POLICY NOTE

THE DEPOSIT AND RETURN SCHEME FOR SCOTLAND REGULATIONS 2020

SSI 2020/154

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 Act").

Purpose of the instrument.

The main policy driver for the Regulations 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.

The Instrument is subject to super-affirmative procedure by virtue of section 96(4) of the Act. It must therefore be approved by resolution of the Scottish Parliament before it can be made.

The Instrument will, if approved, be the first regulations made under section 84 of the Act. A copy of the proposed Regulations was therefore laid before the Scottish Parliament in accordance with section 97(2) of the Act.

The Scottish Ministers specified on laying a copy of the proposed Regulations, in accordance with section 97(2) to (5) of the Act, that there would be a 91 day period during which representations on the proposed Regulations might be made to them. They then publicised the proposed Regulations in accordance with section 97(5) of the Act.

The Scottish Ministers have in accordance with section 97(6) and (7) of the Act considered representations on the proposed Regulations made to them, and considered the Reports on the proposed Regulations made by the Environment, Climate Change and Land Reform (ECCLR) Committee, and the Delegated Powers and Law Reform (DPLR) Committee of the Scottish Parliament.

The Scottish Ministers have laid a report (the "Accompanying Statement") setting out details of the representations and of the Report, and of changes made to the proposed Regulations, all in accordance with section 97(7) of the Act.

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. We recognise that fresh interventions are needed to bring about the systemic and behavioural change necessary to fulfil these aspirations and these Regulations will support that aim by creating a Deposit Return Scheme for Scotland.

By applying a deposit of 20p to drinks in the most common single-use packaging, the scheme will encourage people to return that packaging to specified return points, where they will be

able to reclaim the deposit. 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.

To achieve this, the Regulations:

- Prohibit the marketing or sale to consumers of **single-use drinks in containers made of polyethylene terephthalate (PET plastic), steel, aluminium or glass which are ultimately intended for retail sale in Scotland**, if the producer of those articles is not registered with the Scottish Environment Protection Agency (SEPA). The producer is either the brand owner (for products branded in the United Kingdom) or the importer (for products branded outside the United Kingdom).
- Require that a **20p deposit** is applied each time a drink in a relevant single-use container is sold in Scotland. The seller must also make clear that the packaging can be returned in exchange for reimbursement of the deposit. These obligations do not apply to products sold in export (duty-free) shops, on hospitality premises only selling for consumption on-site, or for sale to a consumer outside Scotland.
- Require **producers to collect a target percentage of the scheme packaging** which they place on the market in a calendar year, by collecting their own scheme packaging from retailers and return points, and accepting the return of their scheme packaging from wholesalers. Producers will reimburse deposits for any scheme packaging returned or collected.
- Provide for **targets** which will increase over the first three years of the scheme's operation (70% in year 1, 80% in year 2 and 90% in year 3). This approach builds on the experience in other countries which have successfully introduced similar schemes.
- Provide for producers to act through a **scheme administrator** that will meet the above obligations on their behalf. Anyone seeking to act as a scheme administrator must be approved by the Scottish Ministers.
- **Require retailers to operate a return point at premises from which sales of scheme products are made.** This involves accepting (subject to certain exceptions) packaging returned by consumers, reimbursing deposits for that packaging and retaining the packaging for collection by or on behalf of producers.
- Provide that, where specified criteria are met, the Scottish Ministers may **exempt** a retailer from acting as a return point and may approve any other person who wishes to act as a return point.
- Require retailers selling products by means of **distance sales** (e.g. through an online grocery sale and delivery service) to provide takeback services from the site of delivery to consumers who have purchased those items.

The Regulations provide that SEPA will be the enforcement authority in relation to compliance with the Regulations and give them powers to assist with collection of information required for their enforcement role. An Order amending the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015, giving SEPA powers to impose civil penalties in the event of a breach of certain provisions of the Regulations, will be laid at the same time as these Regulations.

The Regulations include a provision requiring the Scottish Ministers to review the operation and effect of the Regulations after sufficient time has passed to allow for an assessment of the performance of the scheme. Following the review it will fall to the Scottish Ministers to

consider whether the Regulations should remain as they are or be amended. A further Instrument would be needed to amend the Regulations.

Consultation

The public consultation on the design of a DRS for single-use drinks containers closed in September 2018, with 3,215 responses received. This comprised responses from 159 organisations, 2,008 individuals and 1,048 campaign respondents. There was widespread agreement amongst both organisational and individual respondents that a well-run and appropriately targeted DRS could provide opportunities in relation to improving the environment, changing people's attitudes to recycling and littering, and building the circular economy.

As noted above, this Instrument is subject to Section 97 of the Act, which required Scottish Ministers lay a copy of the draft Regulations before Parliament for a representation period of at least a 90 days. 147 representations were received during this time. Furthermore, both the ECCLR and DPLR Committees considered the draft Instrument, and the ECCLR Committee took evidence and produced a report in relation to the Instrument. The Scottish Ministers' analysis of, and response to, the representations received has been laid before Parliament in the form of an Accompanying Statement to the Regulations.

Impact Assessments

The following impact assessments have been completed on the policy:

- A Final Equality Impact Assessment (EQIA) was published to coincide with the laying of the Regulations. That document builds on an Interim EQIA published in June 2018 and a Full EQIA published in July 2019.
- A Fairer Scotland Impact Assessment was published in September 2019.
- An Islands Communities Impact Assessment was published to coincide with the laying of the Regulations. That document builds on an Islands Communities Screening Assessment published in September 2019.
- A Final Business and Regulatory Impact Assessment (BRIA) was published to coincide with the laying of the final Regulations. That document builds on a Partial BRIA published in June 2018 and a Full BRIA published in July 2019.
- A Strategic Environmental Assessment was published in June 2018 and Post-Adoption Statement (PAS) was published in July 2019. An Addendum to the Strategic Environmental Assessment was published to coincide with the laying of the Regulations.

The impact assessments have collectively informed the design of the scheme, in particular issues such as deposit level, return point configuration and scope of materials.

The intention is for the Regulations to apply equally to all relevant sectors of the drinks market, and to producers in Scotland and outside of Scotland. It is recognised, taking into account experiences of existing Deposit Return Schemes in other countries, that the scheme imposed by the Regulations may have some indirect impact on trade within the UK and between Scotland and other countries. The Regulations provide significant flexibility to producers and other actors within the scheme in complying with their obligations, with the purpose of reducing any such impact or difference in treatment and making any such impact proportionate to the benefits created by the scheme. The requirement that the Scottish

Ministers review the Regulations once sufficient time has passed to obtain an analysis of their operation is intended to provide further opportunity to make adjustments to address any disparity in treatment of actors involved in the scheme or significant impacts on trade.

Financial Effects

A Final BRIA was published to coincide with the laying of the Regulations alongside an Addendum to the Scottish Government's "Deposit Return Scheme for Scotland: Full Business Case (FBC) Stage 1".

Consistent with the principle of producer responsibility, the Regulations place responsibility for delivery of deposit return directly with producers. Commercial decisions concerning the establishment and operation of Scotland's DRS are therefore ultimately a matter for industry.

It is anticipated that producers will appoint a single scheme administrator to act on their collective behalf to discharge their obligations. The Addendum to the FBC assumes that any such scheme administrator would incur initial set-up costs of £27.6 million.

The direct operational costs of the scheme administrator under the preferred scheme design are estimated at £92.9 million a year once the scheme is fully established. Costs are projected to be funded by income from unredeemed deposits (46%) and sale of materials (20%), with the balance from producer fees (33%). The indicative producer fees equate to £31.9 million per annum or an average of 1.4p per drinks container falling within scope of the scheme.

It is recognised that the wider supply chain will also incur costs as a result of the introduction of DRS. The Final Business Regulatory Impact Assessment (BRIA) accounts for these costs and, in particular, the costs associated with the potential introduction of distinct labelling for DRS obligated products. The estimates included in that document have been developed on a "per Stock Keeping Unit (SKU) / product basis".

One-off set up costs for establishing new Scottish SKUs are estimated to be £46 million, whilst ongoing costs associated with inefficiencies created in production, logistics and storage are estimated to be £73 million (spread over 25 years). There are a number of variables which will impact on the extent to which these costs will be realised.

Scottish Government
Environment and Forestry Directorate

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