



T: 0300 244 4000
E: scottish.ministers@gov.scot

Edward Mountain MSP
Convener
Net Zero, Energy and Transport Committee
Scottish Parliament
EDINBURGH
EH99 1SP

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Dear Edward

Following the evidence session of Tuesday 14th March on the Deposit Return Scheme, I am writing to provide further information on a number of points agreed during the session.

1. Producer registration after 30th June 2023

I agreed to provide clarification on the issue of flexibility in terms of business registrations to the scheme, specifically whether producers who have registered after the 30th June deadline could have their registration processed to enable their products to be available on the Scottish market in the current year, or if this registration would be considered for the following year.

In summary, not registering by 30th June will not prevent a supplier from supplying products in the Scottish market for the rest of the year, but they will not be able to supply scheme products until SEPA have confirmed their registration. Registering by 30th June this year will allow registration to be complete before the scheme starts on 16th August and therefore prevent any risk of not being able to sell scheme products in the Scottish market while a registration is processed by SEPA. Further detail on this issue is provided in Annex A, should the Committee find it useful.

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2. Scheme exemption timescale

I agreed to clarify whether there is a specific timescale for how long a scheme exemption will last for.

In short, exemptions do not expire but are specific to that premise and applicant. A change of ownership or new premises would require a new exemption application.

Under the DRS Regulations, any exemption from operating a return point is granted by the Scottish Ministers for an unlimited period of time. However, an exemption can be revoked by the Scottish Ministers in certain circumstances (as set out in regulation 23). In particular, a retailer may request that Scottish Ministers revoke the exemption, and Ministers would consider whether to grant that request. If a retailer had been granted an exemption on the grounds that operation of a return point would mean that there was a significant risk of them breaching environmental health obligations, then the retailer would need to show why they were no longer likely to breach such obligations if the revocation of the exemption was granted. Scottish Ministers also have powers to initiate a revocation of an exemption if there has been a material change in the circumstances under which the exemption was granted or where the retailer has failed to comply with their obligation to provide information about a material change in their circumstances. An exemption which has been given on the basis that the retailer is in close proximity to another return point could also be revoked by the Scottish Ministers if they consider that maintaining the exemption no longer provides consumers with reasonable access to a return point.

3. Impacts of format switching

I agreed to share with the Committee any information and modelling data which relates to the impacts on small businesses as a result of format switching.

During the development of regulations for Scotland's Deposit Return Scheme, Zero Waste Scotland liaised with a range of international operators of DRS schemes to understand more on this and other matters. They identified there was little evidence that deposit return had influenced material switching. Zero Waste Scotland led on work to model international comparisons. We have asked them to share this with you where possible.

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4. Gateway Review

I committed to provide an indication of when findings from the March Gateway Review will be shared.

The review report is currently in the process of being finalised. Therefore I will share the review findings with the Committee in due course.

5. Labelling

I agreed to provide further details on the process of labelling for businesses outwith Scotland who are importing small quantities of products.

Circularity Scotland have completed the design of a system of simple and cost-effective barcode labelling for purchase by those producers whose products don't currently have a barcode. They are in the middle of implementation, working with partners to put in place the detailed processes to ensure producers can use the service in a straightforward manner, and to set up the necessary monitoring and governance.

Those producers have two methods of utilising these labels:

- applying them to their products before despatch into the supply chain;
- including the label within the packaging of the product so that the consumer can apply the label just before returning the container for redemption.

If the producer does not yet have the numeric barcode to use on the sticker, they will purchase that code from GS1 (who maintain international standards for barcodes) – this will allow the specific labels to be produced by Circularity Scotland's providers. Producers will purchase the self-adhesive barcode labels from these providers.

As part of the support package announced for SMEs on 21 February, Circularity Scotland have outlined that self-adhesive barcode labels will be made available to producers placing less than 25,000 units per year of a specific product on to the Scottish market. This will provide a simple and straightforward administrative solution for independent producers and importers for whom the cost of changing packaging to introduce new barcodes could be prohibitive.

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I hope that the information provided here is helpful to the Committee. I will continue to work closely with businesses and others to ensure that we have pragmatic solutions to any remaining challenges as they work to implement this transformational scheme. I look forward to updating you further on progress as we move towards the launch of Scotland's Deposit Return Scheme.

Kind regards

LORNA SLATER

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Producer registration after 30th June 2023

Regulation 7 of the Deposit and Return Scheme for Scotland Regulations 2020 (“the DRS Regulations”) set out the registration provisions (deadlines, fees and form of applications) for producers who wish to sell scheme articles in Scotland. Producers can register with SEPA directly or, if they have agreed that a scheme administrator will fulfil their producer obligations, then the scheme administrator, Circularity Scotland, will register the producer with SEPA.

In particular, regulation 7(2) sets the administrative deadlines for applications for producer registration. An application must be made—

- before 1 March in any calendar year during which a person is producer, or
- within 28 days of that person becoming a producer in any calendar year.

This therefore allows a new producer to register with SEPA, within a 28 day deadline; the annual deadline to register before 1 March does not apply to new producers and therefore there is no impediment to new producers joining DRS at any point.

The Committee will hopefully find it useful if I provide a bit more information about the effect of the registration deadlines. Regulation 8(4) of the DRS Regulations sets out the dates from which each producer registration *will take effect* and those relate directly to the registration deadlines set out in regulation 7(2). So, where an application is made before 1 March in any year, then under regulation 8(4)(a) the producer registration has effect from 1 April; for any new producers who register during a calendar year, then under regulation 8(4)(b) their registration takes effect from the date that the application is received by SEPA, provided the application was made within 28 days of them becoming a producer.

In relation to applications which do *not* meet the deadlines set out in regulation 7(2), then under regulation 8(4)(e) the registration only becomes effective on the date on which it is actually granted by SEPA. Therefore, the deadlines in regulation 7 are important from the point of view of ensuring a smooth registration process for producers and providing clarity on their effective registration dates; that is of relevance because scheme articles can only be sold in Scotland if the producers are registered.

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If a producer (whether new or existing) does not meet the deadlines in regulation 7(2), then their registration is not effective until they receive notification stating the date of their registration with SEPA and that producer may therefore face delays in being able to sell their scheme articles in Scotland. The DRS Regulations impose no sanctions for failure to meet the registration deadlines set out in regulation 7; and, as explained, the consequence of failure to meet the deadlines has an impact in relation to the effective registration date of the producer.

That is why, in 2023, SEPA can accept applications made on or after 1 March 2023. Producers who registered before 1 March 2023 will, by virtue of the DRS Regulations, will be registered with effect from 1 April 2023 and will be fully ready for DRS going live in August. Producers who did not register before 1 March 2023 deadline will only be registered with effect from the date on which SEPA notifies the producer that registration has been granted. Therefore, if a producer does not register with sufficient time for SEPA to process their registration ahead of 16 August 2023, that producer will not be registered and cannot sell scheme articles in Scotland. That is why SEPA is therefore suggesting a final cut-off date of 30 June 2023 for registration applications so that there is time for the registration to be processed and granted by SEPA before 16 August 2023. The deadline of 30th June does not apply beyond 2023.

As a final point of explanation, the 1 March registration deadline will apply in 2024 and all future years; failure of an existing producer to register before 1 March in each year would allow to SEPA to cancel the registration and, even if the producer re-applied, that could mean that there is a period during which a producer is not registered and could not sell scheme articles in Scotland until SEPA grants the registration application.

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