

Net Zero, Energy and Transport Committee

3rd Meeting, 2022 (session 6), Tuesday, 25
January 2022

Subordinate Legislation - Deposit and Return Scheme
for Scotland Amendment Regulations 2022 [draft]

Evidence session with Lorna Slater MSP, Minister for
Green Skills, Circular Economy and Biodiversity

Note by the Clerk

Overview of instrument

1. The following Scottish Statutory Instrument (SSI), subject to affirmative procedure, is being considered at today's meeting:

[Deposit and Return Scheme for Scotland Amendment Regulations 2022](#)
2. Scotland's Deposit and Return Scheme (DRS) aims to promote and secure an increase in recycled materials, by ensuring the targeted materials are collected in larger quantities and separately to other materials. The scheme forms part of the Scottish Government's response to the global climate emergency,
3. These regulations amend the Deposit and Return Scheme for Scotland Regulations 2020 ("the original Regulations") to move back the full implementation date for the DRS. They make other changes to the original Regulations. The Scottish Government considers that these changes will support the delivery and operation of a successful scheme.
4. The Minister for Green Skills, Circular Economy and Biodiversity has lodged motion S6M-02582 (as set out in the agenda) that the Committee should recommend the approval of these regulations.
5. The instrument, if approved, will come into force the day after it is made if passed by the Scottish Parliament.

Purpose of the instrument

6. The amending Regulations provide for a revised full implementation date of 16 August 2023. Previously it had been 1 July 2022.

7. The amending Regulations also make a number of provisions that respond to feedback from the public and private sectors since the original Regulations were passed in May 2020. The Scottish Government considers that these will provide additional clarity or reduce risks associated with implementation. These include:
- Allowing online retailers, and others selling through a distance sale, to refuse to accept a return of a disproportionately large number of containers in a single transaction;
 - Clarifying that, for products that are filled and sealed in a retail or hospitality setting, for example the kind of can known as a ‘crowler’, the person filling and sealing them will be the producer and bear responsibility for their collection;
 - Providing that a producer that is a producer only by virtue of filling and sealing crowlers is exempt from the annual fee to register with SEPA, and changing this fee from £360 to £365 for eligible producers to cover the cost of regulating these additional producers;
 - Creating a duty for wholesalers or others selling articles not intended for sale in Scotland 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;
 - Adjusting SEPA’s enforcement powers in line with SEPA’s existing powers in the Environment Act 1995, which will help ensure effective enforcement of DRS.
8. The Policy Note provides further detail on the instrument and is available at the **Annexe**.

Delegated Powers and Law Reform Committee consideration

9. The Delegated Powers and Law Reform Committee considered this instrument at its [meeting on 18 January 2022](#) and determined that it did not need to draw the attention of Parliament to the instrument on any grounds within its remit. [Read the official report for the meeting on 18 January 2022.](#)

Procedure

10. The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).
11. Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (i.e. the Committee within whose remit the subject matter of the instrument falls).
12. It is usual practice for the lead committee to take evidence from the relevant Scottish Minister in advance of the motion for approval being formally moved.

The committee can use this evidence session to ask the minister and their officials questions about the SSI.

13. Once the motion is moved, the Committee may debate the instrument. Only Committee Members and the relevant Minister may take part in the debate and, if there is a vote, only Committee Members may vote on the motion. The debate is on whether the lead committee recommend that the draft instrument be approved.
14. The lead committee must report its recommendation to Parliament within 40 days of the SSI being laid. If the committee agrees the SSI should be approved, the whole of the Parliament then gets a chance to vote on it in the Chamber. If the lead committee decides the SSI should not be approved, the Parliamentary Bureau decides whether MSPs should vote on it in the Chamber.

For decision

15. The Committee must decide whether to agree the motion, and then must report to Parliament accordingly by 7 February 2022.

POLICY NOTE
THE DEPOSIT AND RETURN SCHEME FOR SCOTLAND AMENDMENT
REGULATIONS 2022
SSI 2022/XXX

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
December 2021