OFFICIAL REPORT
AITHISG OIFIGEIL

# Net Zero, Energy and Transport Committee

**Tuesday 13 June 2023**

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

# Tuesday 13 June 2023

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## NET ZERO, ENERGY AND TRANSPORT COMMITTEE
**21st Meeting 2023, Session 6**

**CONVENER**

*Edward Mountain (Highlands and Islands) (Con)

**DEPUTY CONVENER**

Fiona Hyslop (Linlithgow) (SNP)

**COMMITTEE MEMBERS**

*Jackie Dunbar (Aberdeen Donside) (SNP)
*Liam Kerr (North East Scotland) (Con)
*Monica Lennon (Central Scotland) (Lab)
*Ash Regan (Edinburgh Eastern) (SNP)
*Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Bob Doris (Glasgow Maryhill and Springburn) (SNP) (Committee Substitute)
Maurice Golden (North East Scotland) (Con)
Ailsa Heine (Scottish Government)
David McPhee (Scottish Government)
Euan Page (Scottish Government)
Lorna Slater (Minister for Green Skills, Circular Economy and Biodiversity)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

The Mary Fairfax Somerville Room (CR2)

# Scottish Parliament

## Net Zero, Energy and Transport Committee

*Tuesday 13 June 2023*

*[The Convener opened the meeting at 09:41]*

## Interests

**The Convener (Edward Mountain):** Good morning and welcome to the 21st meeting in 2023 of the Net Zero, Energy and Transport Committee. We have received apologies from the deputy convener, Fiona Hyslop; Bob Doris is attending the meeting as her substitute—welcome to the committee, Bob. As this is the first meeting that you are attending as a substitute member of the committee, I invite you to declare any relevant interests.

**Bob Doris (Glasgow Maryhill and Springburn) (SNP):** Good morning, convener, and thank you for having me. As is customary on such occasions, I draw members' attention to my entry in the register of members' interests, which is publicly available on the Parliament's website. However, I do not need to draw the committee's attention to anything in particular. I am glad to be joining you for this morning's evidence session.

**The Convener:** Thank you, Bob.

## Decisions on Taking Business in Private

09:42

**The Convener:** The second item of business is a decision on taking items 6 and 7 on our agenda in private. Item 6 is consideration of evidence that we will hear under agenda item 3 and item 7 is consideration of our approach to the future Scottish Land Commission appointments. Do members agree to take those items in private?

**Members** *indicated agreement.*

**The Convener:** We also have to decide whether to consider our work programme in private next week, and whether to consider our report, "Scotland's electricity infrastructure: inhibitor or enabler of our energy ambitions?" in private at future meetings. Do members agree to take those items in private?

**Members** *indicated agreement.*

# Subordinate Legislation

## Deposit and Return Scheme for Scotland Amendment Regulations 2023 [Draft]

09:43

**The Convener:** We move on to agenda item 3, which is evidence on progress towards Scotland's deposit return scheme.

At our meeting on 25 April, the committee agreed to invite the Minister for Green Skills, Circular Economy and Biodiversity to provide a further update on progress in implementing the deposit return scheme.

The draft Deposit and Return Scheme for Scotland Amendment Regulations 2023 were laid in Parliament on 17 May. The instrument is laid under the affirmative procedure, which means that the Parliament must approve it before it comes into force. It gives effect to the announcement of an intended postponement of the start date of the scheme from August 2023 to March 2024. The Scottish Government has since announced that it proposes to delay the launch date to October 2025, stating that the scheme

"cannot go ahead as ... planned."—[*Official Report*, 6 June 2023; c 3.]

The minister wrote to the committee about her intention to revisit the draft regulations that are on today's agenda. We have therefore allocated just over an hour for this evidence session to allow some discussion with the minister about recent developments and the Scottish Government's proposal to revisit the scheme. Following the evidence session, the committee will be invited at the next agenda item to consider a motion to approve the instrument.

Minister, I am sorry for keeping you waiting this morning, but we had some matters to iron out first. I welcome you to the committee and, for those who do not know—I am sure that everyone does—you are the Minister for Green Skills, Circular Economy and Biodiversity. I also welcome, from the Scottish Government, Ailsa Heine, solicitor; David McPhee, deputy director of the deposit and return scheme; Euan Page, head of UK frameworks; and Haydn Thomas, head of the deposit and return scheme policy unit. Thank you for joining us.

We are also joined by Maurice Golden. Maurice, I will offer you the opportunity to ask questions near the end of our session.

I remind everyone that the officials can speak under this agenda item, so if members require answers on anything in the regulations, they will need to raise their question under this item.

Minister, you now have the opportunity to make a short opening statement.

**Lorna Slater (Minister for Green Skills, Circular Economy and Biodiversity):** Last week, I told the Parliament that the Scottish Government was left with no other option than to delay the launch of Scotland's deposit return scheme until October 2025 at the latest. That is a direct result of the United Kingdom Government's decision of 26 May, which was reaffirmed on 5 June, to refuse Scotland a full exclusion from the United Kingdom Internal Market Act 2020. Instead, the UK Government agreed to a partial and temporary exclusion, which imposed additional, significant conditions on our scheme, including the removal of glass.

The Scottish Parliament legislated in May 2020 for an all-inclusive deposit return scheme. We did so because the economic and environmental evidence is stronger and because there was agreement across the UK nations that all the schemes would include glass.

The IMA was brought in after our DRS regulations. As a result, we sought a broad exclusion from it to cover our single-use plastic ban and the DRS. We have therefore been in discussions for almost two years to agree an exclusion for the DRS in line with the agreed common framework process. The inclusion of glass in our scheme was not questioned during that process. Indeed, as recently as January this year, the UK Government's consultation response confirmed that it was for each of the devolved nations to decide on the scope of their deposit return schemes.

It is therefore deeply regrettable that the UK Government chose to unilaterally impose a partial and temporary exclusion at the 11th hour by removing glass and imposing conditions with which we would have to align, but giving no detail on what we are expected to align with.

Since then, we have engaged intensively with delivery partners and the industry to understand how the UK Government's requirements have affected their preparations for the launch of Scotland's DRS. The overwhelming feedback from industry, publicly and privately, is that they can no longer prepare for a March 2024 launch because of the significant uncertainty that has been caused by the UK Government's conditions.

I remain wholly committed to introducing the DRS in Scotland and I remain keen to work with the other UK nations in a spirit of collaboration, not imposition, to see how we can maximise interoperability while recognising the decisions that the Scottish Parliament has made.

The regulations that the committee is considering today were laid on 17 May, before the

UK Government's last-minute decision on the internal market act. The changes that are before the committee are sought and welcomed by industry, which is why we are discussing them. The one exception, of course, is the date. Without the changes that are being made to the regulations today, the go-live date would still be 16 August this year. The regulations change that to 1 March next year. As I have explained, the UK Government's intervention means that that date, in turn, is no longer possible and I am committing to bring before the Parliament further regulations in line with parliamentary procedures and timelines to change the go-live date to October 2025.

I recognise that the process is more convoluted than any of us would wish, but that is where the UK Government's intervention in wholly devolved matters has left us. I am happy to take questions.

**The Convener:** Thank you, minister. You will not be surprised to hear that there are a lot of questions. The first ones come from Mark Ruskell.

**Mark Ruskell (Mid Scotland and Fife) (Green):** Good morning, minister and officials. I am sorry that I cannot join you in person. You spoke about moving forward in a spirit of collaboration. What does that route forward now look like, in terms of trying to secure agreement on interoperability and on other areas where there is significant uncertainty regarding the Scottish DRS and its interrelationship with other schemes around the UK? How does that now take place?

**Lorna Slater:** There are two elements that I would like to include in response to that question. One is that I have a meeting arranged tomorrow with the UK Minister for Environmental Quality and Resilience, Rebecca Pow, to have exactly that discussion about how the UK would like to work with us going forward. Our scheme in Scotland is well advanced. We have passed our regulations and amended them in line with industry, including the amendments that are being considered by the committee today. We know that we have a coherent scheme on the books that is workable by industry and we have been a significant way down the path towards delivering it.

The question for the UK is what interoperability looks like to it. Does it look like the UK Government going away and inventing something entirely different that it imposes on us, or will it take on board the learning that we have done in Scotland, the many years of work that we have done with industry and the expertise that Circularity Scotland Ltd has developed? CSL has within it not only the expertise on how the policies are to be implemented, but the industry connections, and it was well on the way to delivering the information technology systems and infrastructure that are needed.

The matter is with the UK Government and our discussions are to understand how to carry it forward. However, I have a substantial question about how we work with the UK Government, given that we no longer have the common frameworks. The common frameworks are the tool by which we work with the UK Government, but those have, in effect, been smashed up by its 11th-hour intervention. Euan Page is our expert on the frameworks. Perhaps he can add some detail on how we might move forward, given that we do not have the common frameworks any more.

**Euan Page (Scottish Government):** As the minister states, the DRS episode has placed enormous strain on common frameworks as agreed intergovernmental processes designed to manage questions of regulatory interoperability and alignment across the different territories of the UK. They offer the best extant model that we have for managing such questions and they introduce and allow for balance and proportionality in the discussions; those are almost wholly missing from the internal market act and its operation. There is an open challenge about how we can learn from the DRS episode and instil confidence that the common frameworks are a viable means of managing such discussions in a more proportionate way that respects the autonomy and rights of the devolved institutions.

**Mark Ruskell:** Can I just get that clear? You are saying that, in effect, the common frameworks do not exist. What is the forum, then, for a discussion on all the areas of uncertainty, such as the level of the deposit in England's scheme, and labelling? What is the forum for that uncertainty to be discussed and resolved?

**Lorna Slater:** The common frameworks exist as published documents about how we are supposed to work together, but because they have not been followed, it is not clear to me how we move forward. As we have said many times in the chamber and as we have published online, the Scottish Government followed the common framework process all the way through, but that did not result in the exclusion from the internal market act that we needed in order to launch our scheme.

It is not clear to me how we move forward, if that common frameworks process can be disregarded without proportionate analysis and impact assessment by the UK Government at a very late stage, after years of working together. It is unclear to me how we progress, but I will discuss the matter with Minister Pow tomorrow and I also intend to raise it at our intergovernmental meeting in September, to understand how the UK Government intends to work with us going forward, if it does not intend to adhere to those common frameworks.

**Mark Ruskell:** Right. Is there a way forward? What if Minister Pow turned round and said, "We'll discuss all the areas of uncertainty and grant the Scottish DRS the ability to set the framework for the rest of the UK"? Or what if we just had a set of rules that could exist for a period of time?

**Lorna Slater:** That is an interesting question. The UK Government has not done any analysis or impact assessment of its decision to grant a partial exclusion. The UK Government asked the Scottish Government to provide additional impact assessments over and above what is required by the common frameworks. In the interest of supporting our DRS, we provided all the additional documentation and analysis that were requested. What came back to us was the partial temporary exclusion, with no analysis of the impact of that and no understanding of the justification or proportionality.

Nothing has been explained to us by the UK Government, so I genuinely do not know its intentions. I do not know whether the UK Government intends—as I would advise it to do—to take on board the years of work that we and Circularity Scotland have done with industry to put together a workable scheme, or whether it intends to develop something entirely independently and then impose that on the devolved nations.

**Mark Ruskell:** The second part of my question is about what the specific areas of uncertainty are. Could you run through those?

**Lorna Slater:** Absolutely. There are three areas in particular that mean that the decision to delay beyond 1 March was necessary. The first is the matter of the deposit. Scotland's deposit return scheme was based on a deposit of 20p. One of the conditions placed on us by the partial and temporary exclusion from the internal market act 2020 is that the deposit level must align with the UK, but the UK Government has not introduced its regulations yet, so we do not know whether it will set its deposit at 10p, 25p or 30p. A deposit return scheme in which we do not know the level of the deposit is clearly undeliverable.

Another matter is the sizing of containers that are within scope. For example, in Scotland's scheme, the change in container size that the committee is considering today will change the minimum container size to 100ml. However, we know that other parts of the UK, such as Northern Ireland, are considering a minimum size of 150ml. If we do not know what materials are included in the scheme, how can we programme reverse vending machines to accept the materials, and how can we tell businesses that they have to charge a deposit on those materials? That is completely unknown. How can we implement a deposit return scheme if we do not know to which materials a deposit might apply?

The final issue, which is critical and means that the March 2024 launch is impossible, is around labelling requirements. The Scottish deposit return scheme does not include, through legislation, any requirements on labelling, barcoding et cetera, because those matters are not devolved. However, the UK scheme might include that, as the UK Government has powers in those areas. From speaking with businesses and working with them over many years, I know that, particularly for small businesses, they need at least a year to update their labelling and so on, because of the timeline for getting designs ordered and produced. That means that, if the UK Government included regulations on labelling, as it says that it might, and that was to happen, say, in autumn this year, that would in no way give businesses time to get their labelling right before a 1 March 2024 launch.

Those are the three concrete reasons why it is absolutely impossible for us to launch with the conditions imposed as they are.

**The Convener:** Mark, can I come in with a follow-up question before you go on to your next one?

**Mark Ruskell:** I have got just one final question, convener. Is it okay if we go back to you after that?

**The Convener:** You ask your final one, and then I will come in.

**Mark Ruskell:** Great. The question that follows on from that, minister, is about the divergence within the UK. Is there a sense that the UK Government wants one single scheme for the whole of the UK, or is it a matter of allowing the different nations of the UK to have their own schemes, but with a requirement for maximum alignment? Will any divergence at all be allowed? You mentioned that there might be different regulations in Northern Ireland in relation to bottle sizes. Is there one common model for DRS now across the UK that the UK Government wants to be in place, or is there the possibility of different schemes but with an element of alignment?

**Lorna Slater:** In the past six months, we have seen a substantive shift in the UK Government's position on the matter. In January, it clearly said in its documentation that it was for devolved nations to take decisions on those matters; in May, it said that it would not grant exclusions for those nations and that it wants interoperability. It looks like the mechanism for that interoperability is potentially one of imposing those things instead of working co-operatively. Of course, I very much hope that we could work co-operatively and genuinely to everybody's benefit.

10:00

Scotland is years ahead of the other UK nations. We have done so much work and gathered so much expertise in the industry and in getting ready—much of which is encapsulated in Circularity Scotland and in our other bodies such as the Scottish Environment Protection Agency—that the other nations of the UK would be able to pick up from where we are and run with it, if you like, which would make the most sense for smooth implementation. However, it is not at all clear to me that that is the UK Government's intention, although it might be its intention to develop a separate scheme, which it would then impose on us. I will ask Minister Pow those exact questions tomorrow.

**The Convener:** Minister, I am a bit confused. For the system to work across the United Kingdom, surely the same level of deposit should be charged on containers across the whole of the UK. That, I think, is the intention behind the United Kingdom Internal Market Act 2020. Is that not right?

**Lorna Slater:** It would be wonderful to have the same level of deposit across the UK. We have passed regulations that state that the level here would be 20p. However, we do not know what it might be in the rest of the UK, so I cannot comment on that.

**The Convener:** Is your view that you want to impose the level that you want on the rest of the United Kingdom, or is it that you believe that the UK should just do what you are doing?

**Lorna Slater:** It is my view that the Scottish Parliament should be able to legislate on fully devolved matters and that the deposit in Scotland is 20p. That number has not been plucked out of thin air; it is the result of many years of work to develop the right amount for the deposit. When the UK Government sets its deposit, it would make sense for it to look at the work that we have done and to work together with us. We need to have co-operation and discussion on those things, but that is not what we have had. Instead, we have had an 11th-hour intervention saying, "We might change this"—

**The Convener:** Minister, with the greatest respect—

**Lorna Slater:** —but we do not know what that might look like.

**The Convener:** —I am trying to keep the politics out of this. I am trying to work out whether you think that, if the rest of the UK made the majority decision that it would be 10p for a can instead of 20p, that would be the wrong way to go.

**Lorna Slater:** It depends on what the convener considers to be a majority decision. We know that the Welsh are considering a scheme along the lines of ours—for example, they have included glass. Are you measuring a majority decision by the largest nation? Are you suggesting that the largest nation should impose that decision, or that we are a group of four nations that should agree on a level that is based on how many nations wish to go ahead with a different scheme?

**The Convener:** I think that it is all about ensuring that the market is correct. It slightly concerns me that you seem to be wedded to a figure. That figure could be higher or lower in Scotland, which could mean problems for the internal market, which is what the act is trying to protect.

**David McPhee (Scottish Government):** Minister—

**Lorna Slater:** Sorry. I will come to you in a second, David.

Scotland's regulations for a deposit return with a 20p deposit were passed in advance of the internal market act, cover a fully devolved matter, and were passed on the basis of work and research on the right deposit level for our scheme.

I will pass over to David McPhee.

**David McPhee:** Sorry for interrupting, minister. Haydn Thomas might want to come in as well. I just want to make it clear that we work very closely with counterparts across the UK at an official level. Haydn and colleagues in particular have engaged positively with colleagues across the UK on many of those issues for a long time.

In the past, we had been making those decisions and pushing forward with the idea of delivering our scheme, with the rest of the UK schemes then coming into place. We had always thought that interoperability would be an important point and that we would want to do that.

With the IMA decision, the change was that we could not go ahead without agreeing those things in advance and we could not push forward with the decisions that we had made. That caused uncertainty because, at that point, we could not say to businesses, "This is the position on those issues". We were told that we could not go ahead without those issues being aligned in advance. However, we always knew that, in the longer term, we would want to work with our UK Government counterparts to ensure as much interoperability as possible.

The change in context is the fact that we are already in discussions with the UK Government on all those issues, but it is only through the IMA processes that it has been made clear that we cannot go ahead without agreeing those things at a four-nations level, which is a relatively new intervention.

**The Convener:** Was the mood music that 20p was the right level to set?

**David McPhee:** The information from our colleagues in the Department for Environment, Food and Rural Affairs and in Wales, for example, was that they had not yet made a decision on what the appropriate deposit level would be and they would have to work through what that meant in terms of the impact on businesses and on their deposit management organisation, which does not exist as yet. They have to understand the mechanics and what they will mean for that business model and for businesses.

We continue to engage effectively with officials across the UK to discuss those issues but, at the moment, they have not made a decision about what that will look like and whether there would be a single deposit level or variable deposit levels. All those issues are not decided as yet across the other nations. It was therefore impossible for us to say what that deposit could be, because that decision had not been made at that point.

**The Convener:** Okay—that is helpful. Minister, do you have a view, from your discussions, on whether the mood music around 20p per container was going to be something that all the other interested parties in the UK would buy into?

**Lorna Slater:** We have not discussed in detail what their scheme might look like because they have not yet passed their regulations or, indeed, given us an insight into what those regulations might be.

I think that Euan Page had a comment to make, if I can bring him in—

**The Convener:** No, no, minister. Sorry, but I just want to push you slightly on that, if I may. That seems to be a pretty fundamental issue and you do not believe that that has yet been discussed.

**Lorna Slater:** It absolutely has not been discussed on a four-nations basis, which is why the internal market act exclusion is so impossible for us, because the UK Government is saying, "You must comply with our deposit level," but it has not even begun the work to establish what that deposit level will be.

**The Convener:** Okay. My point is that I would slightly question, therefore, where the failure is if you have not got to that level of granularity.

**Bob Doris:** Minister, from your evidence so far, it would appear as though the Scottish Government is open to a four-nations approach where, if there were any concerns about the interoperability of the level of deposit, labelling, or the size of the container, those could be worked out and it would be maybe not essential but desirable for there to be that maximum alignment across all four nations.

Has the UK Government had opportunities to raise concerns about what labelling might look like in Scotland, what the size of container might be and what the level of deposit might be? If it has had those opportunities, has it had those opportunities for six months, for the past year or for the past two years? Have those concerns ever been raised with the Scottish Government?

**Lorna Slater:** The UK Government has had the opportunity to raise concerns at any time in the past three years, since our regulation was passed. I meet my counterparts at DEFRA monthly, when we discuss exactly those matters, and that level of detail has never been raised.

As I have already said, as recently as January, the UK Government was restating its position that the scope for deposit return schemes was a matter for the devolved nations. At no time before January, since the regulations were laid, did the UK raise any concerns about the details of Scotland's scheme, although we all had an agreement that we would work together to make sure that the schemes were interoperable.

Of course, it is to everybody's advantage to ensure that those schemes work well together. However, there is a big difference between ensuring that schemes work well together and being told that you have to comply with something that does not exist yet or even that you have to comply with something that has been created in Westminster and then imposed on us—in a devolved area.

**Bob Doris:** To be clear, there have been discussions through a common framework between the four nations over the past three years where it was hoped that there would be maximum alignment in relation to labelling, container size and the deposit, but at no point in those three years, despite the hope to get alignment, did the UK Government ever raise any issues about any of those things up until very recently. Is that right?

**Lorna Slater:** That is correct.

**Bob Doris:** Thank you.

**Monica Lennon (Central Scotland) (Lab):** Good morning to you, minister, and to your officials.

Can the minister help the committee by explaining what competent assessment was received by the Scottish Government following the March 2023 gateway review of the Scottish deposit return scheme?

**Lorna Slater:** Certainly. Gateway reviews are done periodically on a big delivery process such as the DRS. The purpose of a gateway review is to give a snapshot of progress on delivery, to help us to understand how our on-going engagement is working—both in delivering that project and in

working with industry—and to give us guidance on how to move forward.

That gateway review was a snapshot of project delivery in March. Of course, since March, we have had substantial changes to the scheme, including the delay that was announced to 1 March 2024. Since then, we have also had the intervention through the internal market act, which has created a necessary change to our schedule.

In parallel with the gateway review—as part of the on-going assessment that we always do—we announced in April a set of changes to the scheme to address some stakeholder concerns. Work to deliver the programme necessitated those changes, and we revised the governance arrangement and put in place a system-wide assurance group, with the ministerial strategic assurance group and sector-specific groups. Those groups had already started to meet. We were working together towards that practical delivery.

We had developed the regulations that are being discussed today, which change the scope of the scheme, and bolster our resource. We have a much larger DRS team now to help to deliver that.

All the work that was done was focused on a 1 March delivery date. However, now, of course, we are looking at delivery in October 2025, with an entirely different set of legislation, which has yet to be defined. All the work that was done was to deliver the legislation as passed by this Parliament. Now, we have an entirely different scope, which is to deliver as yet unknown legislation—in October 2025, I hope, but, because the regulations have not yet been laid, we do not know that.

That is the situation. There has been a lot of water under the bridge since March, and we are in a different place now.

**Monica Lennon:** There was certainly some helpful information in that response. You talked about a gateway review being a snapshot of major projects such as the DRS. Back in May 2022, under the confidence assessment, the project's status was amber/red. There was an improvement for October 2022, I think, when it was amber. What was its status in March?

**Lorna Slater:** In March, the gateway review identified that the lack of a decision on an IMA exclusion was a significant blocker to progress, as was the lack of a ruling by trading standards on shelf-edge labelling. Now, of course, as we have seen, the IMA exclusion risk that was identified has materialised, so we are working on the next steps.

**Monica Lennon:** Okay, but that is still not an answer. I am trying to understand the status of the project. In your traffic-light system, minister, was it still at amber, was it amber/red or was it something else?

**Lorna Slater:** Does one of the officials want to come in on that?

**Monica Lennon:** Does the minister—

**David McPhee:** I can come in.

**Monica Lennon:** Sorry, but I am speaking to the minister. Does the minister know what the status was under the gateway review?

**Lorna Slater:** I will bring in my official on that point.

**Monica Lennon:** Okay.

**David McPhee:** Apologies. As the minister set out in a letter last week, the plan is to provide the response to the gateway review before the end of the parliamentary year, including the detail on the rating at that point.

Again, I note what the minister said: that, to some extent, the gateway review was done in a different context, at a different time and on a different position. We want to make sure that we fully represent all the changes that have happened since then, in the response to that review, including all the changes that have happened since March, to make sure that we provide as full a response as possible before the end of the parliamentary year.

**Monica Lennon:** Thank you. As the Government knows, the committee has expressed a view in writing that we would have found it helpful to see the gateway review and to have that published. On 23 May—three weeks ago—the Government said that it would be published imminently. To me, "imminently" means quicker than three weeks. Is there a date?

**Lorna Slater:** Before recess is the intention. In the past three weeks, as Monica Lennon will recognise, there have been substantial changes to the scope of the scheme, so, in order to be able to respond to that gateway review in the context of the work that we are currently doing to take things forward and the situation in which we find ourselves—we made the announcements only last week—we are updating our response to that review and we will publish that response before the recess.

**Monica Lennon:** I have no more questions on the gateway review.

**The Convener:** I will make an observation, minister. On 14 March, you told the committee that the gateway review was imminent. On 24 March, you said in a letter to the committee that you would make it available. You also advised us that you had:

"committed to provide an indication of when findings from the March Gateway Review will be shared. The review report is currently in the process of being finalised. Therefore I will share the review findings with the committee in due course."

10:15

On 27 April, you told us that that would be imminent. On 8 June, I wrote to you regarding a report on the instructions to the committee and asked for the gateway review to be provided as soon as possible. If a committee asks for a report in March and, by June, it still does not have it, my observation is that that is disrespectful to the committee. I make that observation with no political point. The committees in the Parliament are here for a reason. It would have helped today's evidence session if we had had that gateway review in front of us. I am not asking you to respond, but I think that it is wrong.

**Lorna Slater:** I will respond to that point, convener. It is not standard practice to publish gateway reviews, although that has been done on occasion during this project. I committed to the committee that I would respond with the findings of the review, and I have shared some of them with you today. That includes that the review identified significant blockers, such as the lack of a decision on IMA exclusion and the lack of a ruling on trading standards on shelf-edge labelling. I have also outlined our on-going work in that area. As the convener will recognise, there has been substantial change in the past three weeks and I would like the report on the findings to the committee to be up to date with the current context. Therefore, we will publish the findings and the response and will share those with the committee before recess.

**The Convener:** I will make no further observation on that, minister, except to re-read your words to you, which are:

"I committed to provide an indication of when the findings from the March Gateway Review will be shared."

You have shared the other documents, as you have rightly said, which the committee has been pushing for. As convener, my observation is that that has taken too long.

**Ash Regan (Edinburgh Eastern) (SNP):** I was going to ask the minister about the common frameworks process and the way that that is managed across other parts of the UK. During your exchange with Mark Ruskell, you said—you can correct me if I am mischaracterising it in any way—that the Scottish Government had been following the common frameworks process but that the UK Government had not followed the process that it itself had set. Euan Page said that the process was under strain. That is the process that will make things work, if you like, and it is through that that those disagreements would be aired. Is there scope to make it function when it is not currently doing so? Alternatively, do you think that we have gone past that stage?

**Lorna Slater:** That is an area of significant concern. As far as I understand it—Euan Page can keep me right—common frameworks existed before Brexit but have become even more important as we deal with the complexities of the internal market act. If we no longer have that mechanism, and the UK Government can impose restrictions that are based on the 2020 act more or less on a whim and without proportionality, evidence or impact assessments, I do not know where that leaves us in relation to our being able to work together as nations.

Perhaps Euan Page can add some detail.

**Euan Page:** As the minister says, common frameworks predate the end of the transition period and the disapplication of European Union law, which provided a symmetrically applied envelope, or framework, for legitimate devolved policy making in each UK territory, including the UK Government in acting for England. Frameworks also predate the internal market act. I would put the question to the committee of whether common frameworks are able to bear the weight of the disruption and uncertainty that that legislation causes.

My final point relates to the convener's earlier observation about anticipating the consequences of the internal market act on the development and implementation of devolved law. It is useful to keep in mind that there is a distinction between an internal market and the act, which is very specific and anomalous legislation that is overlaid on to the UK constitution and the devolution settlements.

The principles that underpin common frameworks were agreed in October 2017—way before work started on the internal market act. Those principles included a commitment by all UK Administrations to

"ensure the functioning of the UK internal market, while acknowledging policy divergence".

Those words were chosen very carefully. They recognise that it is perfectly legitimate to design policy that has a market impact and that policy divergence is the purpose of devolution. They are very different to the rigidity and lack of proportionality that was introduced by the internal market act, which does not really acknowledge policy divergence and does not recognise that there is a balance to be struck between local autonomy and market efficiencies.

Common frameworks are not dead in the water, but we have to consider very carefully the consequences of the DRS episode, and we also

need to recognise that they offer a viable alternative model for progress by agreement and collaboration.

**Lorna Slater:** It should be also noted that nations within the EU might diverge on policy on the environment—for example—but the internal market act prevents nations in the UK from diverging in the way that we would have been able to if we were a member of the EU.

**Ash Regan:** Okay, thanks—that is helpful. My understanding is that a dispute resolution function is built into the "Resources and Waste Provisional Common Framework". Has the DRS been raised as a dispute under the framework? If not, has that been done under the intergovernmental relations dispute resolution process?

**Lorna Slater:** I will need to turn to Euan Page for the answer to that question.

**Euan Page:** There was no use of the dispute resolution process as part of the common frameworks discussions because there was agreement among the Administrations that policy alignment was not possible and that an IMA exclusion was needed to allow the Scottish regulations to have their intended effect.

Through the new interministerial structures there have been discussions on the implications of the DRS issue on the viability of common frameworks and the effects on the devolution settlement, but those discussions have been items on agendas, rather than a formal activation of the dispute resolution mechanisms.

**Liam Kerr (North East Scotland) (Con):** Good morning, minister. Prior to deciding to pause the scheme, did the Scottish Government take formal legal advice on the impact of that decision?

**Lorna Slater:** The Scottish Government takes many types of advice, and it has received legal advice on matters relating to DRS on an on-going basis, as appropriate. The member will appreciate that what has happened during the past two weeks happened very quickly and that there was a very short time from when that letter was received and reaffirmed on 5 June, to when I made the announcement to the Parliament. However, within that time, the First Minister and I met with businesses to understand how they felt that we should react to the development.

**Liam Kerr:** That is not what I asked, minister. Can we take it that, prior to pausing the scheme, no specific legal advice was sought on the impact of the pause?

**Lorna Slater:** The content of legal advice is confidential, and long-standing conventions—

**Liam Kerr:** I know. Did you take legal advice, minister—yes or no?

**Lorna Slater:** As far as I know, I am not able to discuss that matter. Ailsa Heine can give more information on that.

**Ailsa Heine (Scottish Government):** As the minister said, the Scottish Government has received legal advice on matters relating to the DRS on an on-going basis.

**Liam Kerr:** Did the Government take advice specifically on the decision to pause the scheme? It is a yes or no question.

**Ailsa Heine:** The Scottish Government's position on any matter, and its decision making, is consistent with the legal advice that it receives.

**Liam Kerr:** The First Minister said on Sunday that no compensation would be due from the Scottish Government to businesses that are out of pocket due to the aborted scheme. You will appreciate, minister, that there is always a risk of litigation. How much of a contingency has the Scottish Government budgeted in case the position is not as was set out by the First Minister, and in which budget line is that contingency?

**Lorna Slater:** The member will appreciate that we are working with industry to launch the scheme and that the matter of compensation is not part of the Scottish budget.

**Liam Kerr:** A responsible Government would surely make a contingency, in case its position is not as that Government thinks it is.

**Lorna Slater:** Do any of the officials have a comment to make about that?

**Liam Kerr:** I would like your response as a minister and a representative of the Scottish Government.

**Lorna Slater:** The Scottish Government's position is that, although we recognise the steps that businesses have taken to get ready for the DRS, ministers have been required, in the past few weeks, to make a significant response to challenges imposed upon us by the UK Government. We do not consider that any action that we have been required to take gives rise to any obligation for us to pay compensation.

**Liam Kerr:** Are you saying that no contingency has been made or that you do not know whether a contingency has been made?

**Lorna Slater:** We do not believe that any action that we have been required to take gives rise to any obligation for us to pay compensation.

**Liam Kerr:** Indeed. The scheme administrator, CSL, is funded by business.

**Lorna Slater:** That is correct.

**Liam Kerr:** There is no longer any scheme to administer, which presumably means that

business cannot continue to support CSL. Will the Scottish Government fund CSL in future? If not, what will happen to CSL?

**Lorna Slater:** CSL is a private, not-for-profit company, which is industry-led and is designed to be funded by industry, so it would not be appropriate for the Scottish Government to fund the company. However, as we intend to go ahead with the scheme in 2025 and as the UK Government has said that it intends to go ahead with the scheme in 2025, there will be a need for a scheme administrator and a need to develop the expertise that we have already developed. It is now for producers in the UK at large to decide whether the smoothest path towards the implementation of a UK-wide DRS would be for them to keep CSL in continuity, which I would encourage them to do. Keeping CSL in continuity would allow that expertise to be brought to the delivery of a UK-wide scheme. It is up to the producers that currently fund CSL to decide on that.

**Liam Kerr:** Who will fund CSL until that happens?

**Lorna Slater:** CSL has been funded and must work with its members and producers to decide on the future of the company.

**Liam Kerr:** What is the nature of the £9 million start-up funding for CSL from the Scottish National Investment Bank? What will happen to that investment?

**Lorna Slater:** Arrangements between the Scottish National Investment Bank and CSL are a private matter between those two organisations and I am not involved in that.

**Liam Kerr:** For the avoidance of doubt, are you saying that you do not know the nature of the investment that the SNIB made to CSL?

**Lorna Slater:** I do not have information about the contractual arrangements around that investment.

**Liam Kerr:** Oh dear.

**The Convener:** I am a bit confused. CSL has day-to-day costs to keep going and industry knows that no scheme will come down the road until 2025. Some parts of industry have paid quite a lot of money to keep CSL going. Do you think that they will continue funding CSL on the chance that it will be needed in 2025? That seems quite speculative. Are you happy that that is a reasonable business investment?

**Lorna Slater:** I am interested in the convener's saying that there is a "chance" that CSL might be needed in 2025. The UK Government has committed to launching a scheme in 2025 and we very much support that stated ambition. The smoothest path to a successful UK launch is to keep the expertise that CSL has created. It is for industry to decide whether its smoothest path is to keep CSL going until the 2025 launch or to take another route.

**The Convener:** I was not saying that there was a chance that the scheme would go forward in 2025; I was saying that there is a chance that CSL might be needed in 2025. From a business point of view, it is a punt to continue funding that level of salaries and costs on the basis that that organisation might be part of the new scheme.

10:30

**Lorna Slater:** All the schemes in the UK will require scheme administrator organisations and the UK Government will ask industry to put together what it refers to as a deposit management organisation. We call it a scheme administrator. The UK Government has said that its timeline for putting in place its DMO is 2024. One can imagine a scenario where CSL and its producers work together using their expertise and investment to apply to be the DMO for the whole of the UK. That is one route forward, but it is for industry to decide how it might want to take that forward.

**Liam Kerr:** For the avoidance of doubt, if industry decides not to fund in that interim period, from your earlier answer, minister, your position is that CSL has enough funds to keep going during that interim period.

**Lorna Slater:** That is not my position. That is not what I said. I said that CSL has its existing funding, but to go forward it needs to work out what path it is going to take. There are various paths available, but that is for CSL to work out with its producers, who are its source of funding.

**Liam Kerr:** If its source of funding decides not to fund it because there is no scheme to administer in the immediate future, how will CSL keep going? How will it fund itself, minister?

**Lorna Slater:** Industry will need to decide how it is to comply with regulations. We will lodge amendment regulations saying that the scheme will go live in October 2025 in line with the UK scheme. Industry has to decide how to comply with those regulations. To do that, it has created CSL, so it now needs to decide whether it will keep CSL going in order to comply, or take a different route, such as creating a different body. That is for industry to decide. We as the Parliament make the regulations and industry has to comply with them. The DMOs and scheme administrators are the tools by which industry complies with our regulations.

**Bob Doris:** That has been a very reasonable line of questioning. I am just passing through this committee; I am here for one evidence session only, but it is fascinating.

I am not sighted on the cost to industry for the years when the scheme is not in existence, but there is still a cost to endure there. It appears, minister, that the experience, learning, infrastructure and expertise that Circularity Scotland has built up in recent times would be of direct benefit to the UK Government and to the other devolved nations. I know that Circularity Scotland is an independent organisation that is separate from Government, but is the Scottish Government doing anything to join those dots and be an active party by saying to the UK Government, "Look at this experience, learning, infrastructure and expertise. Let us get round the table and look to see how we can make sure that this organisation is sustainable," so that the UK Government actually makes those decisions? In theory, that could in part lead to a financial commitment from the UK Government.

**Lorna Slater:** That is certainly a very good question, and I intend for exactly that to be on the agenda for my discussion with Minister Pow tomorrow. I intend to highlight the level of expertise and the level of industry connection that has been created, as well as all the infrastructure that CSL has created, such as how to write a producer contract, how to calculate fees and how to do business modelling. For example, it has done extensive modelling on its logistics network to figure out how to collect materials and bring them back to sorting centres, including from islands and remote communities.

All that extensive work is baked into CSL and its contract with Biffa. I will absolutely recommend that the UK Government takes on board that expertise in my conversation with Minister Pow tomorrow. That expertise could be supported going forward so that it could be brought into the UK's DMO and the work would not have to be redone or the investment remade. The investment that CSL and businesses have made here could then be of benefit to the entire UK.

**Mark Ruskell:** I turn to the environmental impact of the exclusion of glass from the scheme and of the delay. Will you please outline what those are, minister?

**Lorna Slater:** As the member will well know, glass is one of the three main materials used to make single-use drinks containers and it accounts for more than a quarter of all containers that were to be included in our deposit return scheme launching in March.

To put that into context, the Scottish deposit return scheme would include up to 600 million glass bottles, which is about the number that reach the Scottish market every year. Our strategic environmental impact assessment addendum, which was published in December 2021, shows that returning glass will account for 1.3 megatonnes of carbon dioxide savings over 25 years, which is almost 32 per cent of the total carbon savings of the scheme. Without glass in the scheme, we would lose one of its substantial benefits, which is the reduction of our carbon emissions. Our route to net zero is, of course, to reduce those emissions to net zero and removing glass from the scheme makes that much more challenging for us to reach. Glass is also one of our most problematic litter materials. Broken glass in our streets and parks and so on causes a health and safety hazard for children, pets and anyone who has to handle it to clean it up.

**Mark Ruskell:** There is a view that we can meet recycling targets for glass just by investing in kerbside collections. What is your response to that?

**Lorna Slater:** There are two issues with counting on kerbside collection alone to meet the recycling targets. One is that kerbside collections are funded by local authorities, so they are funded by public money. The whole point of moving to the polluter pays principle is that the businesses that profit from damaging the environment, such as by the creation of litter, pay for preventing that damage. Across Government, we are moving to a polluter pays principle. The member will be familiar with the extended producer responsibility for packaging regulations that are being worked through on a common UK level towards making that polluter pays principle reality.

The other issue with kerbside recycling is practical. Kerbside recycling can only drive recycling levels up to about 64 per cent. With deposit return, we are looking at more like 90 per cent. Kerbside recycling for glass is what industry experts call "lossy". Items need to be handled many times—put in to boxes, tipped into the back of trucks and otherwise handled—which means that up to 40 per cent of the glass is actually lost. Equally, because the glass can be contaminated, it is considered lower quality, so kerbside recycled glass generally is not recycled into bottles but goes into lower-quality stuff, such as aggregate for roads. The whole point of a deposit return scheme is that it increases not only the amount of recyclate, but the quality of that recyclate so that it can be fully circular and recycled back into glass bottles. That is the whole point of a deposit return scheme.

**Mark Ruskell:** Thank you.

**The Convener:** Sorry—I say this out of interest because I have always slightly struggled on this point. We will still need to collect glass in recycling

bins, such as jam jars and all the rest of it. Surely, the local councils are used to funding that collection through the money that they raise by collecting better glass and selling it on. Now, their glass recycling will just be a loss for them, will it not?

**Lorna Slater:** Many councils do not collect glass at all. There is the ability, when we introduce the circular economy bill, to encourage councils to standardise collection so that everywhere collects glass. In aggregate, there will be more glass in the system, because there will be more, as you say, jam jars, make-up bottles and all those sorts of things that will be included in the scheme. As we improve kerbside recycling, those glass materials can be used to meet the need for glass aggregate and all the other materials that are made of recycled glass that is not as efficient at being recycled back into glass bottles. That glass is needed and is still very valuable.

**The Convener:** Will that cover the costs of those councils that do collect bottles, if they lose the bottles?

**Lorna Slater:** Certainly, our impact assessment of the deposit return scheme shows that, overwhelmingly, councils will benefit from such a scheme. Overall, it will reduce their costs, particularly for handling litter. I am happy for any of my officials to come in on the benefit to local authorities of the deposit return scheme.

**David McPhee:** I do not have much to add to what the minister said, other than the fact that all the analysis that we have seen suggests that it is of benefit to local authorities to remove the glass.

Another point is that the UK Government's own analysis showed that the net present value of including glass in a deposit return scheme increased the benefits of the scheme from £3.6 billion to £5.9 billion. That means that there would be a 64 per cent increase in net present value by including glass in the UK scheme, according to the UK Government analysis. That is why we think that, in general, including glass in a scheme brings with it significant environmental benefits as well as wider benefits to business.

**Lorna Slater:** The final point about glass is that it provides a level playing field so that all drinks producers can be involved in the scheme. If the producers that primarily use glass are removed, there is a bias or tilt in the market for businesses that primarily use cans or plastic bottles. Applying the scheme to all materials that are used for drinks containers makes for a fairer playing field.

**Jackie Dunbar (Aberdeen Donside) (SNP):** I will stay with glass. What are the implications of excluding glass—not only for the DRS but for the wider economy?

**Lorna Slater:** In my previous answer, I went into some detail about how removing glass from deposit return schemes reduces the environmental and littering benefits. As David McPhee said, we know from the UK Government's own analysis that including glass in the scheme would increase its environmental and economic benefits by 64 per cent, which is a substantial increase.

It is also, of course, normal to include glass in deposit return schemes. Of the 51 territories and countries that are operating deposit return schemes, 45 include glass. I think it was WWF that asked on what planet does a bottle return scheme not include glass bottles? It is a commonsense inclusion.

My officials might have something to add on the technical details about the benefits of including glass.

**David McPhee:** From our own analysis, removing glass from the scheme takes the net present value—which takes into account the various environmental, economic and social benefits—for Scotland from £615 million to £337 million. That is our measure of the overall long-term impact of removing glass from the scheme. Removal of glass will reduce the net present value by 41 per cent.

**Jackie Dunbar:** I am aware that you engaged with retailers when you were developing the process. Have you had any feedback from retailers about the recent intervention by Westminster?

**Lorna Slater:** We have spoken with retailers and producers in great detail. Producers—in particular, Tennent's—were very concerned about removal of glass from the scheme because their business is can-based, so removing glass from the scheme will render Tennent's uncompetitive and put in place a significant barrier for its business, which is what we sought to avoid by making sure that glass was included for all businesses.

There are some challenges for everybody who handles glass in the retail space. Glass is heavy and it can be a health and safety hazard if it is broken. Handling glass is therefore a challenge for the people who need to handle it, but its inclusion has significant environmental benefits and creates a fair playing field for producers, so it is important that schemes include glass.

**David McPhee:** As the minister said, we spoke extensively to retailers and producers. A lot of retailers will say that excluding glass from the scheme is a good thing from their perspective because of the point about handling. However, we believe that the wider economic and environmental benefits make the case for including it in the scheme. Some retailers therefore support not having glass in the scheme,

but they make the point that it is not simple to remove glass from the scheme now and it will change the scheme significantly. They will have to redo all their calculations, particularly around their reverse vending machines and where they situate them, where they put storage, how they arrange footfall in their stores and their electronic point-of-sale systems. Removing glass is therefore not a simple issue.

The other changes to interoperability are also causing real concern for retailers and producers and uncertainty about going forward. As I said, removing glass from the scheme is not simply about saying, "Well, that's it. We won't do glass." Lots of things will have to be changed, including things relating to planning permission. Even training will have to be changed.

The strong feedback was, therefore, although some retailers have said that they would have been happy if glass had not been included in the scheme, removing glass now changes the scheme entirely and means that they will be unable to go ahead in March.

**Monica Lennon:** What recent discussions has the Scottish Government had with the Welsh Government, in light of the UK Government's position?

**Lorna Slater:** The Welsh Government participates in our weekly intergovernmental meeting of the four nations. From the most recent meeting, I would say that the Welsh Government is incensed at that interference. Because the Welsh Government is at a different stage, it has not passed its regulations yet, but it was fully intending to include glass in its scheme. It had understood, as we had, from the consultation response that the UK Government published in January, which clearly stated that it was a matter for devolved Governments to decide, that it would be able to go ahead with including glass. However, the internal market act applies to Wales, too, so it is likely to see the same level of interference that we have seen. Yes—it is incensed about the matter.

10:45

**Monica Lennon:** I am interested in the position that has been taken in Wales. Even as recently as yesterday, according to a BBC article, Julie James, who is the Welsh Minister for Climate Change, said that Wales will be taking the UK Government to task. The Welsh Government seems to be quite confident that it can proceed with glass in a deposit return scheme in two years' time. I am interested to understand whether you think that that has any implications for the DRS in Scotland. Do you see further amendments or changes, come 2025, if Wales somehow manages to have a DRS with glass included?

**Lorna Slater:** I know Julie James very well. We meet monthly and have met on other occasions as well. I know that Julie would like glass to be included in the scheme. That is the ambition for Wales, as it is for Scotland. My understanding is that the 2020 act will also be a problem for Wales, but the problem has not come to the fore yet because Wales has not passed its regulations. Wales might be forced to pass regulations that are different from those that it would like to pass or, if it were to pass regulations that include glass, it might be forced by the 2020 act—as we are—to revisit that before the scheme's launch date. Of course, none of us knows what the political situation might be by 2025.

**Monica Lennon:** Does Mr Page want to add to that?

**Euan Page:** Just for context, I say that it is obviously not for the Scottish Government to speak to Welsh Government plans, but you will be aware that the Welsh Government had previously sought to take legal action against the UK Government on the impact of the IMA on the devolution settlement in Wales. It is not for me to speak for the Welsh Government, but that might also be in its mind as something that needs to be tested somewhere.

**David McPhee:** I will add one extra point. Again, the context is, as the minister said, that Wales has not laid regulations and is further from implementation. Again, an issue for businesses was uncertainty, from our perspective. If we had said that we were pushing ahead with including glass without an IMA exclusion, that would create uncertainty and prevent businesses from getting ready and being able to move forward. The point is that we had a launch date on the doorstep so we needed certainty in order to move forward and bring businesses with us. I think that there is a difference between the conversation about what might happen and what was actually happening as we tried to move towards a launch in March 2024.

**Monica Lennon:** Thank you.

**The Convener:** I welcome Maurice Golden to the committee. This is your chance.

**Maurice Golden (North East Scotland) (Con):** Thanks, convener.

I am interested in governance of the scheme. As a result of freedom of information responses, we know that, on 3 March 2021, CSL sent an application to the Scottish Government. The then cabinet secretary, Roseanna Cunningham, replied on 21 March 2021 with a series of concerns, one of which was that CSL was still establishing a company, no chair or board had been appointed

and there had been no due diligence on producer registration. There is a host of issues there.

At that point, the Scottish Government required an agreement by 1 October 2021 with regard to CSL continuing with the scheme, and there was a go-live date of 1 July 2022. Perhaps the committee might look at whether that date was realistic but, clearly, if it was a fully industry-led scheme there would have been no application process to the Scottish Government and no engagement in the detail that is described. Between that letter and 24 March, as part of that application process, CSL said:

"CSL will not buy new vehicles or build new sheds."

Clearly, we have seen that that has not been the case. Did the minister sign off on that?

**Lorna Slater:** My understanding of the process for becoming scheme administrator—I will ask officials to jump in to add detail—is that the regulations that were passed in 2020 set out the conditions for a scheme administrator, and the process is that when an industry body—

**Maurice Golden:** Yes, I realise that. I do not really need an explanation of the process—

**Lorna Slater:** When an—

**Maurice Golden:** I just want to know whether the minister signed off on that. In the application, it says that

"CSL will not buy new vehicles or build new sheds",

but we have seen new sheds and new vehicles.

**Lorna Slater:** I am proceeding to answer the member's question. The criteria for being a scheme administrator are laid out in the regulations. Provided that a business has met those criteria, the Scottish Government does not have the power to deny it the ability to be a scheme administrator, because a scheme could have many administrators. That is not how the power for creation of scheme administrators works. It does not come with that sort of additional conditionality with regard to how an administrator operates, but I am happy to ask officials to provide more detail.

**David McPhee:** I am afraid that I do not have the detail behind the letters that were sent back in 2021.

The only thing that I would add is that Circularity Scotland has been focused on making a scheme deliverable for 1 August this year then March next year, and on doing what was required to ensure that it was able to make the scheme work as effectively as possible. It has been working with its members, which are the producers and retailers that, in essence, would have to deliver the scheme. Therefore, it has been focused on ensuring that it had the capacity and the processes in place to deliver the scheme.

**Maurice Golden:** Okay. The application also says that counting centres will be co-located with existing sorting or recycling sites. On 25 May 2023, I asked for a list of those sites, and the minister said that the Scottish Government does not hold that information. How does the Scottish Government expect to deliver a deposit return scheme without understanding some basic tenets to make it successful? Are you really saying that the Scottish Government does not know which sites have been constructed or are operational?

**Lorna Slater:** The scheme administrator is a company that has been created by the industry to deliver on the regulations that were passed by this Parliament. The regulations do not contain powers for the Scottish Government to interfere in how that is done. We are absolutely following the regulations. However, we have worked with industry on how the scheme is going to work. CSL is responsible for implementation on behalf of the industry, the industry is responsible for complying with our regulations and SEPA will enforce the regulations. Those are the mechanisms for implementing the deposit return scheme.

In addition—as I outlined earlier—we have added a governance structure to support delivery. That is the system-wide assurance group, which helps all the pieces of the puzzle to fit together smoothly. That governance structure was implemented recently to ensure smooth delivery. However, operational details, such as exactly where sorting centres are located and exactly how goods are transferred, are matters for Circularity Scotland. The regulations do not give the Government powers to interfere in that.

**Maurice Golden:** I am not asking the Government to interfere, but to make an assessment. Clearly, the deposit return scheme has now been delayed four times: that is no wonder, if the Scottish Government is not aware of how it can deliver the scheme.

I have a relatively easy question. To the nearest £10 million, what is the total business liability resulting from the delay to the scheme?

**Lorna Slater:** As I said in response to an earlier question, on the basis of the actions that will we have been required to take, we do not believe that there is any requirement to pay compensation.

**Maurice Golden:** I did not ask that. I just wonder what the total business liability is. Surely, there is a total figure for the previous delays. I am not asking for specific business liabilities but for the total figure, because that would clearly be a mechanism that you would use in deciding whether to delay the scheme at any point.

**Lorna Slater:** I feel that you have misrepresented the delays to the scheme, but I am happy to explain those delays in detail. Maurice Golden is suggesting that delays have been decided on a whim or have happened because the scheme was not deliverable in some way—

**Maurice Golden:** I just want to know the total business liability. That is all.

**Lorna Slater:** I do not recognise the term "liability". We have had substantial investment in the scheme—

**Maurice Golden:** So no businesses will need to pay a penny.

**Lorna Slater:** We have significant investment in the scheme. The delays to which you refer need to be properly explained. According to the regulations that were passed in 2020, the scheme was due to go live last year, in 2022. We had the Covid pandemic and Brexit, however, which substantially changed the circumstances in which businesses were operating.

To support businesses, we provided the first year's delay until August this year. That was the launch date towards which we were working until, from February this year, the Secretary of State for Scotland put some doubt in the public space about whether the internal market act would be used to veto and block our scheme. He managed to make good on that threat in May and vetoed and blocked our scheme from being implemented as the Scottish Parliament had passed it.

The latter delays were specifically around interference with the scheme using the internal market act. None of them had to do with any suggestion that the scheme was not progressing operationally.

**Maurice Golden:** How much does CSL require monthly from producers or banks to survive?

**Lorna Slater:** That is a matter for CSL to decide, as a private business.

**Maurice Golden:** Do you know?

**Lorna Slater:** That depends on the structure of CSL, going forward. It depends on whether, for example, it tries to apply to be the DMO for the UK or waits for a Scottish scheme. Producers might like to continue to develop IT systems. There are many pathways forward for CSL; it is working that out right now with its members.

**Maurice Golden:** How much was required after the third delay for CSL to make it to March? Are you aware of that figure?

**Lorna Slater:** That matter is between CSL and its producers.

**Maurice Golden:** I am asking whether you are aware, because I have a figure and I would like to cross-check it.

**Lorna Slater:** It is not a figure that I have. It is an internal figure for CSL and it is working with its members.

**Maurice Golden:** So you do not know.

**Lorna Slater:** I do not have that figure.

**Maurice Golden:** Wow!

**David McPhee:** We have regular discussions with CSL. The point that the minister is making, which we stick by, is that we would not share private figures; it is a private company and is not beholden to Government. The conversations that we would have with CSL about the future of what the delay means are private discussions that we would not necessarily share because it is a private company, so such discussions are very much a matter for CSL.

**Lorna Slater:** We, of course, take industry confidentiality seriously.

**Maurice Golden:** Of course. That is why I asked for the total amounts. Others might think that the Scottish Government has a duty of care.

This will be an easy question. It is my final question, convener. How much is budgeted for the deposit return scheme via Zero Waste Scotland?

**Lorna Slater:** I am aware of the written question that you have lodged on that and that Zero Waste Scotland does some work on the deposit return scheme through part of its budget. I do not have the breakdown of its budget; that might be information that we can get for the member.

**David McPhee:** I do not have the information in front of me, but we can certainly come back with it.

**Lorna Slater:** I am happy to get back with that detail.

**Maurice Golden:** Thank you.

**The Convener:** Before we move on to the next item of business, minister, and while you have your team around you, it would be helpful if we could explore a wee bit why we are going on to that item, which is on an affirmative Scottish statutory instrument that will delay the scheme that was put before Parliament to March 2024 and will modify it, although we know that it will not start then.

What have you done to expedite the outcome so that the committee can consider something that is—it appears to me and might appear so to people outside Parliament—purely a delaying process that kicks some parts of the scheme down the road so that we do not have a start date? Could we have done something different, whereby

the committee considered an SSI to put the whole DRS on hold, rather than amending the scheme before recess? I would like to hear your views on that; people who are watching would find it helpful.

**Lorna Slater:** That is an excellent question, convener, and I am happy to go into it in detail.

As you all know, the urgent matter that we have before us is that the regulations that have been passed by Parliament say that our scheme will go live on 16 August, which is during the parliamentary recess. The urgent matter is that we deal with that so that businesses do not have to launch a scheme this summer after we have committed to delaying it.

The other part of the SSI is practical amendment to the regulations with regard to the size of miniatures and online takeback. We worked with industry for months to establish all those things, including the changes to online takeback, that we know are part of a working scheme. We owe it to the industry to follow through on our promise to deliver on what it worked on, which is why we are bringing those two matters forward. With regard to fitting in an expedited process before recess because of the 16 August cut-off, it would have been very risky to try to get that through Parliament. To make sure that we do not put businesses in the position of having to launch the DRS on 16 August, that was the smoothest process through that time, but I realise that it is not ideal.

**The Convener:** Can you quantify "risky"? I do not quite understand that. Surely, the Parliament is set up to allow a process to stop the scheme now, even if that meant the committee sitting during recess so that the procedure—whatever it is—could be carried out before 16 August.

**Lorna Slater:** I think that that would have reduced scrutiny time, but I will pass over to Ailsa Heine for the detail.

**Ailsa Heine:** We were trying to make sure that we complied with the parliamentary processes and brought forward the regulations that were already laid before Parliament, so that we did not have to inconvenience the Parliament with various expedited processes.

**The Convener:** Is there a parliamentary process that would have allowed that? Presumably, when we come back in September after recess, you will bring forward more regulations or another vehicle to stop the scheme in March. Why could we not have brought that vehicle forward now?

**Lorna Slater:** The requirement would have been to remove the regulations that were laid on 17 May. The changes to the scheme to move it to October were announced last week. We would have had to withdraw those regulations, change them and bring them back. That would have been done through an expedited process, which would allow less scrutiny and, would, potentially, run up against that recess break. I agree that doing it this way is frustrating to all of us, but it means that the committee has had the normal amount of time to scrutinise those amendments and we avoid the cliff-edge problem of what happens over the summer. It is absolutely my intention to lay—as the convener suggests—amending regulations for October 2025 before recess, but those cannot be laid until this SSI has passed.

**The Convener:** However, you could have withdrawn the SSI.

**Lorna Slater:** We could have withdrawn the SSI and modified it, but the timeline for scrutiny would have been very much compressed and we felt that it was important for the committee to be able to scrutinise the regulations.

**The Convener:** I am asking what the scrutiny would be. Surely, if you are saying that nothing will happen until October 2025, we are not going to continue to scrutinise something that is not going to happen, are we?

**Lorna Slater:** From the internal market act intervention, we know that we might have to bring before Parliament more regulations, not only around whether the October 2025 date is deliverable but around other matters, such as the amount of the deposit. By continuing with this SSI—with these amendments, as promised to industry—we completely define the Scottish scheme and avoid that cliff edge. We do so using the smoothest parliamentary process.

**The Convener:** I am not sure that I follow that, but I am sure that somebody does.

**Liam Kerr:** I do not follow that, so I will press the minister, if I may. I am deeply uncomfortable that we are about to pass—you hope—regulations that move the date of implementation to March 2024, when this committee knows that that will not happen. It feels to me like the committee has been asked to agree to laws that we know are not competent and will not come in. Why are the regulations not expressed simply to say that they will not come into force on 16 August but will come in on a date in the future—or something—so that we do not pin them to a date that we know to be false?

**Lorna Slater:** Ailsa Heine may want to comment on that.

**Ailsa Heine:** If I may, I will explain the parliamentary process for the regulations. They are subject to the affirmative procedure, which means that they cannot be made until Parliament has approved them. In their drafting, they must

specify a coming-into-force date. We cannot leave that blank or leave the date to be specified in the future. There is no way to specify the coming-into-force date other than by putting it in the regulations, which have to be approved—

**Liam Kerr:** Why put in a date in March 2024 and not a date in October 2025?

**Ailsa Heine:** As the minister explained, the regulations were laid on 17 May, before there was any knowledge of the UK Government's decision. The Scottish Government's plan was for implementation of the DRS to be 1 March 2024. The only way to change the date to 1 October 2025 would have been to withdraw the set of regulations and lay a further set, which would have required scrutiny by the Parliament—they would have gone to the Delegated Powers and Law Reform Committee for further consideration and they would then have come to this committee for further consideration.

The timescale that we have is such that we have only three weeks left before the recess. That is a very difficult timescale to meet—

**Liam Kerr:** Do standing orders prevent the consideration of regulations during a recess?

**Ailsa Heine:** I do not think that they prevent consideration, but—

**Liam Kerr:** So they could have been considered during the recess.

**Ailsa Heine:** The Parliament would have had to be recalled to consider them. The parliamentary process is such that recess days are not included in the days that are counted under standing orders. Unless standing orders were suspended, the Parliament would have had to agree to a different process. It is not within the Government's gift to change the process. That would have been—

**Liam Kerr:** No, but it is in the Parliament's gift.

**Ailsa Heine:** Yes. The Parliament would have to agree to that.

**Liam Kerr:** Minister, the regulations make other amendments, as you pointed out, and I understand the reason for that. You talked about the need for collaboration and the need to discuss changes to the scheme with the UK Government. Have the changes that you are asking the committee to agree to today been discussed and agreed with the UK Government—in the collaborative way that you talked about earlier—to ensure alignment?

**Lorna Slater:** The UK Government is, of course, aware of the changes but, because it has not put its regulations or its scheme in place, there has not been any co-development on these matters. The amendments have been developed with industry. We have been working with industry for months—for example, with the hospitality industry and small producers—to bring these changes to define Scotland's deposit return scheme, which I remind the member is a fully devolved matter. The amendments, together, fully define Scotland's deposit return scheme.

I will be discussing with Minister Pow how the UK Government wants to develop its scheme. I very much hope that it will look at our complete set of regulations and the work with industry that went into them, and take the learning from that forward into its scheme.

**Liam Kerr:** Just to be clear, the amendments that you are asking the committee to agree to today have not been discussed with the UK Government. You will discuss them with the minister tomorrow. We have just heard about the timescale and how tight it is, given that we are coming up to the recess. However, you have been discussing the amendments for months with industry. Is that correct, minister?

**Lorna Slater:** It is not for the UK Government to agree matters that are devolved to the Scottish Parliament. The Scottish Parliament—

**Liam Kerr:** That is not what I asked about, minister. I asked about the timescale. Was my reflection on your timescale correct?

**Lorna Slater:** The question from the member does not make sense. These amendments have been brought as the result of discussions with industry about Scotland's deposit return scheme, and we are amending Scotland's deposit return scheme—the regulations that were passed by this Parliament in 2020. We are not required to agree amendments to our legislation with the UK Government.

As we go forward to develop an interoperable scheme with the UK Government, we will of course discuss what is going to be best for the whole of the UK.

**The Convener:** Okay. Sorry—I think that I may have caused confusion here, but I am very happy to clarify. I was trying to get an explanation from the minister—before we go on to discuss the regulations and their contents, which we will do under the next agenda item—of why there appears to be a somewhat clumsy approach that involves passing legislation to enable a scheme that is not going to go ahead in the format that is in the regulations. That is what I was trying to do.

Mark Ruskell and Bob Doris want to ask questions on the regulations. I am very happy to open up to such questions if the members feel that it would be helpful for the minister to have her team around her to be able to answer the questions, because, in the next item, only the

minister can answer the questions. I want to be as fair as possible.

Bob, I think that you were first, then I will come to Mark Ruskell.

**Bob Doris:** I am in your hands, convener. We are half way through a line of questioning by Liam Kerr that raises additional questions on which I would like clarity, which is why I would like to ask some questions under this agenda item.

Minister, I can well imagine the fake outrage, had the Scottish Government withdrawn this set of regulations, brought in others and tried to bulldoze those through the DPLR Committee and this committee before recess. Some people in this room, who are now criticising our putting these regulations through, would express absolute outrage if the Government sought to bulldoze through other regulations. I leave that sitting there and go to my substantive question.

You have a meeting tomorrow with Rebecca Pow. Can you confirm that the UK Government does not have a power of veto over individual statutory instruments and regulations that the Scottish Government brings to the Parliament? That would be quite helpful.

However, I take it that you take cognisance of what UK ministers say. Is it possible that, following discussions with Rebecca Pow tomorrow, the final details of what is in a fresh statutory instrument might change slightly, depending on those discussions? If they might, it would not make sense to withdraw these regulations, bring in fresh ones, then bring in a third set further down the line.

I want to know a little more about that meeting tomorrow with Rebecca Pow, because it would be crazy to have three different sets of regulations going about, as some on the committee might anticipate.

**Lorna Slater:** I am happy to discuss tomorrow's meeting and to provide some clarity on that point. The meeting with Minister Pow is to take a baseline of where we are with what the UK Government means to do with the conditions that it has imposed on us. However, the minister will absolutely not be able to answer questions about what the deposit level will be, what the labelling requirements will be or what will happen with miniatures and sizing. She will not be in a position to answer any of our operational or detailed questions that might affect this.

We are therefore going forward with this SSI, partly because it was laid before the interference through the internal market act, but also because it represents our commitments to industry on what the deposit return scheme will look like. As you have said, it is not for the UK Government to veto or agree any particular part of legislation that we pass at the Scottish Parliament.

However, at the meeting with the minister tomorrow, I will be able to present a developed Scottish system, the expertise of CSL and what I hope is a working proposal—that the UK Government can take on board our learning and CSL's experience as the best and smoothest way of launching its scheme, rather than its duplicating effort, coming up with something entirely different, then imposing it on us.

However, I anticipate that we would have to bring forward yet another set of regulations at some point before 2025—if only to take glass out of the scheme, although other things may also be imposed on us.

**Bob Doris:** Thank you.

**The Convener:** I encourage members to stick to the content of the regulations.

**Mark Ruskell:** I will gladly do that, convener.

I turn to the specific amendments that are being brought forward in the regulations today. Will the minister outline what those are and what the reaction from industry has been to those changes, given that many in the industry were calling for them?

**Lorna Slater:** I am very happy to do that. The regulations as passed by the Parliament in 2020 were deliberately quite broad, to allow industry to find a route to compliance that would suit it. The amendments cover five areas that have been the result of extensive work between us and industry.

The first is the requirement for online takeback, which is an important part of the scheme when it comes to equalities and people who are housebound or otherwise disabled and not able to get to a return point to return their scheme articles.

Originally, the regulations required anyone who sold any container to implement an online takeback service. That was difficult for small producers such as gin distillers who might sell only 500 bottles per week. They asked how they were to put in place an entire takeback scheme with vehicles to go and collect such items. The obligation has been restricted to the largest grocery retailers who already have the infrastructure, vehicles and IT systems to handle it, which will make the scheme both accessible and not overly burdensome for small businesses.

11:15

Another amendment is the provision on low-volume products, which is specifically aimed at supporting small producers but in fact will apply to all producers. It says that runs of products valued at less than £5,000 will not incur a deposit and

therefore will not have to meet the system requirements. That will remove 44 per cent of the smallest producers from the scheme altogether, but it will also reduce the materials for the scheme by less than 0.5 per cent. It therefore does not undermine the scheme's environmental benefits but does provide the crucial support for small producers that we all agree is important.

Another amendment is on the minimum container size, as it will apply to miniatures. There are practical issues around how tiny bottles and barcodes can be made recognisable by RVMs, but that change largely involves a simplification of the scheme that will help producers. We think that it will remove only 0.2 per cent of the total scheme articles. Again, we are providing significant support for business while not undermining the environmental aims of the scheme.

The fourth amendment applies to hospitality retailers. Originally, in the regulations as passed, any retailer who sold any article covered by the scheme would be required to apply to be a return point, unless they were granted an exemption. We have widened that out at the specific request of hospitality retailers, who sell more than 90 per cent of their items in a closed loop. I am sorry to use that technical phrase; it means that they sell things that are to be consumed on their premises. If someone goes to a restaurant and buys a bottle of wine they do not take it off the premises; they consume it there and then they leave. That is an example of a closed loop. However, if they go to premises and buy a can or a bottle of juice and then leave with it, that is an example of an open loop. Hospitality premises, 90 per cent of which represent closed loops—which will include most restaurants and many nightclubs and bars—will not be required automatically to be return points. That will remove a substantial proportion of operators from the scheme. The rough estimate that I had from the industry was 50 per cent or so, but David McPhee might correct me on that.

**David McPhee:** It is slightly more than that.

**Lorna Slater:** Was it 60 per cent?

**David McPhee:** Yes.

**Lorna Slater:** That substantially removes hospitality venues from the scheme, which was their request. Again, we do not think that that will interfere with accessibility. The model in other countries is that people tend to return their bottles when they buy their groceries, whether that be at a small shop or at a larger one. They do not think so much about taking their bottles back to a nightclub, for example.

The final aspect is about the right to refuse scheme packaging in certain circumstances. That is specifically in relation to businesses who sell only some types of packaging and their having to handle other types that they would not normally do. That is a more technical aspect, but it matters to some businesses.

Those are the substantial amendments to the scheme's operation that we are considering today.

**Mark Ruskell:** Okay. It would be useful to get a sense of what the reaction has been from businesses that would benefit from those amendments and whether there are calls for others to be made, beyond the larger issues of glass.

**Lorna Slater:** The amendments were developed over several months of discussion with industry representatives. They were asking for those five changes, so we have done as they asked. The amendments were broadly welcomed by industry as helping to make the scheme workable, which is of course why we want them to be passed and covered by regulations in Scotland, so that we can demonstrate to the other UK nations that we have a workable scheme that has industry support behind it. We had not intended to bring in any more regulations to define the Scottish scheme but, depending on how the politics over the internal market act play out over the next couple of years, we might have to lodge further amendments should the UK Government impose matters upon us. At the moment, the present regulations fully comprise the Scottish scheme.

**Mark Ruskell:** You said earlier that there is now effectively a doorstep-ready DRS in Scotland. In your discussions with Rebecca Pow and other ministers, will you be presenting it as a scheme that has effectively been designed by the industry itself?

**Lorna Slater:** That is a really nice way of putting it. As I have said, the regulations as they were originally passed in 2020 were made deliberately broad to allow the industry to find its way. The amendments represent feedback from the industry on the support that it would like to make the scheme work best for its members. We have gone and done what it asked us to do.

**The Convener:** Jackie Dunbar wants to ask some questions.

**Jackie Dunbar:** I do not so much want to ask questions, convener, as get clarity so that I can try to get my head around this. We heard from Ailsa Heine that, if we were to withdraw today's SSI and introduce a new one, because of the date, we would have to recall Parliament to ensure that the scheme did not go live in August. Is that correct?

**Lorna Slater:** In planning the process and looking at our options after last week's disruption, I considered the option of working within the given parliamentary days. It is the smoothest process for

ensuring that scrutiny happens and that things do not hit the cut-off within the given parliamentary days.

**Jackie Dunbar:** If that did happen, what would happen to the scrutiny? You said previously that it would go to the DPLR Committee and then have to come back to us. Should Parliament be recalled, would we have a good level of scrutiny?

**Lorna Slater:** I ask Ailsa Heine to review the process again.

**Ailsa Heine:** Under normal standing orders, Parliament has 40 days to scrutinise an affirmative instrument, and it is my understanding that the first 20 days are for the DPLR Committee to consider the regulations, which then go to the subject committee. Normally, the Government gives 54 days for scrutiny, which allows for the 40 days of committee scrutiny plus time for the regulations to be sent to the chamber for the plenary vote. That whole process would have to be severely truncated and expedited with the agreement of Parliament to allow any regulations to be approved before the end of this parliamentary term.

I am not sure what the process would be for asking Parliament to have that scrutiny time during recess. Normally, the counting days—the 40 days plus the 14 extra days that the Government gives—stop at recess and the recess dates are not counted towards those scrutiny days. An arrangement would therefore have to be made with Parliament on how the scrutiny would work. Although I do not know exactly how that process would be agreed, it would be in the gift of Parliament.

**Lorna Slater:** Although that mechanism for passing regulations that we know will need to be amended is, as the convener has said, a bit clumsy, it is the smoothest in terms of not having to recall Parliament while still allowing for the full scrutiny process instead of an expedited one. Once this SSI passes, I will immediately bring another one before Parliament, which will set the October 2025 date. That will allow for a normal amount of scrutiny, not some accelerated process, as we will have passed that 16 August cliff edge by passing the SSI that you are considering today.

**The Convener:** That probably proves that we have quite a clunky system—I think that that was the description. If there had been an act before the SSI, you could have done it by other procedures—by the made affirmative procedure, I think, for those people who are interested—but there is not, so we are struggling a wee bit with the fact that this is the only way of doing it. We cannot use the made affirmative procedure in this case, so the process appears quite clunky. On that note, I thank you for your evidence.

We move straight to agenda item 4, which is the formal consideration of motion S6M-09033, calling on the committee to recommend approval of the Deposit and Return Scheme for Scotland Amendment Regulations 2023. I remind members that only the minister or members of the committee may speak in the debate. Minister, would you like to speak to this and move the motion—[*Interruption*.]

That was a bang and a half. If you did not hear me, minister, I asked that you speak to and move the motion.

**Lorna Slater:** Thank you, convener, We have covered the matter extensively, so I will go straight to moving the motion.

I move,

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

**The Convener:** Would any member like to contribute?

**Liam Kerr:** I will make a brief contribution. I understand the difficulty of the timing, but I am deeply uncomfortable that the committee is almost being bounced into agreeing this motion—and I do not mean that in a pejorative way. I just find it deeply unsatisfactory to agree to a motion that we know will not be actioned next March, and I do not entirely understand why it cannot be changed. If it meant that the committee or the Parliament would have to sit during recess, that would be fine in my view—there are more than 40 days between now and 16 August. It is better to do things right, rather than quickly.

However, I appreciate that we do not have that choice, so I do not expect to vote against the motion. Indeed, it is for those reasons that I will vote for it. My observation on the substantive amendments that we looked at is that, although they might be the right way to go—and I listened to Mark Ruskell's questions in this respect—I still find it difficult to understand why, given what we heard earlier, this has not at the least been discussed with the UK Government. The minister could have said, "Look, events of the past few weeks have caused changes to the Scottish scheme. Why are we not trying to make sure that there is alignment so that there will be no further changes?"

That is just an observation, however. I appreciate the situation that the minister has set out. For that reason, I am likely to vote for the regulations.

**Mark Ruskell:** I welcome the SSI, which was lodged some time ago. It represents the fact that the minister and her officials have, over time,

listened to business and actively engaged with the sector. As a result, business has helped shape the scheme, and we are probably as close as we can be to a consensus on what a model DRS scheme for Scotland—and, potentially, the rest of the UK—could look like.

Inevitably, there will always be sectors, particularly those that favour glass as well as the glass industry itself, that will want glass to be excluded from any scheme and which will try to seek a commercial advantage over other businesses by doing so. However, this scheme has captured the consensus and has been shaped by business; it can operate in Scotland and could be adopted across the rest of the UK.

The Government has worked long enough on this. In fact, there has been so much consultation and engagement with business that we now have a model that should set the direction for the rest of the UK with regard to interoperability. I am proud of where we as a Parliament have got to with the scheme and proud of what the Government has achieved. We will be ready to go with the scheme as soon as we are able to.

**Bob Doris:** I will be brief, as Mr Ruskell has made some of the comments that I wanted to make.

Somewhere during our robust scrutiny session, the point about the progress made in working with business got a little bit lost in amongst all the process. Mr Ruskell has put that on record pretty well. Having listened to colleagues and having asked lots of questions, I believe that this matter would benefit from more scrutiny, not less. A fresh set of regulations and a statutory instrument returning in September for scrutiny would be no bad thing for the committee and the Parliament. Supporting this statutory instrument is the way of securing that and of making sure that we do not have a scheme that starts in August—which, after all, would not be possible.

As for what Mr Kerr has just said—and I note that he tried to be conciliatory in his remarks—there have been many opportunities over the past three years for the UK Government to raise its concerns, but it did not do so until the past few weeks. We should not lose sight of that when we look at why we are in this situation. It needs to be put on the record, yet again: the requirement for a further set of regulations and further statutory instruments lies squarely at the door of the UK Government.

That said, I think that the statutory instrument that the committee has to pass is perfectly competent. If I were to be invited back to the committee in September to scrutinise the new set of statutory instruments, I would look forward to it.

11:30

**The Convener:** I fear that the person for whom you are substituting might not allow you to take her place. I might have misjudged that, though—I do not want to put words in her mouth.

Minister, I have a question for you to start with, before I make a comment. When do you perceive laying the set of regulations, or the statutory instrument, to replace this statutory instrument?

**Lorna Slater:** It will not replace it—it will just amend the date.

**The Convener:** Amend it.

**Lorna Slater:** Yes. I hope to be able to do that before recess—that is my intention. There is a requirement for the statutory instrument that the committee is considering to pass through Parliament before I can lay that one. I am not the Minister for Parliamentary Business and I am not in charge of the timetable, but that is the intention.

**The Convener:** As you and I well know, it will be just a quick vote at decision time, so it is simply a question of putting it in.

So, in the regulations that you will bring in to update these regulations, it will just be a matter of amending the date. There will be nothing else in it.

**Lorna Slater:** That is correct.

**The Convener:** So that instrument will need a lot more scrutiny, will it?

**Lorna Slater:** It will have to go through the same process as every other SSI.

**The Convener:** But it is just about a date.

**Lorna Slater:** The parliamentary process is the process, and we need to make sure that it is followed. The number of scrutiny days and so forth is set out, and it is not something that I intend to challenge.

**The Convener:** So there will be no other regulations in that statutory instrument apart from those to do with the date.

**Lorna Slater:** Yes—sorry. There will be some consequential date changes around registration, but it will be to do with that date. There will be no more definition of the scheme in terms of the materials included in it and so on. It is specifically in order to get that date right.

As I have said, there are some consequential date changes in terms of the registration date. The registration date for 16 August, for example, required a March date, so if we were to move to October 2025, there would be other consequential dates associated with that. However, that would be the full matter.

**The Convener:** Okay. I do not mean to labour the point, but I will just say that the process for getting us to where we are today seems very clunky. I find myself in a position where voting against this statutory instrument would put unbearable strains on businesses, but I also believe that there would have been a way of resolving this before Parliament went into recess, if there had been the will to do so. I find it particularly difficult to consider and approve something when I know that, as soon as I approve it—or as I am in the process of approving it—it is invalid. That is my position.

As no one else around the table wants to make a comment, you may make a closing statement, minister. You could of course waive that, if you would like to, and we would move directly to the decision. It is up to you, minister.

**Lorna Slater:** I am happy for you to move to the decision, convener.

*Motion agreed to,*

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

**The Convener:** The committee will report on the outcome of the instrument in due course. I invite the committee to delegate authority to me, as convener, to finalise the report for publication. Is the committee happy with that?

**Members** *indicated agreement.*

**The Convener:** I thank you and your officials, minister, for the time that you have given us this morning.

I briefly suspend the meeting and ask committee members to be back at 11:40.

11:33

*Meeting suspended.*

11:40

*On resuming—*

## Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2023 (SSI 2023/160)

**The Convener:** Welcome back. Our next item is consideration of an instrument laid under the negative procedure, which means that its provisions will come into force unless the Parliament agrees to a motion to annul it. No motions to annul have been lodged.

If members have no comments on the instrument—[*Interruption*.]—I am sorry, Ms Dunbar.

**Jackie Dunbar:** I am just saying that I am content.

**The Convener:** Thank you. Does the committee agree that it does not wish to make any recommendations in relation to the instrument?

**Members** *indicated agreement.*

**The Convener:** Thank you. That concludes the public part of our meeting.

11:41

*Meeting continued in private until 12:05.*

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