

Timeline and process for securing an Internal Market Act exclusion for DRS

1. The Internal Market Act was passed by the UK Parliament at the end of 2020, without the consent of the Scottish Parliament: it has the potential to undermine devolution and the powers of the Scottish Parliament.
2. A particular concern is the Act's impact on the operation of Common Frameworks. These are intergovernmental arrangements designed to ensure the UK maintains regulatory coherence in devolved matters previously subject to EU law, while at the same time acknowledging the legitimacy of the Scottish Parliament legislating as it chooses in areas of devolved competence. The automatic operation of the Act would have made efforts to manage divergence by agreement through a Common Framework of little value
3. Late in the Internal Market Act Bill's passage, UKG offered up a concession in the form of an amendment which allows for UK ministers to exclude policy divergence agreed through a Common Framework. UK Ministers committed to this process through a [written ministerial statement](#) laid in December 2021.
4. A [process note](#) setting out the steps to be taken in securing an exclusion was also agreed between the UK Government and the devolved governments. This process has been followed by the Scottish Government at all times. The Scottish Government first raised the issue of an exclusion with UK Government in 2021 when we sought a broad exclusion under the Resources and Waste Common Framework that would cover a range of policy areas, including DRS. A narrower exclusion was agreed at that time however, covering Scotland's single use plastic regulations only. Subsequently, the process for considering a specific exclusion for DRS commenced in October of last year. This is documented in minutes from the Inter-Ministerial Group meeting on [7 November 2022](#).
5. Under this process, the Scottish Government has set out its case for an exclusion. We have welcomed the constructive engagement across all administrations, including from UK Government, as was the case for the previous discussion on single use plastics. It is now for Defra, as the lead UK Government department in this policy area, to manage consideration, engagement and decision-making processes across UK Government departments in reaching a UK Government decision.
6. It is important to emphasise that there is no step in the agreed process note for a "formal ministerial request" for an IMA exclusion. A proposal for policy divergence and the need for an IMA exclusion is considered in the relevant common framework (in this case, the Resources and Waste framework); the outputs from that process are then considered by ministers from each administration.
7. Where ministers in each administration are content to agree an IMA exclusion, it is for each government to determine how it intends to reach internal agreement.
8. The timelines below sets out the steps already taken in securing an exclusion.

1. Seeking broad exclusion under Resources and Waste Common Framework	
Step	SG actions and times
Exclusion seeking party to set out scope and rationale for proposed exclusion.	July 2021: cross administration discussions begin in the Common Framework (Resources and Waste) working group; SG proposes that the single-use plastics exclusion be broad enough in scope to cover anticipated DRS exclusion request
Consideration of the proposal, associated evidence and potential impact taken forward, consistent with the established processes as set out in Resources and Waste Common Framework, including an assessment of direct and indirect economic impacts	October 2021: Common Framework agrees SG proposal should proceed to Senior Officials Programme Board (SOPB) October 2021: SOPB discusses SG proposal and agrees it should proceed to Inter-Ministerial Group (IMG) December 2021: IMG, where Defra notes intention to re-examine all potential options.
Administrations consult and seek agreement internally on their position before formal agreement of the position within the Common Frameworks	January 2022: Defra begins internal processes for UKG consultation on an exclusion
Policy divergence agreed including agreement to create or amend an exclusion to the UKIM Act's market access provisions	March 2022: IMG, where Defra confirms UKG write-round outcome - UKG agreement to a narrow exclusion covering the scope of Scotland's single-use plastic regulations April – July 2022: SG supports Defra's SI preparation; SG notifies intended SI to SP (May) July – August 2022: Defra lays SI giving effect to the SUP exclusion which enters into force in August

2. Seeking separate DRS exclusion under Resources and Waste Common Framework (after broad exclusion rejected by UKG)	
Exclusion seeking party to set out scope and rationale for proposed exclusion	October 2022: SG engages cross administration discussion in the Resources and Waste Common

	<p>Framework; SG proposes exclusion for DRS with scope to cover all DRS across UK but, at minimum, excludes Scottish DRS in advance of scheme launch</p>
<p>Consideration of the proposal, associated evidence and potential impact taken forward, consistent with the established processes as set out in R&W Common Framework, including an assessment of direct and indirect economic impacts</p>	<p>7 November 2022: IMG, where SG notes ongoing work in the Common Framework to consider an exclusion</p> <p>19 December 2022: Resources and Waste Common Framework working group, discussion of SG proposal on exclusion</p> <p>10 January 2023: SOPB, where SG notes on-going work in the Common Framework to consider an exclusion, and SG's view on need for exclusion</p> <p>18 January 2023: Ministerial meeting where SG updates on exclusion work within Common Framework</p> <p>13 February 2023: Resources and Waste Common Framework working group, where SG presents final paper on proposal for exclusion</p> <p>22 February 2023: SOPB, where agreement on framework recommendation to seek ministerial views on an exclusion</p> <p>To come: 6 March 2023: proposed IMG discussion</p>
<p>Administrations consult and seek agreement internally on their position before formal agreement of the position within the Common Frameworks</p>	<p>To come: February – March 2023</p>
<p>Policy divergence agreed including agreement to create or amend an exclusion to the UKIM Act's market access provisions</p>	<p>To come</p>