MSP briefing 12 November 2021

Possible delay to deposit return

Have You Got The Bottle?

Scotland's already overdue deposit return system is at risk of another unnecessary delay, which would be in breach of an SNP manifesto commitment.

Background

Members will be aware that there will be a Ministerial Statement next week, on 17th November, which is expected to confirm or delay the launch date for Scotland's deposit return system. The current regulations set a launch date of 1st July 2022.

The July 2022 launch date is already:

- fifteen months later than the date first proposed by Scottish Ministers in 2019;
- almost five years after the First Minister committed to a deposit system for Scotland; and
- more than thirteen years since Parliament gave Ministers the power to introduce such a scheme via the Climate Change (Scotland) Act 2009.

In March this year a Gateway Review into the launch was announced, and this was conducted prior to summer recess. The SNP's 2021 manifesto included the following commitment (our emphasis):

'We will implement our ambitious Deposit Return Scheme for single use drinks containers ***next year*** *to improve recycling, reduce litter and achieve our climate change targets'.*

This briefing will cover:

1. The estimated impact of any further delay;
2. The strategic reasons why elements of industry are pushing for a further delay;
3. International comparators to illustrate how Scotland's system is already the slowest ever to be introduced (except for Germany, where the delay was attributable to industry legal action); and
4. The issues offered as justification for such a delay.

1 The cost of delay

Unnecessarily littered cans and bottles across Scotland. Eunomia calculated for APRS that approximately 140,000 additional cans and bottles are littered every day while we do not have a deposit return system in operation. That amounts to 1,085 per MSP (shown above), and a total of 31.5 million extra cans and bottles have already been littered since the 1st April 2021 date originally proposed by Scottish Ministers. A further 32.5 million items will be littered between now and 1st July 2022. Even a delay to 1st December 2022 would lead to an additional 21.4 million cans and bottles in our streets, parks, and seas, or more than 160,000 per MSP.

Cost to local government. In the 2020 Business and Regulatory Impact Assessment, the Scottish Government estimated a Net Present Value benefit to Scottish local government of deposit return of £168m over 25 years. That reflects the additional costs of street cleansing, bin emptying, and recycling centre gate fees, and amounts to more than £0.5m per month. The effect of the pandemic on litter and cleansing may make the real current costs even higher. A delay to December 2022 would cost hard-pressed local authorities £2.8m.

Carbon consequences. The deposit return system was one of the few policy measures announced last session which has a clear and measurable carbon benefit. Much of this is because of more sustainable manufacturing processes - for example, making a recycled can uses 95% less energy than using virgin aluminium. Zero Waste Scotland estimated in 2019 that deposit return would cut Scotland's carbon emissions by 160,000 tonnes a year. Delaying would therefore result in avoidable annual emissions on that scale, which is almost 20% higher than the annual carbon cost of the M74 Northern Extension. A further delay just after Scotland hosted COP26 would send out a clear message to the world that – despite all its fine words – the Scottish Government is simply not serious about striving for Net Zero.

Discrimination against responsible businesses. Many businesses have invested substantial sums based on the July 2022 launch date (as an example, [this story about Lidl's investment in their Dalkeith store]() makes that explicit). That infrastructure would then not be bringing any handling fees for the duration of any delay, so these investments would not begin to be recouped on time. Postponing the launch again would essentially transfer cost and risk onto responsible businesses and from those who have not taken the regulations seriously, and could be subject to judicial review.

Risk of a third delay. The interests which have pushed so hard for a second delay despite a first delay of fifteen months would not suddenly and spontaneously decide to act, given that the message would have been clearly communicated that the Scottish Government will not stand its ground. Without a financial incentive (e.g. an agreement only to delay within 2022 and only where producers agree to pay the full EPR costs during any such delay) Ministers could not be confident that a second delay would be any more fruitful than the first delay was. This would also be a further blow to the UK Government's plans for an English deposit return system. If the Scottish Government proves unable to stick to its own policy decisions, that would put at risk progress on this issue across the rest of the UK. The retailers and producers in Scotland are largely the same as those who operate across the rest of the UK, and if progress is delayed in Scotland that will only embolden efforts to try to stall deposit return indefinitely elsewhere.

Missed circular economy opportunities. Unlike kerbside recycling, deposit return secures clean single-material streams of recyclate, which are then sold by the scheme administrator to offset the costs of running the system. In addition to reducing our dependence on oil for virgin plastics, the availability within Scotland of these resources is key to our move towards a circular economy, with the associated higher employment opportunities. The draft National Planning Framework 4, published earlier this week, rightly talks about Circular Economy Materials Management Facilities, stating that "sites and facilities will be needed to retain the resource value of materials so that we can maximise the use of materials in the economy and minimise the use of virgin materials in order to reduce greenhouse gas emissions". None of this can happen without access to those materials.

International reputation. Zero Waste Scotland claim that "Scotland is making a name for itself as a frontrunner in the circular economy", but a further delay to deposit return, the simplest and most widely-proven circular economy measure, would make this claim ring rather hollow.

2 The pressure to delay

In March this year, Circularity Scotland was approved by Scottish Ministers as a scheme administrator. It is wholly owned by producers and retailers. International best practice is for such companies to be exclusively producer-owned, as deposit return is a form of Extended Producer Responsibility (EPR), and a scheme administrator charges producers a fee per item put onto the market to cover the net cost of recovering the used beverage containers.

It is therefore appropriate for those producers to be responsible for minimising their own costs through an efficient system, governed by binding targets. Many large supermarkets are also producers via their own brand lines.

The costs of the litter and waste which producers are due to cover from July 1st 2022 are currently borne by local government, the private sector, the climate, streets, parks, beaches and individuals across Scotland. Understandably, some businesses prefer the status quo.

Some elements of industry are therefore concerned about the impact of a successful deposit system being launched in Scotland: they fear a launch in 2022 will strengthen the case for a similar system in England, Wales and Northern Ireland. A delay here would reduce the risk that they would have to meet their full EPR costs elsewhere in the UK, despite a clear 2019 Conservative manifesto pledge covering England. They also reportedly still hope to prevent the Scottish system from ever happening.

Similar efforts are underway to derail Welsh plans for deposit return, in that case the equivalent push is via “digital deposit return”, an impractical, entirely unproven and environmentally damaging use of blockchain technology we understand Scottish Ministers have thankfully rejected.

The Gateway Review spoke exclusively to the public sector (SEPA and ZWS) plus UK industry (including only one producer body). None of the existing deposit return system operators were interviewed. Nor were any of the international experts on the circular economy. It is hard to see what the value of such a flawed and one-sided process would be, but a decision to delay based on it would clearly be vulnerable to legal action.

August 2018: Mark Ruskell MSP, Finlay Carson MSP, Claudia Beamish MSP, Angus MacDonald MSP and Liam McArthur MSP meet the Norwegian deposit system operator Infinitum.

3 International comparators

The best comparators here are small European states who are either in the process of launching their system or who launched recently.

Lithuania accredited their system operator in August 2014, and appointed an IT partner in April 2015. Their system launched just ten months later, in February 2016, with no problems on launch.

The Latvian system operator was accredited in December 2020, three months before Circularity Scotland was accredited in Scotland. Their system will launch in February next year, thirteen months from start to finish, with all this work taking place during the pandemic. Even if Circularity Scotland had done zero work between March 2021 and now, a timescale of this sort would allow the Scottish system to launch in December 2022.

Given the Scottish system is due to operate in a devolved context, Queensland provides another good example of a system set up in their case for a federal territory. The Queensland government announced in June 2016 that it would introduce a state-wide deposit system, and the legislation was in place by June 2017. In November 2017 it appointed COEX, the system operator. The system launched just a year after that, on 1 November 2018.

Under the leadership of Green Minister Ossian Smyth, Ireland committed in March this year to an eighteen month process from start to finish: prior even to the appointment of a system operator.

4 Issues cited as a reason for delay

Complexity of IT systems associated with variable VAT levels on cans and bottles. The Scottish Government correctly argued that the deposit should not contain VAT, and HMRC appear to have rejected this argument, and rates are expected to vary according to point of sale. However, managing VAT payments within a deposit system is an issue which has been long solved in Sweden and Germany. The deposit contains VAT in both, as it will in Scotland, and at variable rates in Sweden.

Scotland-specific labelling under devolution. We expect Circularity Scotland to follow international best practice and offer its producer-members the option of applying a Scotland-specific barcode to items sold here (each line of this sort is known as a Stock Keeping Unit, or SKU). If they do opt to offer this option, those who choose a Scotland-specific label would expect to pay a lower producer fee to reflect the lower level of fraud on SKUs with a system-specific label. Labelling is (correctly) not governed by the regulations: this is a commercial decision for CSL and its members to make. It is again a solved problem. Many systems operate in markets where there is a mix of system-specific SKUs and wider national or pan-national SKUs (e.g. USA/Australia/Canada, or within the EU).

COVID. The previous delay was announced on 17th March 2020, just a week before lockdown, and Ministers argued at the time it was in part to take account of the pandemic (subsequently admitting to ECCLR that the decision in principle to delay had been taken prior to the pandemic, if not the length of delay). Nevertheless, other countries have launched or extended their deposit return systems during the pandemic. In addition to the examples above, the Netherlands decided in April 2020 to bring in plastic bottles below 1l in size, and this change came smoothly into effect in July 2021.

Cost to business. The slow movement by Circularity Scotland and some of its members means that a start on time would indeed be more expensive for them now. It is not clear why this should be a concern of Parliament’s, given the clear deadline set in regulation. It should also be noted that the producer/retailers have done very well during the pandemic. For example, Tesco announced last month half-year numbers showed a doubling of statutory profits to £1.1bn and a 41% increase at the “adjusted” operating level to £1.46bn. The cost to industry of a deposit return system is trivial by comparison.

www.haveyougotthebottle.org.uk

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