

Net Zero, Energy and Transport Committee

9th Meeting, 2023 (Session 6)

Tuesday 14 March 2023

Deposit Return Scheme: Note by the Clerk

Introduction

1. The Committee has agreed to take evidence on the Scottish Government's Deposit Return Scheme. On 14 March, the Committee will hear from the Scottish Government. It has also agreed to hear from Circularity Scotland, the scheme administrator, at a meeting in the near future. In these sessions, the Committee aims to ascertain key information about the Scheme's readiness for launch on 16 August this year.
2. Section 84 of [the Climate Change \(Scotland\) Act 2009](#) empowers the Scottish Ministers to introduce, by regulations, a "deposit and return scheme". [The Deposit and Return Scheme for Scotland Regulations 2020](#) were [passed by the Scottish Parliament in 2020](#), following [a consultation in 2018](#) and [scrutiny by the Parliament](#) of draft Regulations in 2019. The Regulations provided for a Deposit Return Scheme to go live on 1 July 2022.
3. In 2022, the Scottish Parliament agreed to [amending Regulations](#), which delayed the 'go live' date from 1 July 2022 to 16 August 2023, after a review found that due to the pandemic and EU exit the 2022 date was not practical. The NZET Committee took evidence on, and debated, these Regulations at its [meeting of 25 January 2022](#).
4. A [2 March blog from the Scottish Parliament Information Centre \(SPICe\)](#) provides further information about the background to the Scheme's launch, how it is intended to operate (including the distinct roles of Circularity Scotland, Zero Waste Scotland and the Scottish Environment Protection Agency), and concerns that have been raised over the Scheme's readiness in the run-up to 16 August.

Scottish Government updates to the Committee

5. The Minister for Green Skills, Circular Economy and Biodiversity, Lorna Slater, [wrote](#) to the Committee on 3 November 2022 to provide an update on preparedness for the introduction of the scheme.
6. The Minister [wrote](#) to the Committee again on 14 December 2022. She said she recognised concerns within the business community, but that the Scottish Government was "committed to a pragmatic approach to implementation"; as set out in the letter.

7. In a [further update](#) sent to the Committee on 1 March 2023, the Minister stated that “businesses representing over 90% of the total volume of drinks containers sold in Scotland each year have completed registration with Circularity Scotland for Scotland’s deposit return scheme”. The 1st of March had been set as the deadline for completing registration.
8. In the Minister’s [most recent update to the Committee](#) on 6 March she states—
- “... the Committee will be aware the Scottish Government has conducted a series of independent gateway reviews as part of its standard, good practice approach to ongoing assurance of the DRS programme. I can confirm that dates have now been confirmed for a further review to take place week commencing 13 March 2023, in line with the last report’s recommendations for a review to take place in February 2023 or close to that date. The Scottish Government will consider carefully the recommendations from this review, and will share these and its response with the Committee in due course.”

Other written evidence: views from industry

9. The Committee has received two representations from industry, both expressing concerns about the Scheme—
- [Shoogle Spirits – May 2022](#)
 - [Beer 52 – February 2023](#)

The Scheme and the UK Internal Market Act 2020

10. Although implementation of the Scheme has been delayed, it will still be introduced earlier than equivalent schemes in other parts of the UK. Another issue the [2 March SPICe blog](#) touches on the Scheme’s interaction with the United Kingdom Internal Market Act 2020. The 2020 Act enshrines two principles:
- The mutual recognition principle; goods that have been produced in, or imported into, one part of the UK and comply with relevant requirements there, can then be sold in any other part of the UK without adhering to different regulatory requirements in that part.
 - The non-discrimination principle: goods in one part of the United Kingdom should not be affected by restrictions that discriminate against goods from another part of the United Kingdom.
11. The 2020 Act provides a mechanism for the UK Government to grant an exclusion enabling a devolved administration to make law in way that, but for the exclusion, would not be compatible with the 2020 Act. In December 2021, the UK Government and devolved administrations [agreed a process for the consideration of further exclusions from the 2020 Act](#) in areas where a Common Framework agreement¹ exists between the UK Government and one or more of the Devolved

¹ A common framework is an agreed approach to a particular policy, including the implementation and governance of it between the different administrations of the UK. They have been adopted, post-Brexit, in areas formerly subject to EU law.

Administrations. [On 18 January, the Minister wrote to the Committee](#) to share the text of the provisional Resources and Waste Framework. The Committee, in common with counterparts from across the UK [expects to scrutinise the contents of this Common Framework](#) in due course.

12. The agreement requires that if a party to the framework wishes to seek an exclusion to the market access principles, it must set out the scope and rationale for this. The proposed exclusion is then considered by the appropriate framework forum, taking into account evidence such as the likely direct and indirect economic impact of the proposed exclusion. If the exclusion is agreed, it is for UK Ministers to introduce a draft instrument to the UK Parliament to give effect to it.
13. The Scottish and UK Governments have both made public statements indicating that they recognise the Deposit Return Scheme requires an exclusion from the 2020 Act. However, the two governments have expressed different views as to when the process of requesting an exclusion started.
14. On 22 February 2023, the Secretary of State for Scotland, the Rt Hon Alister Jack MP, said in response to [questions on Scotland's economy](#) in the House of Commons, that no request for an exclusion in relation to the Deposit Return Scheme had yet been received. He added that the exemption bar for an exclusion “is very high indeed”.
15. In [a 6 March letter to the Committee providing a further update on the Scheme](#), the Minister for Green Skills, Circular Economy and Biodiversity states that the Scottish Government “first requested an exclusion in 2021”. In questions following her [Ministerial Statement](#) in the Scottish Parliament on 1 March, she had said the Scottish Government had first sought an exemption in “July 2021”
16. The Scottish Government has [published this timeline](#) setting out its communications with the UK Government on the Deposit Return Scheme.

14 March evidence session and next steps

17. The Committee will hear from the Minister for Green Skills, Circular Economy and Biodiversity and officials at the 14 March meeting. It will then discuss that evidence and next steps, including which issues arising from the session to focus on in a future evidence session with Circularity Scotland. Key themes pursued by the Committee on 14 March are likely to include—
 - the concerns from some industry stakeholders about the practicability of the Scheme and how the Scottish Government responds to these;
 - the Scottish Government’s views on the readiness of industry, Circularity Scotland, SEPA and others for the 16 August going live date; and
 - the process followed to obtain an exclusion for the Scheme under the 2020 Act.