



The Scottish Parliament
Pàrlamaid na h-Alba

Cabinet Secretary for Environment,
Climate Change and Land Reform
Roseanna Cunningham MSP

c/o Clerk to the Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

By email only

(RNID Typetalk calls welcome)
Tel: 0131 348 5240
ecclr.committee@parliament.scot

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Dear Roseanna,

Proposed Deposit and Return Scheme: revised regulations

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

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

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

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

Yours sincerely,

Gillian Martin MSP
Convener
Environment, Climate Change and Land Reform Committee

ECCLR Committee questions on the revised regulations

The proposed timeframe

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

Scope – Materials

5. Is the Scottish Government confident that RVMs will be able to accept containers at the smaller end of the size range?
6. Will the Scottish Government consider the potential for further materials such as cartons, pouches, HDPE plastic, biodegradable and other emerging plastics to be added before the October 2026 review date, in particular should evidence become available of significant materials switching to avoid charges, or if there is significant demand from industry or consumers?
7. Is the glass industry currently represented on the Implementation Advisory Group? If not, how will appropriate engagement with the glass industry be achieved in the further design and implementation of the scheme?
8. Can the Committee be provided with the Code of Practice referenced on meeting section 34 of the Environmental Protection Act 1990 on handling high-value waste recycling?
9. Regarding the availability of clear or 'flint' glass, the Government's response said that section 34 of the Environmental Protection Act 1990 requires those handling waste to ensure that it is handled in a fashion that promotes high-value recycling. Does this mean that manual and RVM return points will be required to keep clear glass intact in accepting DRS returns? Would the same requirements apply to returns of non-DRS items such as clear glass jars in existing glass recycling systems? In view of the continuing concerns expressed by some in the glass industry about the availability of clear flint, the Committee would value a more detailed response on this issue to reassure the industry.

Scope – retailers and return points

10. What support will be required for retailers providing manual returns? The Committee understands that the Scottish Government is working with the the Royal Environmental Health Institute of Scotland (REHIS) to better understand potential risks associated with operating a return point in a retail setting in relation to food safety, health and safety, environmental and public health impacts. And will work with REHIS to develop guidance for retailers, particularly smaller businesses. The Committee would welcome further information on the guidance to be issued to small retailers and collection points in terms of manual handling of glass?
11. What existing or new regulatory requirements could apply to vehicles accepting returns – for example would delivery service vehicles for online grocery shopping require a waste carrier licence?
12. Can the Scottish Government confirm it has the powers to require online retailers located outwith Scotland to register and comply with obligations in the Regulations? Are there any legal or practical barriers associated with enforcing these requirements in those circumstances?
13. How will the Scottish Government review the accessibility of the scheme (particularly in rural areas) following its implementation, and will this be done in advance of the statutory review in 2026?
14. What tools or mechanisms could be applied to facilitate the establishment of community return points? Are there opportunities for this to be integrated into wider support for community-based circular economy projects such as re-use and repair centres?

Level of deposit

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

Operational impacts and costs

16. Which amendments have been made to the Regulations “in order to support the effective participation of small producers in DRS” other than the introduction of a tiered producer fee?
17. 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?
18. What role does the Scottish Government expect to have in the initial public communications around implementation of the scheme – is a proportion of the £8.7million estimated in the BRIA for communications expected to be public expenditure?

19. What assessment of employment impacts of DRS for business, including small business and key manufacturers has been undertaken? Will the Scottish Government commit to such an undertaking if it has not been done?
20. What up-to-date analysis of the current reprocessing infrastructure and gaps has the Government undertaken? This is a just transition issue. What plans are in place to address any gaps, including plans to invest? How is the Scottish Government supporting this? Is the Scottish National Investment Bank expected to play a role in this area?
21. The Government has indicated it is up to industry to decide what infrastructure is needed in order to meet obligations in the Regulations, and the Committee understands there are ongoing discussions about infrastructure. Will the Scottish Government be providing support to the industry in the provision of that infrastructure (counting and processing)?

Environmental Impacts

22. Why is it necessary and appropriate for the scheme to operate under no collection target between implementation in July 2022 and the 1st January 2023?
23. Why does the updated SEA show a slightly lower expected emissions reduction over 25 years than the previous SEA?
24. Could the Scottish Government use Regulation 16(b) to require the scheme administrator to publish information on the transport emissions associated with DRS, as a means of encouraging and monitoring low carbon transport infrastructure?
25. Does the Scottish Government plan to ensure, or encourage producers or a scheme administrator to enable deposits to be donated to good causes to support community and environmental benefits?

Implications for local authorities

26. The Committee is keen to understand the impact of DRS for local authorities. The Committee understands the Zero Waste Scotland Report is considered to be commercial in confidence, but asks what further information can be provided to enable the Committee to fully understand the impacts?
27. Regarding the Zero Waste modelling which estimated 3 local councils will be financially disadvantaged by DRS, does the Scottish Government anticipate providing additional support in those areas should the estimates be realised, what are the key causes of those losses, and what are the key opportunities to mitigate those losses?

Wider waste policy context

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

29. Given the UK Government has included primary powers in the UK Environment Bill to introduce its own DRS Regulations – is the Scottish Government in discussion, or planning to be in discussion, with UK Government about potential integration or compatibility of DRS schemes?
30. Can the Scottish Government provide an update on the development of common frameworks on waste and whether they will seek to set a framework to support integrated ambitions across DRS, future extended producer responsibility and other key resource management schemes?
31. The Committee notes that the UK Government intends to use primary powers in the UK Environment Bill to ban the export of plastic waste to non-OECD countries and asks what the implications of such as ban would be in Scotland, and whether there are opportunities associated with DRS to invest in reprocessing infrastructure that would align with these UK-wide measures?

Governance and administration of the scheme

32. Is it possible to legislate for a single Scheme Administrator?
33. How progressed are discussions on the establishment of a Scheme Administrator?
34. Does the Scheme Administrator have the power to determine exemptions and vary the fee levels?
35. What is the framework and mechanism for dispute resolution? And why is a requirement for a dispute resolution mechanism not set out in the Regulations?
36. What additional provisions and support are required in the development and implementation of the scheme are to prevent and detect fraud?
37. Regarding new Regulation 32, why has the Scottish Government set a four-year period before the first review is required. Why has an earlier review period not been specified?
38. Will there be a need for review of some aspects of the scheme implementation earlier than October 2026 to ensure the system has been set up effectively and equitably?

Other Issues

39. In relation to cross border consumer concerns, what further clarification can be provided on charging and return arrangements for those living near the border with England, if they shop in England?
40. How is the Scottish Government responding to the concerns expressed in relation to online shopping?