



ACS Submission - The Deposit and Return Scheme for Scotland Regulations 2020

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the Scottish Government's consultation on the draft Deposit and Return Scheme for Scotland Regulations 2020. ACS is a trade association representing 33,500 convenience stores across the UK. Our members include One Stop, McColl's, SPAR UK and thousands of independent retailers. For more information about ACS, please see Annex A.

ACS represents 4,973 convenience stores in Scotland which will be mandated to operate a return point in the Deposit and Return Scheme for Scotland Regulations 2020. Given the significant role convenience retailers will have to the success of the scheme, we are committed to develop the most effective deposit return scheme (DRS) in Scotland. We continue to work with the Scottish Government and Zero Waste Scotland through the retailer working group on issues including timeframes for implementation, exemption criteria for return points, and the impact of manual handling.

Timeframes for Implementation Must be Extended

To ensure the best possible deposit return scheme in Scotland, we believe the current timeframes for implementation must be extended. Implementation in April 2021 does not allow enough time to develop the new infrastructure required to accommodate a comprehensive DRS. Establishing the governance structures, facilities and executive of a new systems operator in these timeframes will be difficult, let alone delivering the new backhauling system for materials, finance and data systems to track deposits through the supply chain. If the scheme is not ready to be introduced, its success will be severely hampered because consumers do not have confidence in it. For example, if majority of drinks containers on the shelves are not within scope of the scheme or return points expected to receive high volumes of returns have not yet been able to install a reverse vending machine. Therefore, the Scottish Government must reconsider their current timeframes to allow for the appropriate infrastructure and processes to be put in place.

Exemption Criteria Should Consider Store Size

We welcome that the draft regulations provide for Scottish Ministers to grant retailers exemptions from their obligations to operate a return point. We believe further clarity is needed in the draft regulations to ensure it does not become an overcomplicated process, which could deter retailers from apply for an exemption. The draft regulations should also specify how Scottish Ministers will determine which locations to exempt and on what criteria. We believe that a store which has extremely limited space to take back drink containers should be more likely to qualify for an exemption. We understand that the Scottish Government ruled out an automatic exemption for small shops, however, including the size of store in the exemption criteria would allow Scottish Ministers to provide meaningful exemptions for the smallest retailers on a case by case basis.

Manual Handling is Not a Solution for Small Shops

We continue to raise concerns about the impact that manual handling will have on retailers and their staff. While we welcome comments made by the Cabinet Secretary in her evidence to the Scottish Parliament Environment, Climate Change and Land Reform Committee that there is consideration to the impact on small retailers, we do not agree that allowing manual handling in stores rather than reverse vending machines is the solution. A manual system is far more burdensome than hosting a reverse vending machine in store due to the limited space in store, the pressures and risks it would place on staff, and the hygiene issue it presents. In a manual system, a staff member would have to check that the bottle is in the scheme, scan it (if they have an EPoS system), store it by the till, clean and process the bottles and store in a secure container either at back of house or outside, then ensure that they have backhauling systems in place. Therefore, we welcomed comments made by the Cabinet Secretary¹ that the Scottish Government are exploring plans for funding to allow small retailers to purchase a reverse vending machine if they choose to host one in-store.

ACS has also commented on specific areas of the regulations, in places where they may be ambiguous and where we are seeking clarifications and amendments to certain clauses, including:

- Clause 3(2)(d) which states that glass drinks containers are within scope of DRS. Glass presents considerable logistical challenges for retailers and presents health and safety risks for staff and therefore it should not be within scope of the scheme.
- Chapter 3 which establishes a “reasonable proximity” exemption for retailers from being required to host a return point. Further clarity and detail is needed about the exemption process to ensure that it is fit for purpose.
- Clause 11(4) which defines a “reasonable handling fee”. While we welcome that the draft regulations define the parameters of what costs are covered by a ‘reasonable handling fee’ this must adequately compensate retailers and reflect different operating cost for different business models.
- Clause 11(2)(f)(g)(h) requires producers to collect scheme packaging from return points, reimburse the deposit to return points, and pay a handling fee to return points “within the time limits specified in the producer’s operational plan”. The regulations must provide a standard of what is deemed to be an appropriate time limit for producers to adhere to in their operational plan to ensure that retailers are compensated, and collections occur within a reasonable timeframe.
- Clause 5(2)(b) requires retailers to include a deposit in the sale price of the drink container and clearly display information indicating the amount of the deposit. It is currently unclear how retailers can comply with these requirements.
- Clause 20(4) allows retailers to refuse to take back drinks containers in certain circumstances, including when the container is soiled. DRS must be well communicated to consumers to minimise any confusion about the redemption of deposits and therefore minimise confrontation and potential abuse to retailers and store colleagues.
- Clause 1(4) introduces DRS on 1st April 2021. This does not allow enough time to develop the new infrastructure required to accommodate a comprehensive DRS.

¹ In evidence to the Scottish Parliament Environment, Climate Change and Land Reform Committee

- Clause 15(4) allows for multiple scheme administrators to be set up. For the simplicity and efficiency of the scheme, we believe that only one scheme administrator should be responsible for the operation of the DRS

We have provided further comments and detail regarding specific areas of the regulations below. For more information about this submission, please contact Julie Byers, ACS Public Affairs Manager by emailing Julie.Byers@acs.org.uk or call 01252 53008.

Part 1 – General

Section	Comments
Citation and commencement – Clause 1 (4)	<p>Implementation for DRS in April 2021 does not allow enough time to develop the new infrastructure required to accommodate a comprehensive DRS. Establishing the governance structures, facilities and executive of a new systems operator in these timeframes will be difficult, let alone delivering the new backhauling system for materials, finance and data systems to track deposits through the supply chain. We strongly urge for the extension of the proposed timeframes currently under consideration for DRS to ensure best possible scheme is introduced in Scotland.</p> <p>As well as the establishment of a new recycling infrastructure, guidance will need to be developed and disseminated to over 17,000 businesses which will be required to operate a return point under the regulations². This not only needs to focus on raising awareness amongst businesses but ensure that they understand the regulations to be able to comply. Such guidance, issued by the responsible enforcement authority should be available well ahead of the introduction of the regulations.</p> <p>If the scheme is not ready to be introduced, its success will be severely hampered because consumers do not have confidence in it. For example, if majority of drinks containers on the shelves are not within scope of the scheme or return points expected to receive high volumes of returns have not yet been able to install a reverse vending machine. Therefore, the Scottish Government must reconsider their current timeframes to allow for the appropriate infrastructure and processes to be put in place.</p>
Interpretation – Clause 2(1)	<p>This Clause defines some terms in full and others by reference to text in other Clauses. All definitions should be referred to in one section for simplicity.</p>
“First placed on the market in Scotland” means when an article (including the scheme packaging for that article) is first made	<p>We would welcome clarification as to how this definition in the regulations applies to products sold in England which are not intended for sale in Scotland. For example, where a retailer located by the border in Scotland may purchase products from a wholesaler located in England.</p>

² Clause 19(b)

available by the producer to be marketed, offered for sale or sold for the purposes of its retail sale in Scotland, and related expressions are to be construed accordingly

Would the retailer in this circumstance be defined as a producer/importer and be responsible for requirements to place products on the market in Scotland? If so, this presents challenges and additional burdens for convenience retailers which trade on the border where their nearest wholesaler may be the nearest to their store.

We would also welcome clarity regarding the Cabinet Secretary for Environment, Climate Change and Land Reform's comments to the Scottish Parliament Environment, Climate Change and Land Reform Committee on 19 November 2019. In the Cabinet Secretary's evidence, she stated "If you buy a bottle of coke in Carlisle, it is returnable in Scotland." Our understanding is that if a consumer purchases a drinks container in England it is not in redeemable in the Scotland deposit return scheme as it was never made for retail sale in Scotland and the deposit was not paid on those containers. If drinks containers sold in England can be redeemed in Scotland, we would have significant concerns about the feasibility of the scheme, especially the impact it would have on cash flow for retailers who may not be able to claim the deposit or handling fee for a container which was not first placed on the market in Scotland.

Scheme articles - Clause 3(2)

(a) contains a scheme article first placed on the market for retail sale in Scotland on or after [1 April 2021]

We have concerns that the current timeframes mean that there will be a considerable amount of non-scheme articles on the shelves by the time of implementation as it is anticipated that there will not be a long sell through period between producers updating their labelling and 1st April 2021.

A soft launch of the deposit return scheme presents considerable challenges for retailers. We anticipate that there will be consumer communications undertaken by the Scottish Government and Zero Waste Scotland about the introduction of the scheme to raise awareness which is highly likely to create certain expectations, for example, that all products will have a deposit applied and be redeemable from 1st April 2021.

If products which consumers believe would be in scope of DRS but are non-scheme articles from 1st April 2021, this could create consumer confusion and a point of confrontation for the retailer who then has to explain why the deposit has not been applied or why they cannot accept a non-scheme article. As such it is important that the messaging and communications to consumers about the introduction of a deposit is well communicated.

(d) is made wholly or mainly from PET plastic, glass, steel or aluminium

The Scottish Government could also minimise confusion by extending the timeframe for introduction so that retailers have enough time to sell through non-scheme articles so that the majority of products are within scope of DRS by the time of introduction.

Glass presents considerable logistical challenges for retailers and presents health and safety risks for staff and therefore it should not be within scope of the scheme. There are industry wide concerns that glass should not be included as demonstrated in a joint letter to the Scottish Environment Secretary organised by British Glass, which ACS was a signatory to³.

If a retailer plans to accept glass returns through a reverse vending machine, they would be required to invest in additional or larger, more sophisticated reverse vending machines. Reverse vending machines which also accept glass are considerably larger than RVMs which only accept plastic and metal and the costs are significantly higher. If a return point was required to take back glass containers manually this could present additional health and safety issues for staff as there is more of a risk for breakage, which would mean staff handling broken glass.

The amount of space dedicated to a reverse vending machine is crucial in determining the type of take back that smaller stores can provide. If glass is in scope of the scheme, it may not be feasible for a smaller shop, which could accommodate a smaller machine, to accept returns through a larger reverse vending machine. This means that more small retailers may have to accept returns manually, presenting considerable challenges to their operations as well as reducing the convenience of return for consumers to return drinks containers in bulk.

Given one of the principles of the scheme is to ensure that returning drinks containers is as accessible and convenient to consumers as possible, including glass within scope could mean fewer return points accepting returns through a reverse vending machine, displacing footfall to stores which have the space to host larger machines which accept glass containers.

Part 2 – The Deposit Return Scheme

Section

Comments

Sale of scheme articles –
Clause 4(1)

³ British Glass Joint Letter to Scottish Environment Secretary regarding concerns over glass inclusion in the Scottish Deposit Return Scheme

(a) that article has been made available by the producer of that article for the purposes of its retail sale in Scotland	We would welcome clarity as to whether a scheme article not intended for sale in Scotland can be sold and if so if the deposit must be applied? Who would be responsible to apply the deposit and for first placing it on the market in Scotland? Would this be the responsibility of the brand owner/producer or the retailer which is selling the product in Scotland?
(b) the producer of that article is a registered producer	We would welcome clarity if a scheme article not intended for retail sale in Scotland can be sold by a retailer located in Scotland? For example, if a retailer purchased Coca-Cola in England, is this considered a non-scheme article as the producer of that article is a registered producer, but the product has England specific labelling?

Deposits – Clause 5

(1) A deposit is 20 pence	We support the Scottish Government's approach to have the same level of deposit applied to all types of drinks containers regardless of material or size. This will not only ensure that there is clarity for customers to interact with a deposit return scheme but also provide clarity for return points on which the level of deposit that is applied onto drinks containers. A deposit return scheme should be straightforward so that retailers can easily administer the deposit and so that it can be easily understood by customers as customer confusion could limit the effectiveness of a deposit return scheme.
(2)(b) clearly display information in any place where the scheme article is displayed for sale	It is currently unclear in the regulations how retailers can comply with the requirements to display this information, in particular, the information relating to pricing. For example, would this need to be displayed by the product itself on the shelf edge label or one poster within the premises itself? How is the price to be displayed? For example, on a shelf edge label does it need to include the price of product without the deposit and note that a 20p deposit is applied (when the customer is at the till), the price of the product with and without the deposit, or the price of the product including the deposit with a note to say the price includes the 20p deposit? Guidance will be required to be developed to support retailers if the regulations do not provide any further clarity. It is important to allow for the simplest display of information as possible to minimise any confusion by consumers.
(3) Any person who markets, offers for sale or sells a non-scheme article in Scotland on or after [1 April 2021] must communicate to the purchaser at the point of sale	We have concerns that the current timeframes mean that there will be a considerable amount of non-scheme articles on the shelves by the time of implementation as it is anticipated that there will not be a long sell through period between producers updating their labelling and 1 st April 2021.

A soft launch of the deposit return scheme presents considerable challenges for retailers. We anticipate that there will be consumer communications undertaken by the Scottish Government and Zero Waste Scotland about the introduction of the scheme to raise awareness which is highly likely to create certain expectations, for example, that all products will have a deposit applied and be redeemable from 1st April 2021.

If products which consumers believe would be in scope of DRS but are non-scheme articles from 1st April 2021, this could create consumer confusion and a point of confrontation for the retailer who then has to explain why the deposit has not been applied or why they cannot accept a non-scheme article. As such it is important that the messaging and communications to consumers about the introduction of a deposit is well communicated.

The Scottish Government could also minimise confusion by extending the timeframe for introduction so that retailers have enough time to sell through non-scheme articles so that the majority of products are within scope of DRS by the time of introduction.

Part 3 – Producers

Section	Comments
Application for registration of a producer (Clause 7 and Schedule 1)	
Schedule 1(9) The number of scheme articles first placed on the market for retail sale in Scotland by that producer in the previous calendar year in which the application is being made	<p>We would welcome reassurances that this requirement on producers will not burden retailers. Our understanding is that this requirement would only obligate producers to provide information about the number of scheme articles first placed on the market and therefore be information that producers have to hand.</p> <p>We would have concerns if it went further and required producers to provide information about the number of scheme articles sold. This may lead to producers requesting data about sales from retailers to fulfil their obligations. This would be extremely challenging for convenience retailers to share as they will sell hundreds of product lines in scope of DRS. Reporting this information to each individual producer would be extremely burdensome and time intensive, especially for small retailers as a quarter of stores do not have EPoS systems to track their stock take. Small retailers also do not have the resources at a head office to carry out this type of reporting. We would also question about the potential for competition law to be breached if this information is shared.</p>

Producer obligations: directly registered producers (Clause 11)

(2)(f) within the time limits specified in the producer's operational plan, collect scheme packaging first placed on the market for retail sale in Scotland

We welcome that the draft regulations set out producers' obligations to collect packaging from return points. The regulations must clarify the acceptable length of "time limits specified in the producer's operational plan". Without any standards set out in the regulations, retailers will be uncertain on the length of time between collections. Storing containers for collection will take up significant space in store and if not collected frequently could attract pests and impact the hygiene of the store. Therefore, the regulations must provide a standard of what is deemed to be an appropriate time limit for producers to adhere to in their operational plan to ensure that collections occur within a reasonable timeframe. This should also consider that smaller stores may need to have more frequent collections as they have limited space to store containers.

(2)(g) within the time limits specified in the producer's operational plan, pay...a sum equal to the deposit for each item of scheme packaging collected

It is vital that retailers have deposits reimbursed by the scheme administrator in a timely fashion to ensure that the retailer experiences no cash flow problems which could cause disruption to their business. The regulations must provide a standard of what is deemed to be an appropriate time limit for producers to adhere to in their operational plan to ensure that retailers are compensated.

(2)(h) within the time limits specified in the producer's operational plan, pay...a reasonable handling fee charged by that person for each item of scheme packaging collected.

We welcome that the draft regulations set out producers' obligations to reimburse retailers with a reasonable handling fee. However, we believe the draft regulations need to clarify the acceptable length of the "time limits specified in the producer's operational plan" Without any standards set out in the regulations, retailers will be uncertain on the timeframe for the reimbursement of not only their handling fee but of the deposit they have paid as well.

(3)(a) the number of scheme articles first placed on the market for retail sale in Scotland by that producer

We would welcome reassurances that this requirement on producers will not burden retailers. Our understanding is that this requirement would only obligate producers to provide information about the number of scheme articles first placed on the market and therefore be information that producers have to hand.

We would have concerns if it went further and required producers to provide information about the number of scheme articles sold. This may lead to producers requesting data about sales from retailers to fulfil their obligations. This would be extremely challenging for convenience retailers to share as they will sell hundreds of product lines in scope of DRS. Reporting this information to each individual producer would be extremely burdensome and time intensive, especially for

small retailers as a quarter of stores do not have EPoS systems to track their stock take. Small retailers also do not have the resources at a head office to carry out this type of reporting. We would also question about the potential for competition law to be breached if this information is shared.

(4) “reasonable handling fee” Retailers will experience significant costs due to their obligations to host a return point, which we have attempted to estimate in Annex B. However, due to many uncertainties about the operation of DRS, it is challenging to understand the full costs that retailers will incur from its introduction. Any DRS that requires retailers to take back drink containers must be cost neutral and therefore to ensure that handling fees adequately compensate return points as part of the scheme.

One single price is not appropriate as the costs to administer DRS will differ per outlet, as such costs will need to be considered on a case by case basis. We also have concerns that current fixed handling fees set out in the Scottish Government’s Full Business Case for DRS will not adequately compensate retailers for the costs they will incur, as well as time taken, to operate a return point under the regulations.

Therefore, while we welcome that the draft regulations define the parameters of what costs are covered by a ‘reasonable handling fee’ which will be reimbursed to retailers operating return points for every item of scheme packaging they take back⁴. We believe that more detail is needed in the regulations to set out how the handling fee will be enforced and what process will be undertaken to determine the handling fee to ensure that retailers are appropriately compensated. We also need clarity on what process will be put in place to account for the increase in costs over time, for example wage or property costs increasing.

Part 4 – Scheme Administrator

Section	Comments
General	The draft regulations allow for multiple scheme administrators to be set up and does not provide any requirements for the governance of a scheme administrator. For the simplicity and efficiency of the scheme, we believe that only one scheme administrator should be responsible for the operation of the DRS. It is unclear how a deposit return scheme would operate effectively if there are multiple scheme administrators responsible for the scheme.

⁴ As set out in Clause 11(4)(a)

The ownership of the scheme administrator will play a key role in the accountability and delivery of the deposit return scheme and therefore should be representative of the whole supply chain involved with DRS. As such, the scheme administrator should be accountable to a Board. Given that return points will play an integral role in the delivery of a deposit return scheme, we believe that there should also be representatives from businesses which act as return points on the Board. The regulations should mandate that representatives from the whole of the retail sector, including small shops, form the governance of the scheme administrator.

Part 5 – Retailers and Return Points

Section	Comments
Return points – Clause 20	
General	One of the aims for the design of a deposit return scheme is to ensure that it is convenient for consumers to return their drinks containers and therefore we disagree with suggestions made by the Cabinet Secretary to the Scottish Parliament Environment, Climate Change and Land Reform Committee on 19 th November 2019 that “there will be benefits for small retailers, because the scheme will generate additional footfall.” While a deposit return scheme could allow for customers returning drinks containers to spend their redeemed deposit in-store, there is no evidence to suggest that these same customers would not be already spending their money with that retailer irrespective of a deposit return scheme.
(4) A return point operator may refuse to accept an item of packaging if (a) it is not identifiable as scheme packaging, (b) it is soiled, (c) it is not empty), or (d) the retailer has requested a collection of scheme packaging...and the collection has not been carried out in accordance with that...operational plan.	<p>While we welcome that the regulations allow retailers to refuse to accept the return of a scheme article in above circumstances, retailers may not be in a position to refuse to accept an item of packaging as it would act as a point of confrontation between themselves and the consumer which could be a trigger for violence and verbal abuse⁵. It is important that DRS is well communicated to consumers to minimise any confusion about the redemption of their deposit under the scheme and therefore minimise confrontation.</p> <p>We would also welcome further clarity and guidance on what condition a container would need to be in to be considered as soiled. Without a definition, this means it will be entirely subjective by retailers and by enforcement bodies.</p>

⁵ ACS Crime Report found that the top triggers for violence and abuse include day to day activities that store colleagues carry out including enforcing age restricting and refusing to serve alcohol to intoxicated persons.

Takeback services –
Clause 21

We would welcome more information from the Scottish Government on how the regulations relating to takeback services applies to businesses which use a third-party app such as Deliveroo or Uber Eats will apply. Would it be the retailer dispatching the delivery or the delivery service that would be responsible for the takeback service?

Exemptions for return
points – Clause 22

(1) The Scottish Ministers may grant an exemption (whether or not an application under regulation 24 is made to them)

We welcome that the draft regulations provide for Scottish Ministers to grant retailers exemptions from their obligations to operate a return point. We believe further clarity is needed in the draft regulations to ensure it does not become an overcomplicated process, which could deter retailers from apply for an exemption.

There are still a number of questions surrounding the exemptions process, including: how does a retailer determine what is a reasonable proximity to understand that they are eligible for an exemption? Can an alternative return point accept on behalf of a number of retailers or is it a first come first served basis? There are also questions about the wording of the regulations, for example, can Scottish Ministers grant an exemption for a retailer despite them not applying for one and can a retailer ask a voluntary return point to take containers on behalf of them? We believe these questions must be answered in the regulations to ensure the exemption process is fit for purpose

The draft regulations should also specify how Scottish Ministers will determine which locations to exempt and on what criteria. For example, would a store which has extremely limited space to take back drink containers be more likely to qualify for an exemption? Currently, the onus is on the retailer to identify an alternative return point to accept scheme packaging on their behalf.

We would welcome clarity regarding the Cabinet Secretary's comments made to Scottish Parliament Environment, Climate Change and Land Reform Committee on 19 November 2019. In the Cabinet Secretary's evidence, she stated: "In a sense, the question of exemptions applies mostly to small retailers." It is still unclear about the criteria that the exemption would be based on. As stated above, we believe that the criteria should account for stores which have limited space to facilitate a DRS and would welcome clarity if this is also the intention of the Scottish Government.

(1)(a) there is an alternative return point located within reasonably proximity to the premises, and the operator of that return

What assessment has been made about the potential implications that the exemptions process will have on competition law? We have concerns about the potential for

point has agreed to accept the return

retailers to breach competition law as retailers if there is a required to agree a strategy with other return points⁶.

(1)(b) if the exemption is granted, this will still provide consumers with reasonable access to a return point

We continue to call on the Scottish Government to consider an exemption for small stores which have limited sales and storage space to facilitate a deposit return scheme. Regardless of the method of take back (automated or manual), a retailer would be required to sacrifice space in-store to operate a deposit return scheme – either by storing drinks containers nearby the till and at back of house for collection, or with a reverse vending machine taking up significant space in store. We believe that the size of a store must be taken into consideration rather than solely relying on the “reasonable proximity” exemption process. A large number of countries where DRS exists have automatic exemptions for small shops which range from 20m² to 200m². We believe a size exemption should be considered by the Scottish Government to be included in addition to the “reasonable proximity” exemption.

Instead of a potentially complicated exemption process, the Scottish Ministers could carry out a strategic mapping exercise to determine which locations are required to take back containers. The process to determine which locations should host return points should be based on evidence of which locations consumers most frequent to ensure that the scheme is convenient to consumers. This will mean that the scheme has the highest chance at success to change consumer behaviour from recycling at kerbside to bringing drinks containers to a return point.

This process would be similar to existing mapping criteria used for Post Offices, ATMs and National Lottery terminals. For example, the Post Office have a statutory duty to comply with the government’s access criteria for post office branches, which focuses on the distance to a Post Office and how much of the population is ‘x’ distance from a Post Office⁷. LINK has a Financial Inclusion Programme to ensure that consumers have free access to cash through ATMs which is based on distance⁸, while Camelot, the National Lottery operator, determine locations based on criteria including current and projected sales, footfall, store size, access and potential demand.

We welcomed Scott Wood’s (Scottish Government) comments to the Scottish Parliament Environment, Climate Change and Land Reform Committee on 8th October, where he stated: “Theoretically, there is a scenario in which we end up with a single scheme administrator that works with retailers across the country, identifies the optimum network of return points and then presents us with a list, as the basis on which we make judgments.” We would welcome further engagement on how

⁶ Clause 24(2)(b) states that the application for the exemption must include the agreement of the alternative return point operator to take back drinks containers on that retailer’s behalf

⁷ [The Post Office Network Report 2018](#)

⁸ [LINK Financial Inclusion Programme](#)

this process could be developed as it reflects similar principles to strategic mapping of return points which would lead to a more effective and efficient deposit return scheme.

(3) A retailer who has been granted an exemption under paragraph (1) must clearly display information at the retailer's premises indicating (b) the location of the alternative return point

Where a retailer has been exempted from operating a return point that they would be obligated to clearly display information at their premises indicating that they are exempt from the DRS regulations and do not operate a return point as well as the location of the alternative return point⁹. There may be reluctance from retailers to advertise where the alternative return point is located if it is based in another retail outlet. We would welcome community run reverse vending machines which are based in neutral locations to act as alternative return points.

Application for exemption – Clause 24

(2)(c) An application must include any other information requested by Scottish Ministers

The regulations specify that the application must include information about the location of the alternative return point and the agreement of that return point operator to accept scheme articles on their behalf and "include any other information requested by the Scottish Ministers"¹⁰. We do not agree that Scottish Ministers should be allowed to request any information as part of the application process, which could be challenging for retailers to share. The currently wording of the regulations also means that the types of information requested could be determined on a case by case basis, changing from application to application. As such, any information that would need to be requested must be set out in the regulations to ensure a level playing field and establish a standard application process.

(3) Within 28 days of receipt of an application the Scottish Ministers may grant the application and (4) where an application is refused, the Scottish Ministers must within 7 days of the date on which it was refused give notice

Our understanding is that the exemption process will open following approval of the draft regulations by the Scottish Parliament. Once the exemption process opens there could be thousands of applications received. We would welcome reassurances that the Scottish Government has the capacity to consider applications for exemptions within the specified timeframes set out in the regulations.

Part 6 – Appeals or Reviews

Section

Comments

Right of appeal or review – Clause 26

The DRS regulations do not allow for an appeals process for retailers to use if their application for an exemption has been refused. The only appeals process specified in the regulations relates to registration for a producer or scheme administrator.

⁹ Clause 22(3)

¹⁰ Clause 24(2)(c)

We believe that the DRS regulations should also allow for a retailer to appeal a decision made by the Scottish Minister as to whether they should be required to operate a return point, this should also take into account other factors such as size of store and capability to take back container rather than solely focusing on accessibility.

Part 7 – Enforcement and Offences

Section	Comments
Offences – Clause 31	We would welcome consideration as to whether the sanctions stipulated in the regulations are proportionate. The regulations not only allow for the Scottish Environment Protection Agency to impose civil enforcement measures on persons in relation to those offences but also provides for criminal penalties for failure to comply with the Regulations which could amount to an unlimited fine.

ABOUT ACS

The Association of Convenience Stores lobbies on behalf of over 46,000 convenience stores across mainland UK on public policy issues that affect their businesses. ACS' membership is comprised of a diverse group of retailers, from small independent family businesses running a single store to large multiple convenience retailers running thousands of stores.

Convenience stores trade in a wide variety of locations, meeting the needs of customers from all backgrounds. These locations range from city centres and high streets, suburban areas such as estates and secondary parades, rural villages and isolated areas, as well as on petrol forecourts and at travel points such as airports and train stations.



WHO WE REPRESENT

INDEPENDENT RETAILERS



ACS represents almost 19,000 independent retailers, polling them quarterly to hear their views and experiences which are used to feed in to Government policy discussions.

These stores are not affiliated to any group, and are often family businesses with low staff and property costs. Independent forecourt operators are included in this category.

SYMBOL GROUPS AND FRANCHISES



ACS represents over 14,000 retailers affiliated with symbol groups. Symbol groups like SPAR, Nisa, Costcutter, Londis, Premier and others provide independent retailers with stock agreements, wholesale deliveries, logistical support and marketing benefits.

Symbol group forecourt operators and franchise providers like One Stop are also included in this category.

MULTIPLE AND CO-OPERATIVE BUSINESSES



ACS represents over 13,000 stores that are owned by multiple and co-operative retailers. These businesses include the Co-Operative, regional co-operative societies, McColls and others.

Unlike symbol group stores, these stores are owned and run centrally by the business. Forecourt multiples and commission operated stores are included in this category.

THE CONVENIENCE SECTOR



In 2019, the total value of sales in the convenience sector was £40.3bn.

The average spend in a typical convenience store transaction is £6.38.



There are 46,388 convenience stores in mainland UK. 71% of stores are operated by independent retailers, either unaffiliated or as part of a symbol group.



The convenience sector provides flexible employment for around 405,000 people.

18% of independent/symbol stores employ family members only.



19% of shop owners work more than 70 hours per week, while 17% take no holiday throughout the year.

70% of business owners are first time investors in the sector.



Convenience stores and Post Offices poll as the two services that have the most positive impact on their local area according to consumers and local councillors.

78% of independent/symbol retailers have engaged in some form of community activity over the last year.



Between August 2018 and May 2019, the convenience sector invested over £633m in stores.

The most popular form of investment in stores is refrigeration.

OUR RESEARCH

ACS polls the views and experiences of the convenience sector regularly to provide up-to-date, robust information on the pressures being faced by retailers of all sizes and ownership types. Our research includes the following regular surveys:

ACS VOICE OF LOCAL SHOPS SURVEY

Regular quarterly survey of over 1,200 retailers, split evenly between independent retailers, symbol group retailers and forecourt retailers. The survey consists of tracker questions and a number of questions that differ each time to help inform ACS' policy work.

ACS INVESTMENT TRACKER

Regular quarterly survey of over 1,200 independent and symbol retailers which is combined with responses from multiple businesses representing over 3,000 stores.

ACS LOCAL SHOP REPORT

Annual survey of around 2,400 independent, symbol and forecourt retailers combined with responses from multiple businesses representing 7,556 stores. The Local Shop Report also draws on data from HIM, IGD, Nielsen and William Reed.

BESPOKE POLLING ON POLICY ISSUES

ACS conducts bespoke polling of its members on a range of policy issues, from crime and responsible retailing to low pay and taxation. This polling is conducted with retailers from all areas of the convenience sector.

Annex B

Please see below for an estimate of the costs that a convenience retailer would face, based on whether they accept containers manually or through an automated reverse vending machine under the Scottish Government's DRS regulations. Our estimate is based on conversations with convenience retailers and reverse vending machine manufacturers.

Automated Take Back (Per Store)	
Lost sales space	-£7,689
RVM lease	-£1,872 a year (equivalent to £7,000 + VAT for five years)
Staff costs (1hr per day to empty and clean RVM)	-£2,811
Revenue from 3.5p handling fee as stipulated in the Scottish Government's Full Business Case for DRS	+£1,615
Total	-£10,777 per annum
Manual Take Back (Per Store)	
Staff costs (1hr per day to accept containers and process, store and clean, keep records of returns)	-£2,811
Materials relating to manual take back such as bags and boxes for glass	-£210
Revenue from 1.5p handling fee as stipulated in the Scottish Government's Full Business Case for DRS	+£692
Total	-£2,329
Total Convenience Sector Costs	
Automated Take Back (40% of stores as assumed in the Eunomia feasibility study for DRS commissioned by Zero Waste Scotland in 2015)	-£21,435,453 per annum
Manual Take Back (60% of stores as assumed in the Eunomia feasibility study for DRS commissioned by Zero Waste Scotland in 2015)	-£6,949,736 per annum
Net Total	-£28,385,189 per annum

This does not account for other costs such as service agreements for the reverse vending machine, maintenance, and materials such as paper for vouchers and bags to keep containers in. Therefore, the cost to convenience retailers is likely to be far higher.

Assuming as the consultation suggests that small retailers, such as convenience stores would accept returns manually, it was cost the convenience sector, **£11,582,117 per annum** to operate a return point under DRS. However, we believe that many convenience retailers will decide to install a reverse vending machine as it may be more appropriate for their business.

While it may appear more economical to operate a return point on a manual take back basis, it is not feasible for a small shop to manually manage returns in the store due to the limited space in store, the pressures and risks this would place on staff, and the hygiene issues it presents.

Assumptions used: 90% return rate of the 1.7bn drinks containers in the market according to the Scottish Government. 15% return rate to convenience stores as assumed in the feasibility study by Eunomia commissioned by Zero Waste Scotland in 2015.