

Briefing for Minister - 31 October 2022

What	Meeting with SIBA to discuss Scotland's Deposit Return Scheme (DRS) and their concerns re implementation
Where	Microsoft Teams
When	31 October 2022 13:30 – 14:00
Key Message(s) and structure	<ul style="list-style-type: none"> • 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	[Redacted] – SIBA Scotland Director [Redacted] – 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	<ul style="list-style-type: none"> • 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
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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. CSL have also raised their concerns with you on this topic, notably that:
 - Cash flow implications at scheme at launch (initial deposits) are untenable for small producers. The working capital required is equivalent to approx. 1 year turnover.
 - CSL can manage cash flow once they have built up a health balance sheet over the first 12-18 months of operation.
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. Scottish Ministers have consistently argued that they do not wish to exempt small producers at launch, so this request would amount to a significant policy change.
5. [Redacted – Regulation 10(4)(e) – Internal Communications]
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.

ANNEX B: Proposed Meeting Structure & Lines

You will chair.

The main purpose of this meeting is to listen to and understand SIBA's concerns and proposals.

We recommend that you use the following opening remarks to set the tone.

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 [Redacted]*], 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.
- I am already speaking to CSL on this issue to make sure they are playing their part in managing scheme launch for you and your members.
- 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)

You may wish to invite [Redacted] to summarise the challenges faced by small brewers.

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.

You may wish to ask:

- For details of how they see this proposal working in practice
- Why this measure specifically would assist with readiness
- What role SG might play – for example industry and CSL must manage the flow of scheme articles and retailer agreement

- What other support Scottish Government, SEPA, or CSL could provide
- How any delay would ensure readiness in future

[Redacted – Regulation 10(4)(e) – Internal Communications]

[Redacted – Regulation 10(4)(e) – Internal Communications]

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.

Restate your position that this appears to be an issue that would be best resolved through discussion with CSL.

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.

Restate your position that this appears to be an issue that would be best resolved through discussion with CSL.

3. Summing up (13.55 – 14.00)

You may wish to:

- Thank attendees for their time and commitment to improving the scheme.
- Note that you will consider the concerns raised and what solutions could look like.
- Offer to act a broker with CSL in some of these discussions.
- Note that you are also looking at the exemption process for retailers and online takeback requirements – this should reduce overall scheme costs.

ANNEX C: Biographies

[Redacted]

ANNEX D

Correspondence from SIBA

Attached separately.

Briefing for Minister - 10 February 2022

What	Meeting with small producer trade associations to discuss concerns over Scotland's Deposit Return Scheme (DRS)
Where	Microsoft Teams
When	10 February 2023 09:00 – 09:30
Key Message(s) and structure	<ul style="list-style-type: none"> • Take producer concerns over DRS very seriously. • Continuing to work with SEPA on how to support you towards implementation. • Here today to make sure I fully understand the risks you are facing and the implications for who needs to act
Who	<p>Society independent brewers (SIBA) – [Redacted] Scottish Wholesaler Association - [Redacted] Scotch Whisky Association – [Redacted] Scotland Food & Drink – [Redacted] Wine & Spirits Trade Association – [Redacted]</p> <p>SEPA – [Redacted]</p>
Why	Meeting small producers to discuss DRS concerns following joint letter submitted 03 February
Expected outcome	Attendees feel that their concerns have been listened to know that this is a priority for the Scottish Government
Supporting officials	<p>[Redacted], Head of DRS Unit Mobile: [Redacted]</p> <p>Katriona Carmichael, Deputy Director, Circular Economy Mobile: [Redacted]</p>
Briefing contents	<ul style="list-style-type: none"> • 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: Proposed Meeting Structure & Lines

You will chair.

The main purpose of this meeting is to demonstrate that we take small producer concerns seriously, and continue to work towards making sure we have pragmatic solutions in place.

[Redacted – Regulation 10(4)(e) – Internal Communications]

1. Welcome & opening remarks (09:00 – 09:05)

- Thank you again for meeting with me today.
- We are now almost six months out from DRS launching in August. While there has been very significant progress towards implementation since we last met, I know your members continue to have strong concerns that they can be ready for August.
- You should know that I and the rest of the Scottish Government take your concerns very seriously. That is reflected in the First Minister's comments yesterday, and in my continued commitment to take a reasonable and pragmatic approach to launch.
- I understand that you remain concerned about the initial costs and working capital requirements at scheme launch. I am speaking to CSL on these issues, to understand what further action they can take to support you, particularly regarding the upfront financial and cashflow requirements of the scheme. Clearly CSL is an independent company, but if there is further action you believe I can take then we can explore your ideas on that today.
- I took action on your concerns at the end of last year to address issues you had raised as being particularly problematic, notably removing online takeback obligations from your members, and updating our exemptions guidance to enable CSL to reduce producer fees and the day one charge. There has also been intense activity across Government to push HMT on a VAT solution, and I would expect that to be announced very soon.
- I would like to use today to explore further what you believe Scottish Government and SEPA, as scheme Regulator, can do to support you towards full compliance with the scheme, in a way that is reasonable and proportionate.
- I know that you have already raised several potential approaches with me in writing. I can assure you that these have not been ignored. We have been assessing what additional support could be provided for some months.
- No approach is risk free, both for the scheme as a whole, but particularly for your members. I am keen to use today to make sure I have a really clear view of the risks, to make sure we take the best approach to work through them.

2. Small producer concerns (09.05 – 09.10)

You may wish to invite each member to summarise their main concerns.

We expect the following concerns to be raised:

1. Financial costs of the scheme, particularly upfront cashflow requirements
2. Insufficient time to prepare, especially given ongoing uncertainties
3. Requirement to change labels (e.g. to new EANs)
4. Scheme inoperable / too expensive for small volumes (specialist products)
5. Issues with CSL producer agreement
6. Issues with having insufficient information to register before producer registration closes at the end of the month
7. Concerns that a compliance-based approach would be unworkable for SEPA
8. Concerns that retailers will not stock products that are not DRS compliant

You may wish to

- Note that you do see these as legitimate issues, and offer to get into some of these points in detail
- Highlight that you are not expecting everything to be perfect from Day 1. This is a huge scheme – there will be a period of cutover to manage, and an inevitable bedding in period.
- Emphasise that it is very difficult to support producers once the scheme is in place where they are not registered for the scheme, and **encourage producers to register**
- Invite [Redacted] or [Redacted] from SEPA to say a few points on their approach to compliance, and address any of the concerns raised.

3. SEPA approach to compliance (09.10 – 09.20)

Invite [Redacted] or [Redacted] to set out SEPA's approach to compliance.

You previously indicated that your preferred approach to supporting small producers was via Regulatory support from SEPA. SEPA has developed (in principle) a 'transition plan' approach. This is based on feedback from small producers, and could allow registered producers to work through a supported process to full compliance.

SEPA, CSL and producers have raised concerns that this approach would be administratively demanding, and may have unintended consequences for competition, retailers, and consumer confusion. However, these consequences would also exist (to a greater extent) where there is large-scale non-compliance, and would also likely exist where there is a legislated grace period.

[Redacted – Regulation 10(4)(e) – Internal Communications]

You may wish to invite producers to highlight concerns with SEPA's approach to compliance, and any additional support needed.

4. Small producer solutions (09.20-09.30)

Grace period

[Redacted – Regulation 10(4)(e) – Internal Communications]

Exclusion for small volumes (de minimis)

Small producers have requested that specialist products with fewer than 5,000 containers placed on the market should be exempt from DRS. They are of the view that below this threshold, the administrative requirement to register products makes them unviable, and so they will no longer be available to hospitality and consumers (would particularly affect wines and spirits)

You may wish to ask:

- How did you come to the 5,000 threshold? Is that number of containers of a specific product per year? Is there evidence / a existing definition behind this?
- I understand CSL are also working on solutions to specialist products. What conversations have you had with CSL on this topic?

Extending producer registration

[Redacted – Regulation 10(4)(e) – Internal Communications]

You may wish to say:

- You want as many producers as possible to be registered by the end of February.
- There is no way for that date to be changed in legislation, so this would need to be a question for CSL and SEPA regarding how they intend to manage that deadline.
- Clearly members continue to have concerns about that timeline. You would strongly encourage any producer with concerns to speak to CSL or SEPA.

You may wish to invite [Redacted] and [Redacted] to speak on this point.

4. Closing remarks

You may wish to sum up by acknowledging the urgency of member concerns, that this remains a priority for you, and offer to meet again in two weeks.

ANNEX B: TOP LINES – BY ISSUE

NUMBER OF REGISTERED PRODUCERS

- The number of producers registered with CSL is a commercial matter for CSL. When you last spoke with CSL they remained confident that the process was running well.

- As set out in the Regulations, SEPA will publish and maintain a register of all producers who are registered to market and sell drinks in Scotland.

COMMERCIAL QUESTIONS e.g. cashflow, payment terms

- You have already indicated that this must be a commercial matter for CSL.
- CSL have already communicated (for example in their update on the producer fee on 13 Dec) that are working on solutions to provide further support on these matters.

CSL PRODUCER AGREEMENT

- You are unable to comment on the producer agreement, as this is a commercial agreement between CSL and the producer.
- The producer agreement was published last year, in advance of producer registration.
- If there are consistent concerns across all your members on the producer agreement then you would be happy to raise these in your next meeting with CSL
- However, these conversations would be best directly between CSL and producers.

INTERACTION WITH INTERNAL MARKET ACT (Scheme ‘unlawful’)

- The process for securing an exclusion from Scotland’s Deposit Return Scheme is underway.
- The Scottish Parliament approved the Deposit and Return Scheme for Scotland Regulations in 2020. The Regulations are wholly within devolved competence.
- We need the UK Government to issue an exclusion for Scotland’s DRS from the Internal Market Act.
- We have raised this with the UK Government for some time, and the formal process for excluding Scotland’s DRS from the Internal Market Act is underway.
- Given these are long-standing plans that will make an important contribution to our climate change and recycling targets, and will give businesses the clarity they need, the Scottish Government expects a decision from the UK Government as soon as possible.

LABELLING

- Producers do not have to change their labelling for the Scottish market, and can continue to use existing barcodes.
- However, there is a day 1 payment for producers continuing to use an existing UK wide barcode for sales in Scotland.
- In response to industry concerns, this day 1 payment will be reduced by two thirds, from 2.4 months of fees to 3 weeks of fees.

GATEWAY REVIEW

Significant progress has been made and we are on track for the scheme to go live in August.

- The review carried out in October 2022 concluded that “the DRS Programme has gained increased momentum and is in a much-improved position” and that go live in August 2023 is now “feasible”.

COMPLIANCE AND REGULATION

- The Scottish Government has confidence in SEPA's ability to carry out their required scheme regulatory service.
- SEPA has agreed that, where there are clearly evidenced operational challenges, they will take a proportionate approach to compliance.
- They have committed to providing advice and guidance as the preferred route to achieving compliance for businesses who are striving to meet their obligations.

rUK DEPOSIT RETURN SCHEME

- We welcome the UK Government's plans for a deposit return scheme which will bring the rest of the UK in line with Scotland.
- Many aspects of their scheme have been informed by work already undertaken in Scotland.
- The UK government's decision to deliver a smaller scheme that excludes glass and on a slower timetable should not be used as an excuse to undermine ambition in Scotland.

GLASS

- There are no plans to reconsider the inclusion of glass in Scotland's DRS
- The Scottish DRS business case suggests that including glass will save over 1.2 megatonnes CO2 equivalent over 25 years, and will significantly increase the quantity and quality of glass recycle.
- Glass is one of the three main materials used to make single-use drinks containers and accounts for more than a quarter of all the containers due to be included in our DRS.
- Of the 44 countries and states operating DRS, only four of them do not include glass.

ANNEX C

Correspondence from SIBA and small producer briefing

Attached separately.

ANNEX D

Small producers note to FM

First Minister

I have responded below to your questions regarding the risks to Scotland's Deposit Return Scheme. While I am confident that we or CSL have taken action to address the concerns raised, I wanted to provide some further context on the risks associated with producer registration, particularly among small producers.

You will be aware from my note of 26 January that drinks producers must register for DRS in order that deposits can be charged, and that formally runs to 28 February. As of the start of February, 21 producers had fully registered and approximately 200 were

in the process of registering. Registration varies by sector: we understand that 90% of soft drinks businesses were preparing to register, but we are facing very strong opposition from small brewers and some other alcohol sectors.

The top 40 producers in Scotland account for 90% of all single use drinks containers on the market, with the top 16 producers accounting for 75%. CSL has dedicated account managers in place for all these producers, but only one has currently registered. CSL has been outwardly confident that they will register all large producers by the end of February, and is developing specific communications plans to announce the registration of the largest producers (notably [Redacted], [Redacted]). It is CSL's view that achieving this level of registration would demonstrate a workable minimum viable product for DRS, from the perspective of the scheme's financial viability, and likely from the perspective of recycling, litter and carbon objectives. If large producers fail to register by the end of February, we will need to consider whether a launch date of August 2023 is viable. There is a risk that the concerns raised this week regarding the interaction between DRS and the UK Internal Market Act will deter producers from registration, unless very swiftly resolved. Further advice is being provided on this.

[Redacted – Regulation 10(4)(e) – Internal Communications]

[Redacted – Regulation 10(4)(e) – Internal Communications]. For that reason, I am continuing to monitor the risks associated with small producer registration as closely, so that we can take decisions as early as possible on whether further changes are needed to the scheme timeline or scope. I am also continuing to work with businesses and SEPA to support business to work toward the go live date of 16 August.

LS

[Redacted – Regulation 10(4)(e) – Internal Communications]

Note of meeting - 31 October 2022

By MS Teams

Attendees

Minister for Green Skills, Circular Economy and Biodiversity

[Redacted] – SIBA Scotland Director

[Redacted] – SIBA Head of Public Affairs and Policy

Katriona Carmichael – Scottish Government

[Redacted] – Scottish Government

Meeting notes

The meeting purpose was to ensure the Minister fully understand the concerns of FIBA members, and the role that the Scottish Government can play in reaching pragmatic workable solutions. The Minister asked [Redacted] to provide some opening remarks.

[Redacted] 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, [Redacted] employees 5 people in total. 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.

[Redacted] 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, [Redacted] 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. [Redacted] 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 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, [Redacted] outlined that SIBA has 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.

Note of meeting - 10 February 2023

Participants

Minister for Green Skills, Circular Economy, and Biodiversity – Lorna Slater

[Redacted] - Scottish Wholesaler Association

[Redacted] – Caledonia Public Affairs

[Redacted] – Society of Independent Brewers

[Redacted] – Society of Independent Brewers

[Redacted] – Scotch Whisky Association

[Redacted] - Scotland Food & Drink

[Redacted] - Wine & Spirits Trade Association

[Redacted] - Wine & Spirits Trade Association

[Redacted] – SEPA

[Redacted] - SEPA

Katrina Carmichael

[Redacted]

Agenda

1. To discuss to discuss DRS concerns following joint letter from small drinks producers submitted 03 February

Opening remarks

2. Ms Slater thanked trade associations for ongoing engagement and highlighted the steps taken to reduce costs and wider implementation challenges for small producers.

Discussion with trade associations

3. Trade associations highlighted that the issues faced by small producers were systemic, urgent and valid, and had been backed up by the Gateway Review. Small producers would not be ready for scheme launch on 16 August.
4. Main issues raised included the requirement to register by the end of February, the lack of clarity on operational aspects of the scheme (e.g. invoicing), a lack of definition about who was a producer / importer, the requirement to use GS1 compliant barcodes, and overall cost concerns. All trade associations requested that producer registration should be extended.
5. Producers were not reassured by SEPA's proposed approach to Day 1 compliance as there was a lack of certainty, contrasting with legal requirements set out in Regulations and in CSL's producer agreement. Compliance officers within individual businesses along the supply chain must deal with these legal certainties. This may mean that, for example, retailers would only purchase products from producers that were fully compliant. Any compliance approach must be in writing.

Conclusion

The Minister thanked attendees for clarity on the issues faced and proposed solutions, and agreed to follow-up in the next fortnight to update on action taken.