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Room T3.40
The Scottish Parliament
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1 April 2020

Dear Gillian

Thank you for your letter of 26 March regarding The Deposit and Return Scheme for Scotland Regulations 2020. I am grateful for the Committee's flexible approach to considering the Regulations as we all work to respond to COVID-19.

As you recognise in your letter, our response to COVID-19 is rightly the Scottish Government's priority at present. Nevertheless, I wanted to answer as many of the Committee's questions as possible in advance of the Easter recess. I am happy to attach those answers as an Annex to this letter.

I am mindful of the Committee's intention to consider the motion on the Regulations following recess and will provide answers to the remaining questions in due course.

I hope this is helpful.

Yours



ROSEANNA CUNNINGHAM

ANNEX

The proposed timeframe

Q1. How and when was the new timescale chosen, who was consulted and who made representations in relation to this?

A. When the draft Regulations were published in September 2019, we indicated that we had begun an extensive programme of engagement with a range of stakeholders, primarily supported through the DRS Implementation Advisory Group (IAG), to better understand the factors governing implementation in different sectors. The estimated timescales presented by IAG members were tested further by Zero Waste Scotland, which also sought input from a number of industry representatives who had been involved in the establishment of other schemes internationally.

The output of this work was subject to external assurance in the form of a Gateway Review in November 2019. As a result of the evidence, Ministers agreed before the final Regulations were laid that summer 2022 was the earliest go-live date which would give high confidence of successful delivery.

Q2. 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?

A. As described above, the revised commencement date of July 2022 was arrived at through our assessment of industry readiness to implement DRS, based on the best information available at the time and including a contingency period to allow for unexpected events and delays.

While this assessment was carried out prior to developments in relation to COVID-19, we have taken the view that the extended timetable will provide much-needed time for businesses to respond to the pandemic. We will continue to monitor developments closely.

Q3. 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?

A. As noted above, the go-live date of 1 July 2022 will provide flexibility in the immediate term as our stakeholders deal with COVID-19. The Scottish Government's DRS Programme Board will retain responsibility for providing assurance to Ministers that implementation remains on track and will work closely with industry to monitor the impact of COVID-19.

Q4. 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?

A. The programme has been developing a more detailed understanding of the plan for the remaining phases of delivery as part of its work in finalising the regulations. This will continue and be an iterative process involving close engagement with any scheme administrator(s), once established. Once developed and agreed, we will be happy to consider how this information can best be shared with the Committee. Our analysis is that the critical path for the project is the time that will be needed for retailers to scope requirements, procure and install RVMs at a large number of sites across Scotland, including the time needed to secure planning consent where required.

Scope – Materials

Q5. Is the Scottish Government confident that RVMs will be able to accept containers at the smaller end of the size range?

A. The upper and lower size limits for containers in scope were set in the Regulations based on our understanding of the specifications for currently available RVMs.

Q6. 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?

A. While the Regulations set October 2026 as the date by which a review must be completed, this does not prevent a review of some or all of the scheme beforehand if it is appropriate. We have already committed to consider the scope of materials further, once the scheme is up and running smoothly with the established range of material.

Q7. 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?

A. The glass industry is not represented on the Implementation Advisory Group (IAG), which is formed from trade bodies directly involved in the drinks supply chain as these businesses will be directly involved in the scheme. We would note, however, that drinks producers such as the Scotch whisky sector, which is represented on the IAG, have a strong interest in maintaining a high-quality supply of glass bottles.

As responsibility for implementation of DRS is passed to industry, it will be for the relevant businesses, and any scheme administrator(s), to determine how best to engage wider industry in implementation discussions, including the future remit and membership of any advisory group such as the IAG.

Q8. 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?

A. The current guidance can be found here:

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2012/10/duty-care-code-practice/documents/00404095-pdf/00404095-pdf/govscot%3Adocument/00404095.pdf>.

Q9. 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.

A. Section 34 of the EPA 1990, as amended by the Waste (Scotland) Regulations 2012 requires any person who manages controlled waste (including, for the purposes of these Regulations, return points, producers and Scheme Administrators) to apply the Waste Hierarchy set out in Article 4(1) of Directive 2009/98/EC (the “Waste Framework Directive”) and to take reasonable steps to increase the quantity and quality of recyclable materials, with the desired outcome being closed-loop recycling. Producers and any scheme administrator will therefore have to ensure glass is sorted and processed in a way that maintains the recycle in a high-value state.

Bodies responsible for kerbside collection of glass are already required to ensure they are obeying the duties in Section 34 of the EPA.

Environmental Impacts

Q22. 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?

A. Once DRS reaches its steady state, producers will be required to collect 90% of their PET plastic, metal, and glass drinks containers. This is modelled on the best-performing schemes in Europe, which are achieving collection rates of around 90%. Nevertheless, we recognise that all schemes take time to build up to full performance. This is why the targets begin in the first full year of operation (at 70%) before ramping up to 80% in the second year and then 90% as the steady-state target.

Q23. Why does the updated SEA show a slightly lower expected emissions reduction over 25 years than the previous SEA?

A. The Strategic Environmental Assessment (SEA), published in June 2018, estimated the potential environmental benefits of four different scheme designs. The SEA Addendum published alongside the final Regulations calculated the projected

environmental benefits of the final design for Scotland's DRS. It found these to be higher than those projected for schemes 1, 2, or 3 in the original SEA, due to features including a return-to-retail design, 20p deposit, and legally mandated steady-state target of 90%.

Scheme 4 in the original SEA covered a wider range of materials than the final scheme design, including HDPE drinks containers, drinks cartons, and single-use paper cups. The final scheme design is still expected to outperform scheme 4 for materials targeted under both schemes, but achieve a slightly lower carbon benefit due to the additional material which would have been captured by scheme 4.

Q24. 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?

A. Regulation 16(1)(b) requires a scheme administrator to provide any information requested by the Scottish Government and/or SEPA for the purposes of monitoring its compliance with its member producers' obligations on their behalf. As the Regulations are silent on the subject of the transport infrastructure to be employed by producers (or a scheme administrator as the case may be), a scheme administrator would not be in breach of regulation 16(1)(b) if it did not provide such information to the Scottish Ministers or SEPA if asked. There is nothing to stop a scheme administrator from choosing to publish or share this information.

It should be noted that transport and logistics is one of the significant cost elements for running DRS. It is therefore in the interests of industry to design efficient transport and logistics systems which should have the effect of bearing down on emissions.

The 'additional benefits' section of the application form for approval of a scheme administrator asks applicants to provide examples of how operational decisions or efficiencies could reduce or minimise the environmental impact of operations. Although it is made clear this section is not a formal part of the approval process and responses will not influence whether an application would be approved, we anticipate that any applicant would want to take this opportunity to demonstrate its commitment to operating the scheme in an environmentally friendly manner.

Q25. 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?

A. While Ministers do not have the power to require producers or a scheme administrator to enable deposits to be donated, the vast majority of European schemes offer this option, and producers and any scheme administrator(s) operating in the Scottish scheme will be free to operate this approach. Similarly, return points may choose to allow consumers to opt to have their deposits donated to a good cause rather than being returned directly to them. There are strong reasons to anticipate they will do so: allowing charitable donations will enhance the reputation of the scheme/retailer at little or no cost to them.

The 'additional benefits' section of the application form for approval of a scheme administrator asks applicants to indicate how they could support financial contributions to good causes; again, although this will not influence whether an application is approved, we anticipate that any applicant would want to take this opportunity to demonstrate its willingness to act in this way.

Wider waste policy context

Q28. 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?

A. We view deposit return as a form of producer responsibility, therefore, if a producer is discharging their obligations for material through DRS, they should not also be required to pay into any other extended producer responsibility system. Our research, as laid out in the Full Business Case and BRIA, indicates that DRS will achieve at least the same environmental outcomes as the reformed EPR system and within a shorter number of years. DRS will recover the full net costs of running the system, that is, those costs above any income derived from sale of materials and unredeemed deposits, from drinks producers. This is in line with the approach being considered for the reformed EPR system.

Q29. 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?

A. We have been clear in our willingness to engage with the UK Government and other administrations on DRS to ensure our approaches are compatible, assuming the system introduced in the rest of the UK matches our ambition. The Cabinet Secretary for the Environment, Climate Change, and Land Reform has met her counterparts on a number of occasions to discuss this issue and officials continue to engage with Defra on this and wider EPR issues.

Q30. 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?

A. We are continuing to engage with the UK Government and the other devolved administrations on the development of common frameworks and will be able to share a full update on this wider work in due course. It is the intention that deposit return, extended producer responsibility and other waste-management issues will be captured in a wider framework agreement between the administrations.

Q31. 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 a 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?

A. Deposit return should offer an incentive for reprocessors to set up in Scotland, to take advantage of the supply of high quality recyclable material on offer. Zero Waste Scotland has a workstream tackling this issue. We support action that encourages more domestic reprocessing or otherwise ensures waste is being recycled to the highest quality.

Governance and administration of the scheme

Q32. Is it possible to legislate for a single Scheme Administrator?

A. The enabling powers in the Climate Change (Scotland) Act 2009 provide that, if Ministers opt to designate a scheme administrator, Ministers acquire significant powers of direction over its activities. In our view this would be incompatible with the principle of producer responsibility and our intention of allowing industry flexibility to meet its obligations in the most efficient and effective way possible.

Q33. How progressed are discussions on the establishment of a Scheme Administrator?

A. A coalition of major drinks producers and trade bodies has confirmed to us its intention to apply for approval as a scheme administrator. The proposal is led by three trade bodies with combined membership accounting for c. 80% of the containers placed on the Scottish market: the British Beer and Pub Association, the British Soft Drinks Association, and the Natural Source Waters Association. It is supported by producers including AG Barr, C&C Group, Coca-Cola European Partners, and Highland Spring Group.

The group is engaging with wider industry to raise awareness and build support in advance of submitting an application. While these conversations are ongoing, we understand the reaction from industry has been broadly positive.

Q34. Does the Scheme Administrator have the power to determine exemptions and vary the fee levels?

A. The Regulations give the power to approve and refuse applications for exemptions from the obligation to operate a return point to Scottish Ministers. This would ensure a functioning exemptions process even in the scenario that producers choose to discharge their obligations individually rather than through a single scheme administrator. While this is the case, we would expect to work collaboratively with any scheme administrator to ensure that there is an efficient and effective process that is aligned with their proposed operating model.

The Regulations require producers, or a scheme administrator acting on their behalf, to pay to return-point operators, hospitality retailers and distance retailers offering a takeback service a reasonable handling fee for each item of scheme packaging returned. While the Regulations stipulate the minimum factors which the handling fee for each category must take into account, it will be for retailers to set the handling

fee. This may be done as part of a commercial negotiation with producers or a scheme administrator.

Q35. 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?

A. SEPA is the enforcement body under the Regulations. Any actor therefore has the option of making a complaint to SEPA where they consider that another party is not discharging an obligation under the Regulations and, where SEPA found that this was the case, it could take enforcement action with the aim of compelling the other party to act in accordance with its obligations.

In keeping with the spirit of industry responsibility for DRS, some aspects of the functioning of the scheme are for the relevant businesses to agree as part of a commercial negotiation. Where this is the case, it is for those businesses to agree a mechanism for dispute resolution and it would not be appropriate for the Scottish Ministers to specify one.

Q36. What additional provisions and support are required in the development and implementation of the scheme to prevent and detect fraud?

A. In line with the principle of producer responsibility for the scheme, the Regulations provide producers with flexibility to identify and adopt appropriate fraud-prevention measures. We would expect any scheme administrator, once established, to work with producers and other stakeholders to agree an approach.

Q37. 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?

A. DRS is anticipated to reach its steady state in the third full year of operation, i.e. the calendar year 2025. Review by October 2026 allows sufficient time to collate and analyse the appropriate data on scheme performance for that year before carrying out the review. This is the latest date a review should be completed and does not prevent the Scottish Ministers from carrying out additional reviews, and making changes to the Regulations earlier than that date, should the need arise.

Q38. 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?

A. The statutory review requirement is only one part of the monitoring and review that is planned. In line with best practice we envisage an ongoing programme of monitoring and evaluation to ensure the benefits of DRS set out in the Full Business Case Stage 1 are being delivered. The outputs of this work will be considered by the Scottish Government's DRS Programme Board as part of its continuing responsibility for providing strategic monitoring, assurance, and support for the implementation of DRS.

Other Issues

Q39. 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?

A. Products bought in England will not have the Scottish deposit applied, so anyone shopping south of the Border will not be able to return the packaging for those items to our system. They will still have access to kerbside recycling collections and will therefore be able to dispose of their containers responsibly. Cross-border movement of deposit-bearing items once England has a DRS will be an issue we will consider carefully once we see more details of Defra's proposed approach.

Q40. How is the Scottish Government responding to the concerns expressed in relation to online shopping?

A. As the Committee has noted, the inclusion of online sales in the requirement to pay the deposit and, in particular, online takeback of goods will be important to the success and accessibility of the scheme. As with other aspects, the Regulations provide a great deal of flexibility over how duties should be discharged – particularly in terms of the provision of a takeback service. However, it is important that the duties are discharged. We would encourage producers to work together with any scheme administrator(s) to find a common approach to providing this service.