EXPLANATORY MEMORANDUM TO

THE DEPOSIT SCHEME FOR DRINKS CONTAINERS (ENGLAND AND NORTHERN IRELAND) REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs ('Defra') and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Minister Mary Creagh CBE, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Clare Delaney, Deputy Director for Deposit Return Scheme Resources and Waste at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Helen Little at the Department of Environment Food and Rural Affairs: email: drs@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument establishes, in England and Northern Ireland, a Deposit Return Scheme (DRS) for drinks containers, for the purposes of increasing the recycling of materials, reducing littering, and promoting a circular economy. Under the DRS, a person who is supplied with a drink in a container that is in-scope of these regulations pays a deposit to the person who supplied that container, and a person who returns the container to a designated return point is entitled to redeem the deposit. The instrument provides for the appointment of a scheme administrator to operate the scheme, referred to as the Deposit Management Organisation (DMO). The operation of the scheme will commence on 1 October 2027. The instrument sets out: the scope of the DRS; the role of retailers, drinks producers and suppliers; the functions of the DMO; and the monitoring, compliance and enforcement measures that will be in place to support the running of the scheme - including the roles of the DEFRA Secretary of State, DAERA ministers and regulators.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 UK consumers use an estimated 12 billion plastic drinks bottles and 14 billion drinks cans1 per year, yet consumers often fail to recycle drinks containers once used or are unable to find an appropriate or convenient route for disposal. This leads many containers to be littered or disposed in residual waste, despite being recyclable. Plastic bottles and cans make up 55% of litter volume2. Charging consumers a deposit up-front when an in-scope drink is supplied and redeeming that deposit when the empty container is returned provides a financial incentive for consumers to return drinks containers for recycling. The Environment Act 2021 conferred powers to introduce deposit schemes, the benefits of which include boosting recycling levels, reducing littering, and offering greater opportunities to collect higher quality, uncontaminated materials in greater quantities thus promoting a circular economy. A DRS would also result in carbon emission savings by increasing the amount of material being recycled, reducing reliance on virgin material and reducing the amount of waste that ends up in landfill and incinerated.

5.2 DRSs are well-established globally. Whilst the core design and scope can vary, well-functioning schemes focusing on single-use drinks containers can achieve collection rates of 90% or higher. This instrument sets a collection target of 90% by year 3.

5.3 Defra has undertaken social research as part of its policy development and has received strong support for the implementation of a DRS. In 2019, consumer research showed broad support with 74%3 of survey participants supporting the introduction of a DRS. Defra has also run 2 public consultations; in the first consultation respondents overwhelmingly agreed (84%)4 with the proposed principles of DRS. A similar percentage (83%)5 supported the introduction of a scheme in the second consultation.

5.4 This instrument provides civil sanctions where a scheme drinks producer, supplier, retailer or the DMO has contravened any requirement, imposing financial penalties and notices to comply. Offences have been created where a person fails to comply with a civil sanction or obstructs an enforcement authority. This approach ensures that persons can be held accountable for supplying in-scope drinks without meeting the requirements of the scheme, such as adding a deposit, ensuring the drinks containers carry the correct labelling, and information is correctly displayed to consumers. The DMO is held to account under this instrument by the regulatory authorities, (the Environment Agency, DAERA), to ensure that it operates effectively and meets its collection targets, and that it complies with its published operational plan.

What was the previous policy, how is this different?

5.5 There is no DRS in England and Northern Ireland, drinks containers are recycled through the normal recycling and waste collection routes. This instrument places new obligations on businesses that supply packaged drinks. Some businesses producing drinks in packaging have had obligations under the producer responsibility regime for

1 Valpak Material Baseline Modelling, April 2023

2 https://www.keepbritaintidy.org/sites/default/files/resources/20200330%20KBT%20Litter%20Composition%20Report%20-%20FINAL.pdf

3 https://sciencesearch.defra.gov.uk/ProjectDetails?ProjectId=20253

4 https://assets.publishing.service.gov.uk/media/5d5e6050ed915d08d586a2f7/drs-consult-sum-resp1.pdf

5 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1130296/DRS_Government_response_Jan_2023.pdf

packaging established by the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 ("the 2007 regulations"), where regulations require businesses to meet UK recycling targets. The 2007 regulations will be revoked by The Producer Responsibility Obligations (Packaging Waste) Regulations [2024].

6. Legislative and Legal Context

How has the law changed?

6.1 The Secretary of State makes this instrument in exercise of powers conferred by sections 54 and 143(1) of, and Schedule 8 to the Environment Act 2021. This instrument is laid with the consent of the Department of Agriculture, Environment and Rural Affairs, Northern Ireland.

6.2 The powers provided by the Environment Act 2021 to establish a deposit return scheme are used to establish a DRS in England and Northern Ireland for the first time.

6.3 Certain provisions of this instrument (in respect of appointment of the DMO, and associated provisions) come into force on the day after the day on which the Regulations are made. The rest of the instrument comes into force on 1st October 2027; this is the date from which the DRS will be operational.

6.4 The instrument creates a free-standing legal framework for the delivery of the DRS. It provides for the appointment of the DMO, a non-profit private sector body, and places obligations on producers and suppliers of in-scope drinks containers, and on groceries retailers in respect of accepting the return of deposit items. The instrument makes provision for monitoring and enforcement activities by the Environment Agency and local authority trading standards departments (in respect of England) and DAERA (in respect of Northern Ireland).

6.5 The instrument provides for appeals in respect of certain decisions to be brought to the First tier Tribunal in England, and to the appeals commission in Northern Ireland.

6.6 The instrument makes provision in respect of the treatment of deposit items from any DRS schemes established in Wales and Scotland. The regulations provide for the DMO to make arrangements to return deposit items that originate from overseas DRS schemes.

6.7 The UK will be under an obligation to establish a DRS in Northern Ireland by 2029 under the EU's Packaging and Packaging Waste Regulation which will have effect by virtue of Annex 2 of the Windsor Framework. This instrument will enable the UK to fulfil these Windsor Framework obligations.

Why was this approach taken to change the law?

6.8 Deposit Return Schemes are proven to increase recycling rates and directly reduce litter by incentivising the consumer to recycle the container. The scheme design adopted by this instrument was informed by international comparators, resulting in a centrally managed operational approach by an industry-led, not-for-profit organisation, the DMO. Placing obligations on drinks producers to ensure that in-scope drinks containers are collected and recycled is consistent with the well-established 'polluter pays' principle.

7. Consultation

Summary of consultation outcome and methodology

7.1 Two public consultations have been undertaken to inform the policy that is implemented by this instrument.

7.2 An initial consultation6 published by Defra, together with the Welsh Government and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland was open for 12 weeks in February 2019 and set out the aims of introducing a deposit return scheme to:

- reduce the amount of littering;
- boost recycling levels for relevant material;
- offer the enhanced possibility to collect high quality materials in greater quantities;
- promote recycling through clear labelling and consumer messaging; and
- incentivise moves to push more material up the waste hierarchy and move towards a more circular economy.

7.3 The government response7 to this consultation was published in July 2019. The consultation received a total of 208,269 responses and was met with wide support, with 84% of respondents agreeing to the proposed principles of DRS. Based on the consultation responses received, and the strong support for the introduction of a DRS from the consumer survey8, the previous government committed to continuing to develop proposals further and stated that it was minded to implement a scheme from 2023, subject to further evidence and analysis on the costs and benefits of such a scheme.

7.4 A second consultation9 was launched in March 2021 and was open for 10 weeks. It presented the updated policy positions on the deposit return scheme and sought further information on any outstanding areas of design.

7.5 The government response10 to this consultation was published in January 2023. The consultation received 2,590 responses from a range of stakeholders including local government bodies, Non-governmental Organisations, retailers, producers and waste management companies. The responses demonstrated continued support for the introduction of a DRS, with 83% of respondents supporting the implementation of a deposit return scheme, within a post-covid context.

7.6 In addition to the consultations, ongoing industry engagement has helped the development of DRS policy. This includes:

- **Statutory Instrument engagement (February - May 2023):** two versions of the draft statutory instrument were shared with over 40 industry stakeholders under non-disclosure agreements. Stakeholders provided written comments, had 1:1 discussions and were involved in a hybrid workshop that was delivered by third party consultants.

6 https://consult.defra.gov.uk/environment/introducing-a-deposit-return-scheme/

7 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826853/drs-consult-sum-resp1.pdf

8 https://sciencesearch.defra.gov.uk/ProjectDetails?ProjectId=20253

9 https://consult.defra.gov.uk/environment/consultation-on-introducing-a-drs/

10 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1130296/DRS_Government_response_Jan_2023.pdf

- **Deposit Management Organisation workshop (June 2023):** held with over 50 organisations covering producers, retailers, material manufacturers, other DRS operators and infrastructure firms, and local government.
- **Interoperability workshop (August 2023):** conducted with the devolved governments and industry to receive feedback on joint policy positions.
- **SI Reading Room (April 2024):** stakeholders reviewed and commented on near final SI Draft. Attended by groups that represent Defra's key stakeholders.
- **Business as usual engagement:** worked collaboratively with industry on policy development through regular engagement at the quarterly DRS Industry Forums, sub-groups and 1:1 meetings.

7.7 A quarterly forum is held with representative sectors who will be obligated under DRS (including large and small producers, large and small retailers, hospitality, and wholesalers). Sub-groups have been developed for working level operational and solutions-focused discussions, and additional engagement is delivered with individual stakeholders where needed and requested. DRS updates are also provided at forums such as the Resources and Waste Business Readiness Forum and through the Collection and Packaging Reforms newsletters to reach as many stakeholders as possible.

7.8 Defra and the devolved governments work together to engage stakeholders on DRS. This ensures views from across industry are heard and that lessons are learnt from other schemes. Engagement with industry will continue as the DRS is progressed.

8. Applicable Guidance

8.1 Guidance may be published by Defra, regulators and the DMO on the obligations on scheme producers and suppliers ahead of the DRS launch in October 2027. This is likely to include guidance on how producers register containers with the scheme and pay fees for those containers, information to support small producers including on low volume product line exemptions, as well as information for retailers on return point obligations and for consumers on their participation in the scheme.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment reflective of England and Northern Ireland is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 The impact on charities or voluntary bodies is anticipated to be minimal, they will be impacted if they supply drinks in in-scope containers as they will need to pay the deposit when purchasing the drinks for resale and pass this on to consumers at the point of sale. Further to this, charitable or voluntary bodies involved in litter clean up may see a reduction in their workload and therefore assisting in achievement of litter reduction objectives with the significant reduction in drinks container litter. The impact on businesses is primarily faced by producers and retailers of drinks containers. The DMO, which will manage the scheme, including the flow of deposits, will be a not-for-profit organisation, the revenue streams of which being unredeemed

deposits, material revenue and producer fees. Retailers will be impacted by the scheme if they operate as a return point, however their costs should be covered by a retailer handling fee. The Impact Assessment considers net costs and benefits to society. This is as presented in the Impact Assessment, as a net present value of £3,964m (2019 prices, 2020 present value) across the appraisal period.

9.3 The legislation does impact small or micro businesses.

9.4 To minimise the impact of the requirements on small or micro businesses (employing up to 50 people), the instrument introduces a number of measures: retailers who have floor space of 100m2 or less, and are based in urban areas, are exempted from hosting a return point, and producers that manufacture product lines with less than 5,000 containers placed on the market in a year can opt to be exempted from obligations to pay a deposit on scheme items or labelling obligations, but will still be required to report the number of containers placed on the market. Producers will pay fees on a per container basis, this will ensure any payments are proportionate to what is placed on the market and will alleviate impacts on small businesses who would be disproportionately affected by any flat upfront registration fees.

9.5 The impact on the public sector is the costs borne by the Environment Agency, DAERA and local authority Trading Standards departments in ensuring compliance and monitoring of the DRS. There will also be an impact on local authorities in that drinks containers are less likely to be collected via kerbside recycling collections. Analysis by WRAP indicated that it is difficult to understand the full impact of DRS on local authorities before it goes live, and before adaptations to pEPR and simpler recycling are known. Defra will continue to work to understand the impacts of DRS on local authorities.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This instrument contains a statutory review clause requiring the Secretary of State to carry out a review of the provisions contained in the regulations, setting out the conclusions in a published report within 5 years of the commencement of the scheme on 1 October 2027, and at subsequent intervals not exceeding 5 years.

10.2 A statutory review clause is included in the instrument.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 **Fee increases** - The instrument makes provision for fees to be paid to the DMO by producers of drinks containers in respect of in-scope containers placed on the market in England and Northern Ireland; such fees will be determined by the DMO and will be on a ‘per container’ basis.

11.2 Relations to other SIs – this instrument sits alongside other relevant changes to legislation. The Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 will place new obligations on producers of packaging; such obligations will not apply in respect of drinks containers within the scope of DRS. However, if DRS is not operational by January 2028, then such containers will fall within the scope of those packaging regulations. Further legislation is also due to be made consequential on this instrument in respect of permitted development rights for return points, and in respect of price marking and display of the deposit amount, and

the treatment of VAT in respect of deposits. Defra is working with the relevant departments to ensure these provisions are reflected in relevant regulations.

11.3 Commencement - Regulation 1(3) provides for certain provisions in the Regulations to come into force on the day after the day on which the Regulations are made, with the remainder of the Regulations coming into force on 1 October 2027 (regulation 1(2)). The provisions specified in regulation 1(3) are those necessary for the appointment of the Deposit Management Organisation and the establishment of the necessary administrative arrangements in advance of the Deposit Return Scheme becoming operational, including registrations and exemptions. These provisions do not impose duties on people or require them to adopt different patterns of behaviour at the point on which these Regulations come into force, but rather they facilitate the arrangements that need to be in place in advance of commencement of the scheme on 1 October 2027.

12. European Convention on Human Rights

12.1 Minister Mary Creagh has made the following statement regarding Human Rights:

"In my view the provisions of the Deposit Scheme for Drinks Containers (England and Northern Ireland) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").