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From: [REDACTED]
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Attachments: Final Repak DRS Submission 2nd Consultation 7 May 2021.pdf

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Attached please find a submission from Repak on the above.

Regards,

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Business *funding* recycling

Repak Ltd

Deposit Return Scheme Consultation on a Legislative Framework

Repak Submission



7 May 2021

Deposit Return Scheme (DRS), Consultation on a Legislative Framework

1. Introduction.

As stated in our submission last October to the first round of public consultation on DRS, Repak Limited as a key stakeholder has a keen interest in DRS. This stems from the fact that Repak has been operating an extended producer responsibility scheme for packaging producers for over two decades. Repak's success and track record in this regard speaks for itself, as the scheme led the national effort in growing packaging recycling and achieving all of the EU packaging recycling targets, year on year, in a cost effective manner.

Repak has been monitoring and tracking DRS developments for the past fifteen years and during that period Repak's position on DRS has evolved and changed in response to the changing legislative landscape driven by the EU Circular economy Package (CEP) and the move from a "take, make, dispose" model to a circular economy. The CEP is stimulating the shift to a more sustainable waste management model where resources are recycled and kept in use for as long as possible, thereby reducing the environmental impact of economic activity.

It is also interesting to note that the major producers of beverage containers who place DRS material on the market have also re-evaluated their stance on DRS in recent years, in response to the provisions of the Single Use Plastic Directive (SUPD), the impact of plastic on the environment and increased consumer awareness. Hence the growth in DRS across the EU and elsewhere as a solution in the management and recycling of beverage containers.

It was therefore not unexpected that the Programme for Government in 2020 and the new national waste policy document "A Waste Action Plan for a Circular Economy" set the establishment of DRS as a key strategic objective in Ireland.

At present Repak is responsible for the collection and recycling of plastic beverage containers and aluminium cans and is currently in discussion with many of the key DRS stakeholders to explore what DRS model is best suited to the Irish market. In this regard Repak is of the view that there is a very strong case for it to "put its hand up" to be appointed the DRS scheme operator on behalf of the producers, retailers and other relevant stakeholders.

2. The Preferred Model for a DRS in Ireland

2.1 Centralised Scheme

It is not surprising that the majority of responses to the first consultation on DRS opted for the model of a centralised scheme, producer owned and led. This is what was recommended by the Eunomia Report on DRS (2019), which was commissioned by DECC to analyse options for Ireland to increase its capture rate of single use Polyethylene Terephthalate (PET) and aluminium beverage containers and this model would also represent best practice internationally. In principle Repak is

supportive of a centralised scheme on the understanding that at detailed design stage, it would have to be tailored to suit the Irish market.

2.2 Other Materials

It does make sense at design stage to consider options for the future to incorporate other materials in the scheme. However the scope of DRS should be confined to the two materials listed in the first round of consultation; Polyethylene Terephthalate (PET) bottles up to three litres in size and aluminium beverage cans. Any other materials to be introduced in the future should be subject to a detailed cost benefit analysis.

2.2.1 Glass

The proposal to include glass bottles in the DRS in Ireland is a relatively recent development. When the Government made a commitment in the Programme for Government in June 2020 to introduce a DRS, it was for plastic bottles and aluminium cans only. Glass was not within the scope of DRS at that stage, nor was it part of the scope of the report commissioned by the Department and completed by Eunomia, on the feasibility of introducing a DRS.

A DRS for glass bottles is also not included in the Waste Action Plan for a Circular Economy 2020-2025 and in the consultation on Potential DRS Models for Ireland (October 2020), it was stated that DRS would “not apply to glass bottles.”

The rationale and justification for the inclusion of glass bottles in DRS is unclear and does not appear to have been fully thought through, particularly when one considers the following;

- **Glass Recycling Performance & Target Achievement**

Ireland’s current recycling performance for glass is well in excess of EU and national recycling targets, which are a 70% recycling rate by 2025 and 75% by 2030.

The latest national data published by the EPA in 2020 (for the year 2018), shows Ireland with a recycling rate of 82% for glass. Repak data indicates that the glass recycling rate is now circa 87% in 2020 for all glass containers (beverage & food) and Repak is part of a pan-European action platform, titled “Close the Glass Loop”. This is a bottom-up, collaborative, public-private partnership that aims to boost glass collection and recycling rates to 90% by 2030.

- **Glass Collection Infrastructure**

There is a well-developed, successful collection infrastructure for glass bottles, which is based for the most part on a network of bring banks countrywide. This infrastructure has been incrementally build up over twenty years and there are plans to continue the development of this network into the future. The high collection rates indicates that there is

good buy-in from the public in availing of and using this infrastructure. An unintended consequence of including glass in DRS, would be the dismantling of this infrastructure, the cost of which is unknown.

- **Business Case/ Environmental Case**

There appears to be no obvious business case setting out the benefits, the costs the risks of changing the collection system for glass bottles to a DRS system.

Likewise from an environmental perspective, on the surface it is difficult to assess what environmental benefits will be achieved. It is doubtful if it would lead to higher recycling rates than 90% by 2030 and in terms of a reduction in the carbon footprint, there is no clear benefit.

- **Impact on DRS for PET and Aluminium Cans and the Retail Sector**

Introducing glass bottles into the DRS scheme will add another layer of complexity to the project and will significantly increase the burden and costs (in terms of additional resources and floor space) on the retail sector, participating in DRS.

- **Glass Reuse**

The likelihood that DRS would facilitate the reuse of glass bottles is questionable. Over the past ten to fifteen years, the majority of producers transitioned out of reusable glass bottles. This is due to the fact that the management of reusable glass bottles and the associated crate and bottle and crate washing systems are onerous from a logistical point of view, expensive and the washing processes use a lot of water, harsh chemicals and are very energy intensive. Most glass bottles on the market now in Ireland are designed for single use, not reuse.

Reusable bottles are part of a closed loop system, in the pub trade. Consumers generally do not participate in these closed loop systems, as the bottles are transported between bottlers and pubs only.

Currently many of the glass bottles on the market in Ireland originate in other EU Member States and further afield, the costs both financially and in terms of carbon footprint of shipping empty reuse bottles back to their source of origin, are prohibitive.

At any rate, if the intention is to stimulate glass bottle reuse, other initiatives outside of DRS, should be looked at.

Broadening the scope of DRS at this stage to include glass bottles is not advisable. This should only be considered after a detailed study examining fully the implications of same, to include; a cost benefit analysis, an analysis of the environmental impact and the unintended consequences of same.

This would need to be weighed up against the successful performance of the current collection and recycling system for glass bottles.

Essentially, there would need to be a strong compelling case to justify the inclusion of glass bottles in DRS as the CEP 2030 EU target is already being met and Glass is not a litter issue, which is a core rationale for DRS.

3. Regulatory Framework

Some additional issues to be considered in strengthening the Regulatory Framework are as follows:

3.1 Producer Responsibilities

- It is important in defining “producer” from the perspective of DRS, that the legislation is clear in ensuring that the owner of the branded or private label product or the first entity to place that product on the Irish market for sale or supply (if different) is responsible for ensuring compliance with DRS legislation. This approach ensures that both manufacturers and distributors/importers of the obligated products placed on the Irish market fulfil their obligations.
- To ensure that all obligated product is covered within DRS and to ensure equity within the scheme, it is recommended that no de-minimis should apply to any producer in respect of this obligation.
- While the DRS will be producer owned and led, it should also be not for profit and this should be stated in the Regulations. It is also assumed that the Code of Corporate Governance for Compliance Schemes will apply to DRS.
- Producer reporting and auditing requirements should also be specified in the Regulations.
- It will be important to clearly define deadlines for compliance with DRS legislation once approved and published. This is critical to ensuring that producers are fully aware of the time period that applies from the point of publication of the legislation to their requirement to be fully compliant with same.
- Full compliance from a producer perspective and its associated timelines should be clearly defined to include the following:-
 - Scheme operator nominated to operate scheme and its operational and governance structures in place.
 - Registration completed with the scheme operator,
 - Initiation of deposit charge to participating retailers completed,

- Sales of deposit packaging reported to the scheme operator in the prescribed manner.
- Payment of deposit and producer fees to the scheme operator.
- The display of on pack markings on beverage packaging as required under the legislation.

Note that this clarity will be important for producers to prepare their businesses for full participation in the scheme.

- In addition the following must be clarified at the time of publication of the legislation in order to ensure that both the scheme operator and obligated producers can immediately prepare for the commencement of the scheme in a timely manner.
 - Guidelines concerning deposit markings and barcoding and the date from which they must be present on deposit containers should ideally be available at least 12 months in advance of scheme commencement. This will be critical to enable the run out of previous stocks of products that are neither possible nor practical to relabel to ensure compliance.
 - DRS operator in consultation with producers should agree the detail regarding container deposit markings.
 - Technical specifications should be developed in relation to the correct application of markings (including fonts, sizes, positioning, security features, colours, examples of incorrect application) at least 6 to 12 months prior to scheme commencement.
 - Guidelines on whether any derogations apply in terms of marking methods (e.g. allowance for stickering for small volumes of product and/or for a defined period at scheme commencement).
 - Clarity and preferably examples of product types obligated and not obligated within the text of the legislation.
 - Clarity and preferably examples of packaging types obligated and not obligated within the legislation (including material types where feasible).
 - It will be important for the efficient operation of the scheme that new containers are assessed for compliance and registered with the DRS operator.
- The expiry of any derogations should also be clearly defined in order to provide full visibility to the scheme operator of any non-compliant producers beyond that date.

- It is preferred that the reporting frequency and structure be defined by the DRS operator in order to meet the requirements of the legislation. The prescribed format should help producers to meet the obligations in an affordable manner, while also ensuring that best practice in data management and security is employed by the scheme operator.

3.2 Retailer Obligations

Retailers are central to the success of any DRS and have a key role to play in the operation of a DRS. They sell beverage bottles/containers to the consumer and charge the deposit at the point of sale. They also take back the empty containers and return deposits and are involved in coordinating the collection of empty containers from their premises.

Retailers also have reporting obligations to the DRS operator. No more than producers, retailers also have an interest in ensuring a cost effective scheme and many retailers have a dual role as producer brand owners selling their own private label.

Given the role of retailers it is important that they have appropriate representation on the Board of the DRS operator.

It is important to clarify the following in the Regulations;

- Define what a retailer is, and who exactly is obliged to participate in DRS.
- What role take away outlets (including mobile units), hotels and restaurants will play?
- Retailers will have to accept all returned deposit materials covered by the scheme, irrespective of whether they were purchased at their premises or not.

Retailers will have to liaise with the DRS operator regarding the appropriate collection infrastructure (i.e. use of reverse vending machines or manual collection). Not all retailers will have the space or need for a RVM. It is not recommended that there be any exemptions to retailer participation in a DRS on the basis of store size however this should be a factor in determining choice of collection receptacles (automated / manual) and should be agreed with the Scheme Operator.

The logistics model (i.e. collection, sorting etc.) will have to be designed outlining the role of waste operators, use of backhauling, couriers etc. The DRS operator will have to provide all retailers with scheme registered collectors to ensure an efficient collection system and that no fraudulent activity takes place.

The retailer data management systems should be approved by the DRS operator and the frequency of reporting will also be set out by the operator.

3.3 DRS System Operator

The appointment of a DRS operator is critical to the success of this project. The time frame is ambitious, so the sooner the DRS operator is in place, the sooner the detailed planning for the rollout of the scheme can commence. Any delay in this appointment will reduce the planning and preparation time, which potentially will undermine the launch date of Q3 2022.

Repak has been in discussion for six months now with producers regarding Repak partnering to operate the DRS Scheme. Those discussions are still ongoing.

The following sets out the strengths of Repak and highlights what Repak could deliver in managing and operating a DRS.

- **Extended Producer Responsibility (EPR) Experience (Not for Profit)**
 - Wealth of experience and knowledge in this field – people & skill set.
 - 24 years' operating a very successful producer owned and led packaging EPR scheme.
 - Track record in planning and establishing a new EPR scheme for end of life tyres in 2017

- **Cost Effective Target Achievement**
 - Experience of delivering one of the highest recycling rates in the EU at one of the lowest costs.
 - Strong established relationships with all key stakeholders
 - We have a strong relationships with key stakeholders and considered a trusted partner by; Producers, Retailers, Recovery Operators, Legislative and Enforcement Authorities, General Public, other EPR Schemes across Europe .

- **Producer EPR Fees**
 - Decades of experience in calculating and setting producer EPR fees.
 - Experience of transitioning to an eco-modulated fee structure.

- **Data Management and Reporting**
 - Experience in managing the complex datasets associated with EPR statistical data.
 - Demonstrated prudent Financial Management.

- Regulatory reporting policies and systems. (DECC, EPA, LA Enforcement, Annual Report).
- **Operation of the Logistics System**
 - 3,400 Producers and 100 waste recovery operators (Private & LA's).
- **Research, Knowledge and Know How of DRS**
 - Conducted extensive research of DRS over the past three years.
 - Visited DRS in Sweden, Norway and Lithuania to see at first hand the operation and management of different DRS models
- **Communications, Behaviour Change**
 - Extensive experience in managing high profile campaigns, educating and driving behaviour change.
- **Timeline**
 - With a challenging timeline Repak is best placed to deliver on behalf of producers & retailers.

The Approval Process set out in the Draft Regulatory Framework is comprehensive and thorough. Repak would contend that it has the experience and know how to prepare and submit a strong and convincing Application for Approval to manage DRS.

4. The Deposit

The fact that the level of the deposit will be set by the Minister but that DRS operator will have input into the setting of the deposit is to be welcomed. Setting the deposit at the appropriate level to incentive behaviour change is a key challenge for DRS. Best practice indicates that there is a direct correlation between the level of the deposit and the performance of DRS. It is very much a balancing act in determining the appropriate deposit level and it is recommended that once DRS is launched that there is a review process to assess the impact of the deposit on

- the return rates
- the level of unredeemed deposits
- the impact on producer fees

Obviously based on the results of any impact assessment there should be a mechanism to readjust the deposit if necessary.

A fixed flat deposit is generally a less complex and less costly solution to put in place and easier to communicate to the consumer. While there are varying views on the merits of a fixed flat deposit versus a variable deposit, it may be best to give the DRS operator the flexibility to determine the deposit structure, without compromising the Minister's role in setting the deposit levels.

On the issue of deposit structure, careful consideration needs to be given to what type of structure best suits local market conditions, in order to avoid any unintended consequences and the views of the beverage producers in this scenario are important.

Waste collectors or operators of municipal recycling facility operators should only be able to claim a handling fee in respect of containers that are not returned to retailers or return points but which are placed in recycling bins, provided the quality of the material presented meets the equivalent standards of the material collected through DRS collection system. An obvious concern here would be contamination levels.

5. Citizen / Consumer

The success of any DRS is very much dependent on the role of the consumer and how they respond to the new system. It is essential to make the system as user friendly and convenient as possible for the consumer.

While the majority of the material will be collected through return to retail, all options should be explored to maximise the return rate. This would include targeting on the go material and exploring the possibility of establishing return points at bring banks, civic amenity sites and community organisations such as sports clubs, Tidy Towns, Charities etc.

Consumers will need to know about a DRS well in advance of it becoming operational. This will require a proactive public information campaign, using all communication channels, to create awareness for the new DRS scheme and to explain what a DRS will mean for consumers. It is very much about changing mind-set and culture and explaining that when a deposit is applied to a container; that item now has a value and is no longer a waste item to be discarded.

6. DRS Enforcement

Repak recommends the introduction of a DRS enforcement regime comparable to that which operates under the WERLA model (i.e. the Local Authorities to enforce the DRS Regulations, coordinated by the WERLAS and overseen by DECC).

This approach delivers:

- A coordinated, experienced and consistent approach to enforcement throughout the country.
- Maximum use of local knowledge of Local Authorities within the WERLA structure.

The Local Authorities, and or their authorised agent(s), to have examination and investigative powers, the ability to access premises and examine documentation to support enforcement activity.

The Local Authorities should also have powers to;

- Perform spot-checks on producers, wholesalers, and retailers, and seek proof that a given beverage container is registered with the DRS operator and that the deposit is being charged on that container.
- Prohibit the sale of a beverage container not registered with the DRS operator.

Enforcement measures should be designed to offer the Local Authorities a proportionate set of tools for dealing with relevant offences and breaches of the Regulations, such as

- Fixed penalty notices with late payment penalties.
- Fines not exceeding the statutory maximum on summary conviction.
- Fines on conviction on indictment.

Breaches to include

- Not registering with Scheme Operator.
- Not labelling product correctly.
- Not charging a deposit.
- Not indicating that the deposit is a separate payment.
- Not keeping adequate records.
- Selling goods not covered by the DRS.
- Not issuing a refund on return.

The role of the WERLAs is to deliver an integrated approach to waste enforcement which drives consistent enforcement of legislation across the regions, developing a strong regional enforcement network which shares intelligence and expertise across Local Authority boundaries as required. This is key to dealing with strategic national waste enforcement priorities and serious criminal offenders through intelligence led and coordinated multi-agency enforcement actions.

The Packaging Enforcement Cooperation Programme has provided a template for how cooperation can augment enforcement. This along with the proposed enhancement of the WERLA role in enforcement means they are the most appropriate body to enforce DRS Regulations.