

# The Deposit Return Scheme in Scotland

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Scotland is leading the way in the fight against waste. In efforts to combat throwaway culture, the Scottish Government has committed Scotland to being the first part of the UK to introduce a 'Deposit Return Scheme' (DRS). The scheme in Scotland will cover all drinks sold in plastic, metal, and glass containers between 50ml and 3 litres. The 'go live' date is 16 August 2023. Ireland will see its DRS launch in 2024

## How will it work?

Under the proposals, every time a drink is sold in Scotland (whether in a plastic, metal or glass container) a deposit of 20 pence will be added to the price. All retailers must then offer a return point at their premises where the container can be returned in exchange for the deposit. The term "retailer" has been given a fairly broad definition in the proposed regulations, covering wholesalers, online retailers and vending machines, as well as large supermarket chains and small convenience shops. The enforcement powers will lie with the Scottish Environmental Protection Agency (SEPA), who will have a wide-ranging remit.

Producers will be required to register with SEPA every year and make arrangements for the collection of containers from return points. The Scottish Government has imposed ambitious collection targets of 90% by 2025, based on all materials meeting a collection rate of not less than 85%.

Retailers will be obliged to ensure that effective arrangements are put in place for the return of drinks containers. Either taking these back manually e.g. over the counter, via a takeback service for online or via a reverse vending machine on their premises.

There will also be added labelling requirements applicable to both producers and retailers to assist with preventing fraud and to identify Scotland only products. These are not mandatory at the moment, but they are likely to be required from a logistics and practical perspective.

## Implementation

The main regulations became law on 1 January 2021 and were amended in February 2022.

A scheme administrator, Circularity Scotland Limited (CSL), was approved by the Scottish Government in March 2021. This is a company limited by guarantee and was formed by a number of large producers collaborating to enable them to meet their producer responsibilities. There are membership arrangements within CSL and weighted voting depending on the number of products a producer puts into the market. Membership can be via a trade body or directly.

CSL has been working with external advisers to set the producer fee and the retailer handling fees. The announcement of both has led to outcry and challenge. The current state of play is that they are 'off to think again'!

Some retail groups have continually expressed concerns about the proposals, particularly smaller retailers who have raised doubts about their ability to comply with the legislation. A judicial review case backed by the Small Grocers' Federation has been lodged in the Court of Session in October 2022.

The promised removal of VAT applying to the deposit and a new exemption from the current VAT law on deposits has not yet been agreed with HM Treasury, despite continued lobbying from numerous players in the drinks industry.

Despite this backdrop of numerous challenges, the Scottish Government has indicated its intention to press ahead with the scheme which is said to garner high levels of public support.

It is worth noting that the Scottish Government advised retailers who install reverse vending machines (i.e. machines for accepting and processing returned bottles,) will not be subject to business rates increases but it is unclear if this also includes where additional space is taken to install machines.

## **Enforcement**

SEPA will enforce the obligations arising under DRS. There are a range of enforcement mechanisms available to SEPA including civil enforcement measures and criminal penalties for non-compliance. It is worth noting that the regulations include a power for SEPA to enter and inspect retail premises, along with penalties that can extend to an unlimited fine.

SEPA will take an educative and guiding role to start with to encourage and enforce compliance.

## **The challenges?**

The scheme will lead to significant changes for producers and retailers alike. These changes present a new set of unique challenges, many of which are legal in nature.

DRS will impact retailers and producers in novel ways. The following are just a few of the challenges.

### **For producers:**

- The producer registration process opens on 1 December 2022 and closes on 28 February 2023.
- Thereafter there is a requirement to register with SEPA by 1 March every year (N.B. this includes retailers who import drinks produced outside the UK intended for sale in Scotland), or alternatively, to appoint the scheme administrator to carry out its statutory duties.
- New pricing arrangements to include the 20p deposit in the sale price.
- VAT –is presently included and there are difficulties with recovery of VAT on deposits. Discussions are ongoing with HM Treasury to resolve this.

- New labelling and barcoding for items sold in scheme packaging. No mandatory Scottish labelling but it is preferred for ease of identification and to prevent fraud in the scheme.
- Ongoing obligations to meet specified collection targets.
- Ongoing detailed data reporting requirements to SEPA regarding products on the market in Scotland.
- Small producers need to consider the cost benefit analysis of selling their product in Scotland.
- To join Circularity Scotland or attempt to meet producer obligations alone, a tall order to meet alone – logistics will be key?
- Commercial contracts need to reflect the logistical arrangements and ensure responsibilities are clear.
- Costs and price rises for consumers and the impact on sales modelling and profits.

#### For retailers:

- Retailers must ensure the deposit price is factored into the product price shelf labelling and in-store labelling must make it clear the deposit value is separate from the price (and it is refundable).
- A legal obligation for all retailers to accept the return of containers and to provide deposit refunds to customers. Staff training in identifying scheme articles will be key.
- Retailers (particularly those operating large-scale retail businesses) may be expected to install reverse vending machines to process returns. This may necessitate negotiations with landlords under the current terms of leases to extend premises or change the use of areas or change the fit out or layout of existing stores.
- Retailers will be obliged to hold containers that are returned until arrangements are made by the producers to collect the containers.
- Retailers should consider whether they should apply to become exempt from the regulations. We can assist you with this.
- Online retailers are required to offer a take-back service. Delivery drivers will require waste licences. Scottish Government is off to think about this onerous aspect again.
- Wholesalers will need to consider the contract terms with producers carefully.

#### Key takeaways

- This is a business risk for all businesses producing or selling goods in scheme articles.
- The scheme will go live on 16 August 2023. Preparation is key. The logistical issues are significant.
- A mandatory deposit of 20p will be added to the sale price for all included drinks containers.
- All producers must register with SEPA by 1 March every year (and pay the registration fee).

- All retailers must operate a collection point for 'scheme articles' unless they are granted exemption.
- The collection of deposited containers from retailers is mandatory for all producers who must also meet annual collection targets. The vast majority of large producers are members of Circularity Scotland Limited and as a result solely reliant on Biffa for their collections to enable them to comply with their obligations.

**To discuss further please contact:**



**Caroline Colliston**  
Partner  
**T** +44 (0) 131 474 2333  
**M** +44 (0) 784 184 3744  
**E** [Caroline.Colliston@dwf.law](mailto:Caroline.Colliston@dwf.law)



**Dominic Watkins**  
Partner & Head of Consumer Sector  
**T** +44 (0) 207 645 9591  
**M** +44 (0) 773 450 8634  
**E** [Dominic.Watkins@dwf.law](mailto:Dominic.Watkins@dwf.law)



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