

# Net Zero, Energy and Transport Committee

11<sup>th</sup> Meeting, 2023 (Session 6)

Tuesday 28 March 2023

## Scotland's Deposit Return Scheme

### Note by the Clerk

#### Introduction

1. On 7 March, the Committee agreed to take evidence on the Scottish Government's Deposit Return Scheme. It agreed to hear from the Scottish Government and from the Scheme administrator, Circularity Scotland. The aim is to ascertain key information about the Scheme's readiness ahead of its launch on 16 August.
2. Section 84 of [the Climate Change \(Scotland\) Act 2009](#) empowers the Scottish Ministers to introduce, by regulations, a "deposit and return scheme". [The Deposit and Return Scheme for Scotland Regulations 2020](#) were [passed by the Scottish Parliament in 2020](#), following [a consultation in 2018](#) and [scrutiny by the Parliament](#) of draft Regulations in 2019. The Regulations provided for a Deposit Return Scheme to go live on 1 July 2022.
3. In 2022, the Scottish Parliament agreed to [amending Regulations](#) to delay the go live date to 16 August 2023, after a review found that due to the pandemic and EU exit the 2022 date was not practical. The NZET Committee took evidence on, and debated, these Regulations at its [meeting of 25 January 2022](#).
4. A [2 March blog from the Scottish Parliament Information Centre \(SPICe\)](#) provides further information about the background to the Scheme's launch, how it is intended to operate (including the distinct roles of Circularity Scotland, Zero Waste Scotland and the Scottish Environment Protection Agency), and concerns that have been raised over the Scheme's readiness in the run-up to 16 August.

#### Scottish Government updates to the Committee

5. The Minister for Green Skills, Circular Economy and Biodiversity, Lorna Slater, [wrote](#) to the Committee on 3 November 2022 to provide an update on preparedness for the introduction of the scheme.
6. The Minister [wrote](#) to the Committee with another update on 14 December 2022. She said she recognised concerns within the business community, but that the Scottish Government was "committed to a pragmatic approach to implementation";

as set out in the letter.

7. In a [further update](#) sent to the Committee on 1 March 2023, the Minister stated that “businesses representing over 90% of the total volume of drinks containers sold in Scotland each year have completed registration with Circularity Scotland for Scotland’s deposit return scheme”. The 1<sup>st</sup> of March had been set as the deadline for completing registration.
8. In the Minister’s [most recent update to the Committee](#) on 6 March she confirmed that 16 August remains the going live date. She notified that the next in a series of gateway reviews of the DRS will take place in the week commencing 13 March.

#### **Other written evidence: views from industry**

9. The Committee has received two representations from industry, expressing concerns about the Scheme—
  - [Shoogle Spirits – May 2022](#)
  - [Beer 52 – February 2023](#)

#### **The Scheme and the UK Internal Market Act 2020**

10. On the go live date, the DRS would be the only legally mandated scheme of its kind operating in the UK. Another issue the [2 March SPICe blog](#) discusses is the Scheme’s interaction with the United Kingdom Internal Market Act 2020. The 2020 Act enshrines two principles:
  - The mutual recognition principle; goods that have been produced in, or imported into, one part of the UK and comply with relevant requirements there, can then be sold in any other part of the UK without adhering to different regulatory requirements in that part.
  - The non-discrimination principle: goods in one part of the United Kingdom should not be affected by restrictions that discriminate against goods from another part of the United Kingdom.
11. The 2020 Act allows for the UK to Government to grant an exclusion that from these market access principles; in effect, so as to allow a devolved government to legislate in a way the 2020 Act would otherwise not permit. In public communications, the Scottish Government has recognised that the DRS is likely to need an exclusion to operate as fully intended.
12. The Scottish Government has [told the Scottish Parliament](#) that an exemption was first requested in July 2021. However, [on 22 February 2023, the UK Government was still stating that it had not received a request](#). Both governments [do now agree](#) that an exemption has been requested and is under consideration by the UK Government. The Secretary of State for Scotland has [said that the bar for granting an exclusion is “very high indeed”](#).

#### **NZET scrutiny of the Deposit Return Scheme**

13. On 14 March, [the Committee heard from the Minister for Green Skills, Circular](#)

[Economy and Biodiversity](#) and officials. Members discussed with the Minister some of the practicalities involved with the Scheme’s implementation, key concerns and suggestions highlighted by industry, and views on the DRS proceeding without an exclusion under the 2020 Act.

14. On 28 March, the Committee will continue its scrutiny of the Deposit Return Scheme by hearing from [Circularity Scotland](#). [Part 4 of the Regulations establishing the DRS](#) includes provisions on a scheme administrator, detailing the requirement for approval by Scottish Ministers, and the obligations of a scheme administrator once approved.
15. Circularity Scotland Ltd is currently the only approved scheme administrator. Scottish Ministers [approved Circularity Scotland as a scheme administrator in March 2021](#). It is a membership-based not-for-profit company, limited by guarantee. Members delegate certain powers to the directors to run the company on their behalf. Members are entitled to attend general meetings and vote on defined matters including appointment or removal of directors. A [list of members is published on the CSL website](#).
16. Circularity Scotland’s website states that, to qualify for membership—
  - producers “need to be placing more than 10 million containers onto the market in Scotland on an annual basis”.
  - return point operators “need to be taking back more than 20 million containers on an annual basis and/or be responsible for more than 500 return points in Scotland”.
  - trade associations “need to represent companies who collectively place more than 10 million containers”.
  - companies who collectively are responsible for taking back more than 20 million containers via a return service in Scotland on an annual basis and/or who collectively are responsible for more than 500 return points in Scotland.
17. Some issues Members may choose to pursue in this session include—
  - how Circularity Scotland has sought to address concerns about the Scheme from industry stakeholders, including smaller businesses, and its communications with stakeholders
  - what contingency planning Circularity Scotland has been undertaking should the Scheme not be granted an exemption from the UK Internal Market Act.
  - Circularity Scotland’s role in preparing the Scheme alongside Scottish Ministers and industry, and how the company has been working with industry to ensure businesses are prepared for the launch of the Scheme later this year.
  - Circularity Scotland’s views on how it can conduct its duties in an open and transparent manner and respond to public scrutiny of its activities.