Wholesaler's DRS Outstanding Concerns

Dear Convener,

We appreciate the work that your Committee is currently doing on the Deposit Return Scheme and I wanted to ensure that Committee members had an understanding of the unique and often complex role of Scottish wholesalers in the DRS.

As the representative trade association for Scotland's wholesalers, the Scottish Wholesale Association has been engaged with the Scottish Government (SG), SEPA and Zero Waste Scotland on this issue for several years taking part in Implementation Advisory Group meetings and contributing to Gateway Reviews.

SWA are members of Circularity Scotland (CSL), representing our members who produce their own brand beverages as well as those that import wine and spirits. Many of these businesses are importing often small volumes of particular products being sold onto the market via hospitality and specialist retailers.

Wholesalers across Scotland are supplying Scotland's 5,000 convenience stores as well as 30,000 hospitality and tourism outlets. As a result, we sit in the middle of the complex UK drinks supply chain. The wholesale channel supplies across the open border and several of our members are supplying into both Scotland and England. Our members are also involved in discussions with their retail and hospitality customers about how DRS will affect their businesses.

SWA provided CSL, SEPA and the Scottish Government with the wholesale channel's required timeline to go-live 2 years ago. The Scottish Government's own System Wide Assurance Group's 'DRS Implementation Plan' shows that producers, wholesalers and retailers all needed at least a 10 to 12 month implementation window but <u>only</u> once the various businesses know what they've to do. Yet we are still facing significant numbers of unanswered questions and uncertainty.

We have been working closely with other organisations representing small drinks producers and we are still engaging in conversations with SG, CSL and SEPA about a range of significant issues which impact on our members and are yet to be resolved.

Some of these issues, including pricing displays and labelling, were referred to in the Committee session on 28th March but while there was a great deal of comment about retailers, I believe there was only one mention of wholesalers. Our ongoing discussions with the Scottish Government cover a large number of outstanding issues including standardised invoicing and pricing display; barcode stickering and labelling; VAT and the following which particularly impact on Scotland's wholesale sector:-

- Potential Introduction of a de minimis threshold for small producers and products.
Discussions are ongoing in this area and there is an urgent need of a solution which assists

small businesses. We have been asking the Scottish Government for the introduction of a minimum size for small producers and importers. Smaller producers incur similar DRS unit costs as larger producers however this scheme affects them disproportionately as they do not have the same financial and specialist personnel resilience to draw on.

Smaller businesses are very often unable to make decisions about their approach to DRS until other larger businesses, including supermarkets buying their products, have made key decisions and told them how they are planning to approach it. The impact of DRS will move sales away from small, local Scottish SME producers to much larger, sometimes multinational businesses.

The additional costs imposed on small producers reduce their price competitiveness against those larger producers who are currently pushing for the DRS to progress. Larger producers and those placing millions of a particular stock unit (SKU) onto the market have economies of scale which small companies do not. Despite this, SWA are aware of large producers supplying across the UK that are planning to increase prices for Scottish consumers compared to consumers elsewhere to cover the additional costs of DRS.

Several different options have been proposed to Lorna Slater, the Minister for Green Skills, Circular Economy and Biodiversity at several meetings by SWA and other small producers and importers of small volume SKUs. Industry have provided evidence to SG and CSL suggesting that businesses defined as SME should be given a grace period of 18months, with an opt-in should they choose, and thereafter be given 60 days in lieu of deposits payable to CSL.

Evidence provided by Scottish Wholesale Association also outlined the rationale behind a de-minimis for any SKU with an annual sales volume under 5,000 units. This would remove 87% of such SKU's from having to be registered but leave 83% of the producer's total volume still captured within DRS. However, it would also maintain a wider choice and range of craft beers and wines and spirits in the Scottish marketplace.

David Harris mentioned this at Committee on 28th March and stated that CSL are supportive of this step. Such a de-minimis would assist CSL by reducing the number of producers and products they have to deal with.

- **The UK EAN surcharge** is a blanket charge applied to all containers placed on the Scottish market, regardless of SKU volumes placed in Scotland compared to the rest of the UK (RUK). This issue arises from the fact that the Scottish Government, and by extension CSL, don't have the power to impose labelling regulations.

Those companies which decide to produce a Scottish labelled/barcoded version of their product will not pay the UK EAN surcharge. Many small producers are unable to afford to produce dual versions of their products for sale in Scotland and elsewhere so they have little option but to pay the UK EAN surcharge.

Yet this surcharge disproportionately costs more for any producer who sells a large volume of their SKUs (products) in Scotland compared to the RUK. For example, a Scottish producer selling 90% of their volume in Scotland and only 10% crossing into RUK, will have to pay a surcharge on the 90% of their containers sold in Scotland, compared to an English producer selling only 10% of their SKUs in Scotland and 90% in RUK. The surcharge is to cover the cost of the risk of fraud, yet the Scottish producer's risk of fraud is minimal. They are being asked to pay significantly more, compared to a non Scottish producer that carries a much higher fraud risk.

- **Price Marked Packs** - Exclusion of a deposit within price marked pack (PMP) labels. Industry have been promised clarity on this since late 2022 with conflicting guidance having been released by Trading Standards and subsequently repealed by the Scottish Government. Scottish Government confirmed in early February that they are in dialogue with the UK Government and we believe this is now being looked at by BEIS.

Clarity is also required from trading standards/Scottish Government on how deposits should appear on shelf edge labels/tickets and point of sale material.

- **Suspension of deposits being paid while in a 'Bonded Warehouse'**. Bonded warehouses are used by wholesalers and retailers as a way of 'hedging' against future prices as well as a way of controlling cashflow by drawing stock as and when required.

Such warehouses are used to move stock between different markets all over the world, not just to hold stock for sale in the UK. We have asked that an equivalent form of retrospective 'duty payment', is made available for deposits and producer fees, as and when the beverage containers are officially sold onto the Scottish marketplace.

The first meeting to formally look at this issue, raised by industry 12months ago, only took place on 10/02/23, attended by ZWS, SEPA, CSL and industry trade bodies and operators, including SWA. SEPA were only recently made aware of the bonded warehouses complexities and the clarity required on how deposits would work in this setting.

Furthermore, SEPA are still working on the definition of an 'importer'. CSL had asked for this to be provided urgently ahead of the producer registration deadline at the end of February.

No resolution was found, to any of the issues raised, during the meeting, despite industry offering solutions on how existing systems could be utilised to overcome the issues CSL were raising.

- **Invoicing and IT**
In addition to the above key elements a significant amount of frustration exists amongst retailers and producers (large and small) about the lack of information available in terms of how invoices/pro-formas/ receipts and general paperwork trails should both highlight and display deposits to the customers and consumers.

At a very basic level, this is fundamental to ensuring that all actors within the scheme are following the regulations and being able to highlight what is, and what isn't, a scheme article in Scotland. Without any of this clarity, IT systems cannot be built or modified to allow producers, wholesalers and retailers to comply with the regulations!

The first invoicing workshop, held by CSL and SEPA, only took place on 28th February 2023. The proposed direction of travel, in providing a standardised solution, was only suitable for the large national supermarkets and producers that use an electronic data interface (EDI).

EDI systems are not widely used within the wholesale channel or independent retail channels.

Following two subsequent workshops, it's now seemingly unlikely that one standardised invoicing method will work for the numerous iterations by which a producer may sell their beverages to their customers, nor one that will match the multiple different business operations that exist within Scotland's supply chain – including the 80+ wholesalers; 5,000 retailers; and 30,000 hospitality outlets.

There is absolutely no possibility of the IT changes required being ready for 16th August go-live, with the large supermarkets /multiple retailers saying that without EDI solutions in place manual invoice matching will be hugely problematic for their business operations. This is just one example of how the Scottish Government's claims that this is an "industry" led DRS fails to understand the various different industries and sectors involved and the complexities of the supply chain. As Gateway Reviews have made clear, Scottish and non-Scottish businesses needed answers to these questions two years ago so they could put systems in place.

Recently, at the above invoicing workshops, CSL have presented a new suggestion on when a product might become a scheme article, and when deposits are paid to producers. While industry await any wording/technical changes being proposed by CSL, and agreements made by SEPA, it is indicative of the twists and turns all the way through the implementation of this scheme. With only four months to go, producers and resellers are being thrown another option in how they could deal, specifically, with UK wide SKU's.

The question is what does this change mean for producers that have already decided on their SKU strategy and already invested in making the changes required to their range? Would such a change have taken them down a different route of action; has financial investment been needlessly wasted; what additional confusion and complexity does the new proposal mean for producers and their customers; does this give competitive advantage to one producer over another?

The primary practical solution being asked for, by industry, to deal with the management of non-deposit bearing SKU's being converted to deposit bearing retrospectively is for CSL to create one central repository. Resellers and producers could then both upload and download their conversion files. This solution, which CSL alone might provide, would save businesses time and cost. Regardless of who and how this might be set up, CSL admit themselves that this solution will not be ready by August.

- Marketing and consumer information. In addition to all of the above, wholesalers are currently preparing their August and September promotional brochures and consumer leaflets both for their retail customers and for those convenience stores to circulate to consumers. SWA have asked CSL to give guidance to our members on how they should be advertising and pricing scheme articles in the brochures and consumer leaflets.

Due to conflicting advice being given by SEPA and Trading Standards, on how deposit bearing beverages should be displayed, there is no clarity on what businesses should be doing. Advice being given by CSL, seems to contradict even what SEPA's guidelines state.

Come August thousands of businesses will be in breach of the DRS regulations, and advertising regulations, until such unequivocal clarity is provided.

SWA, and our members, have invested significantly in DRS. We are committed to making it work however, wholesalers and other affected businesses need clarity and the time required to take actions. Despite best efforts, we do not believe that the 16th August Go Live date is achievable.

SWA are keen to give both oral and written evidence to the Committee prior to the laying of amendments to the DRS Regulations by the Scottish Government. The obligations within the regulations are on producers, retailers and wholesalers and as such the outstanding issues highlighted above have a critical impact on our members and in turn the roll out of DRS and its' future success.