



The Scottish Parliament
Pàrlamaid na h-Alba

Published 5 October 2023
SP Paper 446
14th Report, 2023 (Session 6)

Net Zero, Energy and Transport Committee

Net Zero, Energy and Transport Committee report on The Deposit and Return Scheme for Scotland (Miscellaneous Amendment) Regulations 2023 [draft]



Published in Scotland by the Scottish Parliamentary Corporate Body.

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Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Net Zero and Just Transition, with the exception of matters relating to just transition; on matters relating to land reform, natural resources and peatland, Scottish Land Commission; Crown Estate Scotland, and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands; and on matters relating to energy within the responsibility of the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy.



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Introduction

1. [The Deposit and Return Scheme for Scotland \(Miscellaneous Amendment\) Regulations 2023 \[draft\]](#) was laid before Parliament on 30 June 2023 and is subject to the affirmative procedure. The draft instrument was referred to the Net Zero, Energy and Transport Committee for consideration.
2. It is for the Net Zero, Energy and Transport Committee to recommend to the Scottish Parliament whether the draft Regulations should be approved. The Minister for Green Skills, Circular Economy and Biodiversity lodged motion [S6M-09842](#) which recommended the Committee approve the draft Regulations.
3. According to the [Policy Note](#), the purpose of this instrument is to alter the full implementation date for Scotland's Deposit Return Scheme (DRS) from 1 March 2024 to 1 October 2025 (matching the UK Government's planned date for DRS operating across other parts of the UK) and to make other consequential amendments.
4. On June 13, the Committee considered previous DRS Regulationsⁱ which delayed the scheme's launch until 1 March 2024. The Minister said at this meeting that the scheme would be delayed further than 1 March 2024 and therefore she would bring forward new Regulations as soon as possible to ensure the statutory implementation date for the scheme aligned with new policy developments.

[Read the Official Report - 13 June 2023.](#)

5. [On 11 September](#), the Minister wrote to the Committee to share a supplementary Business and Regulatory Impact Assessment and a Strategic Environmental Assessment for the draft Regulations. These assessments focus solely on the impacts associated with the changes to the proposed launch date of the scheme.

Consideration by the Delegated Powers and Law Reform (DPLR) Committee

6. At its meeting on 12 September, the DPLR Committee considered the draft Regulations. The Committee agreed [in its report](#) of the meeting to draw its correspondence with the Scottish Government to the attention of the Net Zero, Energy and Transport Committee on the basis that it provides further information on the Scottish Government's policy intentions regarding registration fees already paid. This correspondence can be found in **Annexe A**.

[Read the Official Report - 12 September 2023.](#)

Consideration by the Net Zero, Energy and Transport Committee

7. At its meeting on 26 September 2023, the Committee took evidence on the draft Regulations from—
 - Lorna Slater, Minister for Green Skills, Circular Economy and Biodiversity, Scottish Government;
 - Ailsa Heine, Solicitor, Scottish Government;
 - David McPhee, Deputy Director, Deposit Return Scheme, Scottish Government; and
 - Haydn Thomas, Head of Deposit Return Scheme Unit, Scottish Government.
8. The evidence taken and debate held at that meeting regarding this instrument can be found in the Official Report.
[Read the Official Report - 26 September 2023.](#)
9. In her opening remarks, the Minister said that "positive progress" had been made over the summer with regards to developing proposals for an interoperable DRS with counterparts across the UK.ⁱⁱ
10. The Committee asked if the Scottish Government could have proceeded with DRS without glass. The Minister said that it is possible to operate a DRS without glass but "the environmental and business case supports its inclusion" and that a scheme without it "would not have been as good". She also explained that reason to halt the scheme was not only due to issues around the inclusion of glass. She said there were also new conditions applied by the UK Government in its partial and temporary exemption from the UK Internal Markets Act 2020 (UKIMA) about how the scheme would operate. This meant she could not provide businesses the certainty they needed.ⁱⁱⁱ
11. The Committee probed if the Scottish Government was premature in delaying the scheme.^{iv} It noted comments made by Circularity Scotland indicating that a DRS with cans and plastic bottles could have gone ahead.^v The Minister said it is possible to progress a scheme without glass, however she reiterated that delaying the scheme was a product of uncertainty created around key issues such as labelling and the deposit level. The Minister said this ambiguity meant the scheme could not proceed in any form.^{vi}

ii Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#) , cols 35-36.

iii Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#) , col 37.

iv Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#) , col 38

v Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#) , col 42.

12. The Committee queried what actions needed to take place to ensure a UK-scheme was delivered by 2025. The Minister said the UK Government needed to bring forward Regulations for the scheme and have them passed by the UK Parliament. These Regulations would set out a how the scheme would function, including on issues such as the deposit level and how to appoint a scheme administrator. The Minister stated that the UK Government has yet to decide what its regulations will look like and the Scottish Government has been feeding into consideration of that over the summer.^{vii}
13. The Committee asked if the Minister was aware whether the UK Government was putting these steps in place. The Minister said her officials were engaging over the summer with their counterparts across the UK to discuss the parameters of an interoperable scheme. A Scottish Government official said the UK Government's current plans are to lay Regulations for the scheme early next year and to appoint a scheme administrator towards the end of next year.^{viii}
14. The Committee asked if a phased launch for the scheme across different parts of the UK could be possible. The Minister said this was a matter for the UK Government to consider.^{ix}
15. The Committee asked what the Scottish Government's assessment has been of the environmental and economic implications resulting from the delaying the scheme to October 2025. The Minister referred to the updated business and regulatory impact assessment that had been produced and stated that the major change is that “all the carbon and waste benefits that we would have had by getting the scheme up and running in August this year, as was originally intended, are being lost. There will be two more years of that pollution and waste”. A Scottish Government official said the environmental impact of the delay would be an additional 166 kilo-tonnes of CO2. He added that the economic impact on the net present value for that one-year delay is £18 million.^x
16. The Committee questioned whether the Scottish Government could have done more to prevent Circularity Scotland going into administration. The Minister said because the scheme could not go ahead Circularity Scotland did not have a scheme to operate.^{xi}
17. The Committee queried if the Scottish National Investment Bank's (SNIB) £9million loan to Circularity Scotland would be lost as a result of organisation entering administration. The Minister said she was also concerned about the potential loss of

vi Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#) , cols 38-39.

vii Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#) , cols 39-40.

viii Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#) , cols 40-41.

ix Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#) , col 41.

x Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#) , col 41-42.

xi Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#) , col 42-43.

taxpayers money.^{xii} She said she was "not familiar with what the administrators will be able to manage through that process."^{xiii} The Committee asked if the Minister took any responsibility for the £9 million of taxpayers' money that could now be lost. The Minister indicated that she did not as "the scheme would have gone ahead in August 2023 if the UK Government had granted a full exclusion in the timeframe that we had previously agreed." The Committee asked if SNIB's Annual Report would show heavy losses as a result of this investment. The Minister said she was not involved with SNIB and does not know what it will be reporting.^{xiv}

18. The Committee asked what lessons had been learned from DRS when considering provisions in the Circular Economy (Scotland) Bill. The Minister indicated that DRS had shown the Resources and Waste Common Framework had not served its purpose of strengthening collaboration between Administrations when it came to DRS. She said there was a larger project being taken forward around how the Common Frameworks work between the two Governments.^{xv}
19. The Committee probed what engagement had taken place between the Scottish and UK Government on the Bill and its potential interaction with UKIMA. A Scottish Government official noted the Bill had been discussed between officials as part of the Common Framework process. The Minister said that because the Bill was framework legislation, there was no inherent internal market issues. She added that proposed measures arising from enabling powers in the Bill would be scrutinised for UKIMA implications.^{xvi} The Committee probed whether framework Bills prevented robust parliamentary scrutiny. The Minister said she appreciated frustrations around framework legislation, but said that enabling powers in this Bill were appropriate to ensure the Government could respond to things such as product developments in the future.^{xvii}
20. The Committee asked what further Regulations the Scottish Government would bring forward to make modifications to the scheme ahead of October 2025. The Minister said it was almost certain further Regulations would be required, and these would be brought forward when details of how a UK scheme will operate become clearer.^{xviii}
21. Following the conclusion of evidence taking, the Minister moved motion S6M-09842 in her name—

That the Net Zero, Energy and Transport Committee recommends that the Deposit

xii Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#), col 43.

xiii Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#), col 44.

xiv Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#), col 43.

xv Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#), cols 44-45.

xvi Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#), cols 45-46.

xvii Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#), cols 46-47.

xviii Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#), col 47.

and Return Scheme for Scotland (Miscellaneous Amendment) Regulations 2023 [draft] be approved.

22. The motion was agreed to without debate or division.

Conclusion

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

Annexe A - correspondence between the DPLR Committee and the Scottish Government

Deposit and Return Scheme for Scotland (Miscellaneous Amendment) Regulations 2023 (SSI 2023/Draft): On 17 August, the Committee asked the Scottish Government:

Transitional Provision

1. Regulation 11 of this instrument revokes regulation 22 of the Deposit and Return Scheme for Scotland Amendment Regulations 2023 and as a result there is no longer any transitional provision for a rollover of previous registrations/ applications/fees paid.

The Policy Note simply states that “this transitional provision is no longer required.” While it is understood that this provision was in respect of the year beginning 1 March 2024 and that the new implementation date is 1 October 2025, it is not clear what the policy intention now is in relation to those producers who had already registered/applied/paid fees in advance of 30 June 2023. These producers who were covered by the transitional provisions were not required to re-apply or to pay a fee as either a registered producer of scheme articles under regulation 8 or as a listed producer of low volume drink products under schedule 5.

It would seem from the amendments made by this instrument to the Deposit and Return Scheme for Scotland Regulations 2020 (the “2020 Regulations”) that producers will now have to make new applications for registration or listing and pay the required fee by 13 August 2025 in advance of the new implementation date of 1 October 2025, however it is not clear what the status of previously paid fees will be, for example will these be refunded or set-off against the new applications? We would welcome your clarification of the policy intention in these respects. Is the intention that previous fees paid would be lost without reimbursement or compensation?

Fees

2. It appears from the proposed amendments to the 2020 Regulations that producers will now require to apply for registration/listing twice in a period of around 6 months, that is (a) by 13 August 2025 to take effect from 1 October 2025 and (b) by 1 March 2026 to take effect from 1 April 2026; and therefore the initial registration will only have effect for 6 months. This is based on:

- regulation 6 of this instrument which amends the dates by which a producer must apply for registration under regulation 7 of the 2020 Regulations to 13 August 2025; and to before 1 March in any relevant year beginning on or after 1 January 2026; and
- regulation 7 of this instrument which amends the dates registration takes effect from under regulation 8 of the 2020 Regulations, where the application is made by 13 August 2025, to 1 October 2025; and is 1 April in any subsequent relevant year where the application is made by 1 March.

It therefore seems that producers will require to pay the full fee of £365, where applicable, for an initial period of 6 months rather than a year, rather than the fee being pro-rated.

Could you confirm that this is the policy intention?

On 5 September 2023, the Scottish Government responded:

Transitional Provision

1. The Scottish Government confirms that, since regulation 11 of this instrument revokes regulation 22 of the Deposit and Return Scheme for Scotland Amendment Regulations 2023, it is intended that there is no longer a transitional provision for a rollover of previous registrations/applications/fees paid. The Scottish Government also confirms that the effect of the amendments made by this instrument to the Deposit and Return Scheme for Scotland Regulations 2020 (the “2020 Regulations”) is that producers will have to make new applications for registration or listing and pay the required fee by 13 August 2025 in advance of the new implementation date of 1 October 2025.

When the Deposit and Return Scheme (DRS) was delayed until 1 March 2024, SEPA intended to retain the producer registration fees which had been paid to it during 2023. Under the regulation 22 of the Deposit and Return Scheme for Scotland Amendment Regulations 2023, the transitional provision would have ensured that producers who had already registered in 2023 would not have to pay a registration fee when they registered with SEPA for DRS in 2024. Under the 2020 Regulations producers are required to register annually and pay an annual registration fee. So, in effect, the registration fee that had been paid by producers in 2023 was simply being rolled over for their 2024 registration, and they suffered no disadvantage from having registered timeously in 2023 when DRS did not in fact go live as originally planned in August 2023.

When DRS was delayed further to October 2025, SEPA indicated that they would not retain these registration fees until 2025. There is therefore no rollover of any producer registration fees to 2025 and any fees paid in 2023 are being refunded to producers. This means that producers will start from scratch in relation to registration for DRS in 2025. For completeness, the Committee may wish to note that Scottish Ministers withdrew from Circularity Scotland its approval as scheme administrator with effect from 18 August 2023. SEPA was then required, under regulation 17(6) of the 2020 Regulations, to contact producers in relation to their registration following the withdrawal of CSL’s approval. SEPA also took that opportunity to set out the refund process for their 2023 registration fees. SEPA wrote to producers on 28 August confirming that they would be refunding the registration fees received, and requesting bank details from the producers affected. SEPA will process all refunds after receiving bank details.

Fees

2. The Scottish Government confirms that the current intention is that the 2020 Regulations (as amended) require producers to pay the full fee of £365, where applicable, for an initial period of 6 months rather than a year, rather than the fee being pro-rated.

