

## **ANNEX A**

The exceptions applied in this instance are:

Some documents and information has been withheld under regulation 10(4)(e) (internal communication). This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. We recognise that there is some public interest in releasing the information as part of an open, transparent and accountable government. However, this is outweighed by the greater public interest in allowing Scottish Government officials and ministers a private space to share free and frank views for the purpose of deliberation of any given policy.

In addition, a small amount of information has been redacted from the documents disclosed under Regulation 11 – Personal Data as it contains personal information and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulations (GDPR) and in Section 34(1) of the Data Protection Act 2018. This exception is not subject to the 'public interest test'.



<Redacted@gov.scot>; <Redacted@gov.scot>; Tim Ellis <Redacted@gov.scot>;  
<Redacted@gov.scot>; <Redacted@gov.scot>; Deputy Director Natural Division  
<Redacted@gov.scot>; Simon Fuller <Redacted@gov.scot>; Deputy Director  
Environmental Quality and Resilience <Redacted@gov.scot>;  
<Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; Alison Coull  
<Redacted@gov.scot><Redacted@gov.scot>; <Redacted@gov.scot>;  
<Redacted@gov.scot>; Callum McCaig <Redacted@gov.scot>; Harry Huyton  
<Redacted@gov.scot>; John McFarlane <Redacted@gov.scot>; Communications  
Net Zero & Rural Affairs <Redacted@gov.scot>; Colin McAllister  
<Redacted@gov.scot>

**Subject:** Submission: DRS and Internal Market Act exclusion - DEFRA SoS  
supportive

Minister

[Redacted]. We will continue to engage closely with DEFRA officials to secure an  
exemption that covers the full scope of Scottish DRS regulations and enters into  
force by 16 August 2023 as set out in [Redacted] submission attached.

Kevin

Kevin Quinlan - Director of Environment & Forestry, Scottish Government (tel:  
Redacted)

**From:** <Redacted@gov.scot>

**Sent:** 17 February 2023 09:39

**To:** Minister for Green Skills, Circular Economy and Biodiversity  
<MinisterGSCEB@gov.scot>

**Cc:** Deputy First Minister and Cabinet Secretary for Covid Recovery  
<DFMCSCR@gov.scot>; Cabinet Secretary for Net Zero, Energy and Transport  
<CabSecNetZET@gov.scot>; Cabinet Secretary for Constitution, External Affairs  
and Culture <CabSecCEAC@gov.scot>; Minister for Environment and Land Reform  
<MinisterELR@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>;  
DG Net Zero <Redacted@gov.scot>; Thomson KAL (Ken) (Director-General)  
<Redacted@gov.scot>; Director of Environment & Forestry  
<director.enfor@gov.scot>; Rogers D (David) (Constitution and Cabinet Director)  
<Redacted@gov.scot>; Carmichael K (Katriona) <Redacted@gov.scot>;  
<Redacted@gov.scot>; <Redacted@gov.scot>; Ellis T (Tim) <Redacted@gov.scot>;  
<Redacted@gov.scot>; <Redacted@gov.scot>; Deputy Director Natural Resources  
Division <Redacted@gov.scot>; Fuller S (Simon) <Redacted@gov.scot>; Deputy  
Director Environmental Quality and Resilience <Redacted@gov.scot>;  
<Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; Coull AJ  
(Alison) <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>;  
<Redacted@gov.scot>; McCaig C (Callum) <Redacted@gov.scot>; Huyton H  
(Harry) <Redacted@gov.scot>; McFarlane J (John) (Special Adviser)  
<Redacted@gov.scot>; Communications Net Zero & Rural Affairs  
<Redacted@gov.scot>

**Subject:** Submission: Deposit Return Scheme and Internal Market Act exclusion

**PS / Minister for Green Skills, Circular Economy and Biodiversity**

Copy as above

Please find attached a submission on the Deposit Return Scheme and the Internal Market Act.

## 1.1 Priority and Purpose

1. Routine. The purpose of this submission is:

- (i) to update you on progress and next steps in seeking an exclusion from the UK Internal Market Act (IMA) for Scotland's Deposit Return Scheme (DRS); and
- (ii) [Redacted – Out of Scope]

## 1.2 Recommendation

2. Recommends that you:

- (i) note the update on seeking an IMA exclusion (**paras 11 – 21**)
- (ii) [Redacted – Out of Scope]

[Redacted – Out of Scope]

Thanks,

Redacted

Redacted (she/her) | Circular Economy Division| Scottish Government | M: Redacted | [Redacted@gov.scot](mailto:Redacted@gov.scot) |

**From:** Director of Environment & Forestry <[director.enfor@gov.scot](mailto:director.enfor@gov.scot)>

**Sent:** Tue 21/02/2023 18:35

**To:** Cabinet Secretary for Net Zero, Energy and Transport <[CabSecNetZET@gov.scot](mailto:CabSecNetZET@gov.scot)>; Minister for Green Skills, Circular Economy and Biodiversity <[MinisterGSCEB@gov.scot](mailto:MinisterGSCEB@gov.scot)>

**Cc:** First Minister <[firstminister@gov.scot](mailto:firstminister@gov.scot)>; FM Policy Team Mailbox <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; Deputy First Minister and Cabinet Secretary for Covid Recovery <[DFMCSCR@gov.scot](mailto:DFMCSCR@gov.scot)>; Permanent Secretary <[PermanentSecretary@gov.scot](mailto:PermanentSecretary@gov.scot)>; DG Net Zero <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; DG Strategy and External Affairs <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; Harry Huyton <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; Colin McAllister <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; Callum McCaig <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; Alison Coull <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; Katriona Carmichael <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; <[Redacted@gov.scot](mailto:Redacted@gov.scot)>; Andrew Bruce <[Redacted@gov.scot](mailto:Redacted@gov.scot)>

**Subject:** Urgent - Deposit Return Scheme (DRS) - Update on latest developments

Redacted

Further to your request below, please note that my submission on 17/2/23 (attached) set out the steps that we are taking to address concerns on DRS (especially from small producers) and the assurance work to dynamically assess options. This note summarises latest developments this week.

[Redacted – Out of Scope]

**[Redacted – Out of Scope]**

[Redacted – Out of Scope]

**[Redacted – Out of Scope]**

[Redacted – Out of Scope]

### **DRS Exclusion from UK Internal Market Act (UKIMA)**

[Redacted]. We will continue to engage closely with DEFRA officials to secure an exclusion that covers the full scope of Scottish DRS regulations and enters into force by 16 August 2023 (detail set out in [Redacted] submission of 17/2/23; attached for ease of reference).

Key next steps are:

- Cross Whitehall officials' meeting this Thursday, chaired by Redacted, to seek a cross-UKG officials' position, which would then need to be put to, and agreed by, UKG Ministers (Ken Thomson has engaged closely with Redacted on DRS)
- Defra SoS to confirm formally her intent to recommend an exclusion to UK Ministers for Scotland's DRS – we will press for this Defra position by the next meeting of the Inter-Ministerial Group on 6 March
- Defra to launch a cross Whitehall write-round on an exclusion recommendation. We will work closely with Defra to support their process and assess where we can help address any concerns arising from other Whitehall departments. It is hard to predict how long this key moment of decision in principle will take, perhaps more than a couple of weeks taking us into late March. We will push as hard as we can.
- Defra to prepare and consult the devolved governments on a draft affirmative Statutory Instrument, and lay before the UK Parliament – we will encourage Defra to begin work ahead of write-round conclusion
- UK Parliament to approve the draft Statutory Instrument to be made by Defra [note ahead of Houses of Commons and Lords rising respectively on 21 July and 26 July]

[Redacted – Out of Scope]

Kevin

Kevin Quinlan - Director of Environment & Forestry, Scottish Government (tel: Redacted)

**From:** <Redacted@gov.scot>

**Sent:** 28 February 2023 12:45

**To:** First Minister <firstminister@gov.scot>; <Redacted@gov.scot>; Minister for Green Skills, Circular Economy and Biodiversity <MinisterGSCEB@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; Director of Environment & Forestry <director.enfor@gov.scot>; Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Cabinet Secretary for Net Zero, Energy and Transport <CabSecNetZET@gov.scot>; Cabinet Secretary for Rural Affairs and Islands <CabSecRAI@gov.scot>; Cabinet Secretary for Constitution, External Affairs and Culture <CabSecCEAC@gov.scot>; Minister for Environment and Land Reform <MinisterELR@gov.scot>

**Cc:** Permanent Secretary <PermanentSecretary@gov.scot>; FM Policy Team Mailbox <Redacted@gov.scot>; DG Net Zero <Redacted@gov.scot>; Colin McAllister <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; Ken Thomson <Redacted@gov.scot>; Alison Coull <Redacted@gov.scot>; Katriona Carmichael <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; Harry Huyton <Redacted@gov.scot>; David Rogers <Redacted@gov.scot>; John McFarlane <Redacted@gov.scot>; Andrew Bruce <Redacted@gov.scot>; Callum McCaig <Redacted@gov.scot>; DG Strategy and External Affairs <Redacted@gov.scot>; Stuart Nicolson <Redacted@gov.scot>; Ross Ingebrihtsen <Redacted@gov.scot>; Emily Mackintosh <Redacted@gov.scot>; <Redacted@gov.scot>; Colin McAllister <Redacted@gov.scot>; Ewan Crawford <Redacted@gov.scot>

**Subject:** RE: IMMEDIATE: Note from Ms Slater to First Minister - Scotland's Deposit Return Scheme

Redacted,

Please find attached correspondence:

- Letter of 31 January from DFM to Chancellor and SoS LUHC
- Reply of 10 February from First Secretary to the Treasury to DFM
- Letter of 21 March 2022 to George Eustice, Secretary of State for Defra

By way of context, Scottish Government has been following the process agreed between UK Government and devolved governments for excluding policy divergence agreed through a common framework.

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. 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. The attached notes provides further background on this and a timeline.

Should Ministers wish to publish the incoming the incoming letter from HMT then we suggest that a short Ministerial letter explain the decision to do that – we suggest from DFM to Mr Gove given his responsibilities for inter-governmental relations. That

would say that, in the light of light of comments by UK Ministers in the Commons and the Lords, and questions that are being raised with us by business and other stakeholders as a result, we are publishing a time-line of engagement with UKG about the exclusion and relevant ministerial correspondence.

Redacted

Redacted (she/her) | Circular Economy Division| Scottish Government | M: Redacted | [Redacted@gov.scot](mailto:Redacted@gov.scot) |

**From:** <Redacted@gov.scot>

**Sent:** Tue 04/04/2023 09:22

**To:** Cabinet Secretary for Net Zero & Just Transition <CabSecNZJT@gov.scot>; Minister for Green Skills, Circular Economy and Biodiversity2023 <MinisterforGSCEB@gov.scot>

**Cc:** Permanent Secretary <PermanentSecretary@gov.scot>; DG Net Zero <Redacted@gov.scot>; DG Strategy and External Affairs <Redacted@gov.scot>; Director of Environment & Forestry <director.enfor@gov.scot>; Elisabeth Campbell <Redacted@gov.scot>; David McPhee <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; SGLD DRS Team <Redacted@gov.scot>; David Rogers <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; Tim Ellis <Redacted@gov.scot>; <Redacted@gov.scot>; Harry Huyton <Redacted@gov.scot>; Callum McCaig <Redacted@gov.scot>

**Subject:** DRS and Internal Market Act exclusion - discussion with DEFRA

PS/Cabinet Secretary

PS/Minister for Green Skills, Circular Economy and Biodiversity

Officials as per circulation

### Deposit Return Scheme and Internal Market Act

Yesterday, Director Environment and Forestry and members of DRS division met senior DEFRA officials on the deposit return scheme and securing an exclusion from the IMA. The following points were noted:

- DEFRA welcomed the Cabinet Secretary's letter of 3 April to the Secretaries of State for DEFRA and Department for Business and Trade (DBT) on the issues of the Internal Market Act and trading standards with respect to DRS, and recognised this represented a clear intent to proceed with Scotland's DRS.
- DEFRA also recognised SG's need for urgency on a UKG decision on an IMA exclusion for DRS and sought to reassure that they were actively working through navigation of political considerations *within* UK Government in order to reach an outcome.
- Given the time critical nature of discussions within UKG (over the recess period), DEFRA emphasised that SG's position was clear and that the proposed bilateral with Scottish Ministers, although welcome, was not essential. SG officials noted Scottish Ministers would welcome engagement with DEFRA counterparts but not at the expense of delaying DEFRA's work

this week on expediting political considerations on securing an exclusion (for example, DEFRA anticipated discussion with Secretary of State for Scotland). **It was agreed that a ministerial bilateral was not required this week**, and officials would meet again on Thursday 6 April to take stock on DEFRA's progress on engagement within UKG.

- SG stood ready to support DEFRA, as required, and urged that DEFRA work with UK departments to decouple considerations on DRS delivery – which were for SG – with UKG considerations on an IMA exclusion; DEFRA seemed to appreciate that the issues were not interdependent.
- On trading standards, DEFRA would look to bring DBT into further discussions but would focus on IMA exclusion work this week.
- In closing, SG and DEFRA welcomed the continuing constructive engagement.

Redacted

Redacted (she/her) | Circular Economy Division| Scottish Government | M: Redacted | [Redacted@gov.scot](mailto:Redacted@gov.scot) |

**From:** <Redacted@gov.scot>

**Sent:** Wed 12/04/2023 16:41

**To:** Director of Environment & Forestry <director.enfor@gov.scot>; First Minister <firstminister@gov.scot>; Cabinet Secretary for Rural Affairs, Land Reform and Islands <CabSecRALRI@gov.scot>; Cabinet Secretary for Constitution, External Affairs and Culture <CabSecCEAC@gov.scot>; Minister for Green Skills, Circular Economy and Biodiversity2023 <MinisterforGSCEB@gov.scot>; Lord Advocate <Redacted@gov.scot>; Solicitor General <Redacted@gov.scot>; Deputy First Minister and Cabinet Secretary for Finance <DFMCSF@gov.scot>; Cabinet Secretary for Constitution, External Affairs & Culture 2023 <CabSecforCEAC@gov.scot>; Cabinet Secretary for Constitution, External Affairs and Culture <CabSecCEAC@gov.scot>; Cabinet Secretary for Net Zero & Just Transition <CabSecNZJT@gov.scot>; Cabinet Secretary for Rural Affairs, Land Reform and Islands <CabSecRALRI@gov.scot>; Cabinet Secretary for Wellbeing Economy, Fair Work & Energy <CabSecWEFWE@gov.scot>

**Cc:** Permanent Secretary <PermanentSecretary@gov.scot>; DG Net Zero <Redacted@gov.scot>; DG Strategy and External Affairs <Redacted@gov.scot>; DG Economy <Redacted@gov.scot>; DG Corporate <Redacted@gov.scot>; Michelle Quinn <Redacted@gov.scot>; Nick Ford <Redacted@gov.scot>; Andrew Bruce <Redacted@gov.scot>; Aidan Grisewood <Redacted@gov.scot>; David McPhee <Redacted@gov.scot>; Elisabeth Campbell <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; Solicitor to the Scottish Government <Redacted@gov.scot>; Alison Coull <Redacted@gov.scot>; <Redacted@gov.scot>; SGLD DRS Team <Redacted@gov.scot>; Legal Secretariat to the Lord Advocate <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; Communications Net Zero & Rural Affairs <Redacted@gov.scot>; Harry Huyton <Redacted@gov.scot>; Colin McAllister <Redacted@gov.scot>; Callum McCaig <Redacted@gov.scot>; PLU SSI Programme Mailbox <Redacted@gov.scot>; David Rogers <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; Ewan Crawford



<Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>;  
<Redacted@gov.scot>

**Subject:** RE: OFFICIAL SENSITIVE - COMMERCIAL - Update for FM on DRS

PO

Please find attached submission on DRS from Kevin Quinlan, Director of Environment and Forestry and agenda for the meeting with FM and Ministers to discuss.

## **Deposit Return Scheme – Assurance Assessment and Options**

### **Priority and Purpose**

[Redacted – Out of Scope]

### **Recommendation**

2. That you **note** the latest developments on seeking an exclusion from the Internal Market Act (para 6) and further assessment of assurance for a 16 August go live date (para 8).

[Redacted – Out of Scope]

[Redacted – Out of Scope]

Redacted - Redacted  
Deposit Return Scheme Assurance  
Circular Economy Division  
Directorate for Environment and Forestry

**From:** David McPhee <Redacted@gov.scot>

**Sent:** Fri 12/05/2023 14:27

**To:** Minister for Green Skills, Circular Economy and Biodiversity  
<MinisterforGSCEB@gov.scot>; Cabinet Secretary for Net Zero & Just Transition  
<CabSecNZJT@gov.scot>; First Minister <FirstMinister@gov.scot>

**Cc:** First Minister <FirstMinister@gov.scot>; Deputy First Minister and Cabinet Secretary for Finance <DFMCSF@gov.scot>; Solicitor to the Scottish Government <Redacted@gov.scot>; Lord Advocate <Redacted@gov.scot>; Cabinet Secretary for Net Zero, Energy and Transport <CabSecNetZET@gov.scot>; Cabinet Secretary for Constitution, External Affairs & Culture <CabSecforCEAC@gov.scot>; Cabinet Secretary for Wellbeing Economy, Fair Work & Energy <CabSecWEFWE@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; DG Net Zero <Redacted@gov.scot>; DG Strategy and External Affairs <Redacted@gov.scot>; Director of Environment & Forestry <director.enfor@gov.scot>; Michelle Quinn <Redacted@gov.scot>; Nick Ford <Redacted@gov.scot>; Andrew Bruce <Redacted@gov.scot>; Pauline Aylesbury <Redacted@gov.scot>; David Rogers <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; Elisabeth Campbell

<Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; Legal Secretariat to the Lord Advocate <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>> <Redacted@gov.scot>; Communications Net Zero & Rural Affairs <Redacted@gov.scot>; Harry Huyton <Redacted@gov.scot>; Callum McCaig <Redacted@gov.scot>; Colin McAllister <Redacted@gov.scot>; Ewan Crawford <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; SGLD DRS Team <Redacted@gov.scot>; Kevin Quinlan <Redacted@gov.scot>

**Subject:** Internal Market Act Exclusion and UK Government

1. Minister for Green Skills, Circular Economy and Biodiversity
2. Cabinet Secretary for Net Zero and Just Transition
3. First Minister

Please find attached a submission from Kevin Quinlan, to be considered in the sequence above, which provides an update on the current position with respect to the UK IMA exclusion for DRS and seeks views on a letter from FM to PM to clarify the urgency of a response on this issue.

A response by the Minister and then the Cabinet Secretary would be helpful by close of play Monday to allow the First Minister to consider and opine, to enable a letter to be sent to the Prime Minister on Tuesday latest if required.

I have attached the submission with the proposed letter as annex A but have also attached the letter as a separate attachment should any amendments be needed.

Happy to discuss.

Thanks  
David

**David McPhee**  
**Deputy Director: Deposit Return Scheme**  
**Directorate for Environment and Forrestry**  
**Tel: Redacted**

### **Extract of note to Ministers from Minister for Green Skills of 27 February 2023**

First Minister  
Deputy First Minister  
Cabinet Secretary for Net Zero, Energy & Transport  
Cabinet Secretary for Rural Affairs & the Islands

### **Purpose**

1. [Redacted – Out of Scope]
2. [Redacted – Out of Scope]
3. [Redacted – Out of Scope]

## **DRS Exclusion from UK Internal Market Act (UKIMA)**

4. As you know, officials have been seeking an exclusion from the UK Market Act for Scotland's DRS under the agreed Common Framework process. We are seeking to secure an exclusion that covers the full scope of Scottish DRS regulations and that enters into force by 16 August 2023. The matter is due to be discussed at the next Inter-Ministerial Group for Environment, Food and Rural Affairs on 6 March 2023.
5. [Redacted]
6. [Redacted]

[Redacted]

**From:** <Redacted@gov.scot>

**Sent:** Thu 16/03/2023 09:41

**To:** First Minister <firstminister@gov.scot>; Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Minister for Green Skills, Circular Economy and Biodiversity <MinisterGSCEB@gov.scot>; Cabinet Secretary for Net Zero, Energy and Transport <CabSecNetZET@gov.scot>; Cabinet Secretary for Constitution, External Affairs and Culture <CabSecCEAC@gov.scot>; Minister for Culture, Europe and International Development and Minister with special responsibility for Refugees from Ukraine <MinisterCEID@gov.scot>

**Cc:** Permanent Secretary <PermanentSecretary@gov.scot>; DG Strategy and External Affairs <Redacted@gov.scot>; <Redacted@gov.scot>;

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<Redacted@gov.scot>; <Redacted@gov.scot>; Harry Huyton

<Redacted@gov.scot>; Ewan Crawford <Redacted@gov.scot>; Kate Higgins

<Redacted@gov.scot>; <Redacted@gov.scot>; Elisabeth Campbell

<Redacted@gov.scot>; Katriona Carmichael <Redacted@gov.scot>; Director of

Environment & Forestry <director.enfor@gov.scot>; <Redacted@gov.scot>;

<Redacted@gov.scot>; Alison Coull <Redacted@gov.scot>

**Subject:** OFF-SEN: DRS Internal Market Act Exclusion

**First Minister**

**DFM**

**Ms Slater**

**Mr Matheson**

**Mr Robertson**

**Mr Gray**

**Copy as above**

Following this week's Cabinet, the First Minister requested a note on the current state of play with the IMA exclusion process for Scotland's DRS. The attached note

sets out where we currently are, offers an assessment of UK Ministers' positions, and summarises Scottish Government engagement on securing an IMA exclusion.

Officials stand ready to provide further detail as needed.

Redacted

**Redacted** | Head of UK Frameworks | Constitution & UK Relations Division |  
Constitution Directorate  
Scottish Government | 2W, St Andrews House | Regent Road | Edinburgh EH1 3DG

Redacted | Redacted | Redacted@gov.scot

## **Securing an Internal Market Act Exclusion for Scotland's DRS**

### *Issue*

1. It has been clear since the Internal Market Act (IMA) was passed at Westminster in December 2020 that its market access provisions could bite on the operation of the DRS, which is due to come into force in August.
2. [Redacted – Out of Scope]
3. [Redacted – Out of Scope]
4. [Redacted – Out of Scope]
5. [Redacted – Out of Scope]
6. [Redacted – Out of Scope]
7. The process has been followed once, in pursuit of an exclusion for the Scottish ban on certain types of single use plastics (SUP). This took longer than expected and was not followed perfectly but, crucially, provided proof of concept that it could be used to secure exclusions from the IMA and thus provide a degree of protection from its effects. At the time SG proposed that the exclusion be wide enough in scope to cover DRS.
8. A SUP exclusion was finally secured in late March 2022, and with a narrow scope covering only single use plastic items covered by the Scottish SUP regulations. The exclusion came into force in August 2022, after the Scottish SUP regulations came into force in June 2022.
9. Discussions on a DRS-specific exclusion have been under way since October 2022, to allow adequate time for an exclusion to be secured before commencement of the regulations on 16 August 2023: contrary to the Secretary of State for Scotland's repeated assertions, Defra ministers acknowledged at the Inter-Ministerial Group meeting on 6 March that the Scottish Government has followed the agreed process at all times. At no point in this process is there a requirement for a "formal request" to UK

ministers. More detail on the process can be found at the summary and timeline in the Annex.

10. [Redacted – Out of Scope]

11. [Redacted – Out of Scope]

### *Engagement with UKG departments and assessment of their positions*

12. Defra: engagement with Defra ministers has been largely collaborative and productive, with ministers adhering to the agreed process – steps and corresponding actions are set out in the Annex – and to be guided by senior officials who have a good grasp of process, understand devolution and appreciate that Defra is the UKG department most exposed to the unpredictable effects of the IMA.

13. [Redacted]

14. [Redacted]

15. Scotland Office: there has been almost no engagement with Scotland Office Ministers or officials on DRS or the operation of the common framework exclusion process. Neither Mr Jack nor his junior ministers have written to, or sought a meeting with, the Scottish Government to discuss their concerns, and Mr Jack has not joined any Inter-Ministerial Group discussions on DRS and IMA. Junior Scotland Office minister John Lamont attended the 6 March Inter-Ministerial Group, where the resources and waste common framework's recommendation of an exclusion was considered, but made no contribution.

16. [Redacted]

17. Scotland Office officials have not met with Scottish Government policy officials on this matter.

18. Other UK Government Departments: there is semi-regular engagement with senior officials in BEIS on the devolution implications of the IMA, but this offers little scope for influence.

### *Comment*

19. The set of issues bound up in the IMA's impact on Scotland's DRS demonstrates the Act's far-ranging implications in a number of areas:

- Most immediately for the successful commencement, operability – [Redacted] – of the DRS scheme due to launch in August;
- The emerging risk of future Scottish legislation being routinely caught by the IMA and what that means for the powers of the Scottish Parliament and the devolution settlement endorsed by the people of Scotland in 1997;

- The vulnerability of the agreed process to mitigate the effects of the IMA in policy areas covered by common frameworks, which represents perhaps the best protection we have from the Act's effects.
20. The point was made clearly in evidence to the Net Zero, Energy and Transport Committee on 14 March that UK Government attempts to block an exclusion would have constitutional consequences that go well beyond DRS, and that UK ministers would want to reflect carefully before taking such a step.
  21. The issues here are of course part of wider pattern of encroachment on, and undermining of, the powers of the Scottish Parliament and Scottish Ministers – see also repeated breaches of the Sewel convention and direct spending in devolved areas without Scottish Parliament oversight or consent.
  22. Officials will be setting out the issues covered in this paper to UK Government counterparts at the next meeting of the Common Frameworks project board in Belfast on 30 March and will provide an update following that meeting.

## ANNEX: Timeline and process for securing an Internal Market Act exclusion for DRS

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.	<b>July 2021:</b> 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	<b>October 2021:</b> Common Framework agrees SG proposal should proceed to Senior Officials Programme Board (SOPB)  <b>October 2021:</b> SOPB discusses SG proposal and agrees it should proceed to Inter-Ministerial Group (IMG)  <b>December 2021:</b> 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	<b>January 2022:</b> 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	<b>March 2022:</b> IMG, where Defra confirms UKG write-round outcome - UKG agreement to a narrow exclusion covering the scope of Scotland's single-use plastic regulations  <b>April – July 2022:</b> SG supports Defra's SI preparation; SG notifies intended SI to SP (May)  <b>July – August 2022:</b> 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)

<p>Exclusion seeking party to set out scope and rationale for proposed exclusion</p>	<p><b>October 2022:</b> SG engages cross administration discussion in the Resources and Waste Common 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&amp;W Common Framework, including an assessment of direct and indirect economic impacts</p>	<p><b>7 November 2022:</b> IMG, <u>where SG notes ongoing work in the Common Framework to consider an exclusion</u></p> <p><b>19 December 2022:</b> Resources and Waste Common Framework working group, discussion of SG proposal on exclusion</p> <p><b>10 January 2023:</b> 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><b>18 January 2023:</b> Ministerial meeting where SG updates on exclusion work within Common Framework</p> <p><b>13 February 2023:</b> Resources and Waste Common Framework working group, where SG presents final paper on proposal for exclusion</p> <p><b>22 February 2023:</b> SOPB, where agreement on framework recommendation to seek ministerial views on an exclusion</p> <p><b>6 March 2023:</b> IMG discussion: ministers from each administration to consider the common framework's recommendation of an exclusion.</p>
<p>Administrations consult and seek agreement internally on their position before formal agreement of the position within the Common Frameworks</p>	<p><b>February – March 2023</b></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>



From: Kevin Quinlan  
Director Environment & Forestry  
12 April 2023

## **Deposit Return Scheme – Assurance Assessment and Options**

Priority and Purpose

[Redacted – Out of Scope]

Recommendation

1. That you **note** the latest developments on seeking an exclusion from the Internal Market Act (para 6) and further assessment of assurance for a 16 August go live date (para 8).

[Redacted – Out of Scope]

[Redacted – Out of Scope]

### **Current Risks and Issues**

2. [Redacted]. It targets the remaining big challenges that the scheme is facing: (i) an exclusion from the Internal Market Act; [Redacted – Out of Scope]

### ***Internal Market Act***

3. My submission of 3 April set out the impact of the Internal Market Act (IMA) upon DRS and the need for a UK Government decision on an exclusion. We have sought a decision by the next UKG-devolved government Inter-Ministerial Group on 17 April, [Redacted].
4. On 3 April, the Cabinet Secretary for Net Zero and Just Transition wrote to the Secretary of State for DEFRA seeking urgent reassurance that the exclusion was progressing and offering a meeting. We continue to engage intensively with DEFRA. DEFRA has subsequently undertaken pre-write round engagement with Whitehall departments. [Redacted]. This delay for further consideration by UK Government means that Defra will not be in a position to confirm a UK Government position on 17 April. We anticipate a UK Government reply to the Cabinet Secretary's letter to this effect shortly. We will continue to press UK Government on timelines and decoupling DRS delivery from agreeing an exclusion, but we assess there to be a high likelihood that we will not have a decision within the time period required to give clarity on an exclusion by 16 August launch.

**[Redacted – Out of Scope]**

[Redacted – Out of Scope]

**[Redacted – Out of Scope]**

5. [Redacted – Out of Scope]

6. [Redacted – Out of Scope]

7. [Redacted – Out of Scope]

**[Redacted – Out of Scope]**

8. [Redacted – Out of Scope]

9. [Redacted – Out of Scope]

10. [Redacted – Out of Scope].

[Redacted – Out of Scope]

[Redacted – Out of Scope]

[Redacted – Out of Scope]

[Redacted – Out of Scope]

[Redacted – Out of Scope]

[Redacted – Out of Scope]

[Redacted – Out of Scope]

[Redacted – Out of Scope]

Kevin Quinlan  
Director for Environment & Forestry

<b>Cabinet Secretaries and Ministers Copy List</b>	<b>For Action</b>	<b>For Information Portfolio interest</b>	<b>For Information Constituency interest</b>	<b>For Information General awareness</b>
Deputy First Minister		X		
Cabinet Secretary for Net Zero and Just Transition		X		
Cabinet Secretary for Constitution, External Affairs & Culture		X		
Cabinet Secretary for Rural Affairs Land Reform & Islands		X		
Cabinet Secretary for Wellbeing Economy, Fair Work and Energy		X		
Minister for Green Skills, Circular Economy & Biodiversity		X		
Lord Advocate				X
Solicitor General				X

### **Officials Copy List**

Permanent Secretary  
 DG Net Zero  
 DG Strategy and External Affairs; DG Economy; DG Corporate  
 Director of Environment and Forestry  
 Michelle Quinn,  
 Nick Ford  
 Aidan Grisewood  
 Andy Bruce, [Redacted]  
 David Rodgers, Donald Cameron, [Redacted], [Redacted]  
 David McPhee / Elisabeth Campbell, Deputy Directors DRS  
 [Redacted], [Redacted], [Redacted], [Redacted], [Redacted] - DRS  
 [Redacted], Office of the Permanent Secretary  
 Solicitor to the Scottish Government  
 Alison Coull, [Redacted], DRS SGLD  
 Parliament and Legislation Unit SSI Programme  
 Legal Secretariat to the Lord Advocate  
 [Redacted], [Redacted], [Redacted], Communications  
 Communications Net Zero and Rural Affairs  
 Special Advisors: Harry Huyton, Callum McCaig, Colin McAllister, Ewan Crawford  
 David Fleetwood