

POLICY NOTE

THE DEPOSIT AND RETURN SCHEME FOR SCOTLAND AMENDMENT REGULATIONS 2022

SSI 2022/76

The above instrument was made in exercise of the powers conferred by sections 84, 89, 90 and 96(2) of the Climate Change (Scotland) Act 2009. The instrument is subject to the affirmative procedure.

Purpose of the instrument.

To amend the Deposit and Return Scheme for Scotland Regulations 2020 (“the original Regulations”); specifically, to alter the full implementation date for Scotland’s Deposit Return Scheme (“DRS”) and make other amendments designed to support delivery and operation of a successful DRS.

The main policy driver for DRS is to promote and secure an increase in recycling of materials, forming part of the Scottish Government’s response to the global climate emergency, by ensuring the targeted materials are collected in larger quantities and separately to other materials.

Policy Objectives

The Scottish Government is committed to creating a more circular economy where products and materials are kept in a high-value state of use for as long as possible – maximising resources to benefit the economy and the environment. In recognition of the fact that fresh interventions are needed to bring about the systemic and behavioural change necessary to fulfil these aspirations, the Scottish Government laid the original Regulations to establish a deposit return scheme for Scotland. Parliament passed the original Regulations on 13 May 2020.

By applying a deposit of 20p to drinks in single-use packaging made of polyethylene terephthalate (PET plastic), steel, aluminium or glass, Scotland’s DRS will encourage people to return that packaging to specified return points, where they will be able to reclaim the deposit. Every retailer selling in-scope drinks for consumption off the premises will be required to operate a return point unless exempted by the Scottish Ministers. This will mean more of these containers will be collected for recycling; they will be collected in bulk to facilitate economies of scale; and they will be collected separately to other materials, meaning they can be more readily recycled in a closed loop.

At the time the original Regulations were passed, the Scottish Government committed to closely monitoring the impact of the COVID-19 pandemic on implementation of DRS. In line with that commitment, on 8 March 2021 the Scottish Government announced an independent review into the implementation timetable for the scheme. This review has now been completed.

This instrument amends the full implementation date for DRS to 16 August 2023 in light of the impact of COVID-19 and EU Exit and to ensure successful delivery of DRS. In addition, this instrument:

- Provides that retailers selling through a distance sale may refuse to accept the return, in a single transaction, of a disproportionately large number of containers by a consumer that is proposed to be made in line with regulation 21 of the original Regulations;
- Clarifies that, for products that are filled and sealed by a retailer (including hospitality premises), the person filling and sealing them is the producer for the purposes of DRS;
- Provides that persons that are producers only by the virtue of filling and sealing such products are exempt from the annual fee to register with SEPA, and increases that fee from £360 to £365 to cover the cost of regulating these additional producers;
- Requires persons selling drinks in Scotland in in-scope packaging not intended for sale in Scotland to a person other than a consumer to disclose at point of sale that the items are not intended for sale in Scotland and cannot be returned for a deposit, which will help to prevent fraud;
- Adjusts SEPA's enforcement powers in line with SEPA's enforcement powers under the Environment Act 1995, ensuring more effective enforcement;
- Makes a small number of other minor amendments to the original Regulations.

Consultation

An extensive public consultation was carried out in 2018 to inform the design of Scotland's DRS. This was followed by a representation period of 90 days in late 2019 during which a draft of the original Regulations was laid before Parliament and the Scottish Government received stakeholder representations and a report from the Environment, Climate Change, and Land Reform Committee.

As part of the Scottish Government's review into the implementation timetable for the scheme a wide range of stakeholders across public and private sectors was consulted by independent reviewers and/or Scottish Government officials and Ministers. A summary of stakeholders consulted is set out in the amended Business and Regulatory Impact Assessment which is published alongside this instrument, on page 13.

The near-universal feedback from industry was that the full implementation date of 1 July 2022 set out in the original Regulations was not deliverable. This feedback was validated by an independent Gateway Review and Assurance of Action Plan published on 14 December 2021. To ensure successful delivery of DRS this instrument therefore amends the full implementation date to 16 August 2023.

Impact Assessments

The following impact assessments were published alongside the original Regulations: a final Equality Impact Assessment, a Fairer Scotland Impact Assessment, an Islands Communities Impact Assessment, a final Business and Regulatory Impact Assessment, and a Strategic Environmental Assessment.

The Scottish Government considers that the Equalities Impact Assessment, Fairer Scotland Impact Assessment, and Islands Communities Impact Assessment remain valid for the policy. The Scottish Government has updated the final Business and Regulatory Impact Assessment, and the Addendum to the Strategic Environmental Assessment (both published on 16 March 2020) to reflect the changes made by these Regulations and attaches these updated impact assessments.

Financial Effects

As above, the final Business and Regulatory Impact Assessment has been amended to reflect the changes made by these Regulations; the amended document is attached.

In line with the principle of producer responsibility, the Regulations place responsibility for delivery of deposit return directly on industry. Commercial decisions concerning the establishment and operation of Scotland's DRS are therefore ultimately a matter for industry, and in particular for Circularity Scotland Ltd, the industry-led body approved as scheme administrator by the Scottish Ministers on 24 March 2021.

Scottish Government
Directorate for Environment and Forestry

15 December 2021