

Copies of all correspondence between the Scottish and UK Governments in relation to the potential exclusion for the Deposit Return Scheme from the UK Internal Market Act since April 2021.

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

□□□□

T: 0300 244 4000
E: scottish.ministers@gov.scot
Rt Hon Michael Gove MP
Secretary of State for Levelling Up, Housing and
Communities and Minister for Intergovernmental
Relations
2 Marsham Street
London
SW1P 4DF

28 February 2023

Dear Michael

The First Minister has today written to the Prime Minister emphasising the need to maintain momentum in the UK Government's consideration of the exclusion of the Scottish deposit return scheme (DRS) regulations from the Internal Market Act.

In her letter, the First Minister noted concern at press coverage, reflecting comments made by UK Government Ministers in the Commons and the Lords, as well as briefing from "senior UK Government sources", claiming that the Scottish Government has not yet requested an exclusion for DRS from the Internal Market Act's market access provisions, and that UK Government is not minded to agree such an exclusion. This coverage comes at a critical moment for business confidence in the scheme.

To maintain this confidence, and counter the inaccurate information in these press reports, the Scottish Government is today releasing an exchange of correspondence between John Swinney and Victoria Atkins at HM Treasury from January and February of this year (attached for your information). We are also publishing a timeline setting out the steps taken to secure an Internal Market Act exclusion.

We would not normally release UK Government letters to the Scottish Government, but in these circumstances we are compelled to ensure that an accurate record of the interaction between the governments is in the public domain and reassure stakeholders and the public about the Scottish Government's actions.

I am copying this letter to the First Minister and John Swinney; Alister Jack, Therese Coffey and Victoria Atkins.

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Kind regards



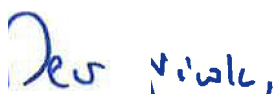
LORNA SLATER



**10 DOWNING STREET
LONDON SW1A 2AA**

THE PRIME MINISTER

3 March 2023




Thank you for your letter of 28 February, regarding the Scottish Government's Deposit Return Scheme (DRS).

I support the Scottish Government's ambition to reduce emissions and tackle litter, both of which are key to helping protect our environment in the long term. Transitioning to net zero is critical and I am pleased that we both share an ambition to achieve this for the benefit of everyone across the UK.

I welcome ongoing work between our governments on the operation of deposit return schemes across the UK. As I am sure you will understand, the bar for a UK Internal Market exemption is high. All the relevant UK Government ministers will consider any request in the usual way when received. The UK Government will continue to work closely with the Scottish Government on this matter.

I have shared your letter with the Secretary of State for the Department for Environment, Food and Rural Affairs.

Thank you, once again, for writing to me.



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The Right Honourable Nicola Sturgeon MSP

From: [Redacted]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Finance

Sent: 31 March 2023 17:55

To: PSMichaelGove@levellingup.gov.uk

Cc: Deputy First Minister and Cabinet Secretary for Finance <DFMCSF@gov.scot>; First Minister <firstminister@gov.scot>; [Redacted]@no10.gov.uk; secretaryofstate@ukgovscotland.gov.uk; Ministerial.Correspondence@levellingup.gov.uk

Subject: Letter from the Deputy First Minister and Cabinet Secretary for Finance - 31 March 2023

PS/Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations

Copied:

PS/Prime Minister

PS/Secretary of State for Scotland

PS/First Minister

Please find attached a letter from the Deputy First Minister and Cabinet Secretary for Finance.

Kind regards,

[Redacted] (she/her)

Deputy Private Secretary to the Deputy First Minister and Cabinet Secretary for Finance – Shona Robison MSP

The Scottish Government

St Andrew's House | Regent Road | Edinburgh | EH1 3DG

T: 0131 [Redacted] | M: [Redacted] | E: DFMCSF@gov.scot

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Deputy First Minister and Cabinet Secretary
for Finance



Leas Phrìomh Mhinistear agus Rùnaire a'
Chaibineit airson Ionmhas

Shona Robison MSP

Seòna Robastan BPA

F/T: 0300 244 4000

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Rt Hon Michael Gove MP
Secretary of State for Levelling Up, Housing and
Communities and Minister for Intergovernmental
Relations
PSMichaelGove@levellingup.gov.uk

31 March 2023

Dear Michael,

Thank you for your letter congratulating the First Minister on his appointment. As Cabinet Secretary with responsibility for intergovernmental relations, I welcome your acknowledgement of the importance of engagement between governments that is open, frank and constructive. I am committed to fostering a relationship based on mutual respect and trust. It is in that spirit that I am writing to follow up a number of issues raised by the First Minister during his call with the Prime Minister.

[Redacted] – Out of Scope

Deposit Return Scheme (DRS)

Scotland's Deposit Return Scheme will be a major part of our efforts to reduce litter, cut greenhouse gas emissions and build a greener, more circular economy. The First Minister noted in his conversation with the Prime Minister on 28 March the importance of the UKG granting an exclusion from the Internal Market Act (IMA) to help secure the successful delivery of Scotland's DRS.

I am sure that you are well aware of the Scottish Government's view that the IMA is damaging to devolution and undermines the exercise of devolved competency. However, there has been constructive engagement between the Scottish Government and DEFRA about the need for an exclusion as recommended by the Resources and Waste Common Framework. My colleague, Mairi McAllan, Cabinet Secretary for Net Zero and Just Transition will write to Thérèse Coffey shortly reconfirming the need for an early decision from UK Ministers. However, I would welcome your assurance that a conclusion will be reached in good time so that business and other stakeholders can have the clarity they need.

[Redacted] - Out of Scope

I also want to highlight two further issues that require urgent attention.

[Redacted] – Out of Scope

[Redacted] – Out of Scope

I am copying this letter to the First Minister, the Prime Minister and the Secretary of State for Scotland.

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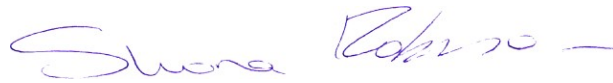
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SHONA ROBISON

From: [Redacted]@gov.scot> **On Behalf Of** Cabinet Secretary for Net Zero & Just Transition
Sent: 03 April 2023 10:46
To: secretary.state.Badenoch@beis.gov.uk; Secretary.State@defra.gov.uk
Cc: First Minister2023 <FirstMinister2023@gov.scot>; Deputy First Minister and Cabinet Secretary for Finance <DFMCSF@gov.scot>; Cabinet Secretary for Rural Affairs, Land Reform and Islands <CabSecRALRI@gov.scot>; Cabinet Secretary for Constitution, External Affairs & Culture 2023 <CabSecforCEAC@gov.scot>; Cabinet Secretary for Wellbeing Economy, Fair Work & Energy <CabSecWEFWE@gov.scot>; Cabinet Secretary for Net Zero & Just Transition <CabSecNZJT@gov.scot>
Subject: Correspondence from Mairi McAllan, Cabinet Secretary for Net Zero and Just Transition.

Good morning,

Please find attached correspondence from Mairi McAllan, Cabinet Secretary for Net Zero and Just Transition.

Kind regards,

[Redacted]

[Redacted]
Deputy Private Secretary
Cabinet Secretary for Net Zero and Just Transition
CabSecNZJT@gov.scot

[Redacted]

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Cabinet Secretary for Net Zero and Just
Transition
Mairi McAllan MSP



T: 0300 244 4000
E: scottish.ministers@gov.scot
Thérèse Coffey MP
Secretary of State for Environment, Food and Rural
Affairs
Department for Food, Environment and Rural
Affairs
By Email: Secretary.State@defra.gov.uk

Kemi Badenoch
Secretary of State for Business and Trade
By Email: secretary.state.Badenoch@beis.gov.uk

3 April 2023

Dear Thérèse and Kemi,

I have the honour to have been appointed by the First Minister to the role of Cabinet Secretary for Net Zero and Just Transition. Having worked with you and your teams in my previous role as Minister for Environment and Land Reform, I look forward to maintaining our constructive working in addressing a number of critical issues relevant to our respective portfolios. One of the most pressing issues, on which I am writing today, is Scotland's Deposit Return Scheme (DRS).

Let me begin by confirming, as the First Minister did in his call with the Prime Minister on 28 March, that Scottish Ministers are committed to the success of Scotland's DRS. The scheme will be transformational in our efforts to reduce littering, cut emissions and build a more circular economy, and I know you share these ambitions as part of our respective government efforts in tackling the climate change and nature emergencies. Many aspects of our scheme have and will continue to inform work undertaken on DRS in the rest of the UK. I would like to take this opportunity to recognise the very constructive collaboration underway with DEFRA officials and the other devolved governments to maximise the interoperability of DRS across the UK, while respecting that waste management is a devolved policy area.

However, there are two issues critical to successful delivery of this wholly devolved policy that are dependent upon UK Government decisions. The first issue is an exclusion from the Internal Market Act (IMA). As you will be aware from discussions in the Inter-Ministerial Group on Environment, Food and Rural Affairs, Lorna Slater, Minister for Green Skills, Circular Economy and Biodiversity has been pressing for urgent clarity from UK Government on a decision on an exclusion.

The continuing uncertainty due to the absence of a UK Government decision to date is Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See

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undermining business confidence and delaying investment in Scotland's DRS, with consequent impacts for maintaining confidence in rest of UK schemes. At the last IMG on 6 March, DEFRA Ministers recognised that: the Scottish Government has followed at all times the agreed process between UK Government and devolved governments for excluding certain policies from the IMA; the relevant Common Framework (Resources and Waste) has recommended an exclusion; and that a UK Government decision should be anticipated at the next IMG on 17 April. I am seeking UK Government assurance that this momentum will be maintained in delivering an exclusion before Scotland's DRS launches in order to provide the urgent clarity that businesses need.

Lorna Slater and I would be happy to discuss this with you, Thérèse, ahead of IMG to support your efforts in rapidly agreeing a UK Government decision that respects the outcome of the common framework process and the powers and responsibilities of the Scottish Parliament.

The second issue falls under the responsibilities of the Department for Business and Trade and concerns how deposits should be displayed under trading standards law. Scottish Government and industry share the view that the price of a deposit should be separate to the price of the drink (for example, £1 plus 20p deposit). We understand this position is also shared by DEFRA and Welsh Government. This is the approach taken by other European schemes which share the same underpinning (retained EU) legislation. The approach maximises recycling, provides greatest clarity for consumers and removes potential trade distortions resulting from the deposit being included in the price. However, trading standards officers have taken a different view; they consider that the selling price should include the deposit since they interpret the requirement for the selling price to include all taxes meaning that it should include all compulsory charges such as a deposit. Businesses regard this as a significant issue, and one which will impact all DRS across the UK. We have continuing engagement with the Department for Business and Trade, where the relevant legislation sits and which is silent on how deposits should be treated, although I am concerned that a satisfactory solution is not yet in place. Our preference would be for amendments to be made to the Price Marking Order 2004 to clearly state that Deposit Return Scheme deposits should not be considered as part of the final selling price of a drink. This would provide certainty for retailers and allow for a consistent approach across all schemes that are to be introduced in the UK. Should this not be achievable in the time available prior to the launch of DRS in Scotland, we would ask that the Department for Business and Trade issue a specific policy statement/guidance to Trading Standards officers in order to address the current interpretation of the Price Marking Order 2004 as it relates to DRS deposits. I look for your support, Kemi, in expediting a clear and consistent UK Government policy direction that deposits should be separate from the price of a drink.

As noted, Scotland's DRS will be significant in maintaining confidence in schemes across the rest of the UK and our collective efforts in successfully delivering a cost-effective transition to net zero. I trust that UK Government will support urgent resolution of these long running outstanding issues on the IMA and trading standards. My ministerial team and officials look forward to meetings with you as required and as soon as possible to bring these issues to a successful conclusion.

I am copying this to the First Minister, Deputy First Minister, Cabinet Secretary for Rural Affairs, Land Reform and Islands, Cabinet Secretary for Wellbeing Economy, Fair Work and Energy, and Cabinet Secretary for Constitution, External Affairs and Culture.

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Yours sincerely,



MAIRI MCALLAN MSP

From: Parliament, CabinetTeam [Redacted]@defra.gov.uk>

Sent: 13 April 2023 17:15

To: Cabinet Secretary for Net Zero & Just Transition <CabSecNZJT@gov.scot>

Cc: [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>;

[Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; SO Min Corr Mailbox

<[Redacted]@ukgovscotland.gov.uk>; PS/ Secretary of State <Secretary.State@defra.gov.uk>;

[Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>;

[Redacted]@defra.gov.uk [Redacted]@defra.gov.uk>; Secretary, Permanent

<PermanentSecretary@defra.gov.uk>; secretary.state.Badenoch@beis.gov.uk;

[Redacted]@defra.ecase.co.uk

Subject: Interministerial Correspondence: Scotland's Deposit Return Scheme (Thérèse Coffey - Mairi McAllan)

Please see attached letter from Thérèse Coffey to Mairi McAllan

Regards

[Redacted]

[Redacted] | Parliamentary and Cabinet Business Team | Department for Environment, Food and Rural Affairs | Direct line: [Redacted] | Email: [Redacted]@defra.gov.uk | Address: 4th Floor, Seacole Building | 2 Marsham Street | London SW1P 4DF

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Department for Environment Food & Rural Affairs

The Rt Hon Thérèse Coffey MP
Secretary of State Environment, Food & Rural Affairs

Seacole Building 2 Marsham
Street London
SW1P 4DF

T: +44 (0) 3459 335577

E: correspondence.section@defra.gov.uk W:
gov.uk/defra

13 April 2023

Mairi McAllan MSP
Cabinet Secretary for Net Zero and Just Transition
Scottish Government
St Andrew's House
Edinburgh EH1 3DG

Dear Mairi,

Thank you for your letter dated 3 April 2023 regarding the Scottish Deposit Return Scheme.

Firstly, congratulations on your appointment as Cabinet Secretary for Net Zero and Just Transition. As you point out, we have shared ambitions on climate change and nature.

Your request for an exclusion from the UK Internal Markets Act was discussed at the IMG EFRA on 6 March. You reference the relevant Common Framework in your letter; the outcome of the discussions between officials was to recommend the request be considered by ministers.

My officials, including the Defra Permanent Secretary, have discussed your letter with their counterparts in your Government and I believe the next step is a discussion of outstanding issues at the IMG on 17 April. Unfortunately, I will not be at that meeting as I will be returning from the G7 Environment meeting, but I look forward to receiving a summary of the discussions.

I note the DRS featured in the recent SNP leadership contest. In response to concerns raised by stakeholders, your First Minister made commitments during his leadership campaign to change the scheme to ease pressures on small businesses by exempting them for the first year. Following his election, the First Minister's spokesperson indicated he was considering next steps and discussions were taking place. I understand a review of the scheme, including a small business exemption and other potential changes, is currently underway. These factors are pertinent to the UK Government's consideration of your exclusion request and I would welcome updates on any changes that may affect Scottish Ministers, special advisers and the Permanent Secretary are

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the scope or timing of your scheme at the IMG on 17 April.

The timelines for our decision making have, understandably, been affected as we await confirmation of any changes to the scheme resulting from leadership changes to the Scottish Government. Given your policy has not been finalised, we will not be able to make a decision on the UKIM exclusion request by the IMG on 17 April. We would appreciate confirmation of the outcomes of the review into scope of the Scottish DRS scheme and any changes that are being made as a result, to enable us to consider the request. The Director responsible for this area, Emma Bourne, will be holding regular meetings with Directors in the Scottish Government.

On how deposits should be displayed, as you have identified, the responsibility lies with the Department for Business and Trade. We are working closely with our colleagues there as they consider this matter fully and will continue to engage with the Scottish Government. I have asked them to reply directly to you, which they will do shortly.

I am copying this letter to the Secretary of State for Business and Trade, Secretary of State for Scotland, the Defra Permanent Secretary and the Defra Director of Resources & Waste.

Yours sincerely,



**RT HON THERESE COFFEY
MP SECRETARY OF STATE,
DEFRA**



**10 DOWNING STREET
LONDON SW1A 2AA**

21 April 2023

THE PRIME MINISTER



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Thank you for your letter of 6 April, in response to my previous letter.

I agree that we face major challenges right now - restoring economic stability, gripping inflation, supporting people with their energy bills, strengthening our NHS, combatting climate change, supporting Ukraine and levelling up our country. I reiterated my priorities in our call, and I believe that now is the time for politicians across the UK to work together on tackling those challenges for the people we represent. I believe that is what people in Scotland want to see.

As you know, the UK Government has launched Track-2 of the Carbon Capture Usage and Storage (CCUS) cluster sequencing process and named Acom in Aberdeenshire as one of the leading contenders. The carbon capture sector is a priority for the UK Government, so we are progressing at pace and investing up to £20 billion over the next 20 years to help decarbonise our industries.

The introduction of a Deposit Return Scheme is a challenging and complex piece of work. I understand you have announced a delay to the implementation of the Scottish Government's scheme and are continuing to work with businesses to address their concerns. Once your policy has been finalised, we will be able to fully consider the Scottish Government's UKIM exclusion request. I am committed to working together on solutions which work for businesses and consumers across the UK.

Our officials will take forward plans for a further meeting between myself and the Heads of Devolved Governments Council later this year. I understand the Minister for Intergovernmental Relations is arranging an Inter-ministerial Standing Committee meeting in the coming weeks.

Thank you, once again, for taking the time to write.

*Yours sincerely,
Humza*

Mr Humza Yousaf MSP

Humza Yousaf MSP
First Minister of Scotland



St Andrew's House, Regent Road, Edinburgh
EH1 3DG
T: 0300 244 4000

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Rt Hon Rishi Sunak MP
Prime Minister
10 Downing Street
London
SW1A 2AA

22 April 2023

Dear Rishi,

I am writing to you regarding Scotland's Deposit Return Scheme (DRS) and to seek your support in finalising an exclusion from the Internal Market Act in line with the process agreed between our governments and by the end of April.

Scotland's DRS will reduce littering, cut emissions and build a more circular economy, ambitions which I know you share in tackling the climate and nature emergencies. Since Scotland's DRS regulations were approved by the Scottish Parliament in 2020, there has been substantial progress with around £300m of private investment made across the country in systems and infrastructure, creating hundreds of new green jobs in the recycling industry ahead of the scheme's launch.

This significant progress has, however, stalled over recent months. This has, unfortunately, largely been driven by the uncertainty that has been created by the ongoing absence of an Internal Market Act (IMA) exclusion. This is despite the Scottish Government consistently seeking an exclusion over the last two years, including a final detailed paper proposing the exclusion that our governments discussed in the Resources and Waste Common Framework on 13 February. Subsequently, we expected the UK Government to confirm a final position on an exclusion at the 17 April meeting of the Inter-Ministerial Group on Environment, Food and Rural Affairs. It was disappointing that this did not happen, and I hope that we can now move on from this and agree an exclusion promptly.

I welcome your commitment in your letter of 21 April to work together on solutions which work for business and consumers. We remain committed to sharing all our lessons learned with UK Government and the other devolved governments to support the roll out of future schemes across the rest of the UK and to the constructive on-going work on interoperability of schemes. In your letter you said that once our policy is finalised you would be able to fully consider our proposed exclusion. For the avoidance of doubt our DRS policy is final. Recognising that Scotland's DRS regulations and implementation are matters of devolved competence, I trust that the details of our announced measures and our continuing commitment to collaborative working on DRS will enable the UK Government to conclude your considerations positively.

On 18 April, I announced that we will delay the launch of our DRS to 1 March 2024. This gives businesses a full 10 months from now to get ready for launch. On 20 April, Lorna Slater set out to the Scottish Parliament a further package of measures (**Annex A**) to

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simplify the scheme and to support all businesses to participate. We also set out our continued commitment to the environmental ambition for the scheme, including the inclusion of glass as the most carbon intensive scheme material, and one of the most problematic litter items on our streets and beaches. Including glass increases the estimated economic benefits of the scheme by £300m over 25 years. Investments totalling over £200m have already been made to integrate glass collection into the infrastructure for DRS across Scotland.

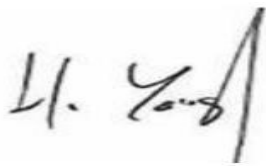
Following our announcements, Lorna Slater and I met with a wide range of producers, retailers and other businesses. They confirmed that they are keen to work with us at speed to resolve all remaining outstanding operation issues by mid summer to enable them to accelerate their preparations for launch by 1 March 2024. They were also clear that the uncertainty created by the absence of an exclusion from the Internal Market Act is undermining this. More broadly, this impacts investor confidence in Scotland's DRS and the UK schemes planned for 2025.

I would therefore be grateful for your assurance that the UK Government will confirm its intention to agree the exclusion by the end of April to remove the current uncertainty for business, and that you will move quickly to ensure that the necessary Statutory Instrument is progressed before the start of the UK Parliament summer recess.

In addition to the IMA exclusion, Scottish Government is also working with UK Government on issues related to Trading Standards which are important for producers and retailers.

Businesses need clarity and a consistent approach to deposit pricing across the UK and so we have requested amendments to the 2004 Price Marking Order to state clearly that deposits should not be considered as part of the final selling price. I seek the UK

Government's support in working with us, business and regulators to resolve these critical issues, and would appreciate your support in making this happen.



HUMZA YOUSAF

Annex A

Deposit Return Scheme package of simplification & business support

On 20 April 2023, the Circular Economy Minister, Lorna Slater, announced (<https://www.gov.scot/news/changes-to-deposit-return-scheme/>) a package of business support for drinks producers and retailers to prepare for and participate in Scotland's Deposit Return Scheme, while ensuring delivery of environmental benefits. The measures simplify and de-risk the scheme and support small businesses and hospitality in particular.

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In addition to the new launch date of 1 March 2024, as announced by the First Minister on 18 April 2023, the measures Scottish Government will be taking forward are:

- **exclude drinks containers under 100ml**; this will benefit businesses in the soft drinks, wine and spirits industries who have raised concerns on miniatures, while removing just 0.2% of articles from the scheme.
- **exclude products that sell fewer than 5,000 units per year**; this will apply to all businesses so a large business which has a niche product line with low sales volume will not need to apply a deposit to that line, and a small business which only sells low volume products will not need to apply a deposit to any of their products. This change will only remove around 0.5% of articles from the scheme but will remove the need for around 44% of businesses to apply a deposit to their products, effectively removing many of the smallest producers from the scheme. These producers will still need to register with SEPA so they can verify their exclusion.
- **exempt hospitality premises which sell the large majority of their drinks productions on the premises from acting as a return point**. Regulations already exempt premises that exclusively sell drinks on site, such as restaurants, pubs and nightclubs. Where hospitality businesses also sell a small proportion of drinks to takeaway, we agree it is disproportionate to ask them to operate as a return point given they will be operating a closed loop system for drinks on site. We will engage with hospitality businesses on the proportion of sales at which this will apply to ensure a balance between support for business and accessibility for consumers.
- in partnership with Zero Waste Scotland, **simplification of the online application process for retailers to apply for an exemption from operating a return point**, in response to business feedback
- Circularity Scotland, the scheme administrator, will also consider creating a **short- form producer agreement** to help reduce the burden on businesses with limited resource

These measures are in addition to our previous commitment to change online takeback requirements so that the majority of online retailers would not be obliged to provide takeback services and to the £22m package of support put in place earlier this year by the scheme administrator, Circularity Scotland, to improve cashflow for producers.

The fundamentals of Scotland's DRS are not changing. It remains a producer responsibility scheme, built on the polluter pays principle. There is no change to the materials in scope – glass remains part of the scheme as does our commitment to accessibility meaning return- to-retail model.

From: [Redacted]@defra.gov.uk>
Sent: 05 April 2023 09:22
To: [Redacted]@gov.scot>
Cc: [Redacted]@gov.scot>; [Redacted]@defra.gov.uk>; [Redacted]gov.scot>
Subject: RE: Criticisms of Scottish DRS

Thanks very much for this [Redacted],

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It's great - very thorough. I take your point about the different angles of critique against DRS, and it's always a mix of stuff that gets thrown out there. I'll let you know if we have any questions on this.

Shout out if you need anything from us in return!

Cheers

[Redacted]

From: [Redacted]@gov.scot <[Redacted]@gov.scot>

Sent: 04 April 2023 15:16

To: [Redacted]@defra.gov.uk>

Cc: [Redacted]@gov.scot; [Redacted]@defra.gov.uk>; [Redacted]@gov.scot

Subject: RE: Criticisms of Scottish DRS

Hi [Redacted], [Redacted]

Information below. This ended up being longer than I intended (and perhaps you expected) but no harm in sending you what we have. I understand that Kevin (my director) also spoke to [Redacted] yesterday.

I think criticisms generally fall into three camps, which I suggest have slightly different handling from a DRS policy perspective.

1. Criticisms of DRS *in general*. E.g. inflationary for consumers, costly for business, duplicates existing recycling systems etc. We have added some responses here, though presumably as Defra / UKG has also committed to introducing DRS you may not need this material from Scottish Government.
2. Criticisms of the Scottish DRS e.g. glass, timing, separate scheme etc. We have provided more information on this below
3. Criticism delivery and process e.g. rushed introduction, hasn't followed due process etc. This last one in particular really should be separate from the IMA process. Indeed, I've suggested previously that (constitutional issues aside) without an exclusion the ability to address any emerging issues associated with delivery is taken out of Scottish Ministers' hands, which creates problems, rather than fixing them. Though aware of concerns, so we've provided information below.

It's rushed, disorganised, and lacks critical clarity necessary to launch in August (TESCO re-iterated this today, and last minute request of UKIM exemption also raised in media recently)

- The Scottish Parliament approved the Deposit and Return Scheme for Scotland Regulations in 2020. That means there will have been more time between laying of Scottish Regulations and introduction of the scheme (3+ years) than is currently accounted for in the rest of the UK (Regulations not yet laid, intended introduction in Oct 2025).
- An extension to the go live date was announced in December 2021, giving industry additional time to prepare. At that time, businesses and the scheme administrator set out and committed to clear plans for implementation to meet an August 2023 launch.

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- As an industry-led scheme, responsibility for implementation rests with obligated businesses and the private sector scheme administrator, Circularity Scotland Ltd. This is the same approach that has been adopted by the UK Government.
- Circularity Scotland have published the information that businesses need to implement the scheme, including announcing all scheme fees in August 2022 (1 year before launch), publishing the producer agreement in November 2022, providing ‘operational blueprints’ and additional guidance and communications tools for all sectors, available [here](#). In addition, the scheme Regulator (SEPA) has maintained business-focused FAQs since 2022 ([here](#)) and additional services (such as the return point exemptions service) have been live since 2021. Trade associations and Zero Waste Scotland have also developed and published specific guidance to help businesses prepare for DRS (for example, [guidance for small retailers](#))
- There has already been upwards of £200m of investment in the scheme by retailers, producers, the scheme administrator, and the scheme logistics provider. This includes the physical infrastructure for the scheme (RVMs currently being installed in all major supermarkets), changes to supply chains (labelling, product lines, accounting systems), purchase of the logistics network (vehicles arriving in Scotland) and construction of counting centres across Scotland.
- On the IMA:
 - Scotland’s Deposit Return Scheme was announced in 2017, Regulations developed in 2018-2019 and Regulations passed by the Scottish Parliament in May 2020. The Internal Market Bill (now Internal Market Act) was not introduced until September 2020.
 - During the passage of the UK Internal Market Bill, the UK Government acknowledge the potential impact on Scotland’s DRS but stated that “we are confident that the deposit return scheme can be brought into effect in full compliance with the market access principles”
 - UK Government ministers have recognised that Scottish Government has followed at all times the process agreed between UK and devolved governments for excluding policy areas from the IMA
 - Scotland’s DRS has been the subject of discussion with UK Government since 2021
 - On 28 February, Scottish Government published correspondence with UK Government seeking an exclusion for Scotland’s DRS from the IMA, alongside a detailed timeline setting out the steps undertaken to secure an exclusion (<https://www.gov.scot/publications/internal-market-act-correspondence/>)

Adding unnecessary cost-pressures to businesses, with a particularly large burden on smaller businesses, both producers and retailers

Overall costs

- In line with the ‘polluter pays’ principle, and just like similar schemes around the world, Scotland’s deposit return scheme is being delivered and funded by industry, led by the scheme administrator, Circularity Scotland. This approach was supported by the Scottish Parliament.
- Scotland’s DRS was based on a full business case and full Business and Regulatory Impact Assessment (BRIA), both published before Regulations were pass in 2020. The business case for demonstrates that the overall net benefit of DRS is expected to be £615 million over 125 years.

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Extended producer responsibility:

- The Deposit Return Scheme in Scotland (and when introduced, the rest of the UK), will replace existing UK-wide Extended Producer Responsibility (EPR) costs faced by businesses placing over 50t of packaging on the market.
- The business case for DRS demonstrates that DRS is a more cost-effective approach to achieving the intended recycling outcomes than EPR. The *EPR for Packaging Consultation Document* estimates that the costs for packaging producers will increase from £200-300m a year, as currently incurred under the PRN system, to nearly £3bn per year in 2023/4. However, DRS articles will be exempt from EPR, representing a saving for drinks business compared to not operating a DRS.

Costs to producers have been reduced and additional support announced:

- Similar to schemes around the world, Scotland's DRS is an industry-run scheme. It is for drinks producers and retailers to work with the scheme administrator to deliver the most efficient scheme possible.
- As an example of this, in December 2022 Circularity Scotland announced new producer fees that are 8%, 30% and 40% lower than originally planned for glass, PET plastic and metal containers respectively
- There is no registration fee for producers with an annual turnover of £85,000 or lower
- In February 2023, Circularity Scotland has announced a £22m package of support to improve cashflow for producers, which will particularly benefit smaller producers.
 - Removal of the day one and month one charges for all producers, up to a threshold of three million units per year.
 - Above the three million unit threshold, the Day 1 payments for producers using UK wide barcodes has previously been reduced by two thirds, from 2.4 months of fees to 3 weeks of fees (announced in December 2022).
 - providing two month credit terms on deposits and fees up to the same volume threshold to reduce the working capital impact on all producers.
 - Circularity Scotland will be offering the option to use self-adhesive barcode labels for producers placing less than 25,000 units per year of a specific product on to the Scottish market to simplify administration.
- SEPA, the scheme regulator, has agreed that, where there are clearly evidenced operational challenges, they will take a proportionate approach to compliance. They have committed to providing advice and guidance as the preferred route to achieving compliance for businesses who are striving to meet their obligations.

Retailer support:

- The retailer handling fee was increased by up to 19% and means Scotland's deposit return scheme offers the highest retail handling fee compared to other deposit return schemes around the world.
- Small retailers (for example, those with an internal footprint under 100m², or food to go businesses) are likely to be eligible for an exemption from return point obligations.
- Updated guidance and support to make it clearer, easier and quicker for retailers wishing to apply for a return point exemption was published in December.
- Scottish Ministers have confirmed that they intend to bring forward amendments to remove the online takeback obligation from all but the largest **grocery retailers**.

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The range of products available for consumers in Scotland will decrease

- It is a commercial decision for individual businesses whether they wish to participate in this important environmental scheme by selling products in the Scottish market but we would encourage any business to contact Circularity Scotland in the first instance for support and to discuss any concerns they have.
- Producers representing 95% of containers placed on the Scottish market have already registered with CSL.
- There are no labelling requirements for the Scottish scheme and producers can continue to use UK-wide barcodes.
- In February 2023 CSL announced a stickering solution that will offer the option to use self-adhesive barcode labels for producers placing less than 25,000 units per year of a specific product on to the Scottish market to simplify administration.
- Scottish Ministers are considering additional support for small producers and specialist products at scheme launch

The policy is inflationary and will add to cost-of-living pressures, and in general is bad for consumers (eg purchase price of a multi-pack of water doubles) – [Redacted]– this one in particular seems to be to be a criticism of DRS in general (which I note is UKG policy too) rather than an issue with the Scottish scheme.

- The deposit will be fully returnable and retailers will be required to display information about this.
- Scotland's DRS was subject to full impact assessment, which considered the additional costs and impact of the deposit on consumers from different economic backgrounds.
- As highlighted above, similar to schemes around the world, Scotland's DRS is industry-run and it is for industry to deliver the most efficient scheme possible.
- DRS will also result in cost savings for some producers, hospitality businesses and local authorities.
- It is a commercial decision for individual businesses whether they increase their prices.

It's better to wait and align with wider UK scheme

- The Scottish Parliament approved the Deposit and Return Scheme for Scotland Regulations in 2020.
- Waste and recycling is a fully devolved policy area. The UK Government response of 20 January 2023 on introducing a deposit return scheme for England, Wales and Northern Ireland stated this and went on to say that "...it is the responsibility of each nation of the UK to decide on the approach to a DRS that fits its policy needs".
- As highlighted above, there has already been upwards of £200m of investment in the scheme by retailers, producers, the scheme administrator, and the scheme logistics provider with Circularity Scotland securing a number of sites across Scotland already to deliver the scheme, creating up to 200 jobs. A delay to late 2025 (at the earliest) at this stage would mean that this investment is lost, result in greater long-term costs for business, and undermine additional investment and job creation in Scotland as a result of the scheme.
- We continue to work closely with Defra and devolved governments to maximise interoperability of the schemes when they go live

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From: [Redacted]
Sent: 03 April 2023 12:50
To: [Redacted]@defra.gov.uk>
Cc: [Redacted]@gov.scot>; [Redacted]@defra.gov.uk>; Hamilton S (Susan)
<[Redacted]@gov.scot>
Subject: RE: Criticisms of Scottish DRS

Hi [Redacted]

Just to confirm we are working to get you something – likely tomorrow morning. Hope that's ok

[Redacted]

From: [Redacted]>
Sent: 31 March 2023 13:30
To: [Redacted]@gov.scot>
Cc: [Redacted]>
Subject: Criticisms of Scottish DRS

Hi [Redacted],

As discussed yesterday, it would be good to get your thoughts on some points in case we get questions on problems with the Scottish DRS. I've done a quick look at statements and media and here are the main points which might come up (e.g.

<https://www.endsreport.com/article/1816857/revealed-uk-government-warned-potential-trade-issues-scottish-bottle-recycling-scheme-2021>):

- It's rushed, disorganised, and lacks critical clarity necessary to launch in August (TESCO re-iterated this today, and last minute request of UKIM exemption also raised in media recently)
- Adding unnecessary cost-pressures to businesses, with a particularly large burden on smaller businesses, both producers and retailers
- The range of products available for consumers in Scotland will decrease
- The policy is inflationary and will add to cost-of-living pressures, and in general is bad for consumers (eg purchase price of a multi-pack of water doubles)
- It's better to wait and align with wider UK scheme

If it's easier to send an existing document on a wider set of points, feel free.

Cheers,

[Redacted]

[Redacted] ([he/him](#))

Policy - Deposit Return Scheme for drinks containers

Department for Environment, Food and Rural Affairs, Ground floor Seacole, 2 Marsham Street, London, SW1P 4DF

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From: Phillips, Lynne <[Redacted]@defra.gov.uk>
Sent: 09 February 2023 12:58
To: Director of Environment & Forestry <[Redacted]@gov.scot>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; Hill, David [Redacted]@defra.gov.uk>
Cc: DG Net Zero <DGNetZero@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <[Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@defra.gov.uk>
Subject: RE: IMA exemption

Kevin

Cc as before

Thanks for your email. As you note our teams have been working closely on this issue – I really appreciate the depth and quality of this engagement.

As you will be aware the work is following [‘The Process for considering UKIM Act exclusions in Common Framework areas’](#), which was developed between UKG and the Devolved Governments.

My understanding of the current position is that your team will table a paper at the Resources and Waste Common Framework Working Group Monday 13th February and that we, Daera and Welsh Government colleagues have had good opportunity to understand and feed into this paper. Thanks again.

We understand your case and its criticality. Assuming this group agrees to proceed with a request for a UK IMA exemption this would then be presented at the EFRA Senior Officials Programme Board on 22 February. As you will be aware, it is ultimately a Ministerial decision on whether to grant a UK IMA exemption.

Please be assured we are in parallel engaging our ministers and taking advice on appropriate UKG internal processes to maintain pace on this issue. We won't hesitate to get in touch if we

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need further information to support this engagement. I understand your concerns regarding timings and will do all I can to expedite a resolution.

I would be happy to have a follow up conversation if it would help – [Redacted] (cc) can help find a time

Regards
Lynne

Lynne Phillips | Director of Programme Delivery Environment Group | Department for Environment, Food and Rural Affairs | Office Hub is Foss House, Kingspool, 1-2 Peasholme Green, York, YO1 7PX
Direct line: [Redacted] | Email: [Redacted]@defra.gov.uk
Diary Manager: [Redacted] | Telephone: [Redacted] / [Redacted] | Email: [Redacted]@defra.gov.uk

Say My Name: Lin Fil-lips
Pronouns: she/her (why have I put this?)

From: [Redacted]@gov.scot>
Sent: 08 February 2023 15:56
To: [Redacted]@defra.gov.uk>; Phillips, Lynne [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>
Cc: [Redacted]@gov.scot; [Redacted]@gov.scot; [Redacted]@gov.scot; [Redacted]@gov.scot; [Redacted]@gov.scot
Subject: IMA exemption
Importance: High

[Redacted] / [Redacted]

The BBC has run this story on IMA wrt to DRS for Scotland. <https://www.bbc.co.uk/news/uk-scotland-64563015> The story appears to have been sourced from [Redacted] KC representing distillers.

As you know we have been having productive discussions with DEFRA and UKG on an IMA exemption. Furthermore our DFM wrote to Mr Gove and Mr Hunt on this last week. However, this new BBC story comes at a time of ever heightened industry nervousness and at a critical moment for maintaining momentum on producer and retailer registrations with CSL.

Can we please meet urgently to work what can be done to fast-track a commitment to an IMA exemption within the next week. If it lingers beyond then we run a very serious risk of compromising our 16 Aug go live date.

I am copying in my DG Roy Brannen and [Redacted] and I think it is likely that our PS will raise with [Redacted]

Can your office please liaise with Katriona's EA [Redacted] to fix a time asap.

Many thanks

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Kevin

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

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From: [Redacted]@defra.gov.uk>
Sent: 21 February 2023 13:16
To: [Redacted]@gov.scot>
Subject: Quick chat

Hi [Redacted],

Hopefully some info has filtered down from Kevin on work we've been doing on your UKIMA exclusion request. I could do with a quick chat for some help with some questions when you get chance – let me know when you are free.

[Redacted]

[Redacted] Deputy Head - Collection & Packaging Reforms: Deposit Return Scheme for drinks containers
Department for Environment, Food and Rural Affairs, Ground floor Seacole, 2 Marsham Street, London, SW1P 4DF

[Redacted]

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From: [Redacted]@defra.gov.uk>
Sent: 15 December 2022 11:12
To: [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]daera-ni.gov.uk>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@daera-ni.gov.uk>; [Redacted]@gov.wales>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@daera-ni.gov.uk>; [Redacted]@gov.wales>; [Redacted]@gov.wales>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; Carmichael K (Katriona) [Redacted]@gov.scot>; [Redacted]@wales.gsi.gov.uk>; [Redacted]@daera-ni.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>
Subject: Common Framework R&W Working Group - agenda and papers - Monday 19th December

Hi all,

Attaching the agenda and papers for Monday's meeting.

- File: 1 [Redacted] – Out of Scope
- File: 2 [Redacted] – Out of Scope
- File: 3 [Redacted] – Out of Scope
- File: 4. DRS - [Redacted]

[Redacted] – out of scope **If anyone has any additions, please return by our meeting on Monday.**

Best wishes,

[Redacted]

[\[Redacted\] \(they/them\) | Strategic Stakeholder Engagement Lead | Resources & Waste Division | Environmental Quality | Department for Environment, Food and Rural Affairs](#)

[\[Redacted\]@defra.gov.uk | \[Redacted\] | 2 Marsham Street, London SW1P 4DF](#)

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From: [Redacted]@defra.gov.uk>
@defra.gov.uk>

Sent: 09 February 2023 14:30

To: [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@daera-ni.gov.uk>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@daera-ni.gov.uk>; [Redacted]@gov.wales>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@daera-ni.gov.uk>; [Redacted]@gov.wales>; [Redacted]@gov.wales>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.wales>; [Redacted]@daera-ni.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@daera-ni.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@defra.gov.uk>; Carmichael K (Katriona) [Redacted]@gov.scot>; [Redacted]@gov.wales>; [Redacted]@gov.wales>; [Redacted]@levellingup.gov.uk>; [Redacted]@defra.gov.uk>; [Redacted]@gov.scot>

Cc: SM-Defra-RRW Strategy [Redacted]@defra.gov.uk>

Subject: DRS paper for Common Framework Working Group meeting - Monday 13th Feb

Hi all,

With many thanks to [Redacted], please find attached the DRS paper ahead of Monday's meeting.

[Redacted]

FYI we have received a letter from the House of Lords Scrutiny Committee on our CF. [Redacted] will kindly add a slot in the agenda to inform/discuss.

Best wishes,

[Redacted]

[Redacted] (they/them) | Strategic Stakeholder Engagement Lead | Resources & Waste Division | Environmental Quality | Department for Environment, Food and Rural Affairs

[Redacted]@defra.gov.uk | [Redacted] | 2 Marsham Street, London SW1P 4DF

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[Redacted]

Discussion paper shared with Resources and Waste Common Framework Group

RESOURCES AND WASTE COMMON FRAMEWORK WORKING GROUP 13 FEBRUARY 2023

Discussion paper: Deposit Return Scheme (DRS) and exclusion from the Internal Market Act 2020

Purpose and Recommendations

1. To set out Scottish Government's proposal for an exclusion to be agreed from the Internal Market Act 2020 (IMA) in relation to operation of Deposit Return Schemes, and to ask the Resources and Waste Common Framework Working Group to:
 - **note** that the operation of the IMA presents a significant risk to the policy effect of the planned Scottish DRS regulations and, given plans in development across UK nations, it is likely the IMA will impact on the effect of policy across nations;
 - **agree** that it is not possible to secure alignment of policies across UK nations ahead of the commencement of the Scottish DRS scheme on 16 August 2023;
 - **note** the Scottish Government's view that an exclusion to the IMA that is wide enough in scope to cover policy proposals across the four nations of the UK should be pursued and implemented prior to the Scottish DRS scheme launch on 16 August 2023; but that, as a minimum, there is a requirement for an IMA exclusion for Scottish DRS regulations in advance of this date;
 - **agree** that officials should seek the views of their respective Ministers on the issue of the proposed DRS exclusion and its scope prior to the planned Senior Officials Programme Board meeting in February 2023, and Inter-ministerial Group meeting in March 2023.

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- **agree** to set out an outline timeline to allow any enabling legislation to be drafted and passed by the UK Parliament in advance of the Scotland scheme going live in August 2023, should an exclusion be agreed by respective Ministers.

1. Background and context

The Scottish Government raised this issue under the Framework's decision-making and dispute resolution process at a meeting on 4 October 2022 to explore the potential for UK alignment, or manage intra-UK policy divergence in a manner that respects devolution and in accordance with the JMC(EN) principles for Common Frameworks.

Scottish Government, working with other administrations, brought a paper to the Resources and Waste Common Framework Working Group in December 2022, noting the sources of divergence, implications for Scotland's DRS, and seeking agreement to a common framework exclusion.

The group:

- recognised that there was divergence in policy, most notably the difference in launch dates
- acknowledged the risks that the IMA posed to the operation of Scotland's DRS
- emphasised the importance of evidence to enable examination of the full impacts of the IMA and all potential routes to manage these
- requested that a further paper is brought back to the Waste Common Framework Working Group in order to reach a decision.

2. Scotland's DRS: Summary

Scotland's Deposit Return Scheme (DRS) will launch on 16 August 2023. The scheme will introduce a 20p deposit on all purchases of drinks containers (known as scheme articles) from 50ml to 3l in size that are made of glass, metal or PET plastic. Consumers will be able to return empty containers to a return point and then get the deposit back.

DRS is an industry-run scheme, meaning that implementation is managed by a private scheme administrator Circularity Scotland Ltd (CSL). All drinks producers, retailers and hospitality businesses have specific obligations under the scheme.

The scheme is anticipated to collect 90% of specified cans and bottles for recycling, reducing the £46 million of public money in Scotland spent cleaning up litter every year and reducing CO₂ emissions by the equivalent of around 4 million tonnes over 25 years (equivalent to taking 83 000 cars off the road in the UK).

3. Progress on delivery

Implementation is at an advanced stage of implementation now approx. 7 months from launch. Very significant investment (money, resource, time) by industry in scheme.

- [Redacted]
- [Redacted]
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- [Redacted]
- [Redacted]
- [Redacted]

4. Work to date on IMA implications

Sources of divergence

DRS Regulations were developed and consulted upon in Scotland from 2018-2020, and approved by the Scottish Parliament in May 2020. Scotland's DRS Regulations were passed prior to the introduction of the UK Internal Market Bill.

England, Wales and Northern Ireland will introduce deposit return schemes, such that there is broad alignment across UK nations in policy direction and intent. Details of rUK schemes were published on 20 January 2023. There are two main sources of divergence with the Scottish scheme related to timing and scope.

First, the Scottish DRS will launch on 16 August 2023 (date set in the DRS Regulations). There is a target launch of schemes in England, Wales and NI of 01 October 2025. This means there will be over two years in which Scottish DRS obligations apply fully to products produced in, or imported to Scotland, but not to products coming into Scotland that are produced in, or imported to other parts of the UK. **Addressing this divergence is urgent given we are less than seven months from the launch of DRS in Scotland.**

Second, there are differences in scope between schemes, notably the inclusion of glass in Scotland and Wales, but not in England and Northern Ireland. There is shared intent to ensure schemes are interoperable – **this will form the focus of future work.**

Common Framework exclusion

A process for excluding certain areas within Common Frameworks from the IMA has been agreed between the UK and devolved governments (Written Ministerial Statement laid in the UK Parliament 9 Dec 2021). This process seeks to enable Common Frameworks to manage devolved policy divergence across the UK, ensuring respect for devolution, by providing a pathway to consider and agree exclusions to the IMA for relevant policy areas (Annex A).

The Scottish Government is of the view that, without an exclusion, **the IMA will undermine the devolution settlement and risk crucial environmental goals, by constraining the policy effect of legislation within devolved competence.** The exclusions process should prevent this from occurring by managing policy divergence in areas of devolved competence while respecting devolved competency.

The remainder of this paper will focus on the ways in which the IMA is likely to impact on the operation of Scotland's DRS, including both policy and economic outcomes.

5. Redacted

6. Redacted

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7. Implications of the IMA: Policy outcomes

Recycling rates. Unlikely to see the intended increase in recycling rates of scheme articles if the scheme failed to operate, or only small increase if scheme partially operating. Potential for a reduction in overall recycling rates as result of consumer confusion, disillusionment, or changes to local authority services to prepare for DRS.

Litter reduction. Unlikely to see decrease in litter, potential to see increase due to local authority changes e.g. to collections, infrastructure.

Full net cost recovery. Packaging producers and importers not responsible for funding the collection, transport, sorting and treatment of packaging waste. Unclear how would interact with extended producer responsibility.

8. Redacted

9. Impact of IMA exclusion for DRS

If a Common Framework exclusion is granted for Scotland's DRS, this would enable the regulations passed by the Scottish Parliament to function as intended, thereby respecting devolution and delivering significant environmental benefit within Scotland and beyond.

There will be a limited and managed impact on the way in which the UK's internal market operates. **Non-scheme articles (i.e. articles not registered for sale onto the Scottish market) could not be sold in Scotland**, but could still be sold in other parts of the UK.

Scheme articles could be sold in Scotland and in other parts of the UK, where producers use a UK-wide barcode. The decision not to register an article for sale in Scotland would be a commercial decision by a producer.

Limited. This would be a time-limited impact on the internal market, since governments share the same policy intent to introduce a DRS. Drinks producers would be required to register in England, Wales and Northern Ireland in order to sell products by 2025. The same registration requirements apply to all producers (within and importing into Scotland) under Scottish DRS Regulations.

Managed. Drinks producers, the scheme administrator (CSL), and the scheme Regulator have already taken a number of mitigating actions to manage the way in which the scheme will interact with the functioning of the internal market across the UK. These include:

- a. **No labelling requirements.** Scottish DRS Regulations do not mandate labelling. Although Scottish DRS labelling and logos are available, there is no requirement that these are used by drinks producers, to ensure that their products can be sold anywhere in the UK
- b. **Use of UK-wide barcodes.** Industry and the DRS Regulator has undertaken extensive work to develop a risk-based process to ensure that drinks producers may continue to use UK-wide barcodes, where this is the most appropriate approach for their business. CSL will charge a small additional cost per container cost associated with UK wide barcodes to help protect against the associated fraud risk. However, the approach means that a product may be registered with a UK-wide bar code and be traded across the UK market. Placed on

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market data can be provided in retrospect. Producers may choose to use a Scotland-only barcode; this will be a commercial decision.

- c. **Price marked pack.** Industry have sought to ensure the deposit can be displayed separately from the price in order that drinks with the price marked on the packaging can be traded between Scotland and rUK. **This outcome has not yet been achieved**, but as trading standards is a reserved matter, the Scottish Government cannot take action to resolve. Given the current view of Trading Standards, we expect producers to manage in other ways e.g. won't supply price marked pack to Scotland, will accept 20p price differential, or will work with retailers to ensure can meet trading standards obligations. However, we also understand that producers have taken legal advice on this matter and may seek to challenge Trading Standard's position.

An exclusion would mean that, under DRS, a container / product could not be sold onto the Scottish market where it is not a scheme article of a registered producer. This would be a commercial decision for the drinks producer to make. Should a producer feel it is economically disadvantageous to sell into the Scottish market, they would not be obliged to do so.

Should a non-scheme article be sold onto the Scottish market (e.g. via a wholesaler), it would be up to the Regulator (SEPA) to take any decisions on enforcement action. However, this would take into account the intent and proportionality of the sale, and the maturity of Scotland's DRS.

10. Redacted

11. Conclusion - Potential Approaches

The Resources and Waste Framework Working Group are in agreement that there is policy divergence between Scotland and rUK, and that alignment is not possible in the near term. This paper has set out the material risks to the effective operation of Scotland's DRS and more widely, Scotland's ability to set standards within devolved competence. This raises three possible outcomes.

1. **Do nothing (unmanaged divergence).** Given the impact and likelihood of risks to devolved policy, this would very likely mean that Scotland's DRS could not operate effectively, or at the very least could not launch successfully on 16 August 2023.
Do not recommend. This would undermine the Scottish Parliament's intention to establish a fully-effective DRS, an area within Scotland's devolved competence.
2. **Recommend a Common Framework exclusion.** This is the course of action advanced by the SG, acknowledging that there is shared policy ambition across UK administrations, and that the exclusion applies to the divergence within delivery timelines. An exclusion would enable Scotland's DRS to proceed as intended, and would have a limited and managed impact on the way in which the UK internal market functions.

Recommend. There is a clear and justifiable case for an exclusion in line with the common framework process agreed between the UK and devolved governments. Industry has already taken significant action to minimise any impact of DRS on the UK internal market.

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3. **Manage divergence through an alternative mechanism.** This option seeks to identify any potential alternatives to enable Scotland's DRS to proceed without requiring an exclusion to the IMA.

Do not recommend. No viable alternative identified that respects devolved competence.

The Resources and Waste Common Framework Working Group are asked to:

- **note** that the operation of the IMA presents a significant risk to regulations in Scotland, potentially constraining the policy effect of the planned Scottish DRS to a significant extent and, given plans in development across UK nations, it is likely the IMA will impact on the effect of policy across nations;
- **agree** that it is not possible to secure alignment in policies ahead of the commencement of the Scottish DRS scheme on 16 August;
- **note** the Scottish Government's view that an exclusion to the IMA that is wide enough in scope to cover policy proposals across the four nations of the UK should be pursued and implemented prior to the Scottish DRS scheme launch on 16 August 2023; but that, as a minimum, there is a requirement for an IMA exclusion for Scottish DRS regulations in advance of this date;
- **agree** that officials should seek the views of their respective Ministers on the issue of the proposed DRS exclusion and its scope prior to the planned Senior Officials Programme Board meeting in February 2023, and Inter-ministerial Group meeting in March 2023.
- **agree** to set out an outline timeline to allow any enabling legislation to be drafted and passed by the UK Parliament in advance of the Scotland scheme going live in August 2023, should an exclusion be agreed by respective Ministers.

End of paper.

ANNEX A - PROCESS FOR CONSIDERING UK INTERNAL MARKET ACT EXCLUSIONS IN COMMON FRAMEWORK AREAS

Delegated powers under [sections 10](#) and [18](#) of the UK Internal Market Act 2020 allow changes to exclusions from the application of the Act's market access principles.

The UK Government, Northern Ireland Executive, Scottish Government and Welsh Government have developed the following process for the consideration of exclusions from the UK Internal Market Act in areas where a Common Framework agreement exists between the UK Government and one or more of the Devolved Administrations, consistent with the Common Frameworks principles agreed by JMC(EN) in 2017 [\[footnote 1\]](#).

1.1 Proposal and consideration of exclusions

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1. Sections 10 and 18 and Schedules 1 and 2 of the UK Internal Market Act contain provisions excluding the application of the United Kingdom market access principles in certain cases.
2. Whenever any party is proposing an amendment to those Schedules in areas covered by a Common Framework:
 - a. the exclusion seeking party should set out the scope and rationale for the proposed exclusion; and
 - b. consideration of the proposal, associated evidence and potential impact should be taken forward consistent with the established processes as set out in the relevant Common Framework, including an assessment of direct and indirect economic impacts.
3. It is recognised that all parties will have their own processes for considering policy proposals. Administrations should consult and seek agreement internally on their position before seeking to formally agree the position within the relevant Common Frameworks forum.

1.2 Agreement of an exclusion request

4. Where policy divergence has been agreed through a Common Framework this should be confirmed in the relevant Common Framework forum. This includes any agreement to create or amend an exclusion to the UKIM Act 2020's market access principles.
5. Evidence of the final position of each party regarding any exclusion and whether an agreement has been reached should be recorded in all cases. This could take the form of an exchange of letters between appropriate UK Government and Devolved Administration ministers and include confirmation of the mandated consent period for Devolved Administration ministers regarding changes to exclusions within the Act^[footnote 2].
6. Parties remain able to engage the dispute resolution mechanism within the appropriate Common Framework if desired.

1.3 Finalising an exclusion

7. Under section 10 or section 18 of the UK Internal Market Act 2020 amendments to the schedules containing exclusions from the application of the market access principles require the approval of both Houses of the UK Parliament through the affirmative resolution procedure. Where agreement to such an exclusion is reached within a Common Framework, the Secretary of State for the UK Government department named in the Framework is responsible for ensuring that a draft statutory instrument is put before the UK Parliament.

Footnotes

1. [Joint Ministerial Committee \(EU Negotiations\) Communiqué: 16 October 2017.](#) ↵
2. Under section 10(9) and 18(8) of the UK Internal Market Act 2020 the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland before regulations are made under those sections. ↵

Annex B: Existing concerns raised by industry

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The risks outlined in this paper may only materialise after launch, should a producer seek to continue to sell non-registered articles into Scotland, and challenge any enforcement action on the basis of the IMA.

Nevertheless, there is clear evidence that IMA considerations are already being considered by drinks producers, retailers, and Members of Scottish Parliament.

Legal opinion

Legal advice to distillers, obtained by the BBC on 07 February 2023, suggested that Scotland's DRS may create a barrier to trade and may, therefore, have to be delayed.

Parliamentary Questions:

Four Parliamentary Questions received (as 07 February 2023):

- To ask the Scottish Government whether it has assessed the implications of the United Kingdom Internal Market Act 2020 on the Deposit Return Scheme.
- To ask the Scottish Government what its position is on whether the proposed Deposit Return Scheme may contravene the provisions on non-discrimination of goods, which are included in the UK Internal Market Act 2020.
- To ask the Scottish whether it has completed its analysis of the text of the Internal Market Act 2020 to understand how it could interact with the Deposit Return Scheme, and when it will publish its analysis.
- To ask the Scottish Government what consideration it has given to any potential impact of including glass in its DRS on compliance with the UK Internal Market Act 2020 in the event that it results in higher costs (a) associated with three labelling regimes and (b) for businesses under the scheme in Scotland, including if any have to cease doing business in Scotland as a result.

We anticipate further Parliamentary Questions on this matter following publication of the recent UK Government Response on DRS and recent legal opinion setting out IMA risks.

Industry

- Drinks producers have raised IMA concerns with Circularity Scotland as a potential barrier to proceeding with producer registration. CSL cannot share details of these individual businesses, but as these concerns have been raised via CSL's dedicated account managers, it is indicative that IMA implications have been considered by the largest producers.
- Several large retailers and the British Retail Consortium have highlighted the IMA as a potential challenge to online takeback requirements.
- IMA concerns have been raised by producers of various sizes with Ms Slater and officials through engagements and correspondence. Concerns include the requirements that will exist in Scotland but not the rest of the UK at launch (difference in timescales), and glass (difference in scope). We have received several recent enquiries from journalists on the back of these concerns.
- We received correspondence from legal representatives of a producer trade association in 2022 seeking to challenge labelling requirements on the basis of the IMA. Scottish DRS Regulations do not include labelling requirements, so this challenge was dropped.

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However, it is indicative that the interaction between the IMA and DRS Regulations is being explored as a route for potential legal challenge.

RESOURCES AND WASTE COMMON FRAMEWORK WORKING GROUP, 28 July 2021

Briefing: Scottish Single-Use Plastic Regulations

2. [Redacted – Out of Scope]
3. [Redacted – Out of Scope]
4. [Redacted – Out of Scope]
5. Protecting the Scottish environment is an area of devolved competence and the framework acknowledges the statutory freedom of all four administrations/governments to take decisions and have separate regulations on areas within their competence.
6. **The Scottish Government wishes to raise this issue under the Resources and Waste Common Frameworks decision-making and resolution process to explore potential for UK alignment, or manage intra-UK policy divergence in a manner that respects devolution and in accordance with the JMC(EN) principles for common frameworks.** In line with the framework’s decision-making principles, Scottish Government is looking to resolve this issue through the frameworks decision process, noting the challenges below and urgent timescales. As per the framework, we are keen to ensure appropriate consideration to the views of other administrations.
7. We would ask the Working Group to note that, in our view, the operation of the UK Internal Market Act 2020 (the Act) presents a risk to planned regulations across all four nations, and severely constrains the policy effect of the planned regulations to ban these products in Scotland.

[Redacted – Out of Scope]

8. [Redacted – Out of Scope]
9. [Redacted – Out of Scope]

Impact of divergence under the Internal Market Act

10. Without UK wide alignment of regulations to ban the relevant products, or exclusion of this policy area, from the market access principles, it is our view that the operation of the Act – which Scottish Government fundamentally opposes - will severely constrain the effect of a ban of products in one nation, where those products are not similarly restricted in the other nations.
11. Ultimately, an exclusion from the market access principles should cover all policy areas under the Resources and Waste Common Framework and we would call for further talks on how this can most efficiently be achieved.
12. Part 1 of the Act introduces new “market access principles” for goods in the UK, comprising a mutual recognition principle (goods that meet standards in one part of UK may be sold in all other parts regardless of any divergence in standards between UK

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nations) and a non-discrimination principle (regulations may not discriminate against goods originating from other parts of the UK). This means that while the Scottish Parliament and Scottish Ministers can technically exercise devolved powers to set standards in devolved policy areas, the market access principles can undermine such decisions by forcing Scotland to accept goods that do not meet those standards.

13. [Redacted – Out of Scope]

14. [Redacted – Out of Scope]

15. [Redacted – Out of Scope]

16. [Redacted – Out of Scope]

17. [Redacted – Out of Scope]

Potential options

18. [Redacted – Out of Scope]

- [Redacted – Out of Scope]
- **Manage divergence in accordance with the JMC(EN) principles for common frameworks, respecting devolution and ensuring such divergence is protected from the requirements of the Act.** This would ensure Scottish regulations are fully effective, in line with the statutory freedom of all four administrations/governments to take decisions and have separate regulations on areas within their competence. Learning, knowledge and understanding from the ban could be shared with other UK nations through policy leads to support development of equivalent regulations. Protecting managed divergence from the requirements of the Act would be achieved by the exercise the Secretary of State’s power under section 10 of the Act to make regulations to amend Schedule 1, adding an exclusion that would cover this policy area. **This could be a broad resources and waste policy exclusion, or as the Act suggests by way of example, it could be more specific to single-use plastics. As above, our preference is a broad exemption and further talks on how this can be achieved to ensure this framework can operate without constraint, in line with the JMC(EN) Frameworks Principles and agreed framework objectives and policy scope.**

[Redacted – Out of Scope]

[Redacted – Out of Scope]

SCOTTISH GOVERNMENT

SENIOR OFFICIALS PROGRAMME BOARD, 7th October 2021

Single-Use Plastics and the United Kingdom Internal Market Act 2020

Purpose

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There are 3 main purposes for this paper:

- To inform the Senior Officials Programme Board (SOPB) of the different approaches being taken to phase out the use of the most commonly littered SUP across the UK. The implementation of the UK Internal Market Act (IMA), has constrained ability to drive this policy forward on an individual nation basis. The Resources and Waste Common Framework Working Group (Working Group) and a Single Use Plastics sub-group is the forum being used to consider a number of approaches to achieving respective policy aims.
- To seek SOPB views on the work conducted so far and a steer on how best to take forward consideration of the issue within the challenging timescales involved, including any views on the direction of travel, on the options considered, on any further evidence needs and on how/when to present the issue to IMG (EFRA).
- To seek SOPB agreement to conducting further work into a potential exclusion to the United Kingdom Internal Market Act 2020 (IMA), with a view to submitting a request to the Inter-Ministerial Group if that further research confirms the initial view of the Working Group that an exclusion will be the preferred approach to managing divergence.

Recommendations

1. [Redacted – Out of Scope]
2. **The SOPB is also asked to consider and express views** on the benefits and risks of an exclusion to the IMA being sought and implemented before June 2022, to try to mitigate the impact of this policy divergence as best as possible. **The SOPB is asked to note** the initial progress by the Working Group to scope potential options and to **confirm** that the Working Group should conduct further work on the potential scope of an exclusion to the IMA to inform future decision-making by IMG on whether it is the most appropriate way to seek to mitigate the impact of this policy divergence. This further work would be progressed in the context of, and be informed by, wider discussions and decisions about the nature of the exclusions process, including the range of evidence needed to support decision making.
3. [Redacted – Out of Scope]
4. Scottish Government recommend developing an exclusion from market access principles, with a preferred recommendation for this being as broad as possible. Excluding single-use plastics policies from the market access principles would ensure that governments across the UK are free to develop policies that effectively reduce the environmental impact of single-use plastics without the Act impacting on the efficacy of these policies. This approach would respect the statutory freedom of all four administrations/governments to take decisions and have separate legislation in areas within their competence as acknowledged by the framework. **The SOBP are asked to consider whether they can agree to this approach and if so, how can it most efficiently be achieved.**
5. [Redacted – Out of Scope]

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6. [Redacted – Out of Scope]

7. [Redacted – Out of Scope]

8. [Redacted – Out of Scope]

Background

9. [Redacted – Out of Scope]

10. [Redacted – Out of Scope]

Current position

11. [Redacted – Out of Scope]

12. [Redacted – Out of Scope]

13. [Redacted – Out of Scope]

14. [Redacted – Out of Scope]

15. The Scottish Government remains fundamentally opposed to the IMA and the potential for it to undermine the common frameworks process as set out by the JMC Principles. In particular the principle that common frameworks will be established where they are necessary to : “enable the functioning of the UK internal market, while acknowledging policy divergence” and that frameworks will “respect the devolution settlements and the democratic accountability of the devolved legislatures” and will therefore:

- be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;
- maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules;
- lead to a significant increase in decision-making powers for the devolved administrations.”

16. [Redacted – Out of Scope]

17. [Redacted – Out of Scope]

18. [Redacted – Out of Scope]

Waste and Resources Framework

19. [Redacted – Out of Scope]

20. [Redacted – Out of Scope]

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21. [Redacted – Out of Scope]

22. The Working Group has also analysed the risks associated with the impact of the IMA on policy development. These risks include exercising devolved powers, environmental damage and the impact on the efficacy of legislation, see Annex C for a complete list and potential impacts in more detail.

23. [Redacted – Out of Scope]

24. [Redacted – Out of Scope]

25. [Redacted – Out of Scope]

26. [Redacted – Out of Scope]

Other risks/factors

27. [Redacted – Out of Scope]

28. [Redacted – Out of Scope]

29. [Redacted – Out of Scope]

30. [Redacted – Out of Scope]

31. [Redacted – Out of Scope]

32. [Redacted – Out of Scope]

Exclusion to the IMA

33. **[Redacted – Out of Scope]**

34. [Redacted – Out of Scope]

35. [Redacted – Out of Scope]

36. [Redacted – Out of Scope]

37. [Redacted – Out of Scope]

38. **[Redacted – Out of Scope]**

39. [Redacted – Out of Scope]

40. [Redacted – Out of Scope]

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Exclusion Options. If an exclusion is considered appropriate it could be defined in different ways, each with a different scope. This will require further work, but in summary the Working Group have identified:

Option 1: Common Framework Agreement

41. 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.

Discussion of this approach:

- This option provides assurance that any allowed divergence will have been considered through the Common Framework oversight, so divergence will be managed.
- This theoretically allows for a very broad exemption but also Ministers would have the reassurance that any allowed divergence will have been considered through the framework process and would therefore retain oversight;
- Less time-consuming than requiring Secretary of State sign off of multiple exclusion requests;
- Enables the common framework to act in the way it was intended in managing the impacts of divergence; and
- There were examples of divergence prior to EU Exit, such as with single-use carrier bag charge policies, and also examples of a UK-wide approach, such as producer responsibility schemes for packaging and batteries. This exclusion would allow us to maintain previous ways of working.

Option 2: Entire EU Single-Use Plastics Directive

42. The Scottish and Welsh Governments have announced their commitment to implementing or going further than the requirements of the EU Single-Use Plastic Directive. The UK Government has also announced its commitment to matching or exceeding the directive where economically practical. An exclusion covering all articles of the Directive would allow each nation to take forward work on implementation to different timelines.

Discussion of this approach:

- Nations would be able to exercise devolved competency in all areas covered by the EU Directive;
- Time saving - Policies covered by the EU Directive would not need to go through the exclusion granting process such as extended producer responsibility and deposit return schemes;
- Nations free to undertake work to their own timelines; however,
- Defining what specific measures are covered by the EU Directive could be difficult, although this could be mitigated by agreeing what measures are covered in the exclusion statutory instrument;
- The Resources and Waste Framework covers more policy areas than just the EU Single-Use Plastics Directive, a potentially lengthy exclusion granting process would still have to be undertaken for other policy areas;

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- Specific link to the EU Directive might not be acceptable for UK Government but this could be mitigated by listing specific policy areas rather than a direct reference to the EU Directive; and
- Would likely limit actions to a narrow list of single-use plastic items and the narrow list of potential interventions per item, not all of which fall within devolved competence.

Option 3: Commitments made pre-IMA

43. All commitments agreed before the IMA, such as the Scottish Government's commitment to match or exceed the standards set in the EU Directive and implementing deposit return and extended producer responsibility schemes would be excluded from the IMA.

Discussion of this approach:

- Respects the fact that these commitments, and timeframes, were made pre-IMA and without full knowledge of the impact the IMA would have;
- Would mitigate the impact of the IMA on upcoming measures such as the Scottish Government's single-use plastics regulations and implementation of its deposit return scheme; however
- Does not cover policy areas post implementation of the IMA such as a potential ban on wet wipes;
- Further work required to be performed on what policy leavers this would include;
- Process to agree what commitments were made pre-IMA might be lengthy; and
- Time-consuming process to agree exclusions for post IMA implementation.

[Redacted – Out of Scope]

44. [Redacted – Out of Scope]

Option 5: Article 5 of the EU Single-Use Plastics Directive

45. [Redacted – Out of Scope]

Recommended option

46. [Redacted – Out of Scope]

47. The Scottish Government's preferred approach is to exclude all matters that fall within the Resources and Waste framework area from the IMA (option 1 above).

48. To respect the JMC principles and devolution; and enable the common framework to operate as intended, the Scottish Government prefers as wide a scope as possible to avoid a situation 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. 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.

49. For this reason, the Scottish Government's preferred approach is to exclude all matters that fall within the Resources and Waste framework area from the IMA. Scottish

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Government is open to discussing how this might be operationalised for the exclusions process as well as to understanding fully the barriers to this approach being adopted should other governments not favour this approach.

50. [Redacted – Out of Scope]

51. Defra's view at this stage is that the scope of any potential exclusion will need careful consideration and should to be supported by the evidence gathered. If an exclusion is considered appropriate for the purposes of reducing the environmental impact of single-use then the scope of any exclusion should be as broad as needed to deliver the desired policy objective and as justified by the supporting evidence.

Conclusion

The SOPB is asked to:

- [Redacted – Out of Scope]
- Provide an opinion on the way forward and next steps with a view to the working group providing and update and preliminary advice to the IMG (EFRA) in October; and
- Review the list of potential exclusions provided and offer an opinion on the preferred approach, or approaches, for an exclusion to the IMA with a view to the Working Group developing this option further for consideration at the November IMG meeting.

ANNEXES

Annex A – [Redacted – Out of Scope]

[Redacted – Out of Scope]

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

[Redacted – Out of Scope]

5. [Redacted – Out of Scope]
6. [Redacted – Out of Scope]

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[Redacted – Out of Scope]

52. [Redacted – Out of Scope]

53. [Redacted – Out of Scope]

54. [Redacted – Out of Scope]

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Annex B -[Redacted – Out of Scope]

55. [Redacted – Out of Scope]

56. [Redacted – Out of Scope]

57. [Redacted – Out of Scope]

58. [Redacted – Out of Scope]

59. [Redacted – Out of Scope]

60. [Redacted – Out of Scope]

61. [Redacted – Out of Scope]

62. [Redacted – Out of Scope]

63. [Redacted – Out of Scope]

64. [Redacted – Out of Scope]

65. [Redacted – Out of Scope]

66. [Redacted – Out of Scope]

67. [Redacted – Out of Scope]

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Annex C – [Redacted – Out of Scope]

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) [Redacted – Out of Scope]
- (b) [Redacted – Out of Scope]
- (c) [Redacted – Out of Scope]
- (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.**

1. [Redacted – Out of Scope]

1. [Redacted – Out of Scope]

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. [Redacted – Out of Scope]

8. Following completion of the Proposal and consideration of exclusions section of the agreed process, the Scottish Government is now looking for agreement through the Common Frameworks forum 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 that the scope of any exclusion could cover policy measures relating to all single-use products.

9. [Redacted – Out of Scope]

10. [Redacted – Out of Scope]

11. 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,

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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.

2. Work of the Waste and Resources Common Framework Group

12. The working group has considered various options to manage policy divergence in this area including:

- [Redacted – Out of Scope]
- A broader exclusion to IMA; and
- An exclusion covering the whole of the Waste and Resources Common Framework.

13. [Redacted – Out of Scope]

14. [Redacted – Out of Scope]

15. [Redacted – Out of Scope]

3. Exclusions considered

16. [Redacted – Out of Scope]

17. **[Redacted – Out of Scope]**

18. **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.

19. [Redacted – Out of Scope]

20. [Redacted – Out of Scope]

21. [Redacted – Out of Scope]

22. [Redacted – Out of Scope]

23. **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.

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24. 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.

4. 5. Exclusion recommended

25. Taking into account the Scottish Government's Single-Use Plastic Regulations and the large amount of upcoming work in this policy area (see Annex A), a suitable exclusion should be granted that helps maximise the impact of policy decisions and respects the agreed principles underpinning common framework and the agreed exclusions process.

26. 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.

27. 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.**

28. 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.

29. [Redacted – Out of Scope]

Conclusion

30. [Redacted – Out of Scope]

- [Redacted – Out of Scope]
- Secondly, that across the administrations we can agree in principle the scope of any exclusion that would allow for minimal disruption for planned policy development to tackle plastic pollution and, therefore, that respects and protects the ability to legislate against environmental harm. The current proposal and recommendation is for the scope of the exclusion to cover all single use items

Annex A: [Redacted – Out of Scope]

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Annex B: [Redacted – Out of Scope]

Annex C: [Redacted – Out of Scope]

[Redacted – Out of Scope]

[Redacted – Out of Scope]

[Redacted – Out of Scope]

[Redacted – Out of Scope]

[Redacted – Out of Scope]

Annex D: [Redacted – Out of Scope]

[Redacted – Out of Scope]

[Redacted – Out of Scope]

[Redacted – Out of Scope]

Annex E: Resources and Waste Common Framework Engagement

Officials from administrations across the UK have engaged, through the Resources and Waste Common Framework, to determine the best approach to mitigate the impact of the UK Internal Market Act (IMA) on the Scottish Government's Single-use Plastic Regulations and future legislation in this policy area across all nations.

Summary of the process undertaken so far:

- The Scottish Government initially raised the issue on 28th July meeting of the Resources and Waste Common Framework Working Group. This included highlighting the risk the IMA posed to the effectiveness of the SG Regulations, and the impact policy divergence in this area could have;
- The Working Group agreed at the 28th July meeting to explore what steps could be taken to mitigate the impact of policy divergence and the IMA;
- Officials across the administrations worked together to document the policy landscape across the UK, risks of the impact of the IMA on the effectiveness of policy measures and options to mitigate these risks;
- The Group presented a joint paper to the Senior Officials Programme Board on 7th October that included these risks and options and requested advice on next steps;
- A sub-group of the Working Group has met regularly to work through the issues of policy divergence in this area and options to mitigate the impact of the IMA;

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- This group has considered relevant evidence and come to the conclusion that policy divergence needs to be managed and that an exclusion to the IMA could be the most effective mechanism to limit the impact of the IMA on policy measures for all administrations future ambitions;
- A further update was provided to the SOPB on 18 November noting the Scottish Government intention to provide this paper to the IMG and recommend an exclusion be granted to the IMA; and
- Following further discussions through the sub-group arrangement Scottish Government officials have now prepared this paper for the IMG recommending that an exclusion to the IMA be granted and that the exclusion is broad in scope enough to cover all single-use items.

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Annex F: [Redacted – Out of Scope]

[Redacted – Out of Scope]

[Redacted – Out of Scope]

[Redacted – Out of Scope]

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

□□□□

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The Rt Hon George Eustice MP
Secretary of State for Environment
Food and Rural Affairs
Seacole Building
2 Marsham Street
London
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9 December 2021

Dear George

As you should be aware from recent discussions at the Inter-Ministerial Group (IMG), the Scottish Government is concerned that the UK Internal Market Act will undermine the policy effect of the Scottish Government's Single-Use Plastic Regulations that were laid on 11 November 2021.

You will also know that we remain fundamentally opposed to the imposition of the Act, as it undermines devolution and risks progress made together on the development of common frameworks. It is in this context that we have worked together with the other governments of the UK to develop an approach by which agreements on policy divergence made in common frameworks areas can be excluded from the Act. This approach reflects clear commitments made by UK Ministers to Parliament in December 2020.

Considerable work has been conducted by officials across administrations to consider the possibility of alignment and the merits of other options to enable policy divergence across the UK, allowing each nation to pursue their own high ambitions on single-use plastics. However, from the recommendations of this work and given that the Scottish Government

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regulations have already been laid and will come into force on 1 June 2022, despite some shared ambitions, it is clear that policy alignment across all parts of the UK will not be possible in this case due to uncertainty around the final content of planned UK and Welsh Government legislation and different timelines for legislating in this area across UK nations.

At the recent IMG on 6 December 2021, I set out our preferred option for as broad an exclusion to the Internal Market Act as possible for policy areas under the Resources and Waste Common Framework, noting that we want to come to a workable solution for all parts of the UK, despite our continued fundamental opposition to the Act.

I hope that, across the administrations, we can agree the scope of any exclusion that would allow for minimal disruption for planned policy development to tackle plastic pollution and,

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therefore, that respects and protects the ability to legislate against environmental harm in a devolved policy area.

I believe that this policy area should be added to the list of exclusions under the Internal Market Act to ensure that its impact is mitigated in the longer term, as well as in response to the specific case of laying of the Single-Use Plastic Regulations in the Scottish Parliament. The means to do this, a position supported by the conclusions from the Resources and Waste Common Framework process, is for the exclusion to cover policy relating to all single-use products items, not just those items within Article 5 of the EU Single Use Plastics Directive.

Such an agreement would respect the jointly agreed Joint Ministerial Committee (JMC) principles on common frameworks and devolution. It would also help to avoid a situation for all administrations whereby individual exclusions have to be repeatedly sought via secondary legislation processes as policies develop across nations. I am sure you agree that we should seek to avoid such time-consuming, overlapping, multiple and messy ongoing processes.

Scottish Ministers are clear that frameworks must be respected and allowed to fulfil their role. The political commitment being made in a UK Ministerial statement to the UK Parliament this week confirms the approach by which frameworks should be afforded a degree of protection from the Act. The Scottish Government expects the UK Government to honour this commitment which is necessary if frameworks are to operate in line with the JMC principles.

I would be grateful for bilateral meeting with you as soon as possible to bring this matter to a successful conclusion.

I am copying this to Lesley Griffiths, MS Minister for Rural Affairs and North Wales, and Trefnydd, Welsh Government; Julie James MS, Minister for Climate Change, Welsh Government; Edwin Poots MLA Minister of Agriculture, Environment and Rural Affairs, Northern Ireland Executive; Jo Churchill MP, Parliamentary Under Secretary of State, Defra; and Angus Robertson MSP Cabinet Secretary for the Constitution, External Affairs and Culture.

Kind regards

LORNA SLATER



Department
for Environment
Food & Rural Affairs

The Rt Hon George Eustice MP
Secretary of State for Environment,
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Lorna Slater MSP
Minister for Green Skills, Circular
Economy and Biodiversity Scottish
Government
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8 March 2022

Dear Lorna,

I am writing to advise you that I have concluded conversations with my UK Government colleagues regarding your proposal for an exclusion from the UK Internal Market Act's market access principles for policies relating to all single-use items.

I am pleased to inform you that the UK Government's position is that we support introducing an exclusion for bans on the supply of single use plastic straws, stirrers, cotton buds, plates, cutlery, balloon sticks and expanded and extruded polystyrene food and drinks containers.

I believe this represents an appropriate balance between furthering our shared ambition to tackle plastic pollution, while also respecting market coherence across the United Kingdom and the importance of providing certainty for businesses and consumers. An exclusion for all single-use items would cause significant uncertainty, which would be damaging for businesses across the United Kingdom.

I hope that we will be able to continue working together constructively in the future, as environmental protection is an area of shared ambition and pollution does not recognise borders.

I would welcome the opportunity for a bilateral meeting with you as soon as possible to discuss this matter further and respond to any questions you may have. My officials will be in touch with your officials about this.

I have written separately to Julie James AS/MS, Minister for Climate Change, Welsh Government and Edwin Poots MLA, Minister of Agriculture, Environment and Rural Affairs, Northern Ireland Assembly.

I am copying this letter to Michael Gove MP, Secretary of State for the Department for Levelling Up, Housing and Communities; Kwasi Kwarteng MP, Secretary of State for the Department of Business, Energy and Industrial Strategy and Alister Jack MP, Secretary of State for Scotland.

With best wishes,

RT HON GEORGE EUSTICE MP

Minister for Green Skills, Circular Economy
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Rt Hon George Eustice MP
Secretary of State for DEFRA
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21 March 2022

Dear George

Thank you for your letter of 8 March where you confirmed the UK Government's support for introducing an exclusion to the UK Internal Market Act's market access principles for bans on the supply of single use plastic straws, stirrers, cotton buds, plates, cutlery, balloon sticks and expanded and extruded polystyrene food and drinks containers.

I welcome the fact that a decision has finally been reached, but wish to express my disappointment concerning the narrow scope of the exclusion and the delay in reaching this decision. I therefore welcome the opportunity for a bilateral meeting with you to discuss this further.

Although the other governments in the UK share similar policy ambitions in relation to single- use items, the Scottish Government was in a position to move

forward with a ban at a faster pace than other administrations. The delay in granting an exclusion for the Scottish Government's Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021 (the Scottish regulations) has created unnecessary uncertainty for businesses and consumers. The Scottish regulations will come into force on 1 June 2022, and it is imperative that a clear timeline for when the exclusion will come into force is established.

Regrettably, the time taken to reach a decision means that there is now a risk that the required statutory instrument will not be in place by the time the Scottish regulations come in to force. The detail of the statutory instrument introducing the exclusion will require careful consideration to ensure the Scottish regulations are covered as intended, and my officials look forward to working with your officials on this matter.

While the decision by UK Ministers to grant an exclusion should allow the Scottish regulations to operate as intended, and this decision marks an important precedent for the exclusions process, lessons must be learned from this process.

Given the narrow scope of the exclusion, and the Scottish Government's ambition to take action on single-use items, we may have to go through this process again in the near future. We must ensure that the future application of the process is informed by lessons drawn from this case. One example is in relation to work on deposit return schemes and I would be pleased to discuss our shared ambition for such schemes with you at the bilateral.

I would also like to bring to your attention the recent launch of the 'Nature Calls' campaign by Scottish Water which calls for a ban of wet wipes which do not meet the 'Fine to Flush' standard. You will be aware that the majority of wipes on the UK market today contain plastic and that the inappropriate flushing of wipes is a major contributor to sewer blockages which can lead to internal flooding as well as unsightly litter in watercourses and on beaches as a result of spills following periods of intense rainfall.

The Scottish Government is firmly in favour of introducing a ban on these products as the most effective mechanism to tackle this growing problem. I am aware that your Department has been consulting on the issue and so would like to stress our strong support for a ban as soon as possible and to urge your Government to work with us and the other devolved nations to make that a reality.

My colleague, the Cabinet Secretary for the Constitution, External Affairs and Culture Angus Robertson MSP, will be writing to his UK Government counterparts separately on these matters.

Kind regards

LORNA SLATER

Attendees

Scottish Government: [Redacted], [Redacted], [Redacted]

Welsh Government: [Redacted], [Redacted]

DAERA: [Redacted]

DEFRA: [Redacted], [Redacted], [Redacted], [Redacted], [Redacted], [Redacted]

1. Welcome/introductions/check-in

[Redacted – Out of Scope]

Next steps on Common Framework documents

The Framework Outline Agreement and the Concordat have completed Project Board review – please submit to ministers for agreement to publish.

Calls for AOB

Scotland DRS

2. [Redacted – Out of Scope]

[Redacted – Out of Scope]

3. [Redacted – Out of Scope]

[Redacted – Out of Scope]

4. [Redacted – Out of Scope]

[Redacted – Out of Scope]

5. [Redacted – Out of Scope]

[Redacted – Out of Scope]

Scottish Government DRS

DRS has been raised with policy teams. Scotland DRS is 10 months away from being launched. What are risks on earlier launch date in reference to UKIM? Minister is keen to explore an exclusion – perhaps even temporarily. Simply flagging in this group as it is being discussed in detail elsewhere, but Working Group will look to bring a paper in due course.

[Redacted – Out of Scope]

[Redacted – Out of Scope]