

**Correspondence between the Scottish Government and UK Government in relation to the Deposit Return Scheme between 01 January 2021 and 31 December 2021:**

From: <Redacted@hmtreasury.gov.uk>  
Sent: Wednesday, July 28, 2021 11:34 AM  
To: <Redacted@gov.scot>  
Cc: <Redacted@hmtreasury.gov.uk>; <Redacted@hmrc.gov.uk>; <Redacted@gov.scot>; Redacted@gov.scot>; <Redacted@gov.scot>  
Subject: RE: Deposit Return Scheme


Morning Redacted

Many thanks for your email regarding the above matter, and for forwarding us the information on Scottish DRS. This information was really useful to understand more of the nuance of the DRS process.

We are currently working on a product that addresses the majority of the points you have raised in your email, and happy to have further discussions on any outstanding areas. We will aim to get that to yourselves at the earliest opportunity.

Many thanks

Redacted

 **HM Treasury** | Redacted  
VAT & Excise Policy Advisor | Business & International Tax  
Redacted | Redacted | 1 Horse Guards Road, London SW1A 2HQ

From: <Redacted@gov.scot>  
Sent: Fri 23/07/2021 15:21  
To: <Redacted@hmtreasury.gov.uk>  
Cc: <Redacted@hmtreasury.gov.uk>; <Redacted@hmrc.gov.uk>; <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>  
Subject: RE: Deposit Return Scheme

Hello Redacted,

Firstly, thanks for everyone's time on what was a helpful call last week.

To help keep things moving forward we have attached the following:

- the flow diagram provided by Circularity Scotland Ltd (CSL), which sets out their interpretation of how the DRS will operate under standard application of VAT at 20%. Note that this applies across approximately 2bn transactions per year. We would welcome your views on whether this aligns with your understanding of how VAT will flow through the system. We can use this to then adapt the model for different VAT scenarios and build understanding of where the issues might be.

- a list of key stakeholders for suggested further engagement; we would recommend prioritising engaging with CSL

- a list of the various potential methods of redemption that have been identified so far

You had asked for a summary of the final scheme design for DRS. A good summary is given in section 2.2 and at Annex A of the Business and Regulatory Impact Assessment, published on 16 March 2020 and available here: [Deposit return scheme for Scotland: business and regulatory impact assessment - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/business-and-regulatory-impact-assessment-2020-03-16/pages/2-2.aspx)

Please do let us know if you need anything further from us on the above.

As discussed, if you can provide us with a 'lay person's' summary of how VAT will operate under your proposed solution that would be much appreciated. Industry is pressing us for this detail so that they can proceed with implementation planning so if you are able to share it at an early opportunity that would be greatly appreciated.

During our discussion, we also addressed a couple of points that we wanted to cover in more detail. To that end, we would appreciate it if you could provide some further clarification and detail around these points:

- Issues around ownership (i.e. the beer keg analogy) and whether a change to terms and conditions could address this at all. You raised the issue of anyone aged under 16 being unable to contract as an immediate impediment to this, but does such a situation not already exist when a child buys sweets from a newsagent or pays a deposit for bowling shoes at a bowling alley, for example? Could you explain in more detail what might prohibit this, i.e. is there specific legislation or case law?

- The distinction (or lack thereof) between the drink and the deposit when a consumer buys a product. You explained these are treated as the same transaction for VAT purposes, but we would appreciate it if you could expand on why this is the case to help us understand the principles behind this. It would be good to understand what, if anything, would expressly allow for the separation of the two in each transaction? Or conversely, what is it that specifically prohibits this if it is easier to approach from that angle.

On the engagement points, we agree that discussions with DEFRA and other devolved administrations would be very useful going forward. Whilst we are approaching this from a Scottish Government perspective and with different timescales, it's clear that all of the UK will have similar (if not the same) type of scheme in place in the not too distant future. Anything we can do to link-up our thinking and address commonalities (whether they be problems or best practice) on VAT issues would be beneficial.

We'd be grateful if you can respond to the above by 6 August so we can keep matters progressing & feed any salient points back to our interested stakeholders promptly. However, please do let me know if that's not feasible.

Thanks again,

Redacted

Redacted

Reserved Taxes Team Leader | Directorate of Tax and Fiscal Sustainability |  
Scottish Government  
Telephone: Redacted

From: <Redacted@hmtreasury.gov.uk>

Sent: 07 July 2021 14:54

To: <Redacted@gov.scot>

Cc: <Redacted@hmtreasury.gov.uk>; <Redacted@hmrc.gov.uk>;

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

Subject: RE: Deposit Return Scheme

Thanks Redacted and Redacted

Apologies for the delay, a few colleagues are currently on leave and so I have not been able to confirm whether Thursday morning is suitable, but I will endeavour to confirm by Monday.

Redacted -just to summarise what we have covered in previous meetings and correspondence.

For the Deposit Return Scheme (DRS), VAT is required to be charged on the deposit at each stage of the supply chain. However, businesses in the supply chain after the manufacturer/importer (e.g. wholesalers, retailers etc), will be able to reclaim the VAT they incurred when purchasing the drinks from their suppliers under the normal VAT rules (this includes the VAT that they paid their suppliers on the deposit).

The change we are looking to make will also allow the manufacturer/importer to reclaim the amount of VAT that is included in the refunded deposit amount they pay to the person returning the bottle/container via a collection point. This essentially means that the DRS will be VAT neutral for revenue purpose, provided the containers are returned and the returner is refunded the amount they paid. Fintan and I support this approach as it aims to ensure businesses do not incur additional VAT costs on the DRS.

We are not at the stage where we have the draft regulations, but we know our approach will require a change via SI and have agreed with the same with ministers.

In terms of next steps, there is currently a proposal by DEFRA to introduce DRS in England, Wales and Northern Ireland, we would like to understand a bit more about the commonalities and any differences between your model and DEFRA's to understand whether we need to take any differences into account. Similarly, we would like to engage with stakeholders to understand more about what effect our proposal would have on different businesses types. For example, retailers offering a service to return empty containers on behalf of customers, or cafés and restaurants that may sell drinks that incur a different VAT rate if supplied in the

course of catering. Further, it would also be useful to know whether your stakeholders have raised any particular VAT concerns themselves.

I would also like to provide a further look at the work we expect to undertake over the next few months, and whether it would be useful to have further catchups, similar to this one, where we can touch base and keep you updated on our progress.

Please shout if you have any questions regarding the above.

Kind regards

Redacted



Redacted  
VAT & Excise Policy Advisor | Business & International Tax  
Redacted | Redacted | 1 Horse Guards Road, London SW1A 2HQ

From: <Redacted@gov.scot>  
Sent: 06 July 2021 09:22  
To: <Redacted@hmtreasury.gov.uk>  
Cc: <Redacted@hmtreasury.gov.uk>; <Redacted@hmrc.gov.uk>;  
Redacted@gov.scot; Redacted@gov.scot; Redacted@gov.scot  
Subject: RE: Deposit Return Scheme

Hi Redacted

Thank you for getting in touch and your emails on this. Given that I am fairly new in post, as is Redacted, I just wanted to follow up on couple of points in relation to this to aid my understanding of what has happened to date and where we are now.

Could you please set out in more detail your proposed changes to the SI? If you have draft regulations to share, that would be great. Just trying to get my head around the detail.

In addition, you mention next steps and questions for us to discuss. Would it be possible for you to set those out before we meet please?

You also mention meetings with interested businesses. Do you have any specific discussions scheduled or any ideas about the types of meetings you will be looking to have and with whom?

Final question, can you also confirm whether the slot Redacted has proposed suits? 11-15 – 12:00 next Thursday (15<sup>th</sup>).

Thank you

Redacted

Redacted | Head of Income Tax and Reserved Taxes Unit | Directorate of Tax and Fiscal Sustainability | 3D North Victoria Quay | Edinburgh | EH6 6QQ | Blackberry: Redacted

From: <Redacted@gov.scot>  
Sent: 30 June 2021 16:12  
To: <Redacted@hmtreasury.gov.uk>  
Cc: <Redacted@hmtreasury.gov.uk>; <Redacted@hmrc.gov.uk>; <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>  
Subject: RE: Deposit Return Scheme

Thanks Redacted

I'm afraid our availability is a little limited w/b 12 July. Would 11.15-12.00 on Thursday 15<sup>th</sup> work for you? Participants from Scottish Government are included in the copy list above.

Redacted

Redacted | Circular Economy Unit | Environmental Quality and Circular Economy Division | Environment and Forestry Directorate| Scottish Government | Tel: Redacted

From: <Redacted@hmtreasury.gov.uk>  
Sent: 24 June 2021 10:19  
To: <Redacted@gov.scot>  
Cc: <Redacted@hmtreasury.gov.uk>; <Redacted@hmrc.gov.uk>; <Redacted@gov.scot>; <Redacted@gov.scot>  
Subject: RE: Deposit Return Scheme

Thanks Redacted

Just to confirm that this approval allows us to explore further to the solution we discussed with yourselves at our last meeting in February. In addition to next steps, there are still some outstanding questions to work through, and would like to discuss these with yourselves.

Best

Redacted



Redacted  
VAT & Excise Policy Advisor| Business & International Tax  
Redacted | Redacted|1 Horse Guards Road, London SW1A 2HQ

From: <Redacted@gov.scot>  
Sent: 24 June 2021 08:39  
To: <Redacted@hmtreasury.gov.uk>  
Cc: <Redacted@hmtreasury.gov.uk>; <Redacted@hmrc.gov.uk>;

Redacted@gov.scot; Redacted@gov.scot  
Subject: RE: Deposit Return Scheme

Hello Redacted

Thanks for your email about DRS and VAT. Can I check if this approval is for the original solution that we discussed, with no changes?

I'll come back to you about dates for a meeting.

Best wishes

Redacted

Redacted | Circular Economy Unit | Environmental Quality and Circular Economy  
Division | Environment and Forestry Directorate | Scottish Government | Tel:  
Redacted

From: <Redacted@hmtreasury.gov.uk>

Sent: 23 June 2021 14:41

To: <Redacted@gov.scot>

Cc: <Redacted@hmtreasury.gov.uk>; <Redacted@hmrc.gov.uk>

Subject: Deposit Return Scheme

Hi Redacted

Following on from our previous conversation in February, I can confirm that our minister has now approved our plans to amend VAT legislation which will allow the Deposit Return Scheme to be VAT neutral for businesses. The minister has also approved our plans to make the changes to the relevant parts of the VAT legislation by Statutory Instrument.

It would be great to meet with yourselves so that we can update on current work and next steps, and discuss approach for future meetings with interested businesses.

I would be grateful for your preferred dates and times for our meeting during w/c 12 July.

Please do not hesitate to contact me if you have any questions regarding the above.

Kind regards

Redacted



HM Treasury

Redacted

VAT & Excise Policy Advisor | Business & International Tax

Redacted | Redacted | 1 Horse Guards Road, London SW1A 2HQ

From: <Redacted@hmtreasury.gov.uk>

Sent: Wednesday, September 29, 2021 3:30 PM

To: <Redacted@hmtreasury.gov.uk>; <Redacted@gov.scot>;

<Redacted@gov.scot>

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

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

<Redacted@hmrc.gov.uk>

Subject: RE: [DRS] CSL engagement and next steps

Hi Redacted

Further to our recent correspondence, we have now pulled together some questions about the how the scheme work based on information provided in the Scottish Government's impact assessment and consultation paper.

We are trying to understand the nuance mechanics of how scheme will work in practice and about businesses need to do on their part to ensure they are ready for when the scheme goes live. These question will need to be resolved before we can revert to stakeholders as some of their concerns cover wider issues that seem to go beyond the VAT element.

We would be grateful therefore if you could consider the questions in the attached ahead of the meeting next week so that we could discuss this further.

Many thanks

Redacted



Redacted  
VAT & Excise Policy Advisor | Business & International Tax  
Redacted | Redacted | 1 Horse Guards Road, London SW1A 2HQ

From: <Redacted@hmtreasury.gov.uk>

Sent: 27 September 2021 11:22

To: Redacted@gov.scot; Redacted@gov.scot

Cc: Redacted@gov.scot; Redacted@gov.scot; Redacted@gov.scot;

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

<Redacted@hmrc.gov.uk>; <Redacted@hmrc.gov.uk>

Subject: RE: [DRS] CSL engagement and next steps

Hi Redacted,

I think we will need more time than a couple of days to review the document given it only arrived at 17:45 on Friday, so let's aim to meet early next week. Please do send over some times that work from your side and we will arrange.

Thanks,

Redacted

Redacted (He/Him) | VAT Rates and Refunds | VAT & Excise | HM Treasury |

T: Redacted | M: Redacted |

From: <Redacted@gov.scot>  
Sent: 27 September 2021 10:30  
To: <Redacted@hmtreasury.gov.uk>; Redacted@gov.scot  
Cc: Redacted@gov.scot; Redacted@gov.scot; Redacted@gov.scot;  
Redacted@gov.scot; Redacted@gov.scot; <Redacted@hmtreasury.gov.uk>;  
<Redacted@hmrc.gov.uk>; <Redacted@hmrc.gov.uk>  
Subject: RE: [DRS] CSL engagement and next steps

Thanks Redacted

I see that the CSL letter did indeed get issued on Friday. For our timings, it would be useful to meet up this week rather than next to discuss – is Thursday afternoon a possibility for you?

Regards  
Redacted

Redacted | Circular Economy Unit | Environmental Quality and Circular Economy  
Division | Environment and Forestry Directorate | Scottish Government | Tel:  
Redacted

From: <Redacted@hmtreasury.gov.uk>  
Sent: 24 September 2021 15:06  
To: <Redacted@gov.scot>; <Redacted@gov.scot>  
Cc: <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>;  
<Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@hmtreasury.gov.uk>;  
<Redacted@hmrc.gov.uk>; <Redacted@hmrc.gov.uk>  
Subject: RE: [DRS] CSL engagement and next steps

Thanks Redacted,

That's a helpful update. With that in mind, shall we aim to meet early the week after (say around the 5<sup>th</sup>) so that we can digest the CSL proposal and then discuss it ensemble? We will then send up our questions for you too ahead of the meeting.

Hope you have good weekends,

Redacted

Redacted (He/Him) | VAT Rates and Refunds | VAT & Excise | HM Treasury |  
T: Redacted | M: Redacted |

From: <Redacted@gov.scot>  
Sent: 23 September 2021 12:48  
To: <Redacted@hmtreasury.gov.uk>; Redacted@gov.scot  
Cc: Redacted@gov.scot; Redacted@gov.scot; Redacted@gov.scot;  
Redacted@gov.scot; Redacted@gov.scot; <Redacted@hmtreasury.gov.uk>;  
<Redacted@hmrc.gov.uk>; <Redacted@hmrc.gov.uk>  
Subject: RE: [DRS] CSL engagement and next steps



Hi Redacted

The latest information from CSL is that they will send it to you tomorrow, copying in SG officials. We have not seen any drafts so will be seeing it for the first time then.

I'm happy to meet up next week (Redacted – can you fix up please). If there are specific questions you have, it would be useful to have them in advance so that we can make best use of the time.

Regards  
Redacted

Redacted | Circular Economy Unit | Environmental Quality and Circular Economy Division | Environment and Forestry Directorate| Scottish Government | Tel: Redacted

From: <Redacted@hmtreasury.gov.uk>  
Sent: 22 September 2021 17:49  
To: <Redacted@gov.scot>; <Redacted@hmtreasury.gov.uk>; <Redacted@gov.scot>; <Redacted@hmrc.gov.uk>; <Redacted@hmrc.gov.uk>  
Cc: <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>  
Subject: RE: [DRS] CSL engagement and next steps

Hi Redacted, All,

Just to follow up on this in Redacted's absence, do you know when we can expect to see this report from CSL? As you will be aware, we are working to a legislative timetable set by the need to get this SI laid before the scheme goes live in 2022, so we will need to begin making announcements in the Autumn. Can we expect this by the end of next week if possible?

On the details illustrated in the impact assessment, it would be very helpful to meet and go over this, as I have some follow up questions. Would next week suit?

Thanks,

Redacted



Redacted (He/Him) | Head of VAT Rates and Refunds | VAT & Ex  
HM Treasury | Business and International Tax Group | 1 Yellow |  
Guards Road, London, SW1A 2HQ |

T: Redacted | M: Redacted Website: [www.gov.uk/hm-treas](http://www.gov.uk/hm-treas)  
<https://twitter.com/hmtreasury>

From: <Redacted@gov.scot>  
Sent: 07 September 2021 17:47  
To: <Redacted@hmtreasury.gov.uk>; Redacted@gov.scot;

<Redacted@hmrc.gov.uk>; <Redacted@hmrc.gov.uk>  
Cc: Redacted@gov.scot; Redacted@gov.scot; <Redacted@hmtreasury.gov.uk>;  
Redacted@gov.scot; Redacted@gov.scot; Redacted@gov.scot  
Subject: RE: [DRS] CSL engagement and next steps

Hi Redacted

I'm glad that you found the meeting useful.

On your first point, you may remember that the email that Redacted sent on 23 July included the following:

*You had asked for a summary of the final scheme design for DRS. A good summary is given in section 2.2 and at Annex A of the Business and Regulatory Impact Assessment, published on 16 March 2020 and available here: Deposit return scheme for Scotland: business and regulatory impact assessment - gov.scot (www.gov.scot)*

If you need any further detail than is provided here, please let me know.

Secondly, CSL has not shared the paper with us but I understand that it is close to being finalised. I will let you know if I hear anything more definite about timings for sending it to you.

As you say, there is a tight timeframe here and your willingness to assess the paper as soon as possible is appreciated. Do you know roughly how long it will take for you to make that assessment once you've received the paper?

It would also be helpful to know if you have any further meetings planned with the wider DRS stakeholder group.

Regards  
Redacted

Redacted | Circular Economy Unit | Environmental Quality and Circular Economy  
Division | Environment and Forestry Directorate | Scottish Government | Tel:  
Redacted

From: <Redacted@hmtreasury.gov.uk>  
Sent: 02 September 2021 15:20  
To: <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@hmrc.gov.uk>;  
<Redacted@hmrc.gov.uk>  
Cc: <Redacted@gov.scot>; <Redacted@gov.scot>;  
<Redacted@hmtreasury.gov.uk>; <Redacted@gov.scot>; <Redacted@gov.scot>  
Subject: RE: [DRS] CSL engagement and next steps

Hi Redacted

Many thanks to yourself and your colleagues for arranging the meeting with CSL. It was a useful discussion and they raised some interesting points about our proposal.

I recall that you may have a product which provided detail about the scheme and how it would operate, and would be grateful if you could forward a copy of that to myself, Redacted and Redacted as I think it would be useful when considering the points that have been raised.

The CSL also mentioned that they would be emailing a paper outlining why they think there is a strong argument for bottle deposits to be treated as outside the scope of VAT. I just wanted to check whether they have forwarded this to yourselves as this is something we will need to assess as soon as possible given the tight timeframe.

Many thanks and happy to discuss if you have questions regarding the above.

Redacted



Redacted  
VAT & Excise Policy Advisor | Business & International Tax  
Redacted | Redacted | 1 Horse Guards Road, London SW1A 2HQ

From: <Redacted@gov.scot>  
Sent: 24 August 2021 11:32  
To: Redacted@gov.scot; <Redacted@hmrc.gov.uk>; <Redacted@hmrc.gov.uk>; <Redacted@hmtreasury.gov.uk>  
Cc: Redacted@gov.scot; Redacted@gov.scot; <Redacted@hmtreasury.gov.uk>; Redacted@gov.scot; Redacted@gov.scot  
Subject: RE: [DRS] CSL engagement and next steps

Hello everyone

Thanks for being so flexible. I have a confirmed time of 9.30 on Thursday with CSL. I'll send out a meeting request shortly.

Regards  
Redacted

Redacted | Circular Economy Unit | Environmental Quality and Circular Economy Division | Environment and Forestry Directorate | Scottish Government | Tel: Redacted

From: <Redacted@gov.scot>  
Sent: 24 August 2021 09:02  
To: Redacted@hmrc.gov.uk; Redacted@hmrc.gov.uk; Redacted@hmtreasury.gov.uk  
Cc: <Redacted@gov.scot>; <Redacted@gov.scot>; Redacted@hmtreasury.gov.uk; <Redacted@gov.scot>; <Redacted@gov.scot>  
Subject: RE: [DRS] CSL engagement and next steps

Hi all

Thursday works best for Redacted and I in the SG Reserved Taxes team. We are both available 0930-1030 or after 1500, and Steph is additionally available 1400-1500.

Let us know if any of these times work.

Thanks,

Redacted  
Tax Policy Officer  
Directorate of Tax and Fiscal Sustainability  
Scottish Government

From: <Redacted@hmrc.gov.uk>  
Sent: 23 August 2021 17:20  
To: Redacted@hmrc.gov.uk; Redacted@hmtreasury.gov.uk  
Cc: <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>;  
Redacted@hmtreasury.gov.uk; <Redacted@gov.scot>; <Redacted@gov.scot>  
Subject: RE: [DRS] CSL engagement and next steps

Those times are fine for me

Redacted

OFFICIAL

From: <Redacted@hmrc.gov.uk>  
Sent: 23 August 2021 16:59  
To: <Redacted@hmtreasury.gov.uk>  
Cc: Redacted@gov.scot; Redacted@gov.scot; Redacted@gov.scot;  
<Redacted@hmtreasury.gov.uk>; <Redacted@hmrc.gov.uk>; Redacted@gov.scot;  
Redacted@gov.scot  
Subject: RE: [DRS] CSL engagement and next steps

Good afternoon Redacted,

Thursday and Friday this week are looking remarkably clear for me at the moment, so yes, morning or afternoon on either of those days should be fine.

Best regards,

Redacted

Redacted | VAT Principles Policy Team | CS & TD | 10 South Colonnade | Canary Wharf | London | E14 4PU | Redacted

OFFICIAL

From: <Redacted@hmtreasury.gov.uk>  
Sent: 23 August 2021 16:53  
To: Redacted@gov.scot; Redacted@gov.scot  
Cc: Redacted@gov.scot; Redacted@gov.scot; Redacted@gov.scot;  
<Redacted@hmtreasury.gov.uk>; <Redacted@hmrc.gov.uk>;  
<Redacted@hmrc.gov.uk>  
Subject: RE: [DRS] CSL engagement and next steps

Thanks Redacted


I think Redacted and I are generally flexible any time up to 14:00pm Thursday and Friday, and I also have flexibility between:

- 15:00pm and 16:00pm on Thursday; and
- 14:30pm and 15:30pm on Friday

Redacted and Redacted – just want to check if these times unsuitable for yourselves?

Best

Redacted

 **HM Treasury** | Redacted  
VAT & Excise Policy Advisor | Business & International Tax  
Redacted | Redacted | 1 Horse Guards Road, London SW1A 2HQ

From: <Redacted@gov.scot>  
Sent: 23 August 2021 16:05  
To: <Redacted@hmtreasury.gov.uk>; Redacted@gov.scot  
Cc: Redacted@gov.scot; Redacted@gov.scot; Redacted@gov.scot;  
<Redacted@hmtreasury.gov.uk>; <Redacted@hmrc.gov.uk>;  
<Redacted@hmrc.gov.uk>  
Subject: RE: [DRS] CSL engagement and next steps

Hi Redacted

I'll be in touch about the meeting with CSL as soon as I've had confirmation from them about participants. We'll do our best to arrange it before the end of this week. Some flexibility in calendars would be helpful – to which end, can you let me know if there are any times Thurs / Fri that you definitely cannot manage?

Best wishes  
Redacted

Redacted | Circular Economy Unit | Environmental Quality and Circular Economy  
Division | Environment and Forestry Directorate | Scottish Government | Tel:  
Redacted

From: <Redacted@hmtreasury.gov.uk>  
Sent: 20 August 2021 11:21  
To: <Redacted@gov.scot>  
Cc: <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>;  
<Redacted@gov.scot>; <Redacted@hmtreasury.gov.uk>;  
<Redacted@hmrc.gov.uk>; <Redacted@hmrc.gov.uk>  
Subject: RE: [DRS] CSL engagement and next steps

Thanks Redacted

If possible, grateful if we could have the meeting with CSL by end of next week, just so we can have that discussion before we set a date for the follow up meeting with the other trade associations.

In the meantime, I will endeavour to work on a one pager on our proposal for early next week and address the questions you raised below.

Many thanks

Redacted



Redacted  
VAT & Excise Policy Advisor | Business & International Tax  
Redacted | Redacted | 1 Horse Guards Road, London SW1A 2HQ

From: <Redacted@gov.scot>  
Sent: 17 August 2021 17:52  
To: <Redacted@hmtreasury.gov.uk>  
Cc: Redacted@gov.scot; Redacted@gov.scot; Redacted@gov.scot;  
Redacted@gov.scot; <Redacted@hmtreasury.gov.uk>  
Subject: RE: [DRS] CSL engagement and next steps

Hi Redacted,

Apologies for the delay in getting back to you. A combination of annual leave & sickness absence has meant we haven't been all been around at the same time & able to respond as promptly as hoped.

[Redacted] is currently liaising with CSL about the potential for a meeting & will get back to you on that as soon as possible. We know they're keen to engage, so I think you're pushing at an open door in looking to set something up & shouldn't have too much longer to wait.

In terms of follow-up between SG & HMT after our call in July, we were wondering if you might be in a position to give more detail on the points below, copied from my email of 23 July:

*During our discussion, we also addressed a couple of points that we wanted to cover in more detail. To that end, we would appreciate it if you could provide some further clarification and detail around these points:*

*- Issues around ownership (i.e. the beer keg analogy) and whether a change to terms and conditions could address this at all. You raised the issue of anyone aged under 16 being unable to contract as an immediate impediment to this, but does such a situation not already exist when a child buys sweets from a newsagent or pays a deposit for bowling shoes at a bowling alley, for example? Could you explain in more detail what might prohibit this, i.e. is there specific legislation or case law?*

*- The distinction (or lack thereof) between the drink and the deposit when a consumer buys a product. You explained these are treated as the same transaction for VAT purposes, but we would appreciate it if you could expand on why this is the case to help us understand the principles behind this. It would be good to understand what, if anything, would expressly allow for the separation of the two in each transaction? Or conversely, what is it that specifically prohibits this if it is easier to approach from that angle.*

The slides you sent through were also much appreciated. Is it possible to have these supplemented by the one-pager 'lay person's' summary of the proposed working of the scheme for completeness?

As if the leave & sickness absences weren't enough to contend with, I'm now about to begin a week-long stint of jury duty, so likely won't be available until next week at the earliest. Someone from the copy list should be available throughout though, so between us we'll be able to pick up your reply or any questions etc. you might have.

Thanks,

Redacted

Redacted

Reserved Taxes Team Leader | Directorate of Tax and Fiscal Sustainability |  
Scottish Government  
Telephone: Redacted

From: <Redacted@hmtreasury.gov.uk>

Sent: 11 August 2021 11:06

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

Subject: RE: [DRS] CSL engagement and next steps

Hi All

Further to my email of 03 August, I just wanted to check you were content with the approach below.

Many thanks

Redacted



HM Treasury

Redacted  
VAT & Excise Policy Advisor| Business & International Tax  
Redacted | Redacted|1 Horse Guards Road, London SW1A 2HQ

From: Redacted  
Sent: 03 August 2021 16:37  
To: Redacted@gov.scot; Redacted@gov.scot; Redacted@gov.scot;  
Redacted@gov.scot  
Cc: <Redacted@hmtreasury.gov.uk>; <Redacted@hmrc.gov.uk>;  
Redacted@hmrc.gov.uk  
Subject: [DRS] CSL engagement and next steps

Hi All

Thank you for attending the stakeholder meeting last Friday, it was great meeting you again. I felt that the meeting went well and was a very constructive.

Based on suggestions from yourselves and others at the meeting we would like to have a meeting with the Circularity Scotland Ltd (CSL) to explore how the scheme will work in practice, and understand what the practical issues that might affect our proposal.

Redacted and Redacted, thank you for providing the contact details for someone in CSL. Could you please arrange for the introductory meeting so that we can meet their team together and we can ease them into understanding the VAT treatment and our proposal? I think this will be more effective than approaching them without a prior connection.

If possible, it may be useful to meet with the CSL towards end of next week, but please contact me if this is not possible or there are any concerns. Following that meeting, we will then arrange further engagement with BSDA as appropriate.

Kind regards

Redacted



HM Treasury

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VAT & Excise Policy Advisor| Business & International Tax  
Redacted | Redacted|1 Horse Guards Road, London SW1A 2HQ

From: <Redacted@defra.gov.uk>  
Sent: Thursday, October 7, 2021 8:45 AM  
To: <Redacted@gov.scot>  
Subject: RE: DRS Implementation timeline question

Hi Redacted,

Yes I'm sure we will, and yes, that's right re Jo Churchill!

Best



Redacted

From: <Redacted@gov.scot>  
Sent: 06 October 2021 18:12  
To: <Redacted@defra.gov.uk>  
Subject: RE: DRS Implementation timeline question

No problem, Redacted. I'll not be at the meeting but perhaps we'll see each other in the future.

While I'm here, can I just quickly check – is it Jo Churchill that is the Defra Minister for DRS now?

Best wishes

Redacted

Redacted | Circular Economy Unit | Environmental Quality and Circular Economy Division | Environment and Forestry Directorate| Scottish Government | Tel:  
Redacted

From: <Redacted@defra.gov.uk>  
Sent: 06 October 2021 11:37  
To: <Redacted@gov.scot>  
Subject: RE: DRS Implementation timeline question

Hi Redacted,

Apologies for not replying sooner – but this was very helpful, thanks very much! I think Redacted and Redacted are catching up later this week, so I will join (and possibly see you there) as it'll be great to understand more about the process as it happened between SI coming into force and Circularity being appointed.

Best

Redacted

From: <Redacted@gov.scot>  
Sent: 09 September 2021 18:14  
To: <Redacted@defra.gov.uk>  
Cc: <Redacted@gov.scot>  
Subject: RE: DRS Implementation timeline question

Hi Redacted

Welcome to the world of DRS!

Briefly, the relevant parts of the DRS SSI came into force in May 2020; the prospective scheme administrator submitted an application (and was approved) in March 2021. Originally the scheme administrator had hoped to submit the application in summer 2020 – i.e. roughly your 2-month timetable - but then Covid got in the way. Even had it not, I suspect that would have been a very ambitious timetable.

Hope that helps. Let me know if you've any other questions.

Redacted

Redacted | Circular Economy Unit | Environmental Quality and Circular Economy Division | Environment and Forestry Directorate| Scottish Government | Tel: 07941 347417

From: <Redacted@defra.gov.uk>  
Sent: 09 September 2021 17:00  
To: <Redacted@gov.scot>  
Subject: FW: DRS Implementation timeline question

Hi Redacted,

We haven't met but I joined the English DRS team not long ago!  
I sent the below to Redacted, but it looks as though he's out of the office, so wondering if you might be able to help?

Thanks very much,  
Redacted

From: Redacted  
Sent: 09 September 2021 16:44  
To: Redacted@gov.scot  
Subject: DRS Implementation timeline question

Hi Redacted,

I hope you're well.  
I don't think we've yet met - I joined the DRS team back in June.  
We are currently in the process of finalising our policy decisions ahead of the gov response, and I was hoping to get an idea from your team as to the amount of time it took Scottish DRS from the DRS SI coming into force to the appointment of the DMO? We had initially had two months for this step in the plan, however, it's become clear that this may not be enough time.  
Any steer you could give from your team's experience would be greatly appreciated!

Best,

Redacted

Redacted (*she/her*) |Policy Advisor – Deposit Return Scheme|Resources and Waste|Environmental Quality Directorate|Department for Environment, Food and Rural Affairs |Email: Redacted@defra.gov.uk|Address: 2 Marsham Street – Seacole Building, London, SW1P 4DF

From: <Redacted@hmtreasury.gov.uk>  
Sent: Tuesday, November 16, 2021 2:21 PM  
To: <Redacted@gov.scot>

Subject: RE: Deposit Return Scheme - response to letter from Minister for Circular Economy

Hi Redacted

Further to my earlier email, you may have seen that our minister has now responded to Ms Slater's letter about VAT and the DRS. I have attached copy for ease of reference.

Apologies again for the delay in this response, and we are happy to have a meeting with yourselves where we can provide a bit of an update on this, and discuss some of the outstanding questions about the workings of the scheme? If you think this would be useful, grateful for a list of preferred dates and times for a meeting early next week.

Many thanks

Redacted



HM Treasury

Redacted

VAT & Excise Policy Advisor| Business & International Tax

Redacted | Redacted|1 Horse Guards Road, London SW1A 2HQ

From: Redacted

Sent: 16 November 2021 09:33

To: Redacted@gov.scot

Subject: RE: Deposit Return Scheme - response to letter from Minister for Circular Economy

Hi Redacted

Many thanks and apologies again for the further delay on this matter. I would be grateful for the readout from the Parliamentary Statement and Q&A with regards to VAT.

Many thanks

Redacted



HM Treasury

Redacted

VAT & Excise Policy Advisor| Business & International Tax

Redacted | Redacted|1 Horse Guards Road, London SW1A 2HQ

From: <Redacted@gov.scot>

Sent: 15 November 2021 18:14

To: <Redacted@hmtreasury.gov.uk>

Subject: RE: Deposit Return Scheme - response to letter from Minister for Circular Economy

Redacted

Thank you for taking the time to provide an update. I appreciate your efforts with Private Office.

If helpful, we can give you a readout after 17th about what is said on VAT during the Parliamentary statement and subsequent Q&A .

Regards

Redacted

Redacted | Circular Economy Unit | Environmental Quality and Circular Economy Division | Environment and Forestry Directorate| Scottish Government | Tel:  
Redacted

From: <Redacted@hmtreasury.gov.uk>

Sent: 15 November 2021 16:35

To: <Redacted@gov.scot>

Subject: RE: Deposit Return Scheme - response to letter from Minister for Circular Economy

Hi Redacted

Further to the above matter and my email of 03 November, I apologise for a further delay to the responses.

Our minister is reviewing our advice, but as it is quite a complex area it is taking some time. We are aware of the time pressure on this matter and we have been working with the FST's private office to prioritise getting a read out at the earliest opportunity.

I will send you an update as soon as I have received the readout.

All the best

Redacted



Redacted

VAT & Excise Policy Advisor| Business & International Tax

Redacted | Redacted|1 Horse Guards Road, London SW1A 2HQ

From: Redacted

Sent: 03 November 2021 09:10

To: Redacted@gov.scot

Subject: RE: Deposit Return Scheme - response to letter from Minister for Circular Economy

Hi Redacted

Apologies, I meant by the 12<sup>th</sup>.

Redacted



HM Treasury

Redacted  
VAT & Excise Policy Advisor| Business & International Tax  
Redacted | Redacted|1 Horse Guards Road, London SW1A 2HQ

From: <Redacted@gov.scot>  
Sent: 02 November 2021 18:35  
To: <Redacted@hmtreasury.gov.uk>  
Subject: RE: Deposit Return Scheme - response to letter from Minister for Circular Economy

Thanks Redacted  
Quick clarification – is 'next' Friday the 5<sup>th</sup> or 12<sup>th</sup>?  
Redacted

Redacted | Circular Economy Unit | Environmental Quality and Circular Economy  
Division | Environment and Forestry Directorate| Scottish Government | Tel:  
Redacted

From: <Redacted@hmtreasury.gov.uk>  
Sent: 02 November 2021 10:26  
To: <Redacted@gov.scot>; <Redacted@hmtreasury.gov.uk>  
Cc: <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>  
Subject: RE: Deposit Return Scheme - response to letter from Minister for Circular Economy

Morning Redacted

Many thanks for your email yesterday about the response to Ms Slater's letter of 08 October.

Our minister has received representations on this matter from Circularity Scotland Ltd (CSL) as well as Ms Slater with both proposing that Scottish law can overrule UK VAT law on 'consideration'. This is a complex legal matter that can have wide implications and must be given due consideration and legal analysis before the FST can respond.

We will forward the response as soon as possible and endeavour to do so before next Friday, but as this is a matter of high importance to both Ms Slater and stakeholder we want to make sure that this is explored fully.

Please do not hesitate to contact me if you would like to discuss or have any questions regarding the above.

Many thanks

Redacted



HM Treasury

Redacted  
VAT & Excise Policy Advisor| Business & International Tax  
Redacted | Redacted|1 Horse Guards Road, London SW1A 2HQ

POA2021/23478



HM Treasury, 1 Horse Guards Road, London,  
SW1A 2HQ

Ms L Slater MSP  
St. Andrews  
House 2 Regent  
Road Edinburgh  
EH1 3DQ

16 November 2021

Dear Lorna

Scotland Deposit Return Scheme and VAT treatment of deposits

Thank you for your letter of 8 October regarding the above matter, and please accept my apologies for the delay in my response. Due to the importance of this matter, my officials have given serious consideration to the proposals outlined by yourself and Circularity Scotland Ltd (CSL) in your respective letters.

I appreciate the importance of the Deposit Return Scheme (DRS) and its environmental aims, which align with those of the UK Government. As you will be aware, the UK Government is also developing a DRS that will apply to England, Wales and Northern Ireland, and therefore the concerns you have raised are not limited to the Scottish DRS.

I should first explain that the application of VAT on deposits is not a policy decision that the UK Government has adopted. Rather, it is how UK VAT law applies to any taxable supply made by a VAT-registered business. Container deposits are charged with the sale of drinks and are not a separate supply of a good or service. This means that the deposit forms part of the consideration (what is paid by the consumer for the drink) of the supply for VAT purposes. Moreover, because a customer can only buy and gain ownership of a drink if they pay the price including the deposit amount, these are linked. However, my officials have also explored whether there are alternative ways to remove the VAT from DRS within UK VAT law, but have concluded that it would not be possible without undermining the fundamental principles of the VAT system.

I understand that my officials explained this to Scottish Government officials in

their first engagement in March 2020, just before 'The Deposit and Return Scheme for Scotland Regulations 2020' were implemented. However, in a recent meeting with CSL, my officials agreed to consider its legal argument which suggested that the UK could make DRS VAT free without breaching the fundamentals of UK VAT law. As you are aware, CSL has argued that your government has implemented a regulation (No. 5 of the Deposit and Return Scheme Scotland Regulations 2020), that overrules UK VAT law by expressly excluding container deposits from being part of the consideration of the drink.

Given that the CSL's proposed interpretation of the Scottish Regulation could have wider implications with regards to the primacy of UK reserved laws and Scottish law, we have given this matter serious consideration.

[Redacted]

CSL has also suggested that VAT on deposits would critically impact costs for businesses and business readiness. However, as stated above, the VAT treatment applies under current law as it does to any other supply. It does not require any deviation from existing processes and costs, which all VAT-registered businesses currently manage. We therefore do not agree that this would have a critical impact on businesses.

Allowing a change to enable DRS to be treated as outside the scope of VAT would have significant repercussions on the UK VAT system as it would undermine the fundamental principles, which align with international standards, on which it is based. It would also contravene recent policy and legislative developments that ensure that VAT is accounted for on retained deposits and other charges not refunded to customers. It could also potentially have far reaching consequences, as other interest groups and stakeholders are likely to lobby for similar treatments to remove other payments from the scope of VAT. This in turn would also have a deleterious effect on the durability of the VAT system, which would undermine the stability of the business environment and put public revenues at risk. I am therefore unable to support your and CSL's proposals to change the application of VAT for DRS, given the wider implications to UK VAT system.

I would instead like to recommend that my officials continue to work with Scottish Government to implement the proposal that will allow businesses at the top of the supply chain to adjust for the VAT element of the deposit. Officials have identified that under current rules businesses at the top of the supply chain (e.g. manufacturers) will be unable to adjust for the VAT element of the deposit on returned drinks containers where the refund is made via a third party (i.e. CSL). The UK Government does not want VAT to hinder the operation of DRS through restricting VAT recovery and have therefore suggested a change in UK law to amend this. My officials have been engaging with your officials and CSL to understand how that would work in practice, and I support developing this proposal further. I look forward to our officials continuing to collaborate on this important matter for both Scotland and the entire UK. A copy of this letter has also been sent to Circularity Scotland Ltd.

Yours sincerely,

THE RT HON LUCY FRAZER QC MP

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

□□□□

T: Redacted  
E: scottish.ministers@gov.scot

The Rt Hon Lucy Frazer QC MP  
Financial Secretary to the Treasury  
HM Treasury

*[by email to: Redacted@hmtreasury.gov.uk]*

1 December 2021

Dear Lucy

#### SCOTLAND DEPOSIT RETURN SCHEME AND VAT TREATMENT OF DEPOSITS

Thank you for your letter of 16 November. I am of course disappointed that the UK Government has decided to maintain its approach to the VAT treatment of deposits under our environmentally ambitious deposit return scheme. I continue to have concerns about the impact that this will have on operability and timescales for our scheme, as set out by industry, and maintain that an alternative solution could have been pursued.

However, the implementation of the deposit return scheme is a priority for the Scottish Government. I understand that there are still many detailed points to be ironed out regarding the implementation of the DRS under current VAT rules, and before proposed amendments to the VAT regulations are made. It is therefore critically important that your officials work together with Circularity Scotland Ltd, our scheme administrator, and my officials, to ensure that the solution that you propose is done as effectively and efficiently as possible for the businesses involved.

I am keen to ensure that constructive engagement continues so that the range of outstanding issues are fully resolved, and welcome your commitment to collaboration on this as we move forward.

Kind regards

LORNA SLATER

From: <Redacted@hmtreasury.gov.uk>  
Sent: Wednesday, December 1, 2021 2:37 PM



To: <Redacted@gov.scot>; <Redacted@gov.scot>; <Redacted@gov.scot>  
Cc: <Redacted@hmtreasury.gov.uk>; <Redacted@hmrc.gov.uk>;  
<Redacted@hmrc.gov.uk>  
Subject: [Deposit Return Scheme] Update - Tax Administrations Maintenance paper and outstanding questions about DRS

Hi Redacted, Redacted, Redacted

We previously indicated in our recent meeting that we would be making an announcement at the Tax Administrations and Maintenance (TAM) day, and I just wanted to flag that the TAM command paper has now been published and can be located using the following link. Tax Administration and Maintenance: Autumn 2021 - GOV.UK ([www.gov.uk](http://www.gov.uk))

The TAM paper is used to announce to businesses the work that the Government is doing on Tax Policy, and includes a small announcement on VAT and Deposit Return Scheme regarding our proposal to make changes to allow businesses at the top of the supply chain to make VAT adjustment when refunding to someone other than the final consumer. The announcement confirms that UK is exploring legislative changes to VAT regulations that would allow the deposit return schemes to operate effectively.

In our last catchup we mentioned that we were awaiting written response to questions raised towards end of September; Redacted, you mentioned that you would follow up on this but I have also attached these for ease of reference. Although, I think it was previously mentioned that some of these questions are for CSL to answer, but it would be useful to have a clear understanding on what areas of the DRS developments CSL are responsible for and what the Scottish Government are responsible for. I would therefore be grateful for confirmation which questions would be for CSL and also a short summary which outlines which parts of the DRS development the Scottish Government leads on and which parts fall under the responsibility of CSL.

Many thanks

Redacted



Redacted  
VAT & Excise Policy Advisor | Business & International Tax  
Redacted | Redacted | 1 Horse Guards Road, London SW1A 2HQ

From: <Redacted@defra.gov.uk>  
Sent: Monday, December 13, 2021 5:09 PM  
To: <Redacted@gov.scot>; <Redacted@gov.wales>; <Redacted@daera-ni.gov.uk>  
Cc: <Redacted@daera-ni.gov.uk>; <Redacted@defra.gov.uk>;  
<Redacted@gov.scot>  
Subject: RE: Scotland's DRS - Ministerial announcement tomorrow

Thanks for the heads up Redacted – appreciate it.

From: <Redacted@gov.scot>  
Sent: 13 December 2021 16:54  
To: <Redacted@defra.gov.uk>; <Redacted@gov.wales>; <Redacted@daera-ni.gov.uk>  
Cc: <Redacted@daera-ni.gov.uk>; <Redacted@defra.gov.uk>; <Redacted@gov.scot>  
Subject: Scotland's DRS - Ministerial announcement tomorrow

Folks

Just a heads-up that at 1720 tomorrow our Minister will update Parliament on delivery of DRS.

That much is in the public domain but, in confidence, she will be announcing her decision on when full implementation of our DRS is to be. I can tell you it will be before the timetable of late 2024 your governments have set out but I'm sure you'll appreciate I can't be more specific before the Minister tells Parliament. We will also make a few tweaks to our Regulations around crawlers, online takeback, and a few other points—we'll lay amending Regs in Parliament on Wednesday—but we're not touching the broad scope of the scheme e.g. all-in, including glass, etc.

Happy for you to share within your governments so long as anyone who you tell knows it goes no further till Ms Slater has sat down.

Best wishes

Redacted

Redacted

Circular Economy Unit  
Environmental Quality and Circular Economy Division, Directorate for Environment and Forestry, Scottish Government

Single Use Plastics and the UK Internal Market Act 2020  
Scottish Government Paper  
EFRA IMG 22 November 2021

Officials from the Scottish Government recommend that IMG-EFRA:

- (a)** Notes the recently laid regulations on single-use plastics (SUP) in Scotland and its intersection with the UK Internal Market Act 2020 (the Act);
- (b)** Note the Scottish Government's continued opposition to the IMA on grounds that the IMA undermines devolved decision-making and risks cutting across the common frameworks process;
- (c)** Note the options that have been considered to manage policy divergence and that alignment is not possible for this issue;
- (d)** As per conclusion from the Resources and Waste Common Framework working group, agree that an exclusion to the IMA can be an appropriate approach to be taken to mitigate the impact of the Act on the Scottish Government Regulations and future policy measures from all

- administrations; and
- (e) Agree in principle that the scope of any exclusion could cover policy measures relating to all single-use products and that officials should continue to develop further evidence and detail to support any future process.

## Background

1. Section 10 of the Act allows for the Secretary of State to amend the list of exclusions to the market access principles in the Act, by statutory instrument. The Act envisages exclusions being used, for example, to give effect to an agreement that forms part of a common framework, and provides that certain cases, matters, requirements or provision should be excluded from the application of the market access principles. The Act also requires the Secretary of State to have regard to the importance of facilitating access to the market within GB of qualifying Northern Ireland goods.
2. The process to grant exclusions to the IMA was agreed at a recent Ministerial quad. The wording of the text will be formally approved following a Whitehall write-round, from which no amendments are anticipated. The exclusion process outlines the steps necessary to for UK ministers to use delegated powers under the Act to exempt agreements reached within a common framework from the IMA's market access principles, in order for policy divergence to be managed across the UK.
3. The exclusions process is set out in a commitment to be laid before the UK Parliament and establishes that: the scope and rationale for the proposed exclusion will be communicated within the framework; the impact of the proposal and associated evidence will be considered consistent with established processes set out in the common framework; confirmed in the relevant common framework forum; and that when formalised, the relevant UK Secretary of State will seek approval of parliament by laying a draft statutory instrument before Parliament in accordance with the IMA. This process is not underpinned by a statutory obligation on UK ministers to Act in this way, but rests instead on a political commitment to do so. The success or otherwise of the agreement will therefore hinge on UK ministers honouring the commitments made.
4. This issue has been raised in the Resources & Waste Common Framework working group, where Scottish Government officials have suggested an exclusion as a means to manage policy divergence, whilst putting on record their Government's fundamental opposition to the IMA. The Welsh Government does not recognise an impact on the competence of either the Senedd or Welsh Ministers arising from the IMA, but (without prejudice to the ongoing litigation in relation to the IMA) their officials continue to work collaboratively on the possibility of an exclusion. Defra officials have been supportive of discussions taking place within the common framework, although without prejudice to the UK Government's final decision on whether to legislate for an exclusion. DAERA officials have also participated

in the discussions.

To respect the JMC principles (reproduced in Annex D) and devolution; and enable the common framework to operate as intended, the Scottish Government prefers as wide a scope as possible, within the known boundaries of current and future policy commitments and considerations. This will help to avoid a situation for all administrations where the framework has to repeatedly seek exclusions via the SI process as policies develop across nations in this framework area potentially resulting in time-consuming, overlapping, multiple and messy ongoing processes. For instance, wet wipes or oxo-degradable plastics are not included in the recently laid Scottish Government regulations but for both there is general consensus that swift action is necessary to limit plastic pollution. This is also the best way to deliver on commitments made during the passage of the Internal Market Bill that devolution and common frameworks would be protected through an exclusions process.

#### Work of the Waste and Resources Common Framework Group

1. The working group has considered various options to manage policy divergence in this area including:
  - Administrations legislate separately to planned timetables without an exclusion;
  - Administrations align their policy measures and legislative timetables;
  - An exclusion to the IMA covering only the Scottish Government Single-Use Plastic Regulations;
  - A broader exclusion to IMA; and
  - An exclusion covering the whole of the Waste and Resources Common Framework.
2. A joint working group paper was presented to the SOPB meeting on 7 October updating the group on work performed so far and seeking agreement to conduct further work into a potential exclusion to the IMA. Alignment in this policy area was agreed to not be possible due to uncertainty around the final content of UKG and WG legislation and the inability for UKG and WG to legislate as soon as SG. This was agreed previously at official and senior official level.
3. A significant amount of time and resources has been required to agree to an exclusion to the IMA in this instance, with further steps needed to work on the required detail for the SI process. For the process to work as intended, there should be no additional requirements placed on the common frameworks process beyond those that would apply were the Act not a consideration. Therefore steps should be taken to ensure that a sufficiently broad exemption is granted to mitigate the risk of multiple similar and overlapping exemptions being requested in future.

#### Exclusions considered

4. Per the work performed above, the following approaches to an exclusion to the effects of the IMA have been identified.

5. Broader Exclusion: Under this option SG bans the SUP items first and UKG makes regulations for an exclusion that goes wider than the items listed in the Scottish Government's regulations / proposed UKG and Welsh Government proposals. For instance, this could include all single-use items to enable flexibility in future policy work.
6. A broader scope would have the advantage of future-proofing the exclusion, thereby avoiding the need for another exclusion if/when additional items are banned in England, Wales or Scotland at a later date. A wider scope would not immediately impose any additional costs on businesses or impact the internal market beyond the option above (because the exclusion would not affect sales until items are banned in one part of GB) but may do so in future.
7. This is a more ambitious approach and will potentially be more time-consuming to pursue (e.g. we will need to consider how much wider the scope should go and how the scope can be legally defined in law). However, officials have a clear sense of measures that should be included by this approach and can work with respective legal teams to define an appropriate scope of exclusion.

A future-proofed exclusion could save time in the future as an exclusion would not be required each time one of the four nations took a different approach to tackling other SUP items not covered by existing proposals. Importantly, this also maximises the impact and pace of Environmental policy across the different nations. Whilst it is the Scottish Government who are driving the process in this instance, it is conceivable that it could be wither the WG or UKG who may need to seek an exclusion for the next iteration of policy development if only a narrow exclusion was pursued initially. Therefore there is shared benefit and fundamentally it is in the interest of the Environment across all nations for a pragmatic solution to be sought.

8. There are significant consequences of this process taking too long however. The Scottish Government Regulations come into force on 1 June 2022 and any exclusion should be in force by this date to mitigate the impact of the IMA and to ensure they are fully effective.
9. Resources and Waste Common Framework Exclusion: The IMA states that the list of exclusions to the market access principles may, by regulations be amended by a UK Secretary of State. By way of example, the Act states that this could be used to "give effect to an agreement that forms part of a common framework agreement". Therefore, an exclusion could be introduced to cover any area, or all areas where divergence is agreed under the Resources & Waste common framework agreement.
10. This form of exclusion would be less time consuming than the options above due to the reduced number of exclusions and would enable the common

framework to operate in the manner it was intended to manage the impact of policy divergence. However, whilst this would be a preferred option of the Scottish Government due to its fundamental opposition to the IMA, it is recognised that this may well be most complex and sensitive avenue and therefore there is a willingness to engage practically with the Common Framework process and work through a pragmatic solution for the policy issue in question.

#### Exclusion recommended

22. As noted above, a considerable amount of time and resources have been spent across the administrations in working through this process. There is a strong concern that granting a narrow exclusion in this instance will result in a high number of future requests for exclusions and this will be so time consuming it will significantly impact on the ability to complete routine policy work.
23. Future policy measures could include banning the supply of further products, deposit return schemes, actions on wet wipes, extended producer responsibility schemes. These are measures that can have significantly positive impacts on the environment.
24. The exclusion should be based on broad principles of policy measures that look to limit the environmental impact of single-use products and not on technical product definitions. However exact details regarding scope can be further developed by officials to ensure clear boundaries to any form of exclusion.

#### Conclusion

25. The Scottish Government recommends that an exclusion to the impacts of the IMA covering all single-use items is pursued and work is continued by officials to gather necessary evidence and outline the detail of such an exclusion. To ensure that environmental policy being a devolved policy area is respected, any exclusion granted should be broad enough to cover the policy measures noted in Annex A and future policy decisions.

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

□□□□

T: 0300 244 4000  
E: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

The Rt Hon Lucy Frazer QC MP  
Financial Secretary to the Treasury  
HM Treasury

*[by email to:  
[FST.correspondence@hmtreasury.gov.uk](mailto:FST.correspondence@hmtreasury.gov.uk)]*

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8 October 2021

Dear Lucy

## SCOTLAND DEPOSIT RETURN SCHEME AND VAT TREATMENT OF DEPOSITS

Congratulations on your recent appointment as Financial Secretary to the Treasury.

I write in relation to Scotland's deposit return scheme for single-use containers (DRS) and the proposed Value Added Tax (VAT) treatment on the associated deposits.

I know that your officials have been discussing this issue with my officials and I am grateful for their constructive engagement on the matter. I am also aware that Circularity Scotland Ltd, our scheme administrator, has recently written to you.

Deposit return schemes are well-established in countries across Europe and have been found to be highly effective in both improving recycling rates and reducing litter. The Scottish Government remains clear that the purpose of the DRS is environmental and is not intended to generate any new revenues, a position we assume is common to all the UK nations developing such schemes. Our scheme is an important commitment to make the best use of our resources as part of a more circular economy and move us towards meeting our ambitious climate change targets.

I understand that the current proposal from HM Treasury is to implement a 'VAT neutral' solution, whereby the deposits will be subject to VAT at different rates depending on the type of beverage being sold, with a further adjustment required when the containers are returned. Whilst I appreciate HM Treasury has actively sought to present a solution, I noted with concern the points raised by Circularity Scotland in their letter and the range of issues that would remain. I understand these concerns are shared across industry bodies. I also note that Circularity Scotland have presented their own legal advice regarding the application of the Regulations, and appreciate that HM Treasury and HM Revenue and Customs are considering this further.

Whilst the legal issues are being given due consideration, I wanted to take this opportunity to urge you to consider the alternative, and arguably simpler, solution to change your policy position. The issues raised by Circularity Scotland and from industry bodies will clearly have a significant impact on the operability and timescales for delivery of our scheme and indeed of future schemes that may be rolled out across the rest of the UK. I would strongly urge you to consider the benefits of a much simpler approach to exclude deposits of this kind from VAT.

I am keen to ensure a positive resolution of this issue by the end of this month as it risks holding up industry progress on the implementation of our scheme. I therefore request that you consider the simpler approach that I and industry propose. This would be a positive signal of the UK Government's commitment to respond to the climate emergency in the run- up to COP26.

I look forward to hearing from you in the coming weeks.

Kind regards

LORNA SLATER