



Law Society
of Scotland

Consultation Response

A Deposit Return Scheme for Scotland

September 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Environmental Law sub-committee welcomes the opportunity to consider and respond to the Scottish Government's consultation *A Deposit Return Scheme for Scotland*¹. We have the following comments to put forward for consideration.

General comments

The consultation suggests a series of broad options, the nature of which raise questions of policy. Many of these questions are best informed by other areas of expertise out with environmental law. Therefore, our comments are limited to possible consequential issues which may merit consideration when determining the further detail of the proposed scheme and associated policies. We will likely be better placed to consider more specific proposals as these develop.

The objective of a deposit return system is admirable. We consider that the practical aspects of the system will require careful consideration to ensure that it is workable and can be easily accessed by consumers and businesses in order to encourage high levels of participation.

It will be crucial to ensure that there is clarity as to the rules for a deposit return system, for example in relation to the materials included in the scope of the system, and how the system will be integrated with existing local authority recycling practices. In order for the system to operate properly, such clarity is important both for consumers and for those involved in operating the process.

A coordinated approach will be required between Scottish Government and local authorities who deal with litter and recycling in their local area.

¹<https://consult.gov.scot/environment-forestry/deposit-return-scheme/>

Materials in Scope

In terms of the materials falling into the scope of the scheme, we are of the view that this question should be considered against the background of the objectives of the scheme.

On one view, all materials should be included in order to reduce the burden of administration in the system. However, operators will require to find disposal options for those materials which cannot be recycled. We are of the view that careful consideration will require to be given to the plans for disposing of the materials following return, in particular, the stability and sustainability of the underlying market. We appreciate that disposal will likely only be made to well-established and low-risk markets.

Products in Scope and Dairy Issues

We have no comment on these matters.

Return Location

We note that may not be convenient for consumers to return materials to the shop at which they have purchased the product, for example, where products are purchased while travelling or away from the consumer's local area. There is potential for local shops to experience high levels of returns due to the convenience that is likely to be associated with returning items locally. Large retailers, however, are likely to be better placed to host collection facilities due to the potential for large-scale infrastructure to be required.

We would highlight the potential for difficulties with cash-flow for businesses in the event that items are not returned to the retailer where they were purchased. This may arise where the retailer is required to pay consumers for return of materials, but the retailer has not already received payment from the scheme operator. This is likely to have a greater impact upon small businesses. If an electronic system is utilised, for example using credit loaded onto a card registered to a consumer, there is potential for fraud to arise and so any system will require careful consideration in order to mitigate this risk.

Careful consideration should be given to the proposals in terms of social equity to ensure that certain groups are not disadvantaged, for example, those living in rural areas, living in flats, or without vehicular transport.

Financing Models

With regards to finance models, consideration will require to be given as to how any cash sums will be dealt with, for example, for taxation purposes or in the case of an insolvency situation.

We consider there would be merit in the deposit return scheme being a form of producer responsibility. There may be merit in use of existing models where possible to reduce the need for new systems to be established and resources sourced. For example, the packaging waste regime model whereby entities 'buy in' to the model and the scheme is regulated by SEPA, and central clearing mechanisms such as for water retail services are generally seen to be effective.

Consumer Information

It is important that consumers have ready access to information about the scheme in order to allow them to guide their conduct as they choose. We note the potential for increased burden on producers of having differing labelling requirements in different jurisdictions.

Fraud Prevention

We have no comment on this.

Deposit Level

We are not in a position to suggest where the deposit level should be set. In order to ensure that the system is effective, there will likely need to be an effective 'carrot and stick' for consumers. Businesses will require some degree of incentivisation – although there may be no cost to a business, there will be some degree of 'hassle' involved. This should be carefully considered given the current difficulties being experienced by high street retailers.

Infrastructure and Logistics

We note that the scheme is designed to cover its own costs, however, there is likely to be a significant infrastructure cost involved.

We consider that a backhauling system is unlikely to be practical – when items are delivered, they are generally palletted and shrink wrapped, thereby reducing transportation space, however this would not be available for materials being backhauled.

Additional Benefits

We consider that there would be merit in investing surplus funds into the protection of the environment. If businesses are bearing financial and other risks, this should be rewarded.

Impact on local authorities

We note that there is a potential significant impact on local authorities given that design of the scheme as drafted would remove only the valuable materials from those currently within local government collections. Further consideration may be needed as to how local authorities will continue to collect and deal with the remaining materials outwith the scheme, given how little value there will be in those compared to the price per tonne in providing collection services which comply with the Recycling Charter currently in place.

System Ownership

We have no comment on this.

Regulation

We have no comment on this.

Example Systems

We have no comment on this.

Co-operation with the other UK administrations

We consider that it is important that there is co-ordination with other administrations in this field to reduce the risk of environmental tourism.

Equality Impact

We have no comment on this.

For further information, please contact:

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