From: (Redacted)
To: Minister for Green Skills, Circular Economy and Biodiversity
Cc: Director of Environment & Forestry; Carmichael K (Katriona); Huyton H (Harry); (Redacted)

Subject: DRS - Briefing - Lorna Slater - Meeting with SIBA - 31 October 2022
Date: 28 October 2022 16:29:00
Attachments: DRS - Briefing - Lorna Slater - Meeting with SIBA - 31 October 2022.docx

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PS Minister for Green Skills, Circular Economy and Biodiversity,

Please find attached briefing for the meeting on 31 October with the Society of Independent Brewers.

Please let us know if you need anything further.

Thanks.

(Redacted)

| Deposit Return Scheme Unit | Environmental Quality and Circular Economy Division | Environment and Forestry Directorate | Scottish Government

MINISTERIAL ENGAGEMENT BRIEFING:
LORNA SLATER, MINISTER FOR GREEN SKILLS, CIRCULAR ECONOMY AND BIODIVERSITY
Meeting with SIBA

What	Meeting with SIBA to discuss Scotland's Deposit Return Scheme (DRS) and their concerns re implementation
Where	Microsoft Teams Click here to join the meeting
When	31 October 2022 13:30 – 14:00
Key Message(s) and structure	• I am strongly committed to introducing DRS on the 16th of August 2023. Scottish Ministers have been clear and consistent that this date will not change. • I am here today to make sure I understand the pressures that small producers will face at launch, and explore the proposals you put forward in your recent letter in more depth. • I absolutely recognise that businesses have concerns over elements of the scheme's implementation, and I would like reassure you that I am continuing to work with businesses, Circularity Scotland and SEPA to ensure pragmatic solutions are in place.
Who	Jamie Delap – SIBA Scotland Director Barry Watts – SIBA Head of Public Affairs and Policy
Why	An opportunity to address the concerns raised by SIBA in their letter of 13 October, and to demonstrate your continued engagement and commitment to finding pragmatic solutions to their concerns.
Expected outcome	Attendees feel that their concerns have been listened to, and that the Scottish Government will continue to work with CSL, SEPA and others to find pragmatic solutions.
Supporting officials	(Redacted) , Head of DRS Unit Mobile: (Redacted) Katriona Carmichael, Deputy Director Circular Economy Mobile: (Redacted)
Briefing contents	• **Annex A:** Background and context • **Annex B**: Proposed meeting structure & top lines • **Annex C**: Biographies • **Annex D:** Correspondence from SIBA (attached separately)
Media Handling / Social Media	N/A

ANNEX A: BACKGROUND AND CONTEXT

1. SIBA have set out the resource challenges facing small brewers in their letter and suggest that DRS will lead to:
   - small producers from outwith Scotland pulling out of the supply market
   - small brewers in Scotland becoming unviable - causing redundancies and business failures across Scotland.

2. (Redacted)

3. SIBA propose three mitigation measures. Two can be managed by CSL (dropping 'Day 1' charges for small producers, and providing 60 day payment terms). However, **the main proposal: 'treating small producer products as Old EANs for 18 months' amounts to an exemption for small producers at scheme launch**.

4. (Redacted)

5. (Redacted)

6. Today's meeting seeks to better understand SIBA's proposals, and particularly:

   - Whether the challenges faced are entirely financial (cash flow, insufficient working capital), or also operational (small producers won't be ready).

   - SIBA's view on the implications for the scheme, and how they propose these could be managed.

MINISTERIAL ENGAGEMENT BRIEFING:
LORNA SLATER, MINISTER FOR GREEN SKILLS, CIRCULAR ECONOMY AND BIODIVERSITY
Meeting with SIBA

ANNEX B: Proposed Meeting Structure & Lines

You will chair.

(Redacted)

1. Welcome & opening remarks (13:30 – 13:35)

- Thank you again for meeting with me today at such short notice. I'm sorry not be able to up your offer to do this in person at your brewery *[in Cairndow, Loch Fyne]*, but hope that we can still have a constructive discussion this afternoon.

- You'll know that I'm committed to introducing Scotland's Deposit Return Scheme on 16 August 2023. Thank you as ever for your continued engagement and your leadership on behalf of small brewers on this important scheme.

- I have appreciated your correspondence setting out the practical issues you're facing.

- I very much recognise the concerns you have raised over the implementation of DRS, as well as the enormous pressures facing businesses during the current crisis.

- I understand that you are particularly concerned about the initial costs and working capital requirements at scheme launch.

- (Redacted)

- I am looking to use today to make sure I fully understand your concerns, as well as the role that I can play in reaching pragmatic and workable solutions.

2. SIBA concerns (13.35 – 13.40)

(Redacted)

3. SIBA proposals (13.45 – 13.55)

Mitigation 1 - Treat small producer products as non-scheme items for 18 mo.

SIBA wish CSL to agree to treat all products produced by small brewers as non-scheme articles for the first 18 months of the scheme (essentially, an exemption for small producers). This would also need the agreement of major retailers to continue to stock these item.

(Redacted)

(Redacted)

Mitigation 2 – Drop Day One charges for small producers

If producers do not move to new EANs a day 1 charge will be levied of 2.4 months of producer fees. SIBA suggest it is not economically viable for producers outwith Scotland to pay that charge. They believe that small producers in Scotland do not have margins to absorb moving to new EANs, or to pay the day 1 charges.

(Redacted)

Mitigation 3 – 60 day payment terms

Most small producers will not be able to access the necessary debt to meet the working capital contribution to CSL. SIBA suggest that small producers are given payment terms to remit deposits and producer fees to CSL of 60 days from the end of the month the goods are sold. This would reduce the need for additional borrowing by small producers can be heavily mitigated or avoided.

(Redacted)

3. Summing up (13.55 – 14.00)

(Redacted)

ANNEX C: Biographies

Jamie Delap

Jamie is the Managing Director of Fyne Ales, a family owned Farm Brewery in the west highlands of Scotland. The brewery has become best known for its progressive British beers, exemplified by Jarl, and for FyneFest their annual Beer, Food and Music Festival.

Jamie is also the Scotland Director of the Society for Independent Brewers, representing small brewers across Scotland and the UK. He has been heavily involved in DRS and is a well engaged member of the System Wide Assurance Group.

Jamie has a Masters Degree in Manufacturing Engineering as well as an MBA, and prior to joining the family business worked in manufacturing in a number of countries across Europe and North America.

You have previously met Jamie on 07 September and 06 October as part of meetings with food and drink trade bodies on DRS.

Barry Watts

Barry is the head of policy and public affairs for SIBA. He has previously worked at the Royal Economic Society, as well as in Parliament and financial regulation. He also ran his own brewing company.

ANNEX D

Correspondence from SIBA

Attached separately.

THE SOCIETY OF SIBA INDEPENDENT BREWERS
The voice of British independent brewing

Lorna Slater MSP
Minister for Green Skills, Circular Economy and Biodiversity
The Scottish Government
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

13 October 2022

Dear Minister

RE: Small brewers and the Deposit Return Scheme

Thank you for taking the time to engage with us over the last few weeks on the final details of the Deposit Return Scheme (DRS). Like you we want to find solutions to ensure that DRS works for everyone in Scotland.

As you will understand this is an extremely challenging time for small breweries in Scotland. Last year you kindly agreed to delay the introduction of DRS because, amongst other factors, small breweries needed extra time to prepare and recover from the Covid-19 pandemic. Sadly, since then the challenges small brewers face have continued to mount, with the onset of the current high inflation environment, material shortages, and now the energy crisis. This means that small producers, who emerged from the pandemic with significant additional borrowing, are now facing severe pressure on their profitability.

In normal times small producers are heavily constrained in their ability to access finance and to make resource available for major changes like the introduction of DRS. In the current environment most simply do not have access to additional financial reserves or borrowing and are very severely constrained in their ability to dedicate resource to DRS.

At the moment implementation of DRS will place very significant financial burdens on small brewers, which would have to be financed by additional borrowing. Implementation is as complex for small brewers as for the larger producers, and at the same time most operate physical and e-commerce shops and bars, so they also have to manage the retailer obligations. For all small brewers implementation will be a part time responsibility for either just one person or at most 2 or 3 people alongside their already busy current jobs. At this stage there just aren’t enough hours left for small brewers to successfully implement the scheme.

In these circumstances, without meaningful changes, the result will be that very few small producers outside Scotland will continue to supply Scottish consumers through legitimate routes. For small brewers in Scotland the scheme poses a deep threat to their future viability, depending on how dependent they are on small pack sales (cans and bottles) and currently it has to be expected to cause redundancies and business failures across Scotland. At the same time consumers will see a substantial reduction in choice available to them via legitimate routes, and specialist retailers' business models are also severely threatened.

Our best estimate is that in total small brewers put 25 million containers per year on the Scottish market, so just 1% of the total containers put on the market. At the same time small brewers produce a huge range of products and probably count for 10% to 20% of all distinct SKUs sold in Scotland. Given the nature of our customers, it seems likely that the recycling rate for these containers is higher than average and make a minimal contribution to Scotland's litter problems. Improving the recycling rate of Small Brewers' products by 10% would improve Scotland's recycling rate of drinks containers by just 0.1% - which, we suggest, is significant, but not essential to the success of the scheme in the first years.

All of that being the case, small brewers absolutely recognise the need to make changes to our businesses if Scotland is to move to Net Zero and we want to do our part in this transition. Whilst our preferred approach remains a stepped introduction in the regulations (larger producers first followed by smaller producers) together with other changes, we have suggested three mitigations, below, which we believe would allow the scheme to achieve its objectives, while allowing more Scottish brewers to continue to survive, minimise redundancies and minimise the reduction in consumer choice.

1. **Treat small producer products as OEANs for 18 months**

   The regulations allow non-scheme articles to be sold through after the scheme goes live, and Circularity Scotland (CSL) is defining these as OEANs. We propose that for 18 months post go-live next August, CSL agrees to treat all products produced by small producers as OEANs. To be successful this would also need the agreement of the major retailers to continues to stock OEANs during this period.

   We are aware of concerns whether consumers will know if a product carries a deposit or not – but given what we now know about the scheme we think this is readily addressed. First, non-Scheme articles are going to be available for sale for a substantial period post go-live under the current regulations, so this needs to be addressed anyway. Second, as on-pack labelling is not an option we know that indicating the deposit is due will need to be done on shelf edge, so it will be possible to indicate to consumers that these products don't carry a deposit quite clearly.

We suggest that in order to qualify for this exemption small producers should still be required to register with CSL and pay the appropriate registration fee, but during the 18 month period they would be exempt from charging the deposit or paying any producer fees.

This proposal would address the huge difference in resource available to large producers to manage the implementation compared to the very constrained resources available to small producers. It also moves the go-live date for small producers from August, the busiest and most challenging month of the year, to February, one of the quietest and least challenging months of the year.

2. **Day one charges dropped for small producers**

The Day one charge, of 2.4 months of producer fees and deposits is being levied by CSL to cover the cost of keeping Retained EANS (REANS) on the market. This charge can be avoided by large producers by moving to New EANs (NEANs, UK wide or Scotland Only).

For a small producer based outside Scotland, moving to NEANs is never going to make economic sense and at the same time the Day one charge is probably around 2 years profit that they make on sale of items in Scotland, so they won't continue to sell to Scotland. For small producers in Scotland, some have volumes where it is cheaper to move to NEANs, but this carries substantial expense as well, so they face either the costs of the Day 1 invoice for using an REAN or the still substantial costs of moving to NEANs. In the current environment there are no margins available for businesses to be able to absorb these costs, and small producers balance sheets don't have room to be able to fund borrowing to cover these costs even if they could be subsequently be passed through to consumers in the form of higher prices, which would be challenging when large producers can avoid this charge.

There would be a cost to CSL of implementing this (we estimate that small producers would have to fund around £1.5million currently before any mitigating EAN moves), but the alternative is widespread withdrawal of products from the market with the resulting redundancies and business failures.

3. **60 day payment terms**

The terms currently proposed by CSL require producers to borrow significant additional funds to provide CSL with working capital. As already noted, post-pandemic, all small brewers are already carrying a lot of additional debt. The reality is that many, possibly most, small brewers will not be able to access to necessary debt to be able to accommodate the working capital contribution to

CSL. For those that can, in the current environment, the cost of that finance is likely to be around 15% per annum, possibly more. Large producers, and indeed CSL itself are able to access funding much more readily and cheaply than small brewers are.

To mitigate this, we would suggest that small producers are given payment terms to remit deposits and producer fees to CSL of 60 days from the end of the month the goods are sold. This would mirror the payment terms from many retailers and wholesalers, so the need for additional borrowing by small producers can be heavily mitigated or avoided. This has a small cash flow cost to CSL (remembering small brewers account for just 1% of the total containers put on the market), but given that the supply chain for Small Brewers' beers has a much slower velocity than the FMCG supply chains, quite probably a proportionate amount of working capital is still being provided.

We suggest that all these mitigations need to be offered to producers putting less than 5 million units per year on the Scottish Market, which within the Small Brewers' sector should equate to the analysis above, and if extended to all small producers maybe accounts for 2 to 3% of all containers put on the market in Scotland.

On the online takeback service, you said that you were considering changes to this to ensure that it is not burdensome for small producers. The craft beer market, post pandemic, relies heavily on internet sales which are almost entirely fulfilled via third-party carriers, and can be shipped from anywhere across the UK. Any solution for a takeback service therefore needs a third-party waste collector, to be able to collect products from consumers' homes, act as a return point, including refunding the deposit, and deliver them to a CSL counting centre. It seems very hard to envisage how this can be done in a remotely economic or in a carbon efficient manner, but we have a meeting with your officials next week and look forward to discussing it further.

We would be happy to discuss all of the above further with you and your officials.

Yours sincerely

[redacted]

Jamie Delap
SIBA Scotland Director

Meeting with SIBA to discuss Scotland's Deposit Return Scheme (DRS)
31 October 2022
13:30 – 14:00

By MS Teams

Attendees
Minister for Green Skills, Circular Economy and Biodiversity
Jamie Delap – SIBA Scotland Director
Barry Watts – SIBA Head of Public Affairs and Policy
Katriona Carmichael – Scottish Government
(Redacted)

Meeting notes

The meeting purpose was to ensure the Minister fully understand the concerns of SIBA members, and the role that the Scottish Government can play in reaching pragmatic workable solutions. The Minister asked Jamie Delap (JD) to provide some opening remarks.

JD asked what can small businesses do to fit into the imperative to deliver DRS by August. Most businesses are coming out of the pandemic with debt, and rapidly spiralling input costs. Craft brewing is relatively small. For example, Fyne Ales employees 5 people within their administration department. There will be lots of work for small producers to comply with DRS, and also retail spaces to manage. Implementation is still not at the point where any small businesses can plan sensibly. It was thought that there may still be a tolerable space for large producers and retailers to be ready, but this was not thought to be possible for small businesses.

JD expressed the risk that if implementation is to go live next August, it is possible that small businesses may be forced out of business. Often, these are green, sustainable businesses, which are located across the country and which employ a lot of people.

SIBA is asking for an 18 month grace period, over which time small producers' EANs are not included in the scheme, as 'scheme articles'. This would allow small businesses to get bars and shops set up properly.

LS outlined the work being taken forward on exemptions and online takeback. She confirmed that support for small producers was CSL's number one issue. The Scottish Government does not want small producers to be collateral.

In terms of timing, JD outlined that the issue is about human resource, as there is a lot of work required in implementing DRS. There is a question about whether it is viable to meet requirements, especially small producers outwith Scotland. Businesses need information to make decisions. For example, on what the SKU strategy is, what labelling requirements are and what that means for design and artwork. There is administration required for financial systems. There is a requirement for bar codes.

For many products, the logical change is to change to a OEANs and NEANs. That will require a whole sale change of products. Outside Scotland, it will not be worth taking this action, when the producer fee is combined with upfront fees. Businesses may choose not to sell into Scotland, if there is no profit for 2 years. There were thought to be too many unknowns. The largest of these is the producer agreement, and particularly the requirements around UK SKUAs. There is not enough detail for small businesses to engage.

The Minister asked whether simplified administration or support would be helpful. JD replied that any resource such as this would help, but that there is a large diversity in the sector. The nature of supply chains, and the work that is remaining, meant that it was not possible to be ready in 8 months.

SIBA's view is that it is the larger end of the craft sector, which faces the biggest problems. There is a need to look at support for up to medium sized businesses, which collectively put about 25 million containers on the market. SIBA had also spoken to other sector industry groups, who thought it was something that could be explored.

In summary, JD outlined that SIBA has been been consistent that a clear 18 months was needed to prepare. Twelve months was not suggested, in part because August is a busy period for businesses, and there will be major changes to the alcohol duty scheme. SIBA is recommending, instead, February to allow enough time to work through the issues.