

POLICY NOTE

THE DEPOSIT AND RETURN SCHEME FOR SCOTLAND (MISCELLANEOUS AMENDMENT) REGULATIONS 2023

SSI 2023/334

The above instrument was made in exercise of the powers conferred by sections 84 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”), to alter the full implementation date for Scotland’s Deposit Return Scheme (“DRS”) to 1 October 2025 and to make other consequential amendments.; it also amends the Deposit and Return Scheme for Scotland Amendment Regulations 2023 (“the 2023 Regulations”).

Policy Objectives

The main policy driver for Scotland’s Deposit Return Scheme (DRS) is to promote and secure an increase in recycling of materials by applying a deposit of 20p. This forms 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, making them easier to recycle.

The original Regulations passed by Parliament on 13 May 2020 were amended to alter the original full implementation date to 16 August 2023.

The original Regulations were further amended by the Deposit and Return Scheme for Scotland Amendment Regulations 2023 (“the 2023 Regulations”). The 2023 Regulations amended the full implementation date of the scheme from 16 August 2023 to 1 March 2024 and also simplified the scope of the scheme in order to respond to an independent Gateway Review, ongoing internal review of scheme readiness, and wider stakeholder concerns.

The Scottish Government completed a review of readiness of the DRS in March 2023. Delivery of the scheme relied, in part, on a UK Government decision on an exclusion from the UK Internal Market Act 2020. Given the decision by the UK Government in late May 2023 not to issue a full exclusion from the Internal Market Act, and associated concerns from business around the imposition by the UK Government of uncertain interoperability conditions and the removal of glass from any scheme planned to launch on 1 March 2024, the Scottish Government took the decision to delay the launch of Scotland’s DRS. The representations made by businesses at that time were that they could no longer prepare for a March 2024 launch given the uncertainty about the changes that would require to be made to the scheme ahead of March 2024 in consequence of the UK Government decision. A considerable majority of businesses therefore supported the option to re-set the launch date to 1 October 2025, matching the UK Government’s planned date for DRS operating across other parts of the UK.

Amendment of the Original Regulations

Regulation 3 of this instrument amends the implementation date for DRS from 1 March 2024 to 1 October 2025, in line with the UK Government's planned date for DRS operating across other parts of the UK. As a consequence of this date change, it then amends other relevant dates in line with the revised implementation date as follows:

- The date is amended to 1 October 2025 in the definition of scheme article in regulation 3(2) of the original regulations (regulation 4)
- The date is amended to 1 October 2025 in the information display obligations relating to sale of a non-scheme article or a non-Scottish article in Scotland in regulation 5 of the original regulations (regulation 5)
- The dates by which producers (both of scheme articles and low volume drink products) must apply for registration in 2025 and subsequent years are amended, noting that the last date for submission of applications before DRS commences is 13 August 2025 (regulations 6 and 10(a)); in addition, the dates from which a producer registration for scheme articles/producer listing for low volume drink products takes effect in 2024 and subsequent years are amended (regulations 7 and 10(b)).
- The date for review of the regulations is amended to 1 October 2029, 4 years after launch in 2025 (regulation 8).
- Collection targets are amended to 80% in the first full calendar year of the scheme (2026), rising to 90% in the second calendar year (2027), maintaining the ambition of the original scheme design while also providing the likely time required for operational issues to be resolved after launch (regulation 9).

Amendment of the 2023 Regulations

Regulation 11 of this instrument revokes the transitional provision in regulation 22 of the 2023 Regulations which enabled the rollover of producer registration fees for producer registration in 2024 for those producers who had already registered with the Scottish Environment Protection Agency (SEPA), in advance of 1 March 2023 in anticipation of the planned go-live date of 16 August 2023. This transitional provision is no longer required.

Consultation

An extensive public consultation was carried out in 2018 to inform the design of Scotland's DRS. The Scottish Government reviewed the implementation timetable in 2022 following an independent gateway review and engagement with industry stakeholders, resulting in a revised launch date of 16 August 2023.

Further stakeholder engagement as part of scheme assurance processes throughout March and April 2023 included providers, retailers, the scheme administrator and hospitality sector representatives had raised concerns about scheme readiness. As a result of that further stakeholder engagement the 2023 Regulations were made to delay the scheme's coming into force date.

Following the decision of the UK Government on 26 May 2023 to refuse a full exclusion for Scotland's DRS from the UK Internal Market Act 2020 and to impose interoperability conditions which created uncertainty, the Scottish Government arranged a meeting which was attended by more than 80 stakeholders from a broad range of sectors including retailers, producers and hospitality. The overwhelming feedback from businesses at that meeting was the UKG exclusion of glass and the vague and unworkable conditions imposed by Westminster made a March 2024 launch impossible.

The Scottish Government will continue to work closely with industry at every stage to deliver Scotland's Deposit Return Scheme.

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. Updates were made when the Deposit and Return Scheme for Scotland Amendment Regulations 2022 and the 2023 Regulations were made.

The Scottish Government considers that the Equality Impact Assessment, Fairer Scotland Impact Assessment, and Islands Communities Impact Assessment (as previously updated) remain valid for the policy. The Scottish Government is updating 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 these updates will be published on the Scottish Government website.

Scottish Government
Directorate for Environment and Forestry
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