

ANNEX A

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

Some information has been withheld under regulation 10(5)(f) (third party interests). This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception.

We have found that, on balance, the public interest lies in favour of upholding the exception. We recognise that there is some public interest in releasing the information as part of an open, transparent and accountable government. However, disclosure of this particular information would, or would be likely to, prejudice substantially the confidentiality of commercial information provided by private 3rd party companies and cause substantial harm to their commercial interests.

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

ANNEX B

Question 5. Could you supply any briefings for ministers about Circularity Scotland between June 1 and the date of this FOI?

01 June 2023 – Briefing for First Minister - Meeting with David Harris, Chief Executive Officer of Circularity Scotland

Key message(s)	<ul style="list-style-type: none">• Thank David and Circularity Scotland Ltd (CSL) for the huge amount of work in difficult circumstances and appreciate the significant progress made.• Convey frustration at the UK Government's conditional and temporary exclusion from the UK Internal Market Act for the Deposit Return Scheme (DRS).• Understand this will have a significant and wide ranging on CSL.• Want to use this meeting to better understand how the conditional IMA exclusion for DRS impacts CSL and the scheme more broadly.
What	The aim of the meeting is to better understand how the conditional IMA exclusion for DRS impacts CSL and the scheme more broadly.
Why	David Harris is keen to speak to you following the UK Government's decision to grant a conditional and temporary exclusion from the UK Internal Market Act 2020 (IMA) for the Scottish DRS. The terms of the exclusion presents CSL with significant financial and operational challenges.
Who	David Harris, Chief Executive Officer of Circularity Scotland
Where	Teams Call
When	Thursday, 1 June at 17:10.
Likely themes	<ul style="list-style-type: none">• UK Government's decision to grant a conditional and temporary exclusion from the IMA for the Scottish DRS.• Financial impact of a DRS without glass on CSL.• Compensation for sunk costs relating to investments for the preparation of glass in the DRS.
Media	N/A
Supporting official	Kevin Quinlan – Director, Deposit Return Scheme Division [REDACTED]
Attached documents	Annex A – Agenda & Summary Annex B – Briefing Annex C – Q&A Annex D – David Harris Biography

Annex A

Agenda and Summary

Agenda (35 mins)

1. Welcome & Aim of Meeting
2. Understand what are the biggest challenges for CSL of (a) the exclusion of glass (b) UKG conditions.
3. Understand whether CSL's banks and members will commit to fund CSL to 1 March 2024?
4. Understand whether CSL's banks and members will commit to fund CSL to October 2025 – if they wish to delay the launch of the Scottish DRS to align with a UK scheme launch in October 2025 (at the earliest).
5. Closing Call: Summarise discussion, confirm next steps and thank David for his time.

Who you are Meeting (via Teams call):

- David Harris, Chief Executive Office at Circularity Scotland Limited.

Reason for Call

- On Friday 26 May, the UK Government granted a conditional, temporary exclusion from the IMA for the Scottish DRS.
- The most significant condition of the exclusion is the UK Government's decision to exclude glass from the scheme.
- This has significant and wide ranging financial and operational challenges for CSL.
- David Harris is the CEO of CSL and wishes to discuss the impact of the IMA exclusion with you.

Desired Outcome of Meeting

- You understand of the main and immediate challenges facing CSL.
- You understand whether CSL's banks and members will commit to funding CSL until a) 1 March 2024 and/or October 2025.
- David Harris is reassured the CSL's concerns are being considered at pace by the First Minister, the Circular Economy Minister and DRS officials.
- David Harris is reassured the Scottish Government will make its position clear as soon as possible, in consideration of all the evidence including the views of CSL and industry.

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Annex B

Briefing

1. Welcome & Aim of Meeting

- Welcome David to the call.
- **Thank David/CSL:** for the huge amount of work in difficult circumstances and appreciate the significant progress made.
- **Frustration at the UK Government's IMA exclusion for DRS:**
 - Not the outcome we had vigorously pursued.
 - The economic and environmental case of the Scottish DRS has been overlooked and undermined in order to align with a UK scheme that does not exist yet.
 - The decision itself and the timing of the decision at the 11th hour is treating the Scottish Parliament and businesses trading in Scotland with contempt.
 - The impact of the UK Government's decision is significant and far reaching for CSL and industry.
- **Aim of Meeting:** Want to use this meeting to better understand how the conditional IMA exclusion for DRS impacts CSL and the scheme more broadly. In particular want to know:
 - i. Ask what are the biggest challenges for CSL of (a) the exclusion of glass (b) UKG conditions following the UKG IMA exclusion for DRS without glass.
 - ii. Ask whether CSL's banks and members will commit to fund CSL to 1 March 2024?
 - iii. Ask whether CSL's banks and members will commit to fund CSL to October 2025 – if they wish to delay the launch of the Scottish DRS to align with a UK scheme launch in October 2025 (at the earliest)?

2. Understand what are biggest challenges for CSL of (a) the exclusion of glass (b) UKG conditions.

- Invite David Harris to set out the biggest challenges for CSL following the UK Government's conditional exclusion from the IMA for the DRS.

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

3. Understand whether CSL's banks and members will commit to fund CSL to 1 March 2024?

- Invite David Harris to set out whether CSL's banks and members will commit to fund CSL to 1 March 2024
- [REDACTED]
- [REDACTED]
- [REDACTED]

4. Understand whether CSL's banks and members will commit to fund CSL to October 2025 – if they wish to delay the launch of the Scottish DRS to align with a UK scheme launch in October 2025 (at the earliest)?

- Invite David Harris to set out whether CSL's banks and members will commit to fund CSL to October 2025 (at the earliest) to align with a UK scheme launch – if its members prefer this approach.

5. Closing Call

- Summarise discussion.
- Confirm next steps.
- Thank David for his time.

Annex C

Q&A

[REDACTED]

- [REDACTED]
- We will update as soon as possible.

[REDACTED]

- It is both prudent and essential that we take the necessary time to fully consider the impact of the exclusion on CSL and industry more broadly.
- Businesses have been clear that they would prefer Scottish Government takes a decision that will be final even if it takes a few days, rather than take a quick decision which changes.
- We will take a decision as soon as possible – will be days not weeks for a decision.

[REDACTED]

- We will take a decision as soon as possible – will be days not weeks for a decision.
- It is important that we give businesses clarity as soon as possible but must fully consider the impact of the conditional IMA exclusion before taking a decision.

Annex D

David Harris Biography

- David Harris is the Chief Executive at Circularity Scotland Ltd (CSL).
- He joined CSL in April 2021.
- David has 30 years' experience from leadership roles in the plastics recycling and packaging industries, including 20 years as a senior manager and Director of British Polythene Industries PLC.

06 June 2023 - Ministerial engagement briefing: Lorna Slater, minister for green skills, circular economy and biodiversity. Briefing for meeting with Scottish Grocers Federation

What	Meeting with Scottish Grocers' Federation (SGF) to discuss the UK Government's decision on the Internal Markets Act
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	(IMA) exclusion.
Where	MS Teams: Click here to join the meeting
When	6 June 2023 15:00 – 15:30
Key Message(s) and structure	<ul style="list-style-type: none"> • Once again the UK Government has shown utter disregard for devolution as Scottish ministers received the UK Government’s decision letter at 9:45pm on a Friday night, more than 12 hours after its contents being briefed to press. This is treating the Scottish Parliament with contempt. • Despite discussions over the last two years this is an eleventh hour attempt by the UK Government to sabotage Scotland’s Deposit Return Scheme by forcing us to remove glass bottles. • This is at odds with all the evidence that says the biggest benefits, economically, financially and environmentally, are from including glass. • Other conditions of the IMA exclusion include unclear demands on interoperability. We are keen for as much interoperability as possible with other schemes across the UK, this cannot simply be the UK Government telling us that we must align fully with their idea of a scheme – particularly given that theirs does not exist and they haven’t even laid regulations as yet • We now want to understand your and your members’ views on the position taken by the UK Government and how it effects the Scottish scheme
Who	Dr Pete Cheema CBE, Chief Executive, SGF Luke McGarty, Head of Policy & Public Affairs, SGF Paul Stirling, Group Retail Director, One O One Convenience Stores
Why	<ul style="list-style-type: none"> • To seek SGF’s views on the latest UK position on a partial confirm what impact removing glass would have on their sectors. • Test reaction to the IMA decision and its impact on appetite and momentum to push on with a version of the scheme in March 2024 (or whether they will push back heavily on the scheme), and • Test if they want to defer and align to UK wide scheme in October 2025 and challenge them to set out how they comply with the regulations give that this delay will like put CSL’s viability at grave risk

Expected outcome	Attendees feel that their concerns have been listened to, and that the Scottish Government will continue to work with SGF and others to find pragmatic solutions, where these require Government action.
Supporting officials	Elisabeth Campbell, Deputy Director Deposit Return Scheme [REDACTED] [REDACTED], Team Leader – DRS Online and Retail Policy Team [REDACTED]
Briefing contents	Annex A: Proposed meeting structure & top lines Annex B: Further Issues raised by SGF
Media Handling / Social Media	N/A

Annex A – Proposed Meeting Structure & Top Lines

You will chair

Agenda

1. Welcome and introductions
2. Internal Markets Act
3. Risks to scheme
4. AOB

1. Welcome and introductions (15:00 – 15:05)

- Thank you all agreeing to this meeting.
- While the SGF attended the wider retailers and hospitality meeting on 30 May to discuss the UK Government's response to the Internal Markets Act exclusion request, I hope that we can continue this discussion today with a larger focus on how this may affect your members.
- We are committed to the benefits of DRS, and would welcome any views and ideas you and your members have to ensure successful delivery of the scheme.
- I am also aware that you have other DRS-related matters to discuss.

2. Internal Markets Act (15:05 – 15:15)

Background SGF attended the meeting on 30 May along with other retailers and hospitality stakeholders where you discussed the potential implications of the UK Government's position on an IMA exclusion.

Conditional Exemption to IMA for DRS

- On Friday 26 May 2023, the UKG granted a partial exemption for the Deposit Return Scheme.
- A summary of the conditions are:
 - The materials included in all countries must be the same – meaning that Scotland cannot include glass
 - A maximum deposit limit to be agreed with the UK Government.
 - Processes are in place to allow deposits to be redeemed anywhere in the UK when other schemes are up and running.

- Processes are in place to minimise the registration and reporting burden for producers, including only one administration fee required per participating company, and producers not required to join multiple schemes separately.
- One marking (e.g. barcode) for use throughout all parts of the UK, and a single common UK logo, recognisable across all systems.
- The First Minister wrote to the PM asking him to reconsider and provide a full IMA exclusion. The PM wrote back and confirmed he would not provide a full exclusion
- We are very disappointed in this decision and think it risks the hard work that has been put into the scheme
- Ministers are considering all the advice around options before announcing final decisions as soon as possible

5. Risks to scheme (15:15 – 15:25)

SGF views on options for DRS

- We take the views from business very seriously and officials, Ministers and myself have been meeting industry stakeholders since the 2 June.
- I am now looking very seriously at where this leaves the viability of the Scottish scheme and talking to businesses, delivery partners and other organisations over the coming days.
- I would welcome an open an honest discussion on a few points:
 - If we decided to go ahead in March without glass, what challenges would this bring for your members?
 - If ultimately we decided to align our launch date with the English and Welsh schemes what preparations would you put in place to ensure this could be delivered?
 - Do you have views on the interoperability conditions UKG have placed on us?
 - If UK Government were unable to deliver a scheme in October 2025 would you still want alignment on timescales or would you support Scotland then going first?

Background SGF have already raised the following risks:

Compensation for businesses

You may wish to say:

- We are grateful to all businesses for the millions of pounds they have invested in preparing for the launch of the deposit return scheme.
- We are looking very seriously at where this leaves the viability of the Scottish scheme and talking to businesses, delivery partners and other organisations over the coming days and weeks.
- We will provide a further update to parliament as soon as possible

Online Takeback

You may wish to say:

- Online takeback obligations have been in place since 2020.
- The proposed amendments laid in parliament reflect feedback from retailers of all sizes, removing the obligation from the vast majority of retailers, while making it easier to deliver for larger retailers.
- Large retailers will also have flexibility to provide their own takeback service or have a third party deliver it for their customers.

- While we recognise this creates a challenge for large retailers, we consider it to be fair, proportionate and important as it will mean that everyone has access to Scotland's deposit return scheme.
- The UK government, who are developing their own plans, have also made it clear that online takeback will be required from the start of their scheme, particularly for large retailers.
- We are working with retailers to explore all available options for this service, which will be paid for by drinks producers.
- We have also recently set up a new operational group with retailers to resolve any outstanding issues to allow the scheme to launch successfully on 1 March 2024.

VAT

You may wish to say:

- The Scottish Government continues to regularly engage with HM Treasury and HMRC to discuss ongoing implications to businesses regarding the UK Government's decision on VAT.
- **Invite** SGF to detail any concerns they have regarding VAT treatment of deposits and their potential solutions.

Trading Standards

You may wish to say:

- The Scottish Government is pressing the UK Government to try to ensure that effective guidance is in place for retailers as soon as possible.
- The Department for Business and Trade (DBT) have indicated they are seeking to review the relevant legislation and are going to discuss implications of this with Trading Standards officials in Scotland.
- **Invite** SGF to share any concerns they have regarding price marking and their potential solutions with the relevant Ministers in DBT as they are the decision makers in this area.

5. AOB (15:25 – 15:30)

If timings allow, SGF may query the final Gateway Review report and Retail Sectoral Working Group (**top lines included in ANNEX B**).

ANNEX B

Further Issues raised by SGF

Gateway Review

Background The final report of the most recent gateway review was delivered to the Scottish Government on 27 March 2023. As yet the report and any subsequent assurance of actions plans, have not been published.

[REDACTED]

- The Scottish Government will share the recommendations from this review and our response with the Net Zero, Energy and Transport Committee soon and in light of the significant 11th hour changes by the UKG.
- Gateway Review teams normally speak with 12-15 interviewees including relevant commercial and external stakeholders (e.g. prime contractors and consultants).

- For the latest review, reviewers spoke to 45 people which included CSL, a range of producers, retailers, wholesaler, hospitality representatives, SEPA, Zero Waste Scotland and Scottish Government.

Retail Sectoral Working Group

Background SGF are members of the Retail Sectoral Working Group which meets fortnightly as part of the new governance structure developed to aid the implementation of Scotland's DRS. Since the revised governance arrangements were put in place, there have been two meetings of this group, the most recent was held on 24 May.

The working group maintain an operational issue log covering the issues raised that need addressing to ensure a successful implementation of DRS. At present there are 109 issues in total, with 56 still open.

At the most recently meeting, Paul Stirling queried the methodology used when determining when to close an issue amid concerns that some live issues were being shown as resolved. This prompted David McPhee as Group Chair, to provide reassurance that processes would be put in place to ensure that entries are not closed in error.

You may wish to say:

- I welcome SGF's participation in the Retail Sectoral Working Group.
- **Invite** SGF to discuss any concerns they have with the group, and how they would like to see them addressed.

07 June 2023 - Briefing for the First Minister - Meeting with Deposit Return Scheme Stakeholders

Key message	<ul style="list-style-type: none"> • Thank you for taking the time to meet with me at such short notice. • I am grateful to all businesses for the investment they have made in preparing for Deposit Return Scheme (DRS). • I remain committed to the benefits of a successful Deposit Return Scheme. • I am deeply frustrated at the UK Government's conditional and temporary exclusion from the UK Internal Market Act for the DRS. • I understand this will have a significant and wide ranging impact on businesses. • I want to use today's meeting to understand: <ul style="list-style-type: none"> ○ The views from business on proceeding with a DRS on 1 March without Glass. ○ Views from business on delivering a DRS in line with UK and what this means for support for Circularity Scotland (CSL) and how else business may prepare
What	<ul style="list-style-type: none"> • Meeting with DRS stakeholders to discuss their views on (1) when the Scottish DRS should go live and (2) understand whether they will support CSL financially should they want the scheme to be delayed.

Why	<ul style="list-style-type: none"> Without the support of businesses, successful delivery of the scheme on 1 March 2024 is highly unlikely. If this scheme is delayed and businesses choose not to finance CSL until October 2025, it may go out of business.
Who	<ul style="list-style-type: none"> Stakeholders from the Producers, Retailers, Wholesalers and Hospitality following sector will attend.
Where	Teams Meeting Click here to join the meeting
When	Wednesday, 7 June 2023 11:30-12:30
Likely themes	<ol style="list-style-type: none"> Do businesses support DRS go live on 1 March 2024 (without glass)? If not, will businesses support CSL until a UK wide DRS is introduced in October 2025 (at the earliest)?
Media	No media invited to the meeting
Supporting official	Kevin Quinlan, Director – Deposit Return Scheme Division [REDACTED] David McPhee, Deputy Director – Deposit Return Scheme Division [REDACTED] Elisabeth Campbell, Deputy Director – Deposit Return Scheme Division [REDACTED]
Attached documents	Annex A – Agenda and Summary Annex B – Top Lines: Welcome & Purpose of Meeting Annex C – Discussion: Questions for Stakeholders Annex D – Additional Supporting Lines Annex E – Circularity Scotland Annex F – Business views on IMA exclusion Annex G – Case for Glass Annex H – FMQ (attached separately)

Annex A

Agenda and Summary

Agenda

- Welcome & Purpose of Meeting** (11:30 -11:35, 5 minutes)
- Discussion** (11:35 -12:25, 50 minutes)
 - Support for DRS without glass go live on 1 March 2024; and
 - If delay is preferred, what are businesses plans to ensure delivery of DRS in the future and will business support CSL until UK wide DRS is launched in October 2025 at the earliest)
- Sum Up & Agree Next Steps** (12:25 -12:30, 5 minutes)

Background on Meeting

- On 26 May UK Government granted a conditional exemption to the IMA for the Scottish DRS.
- This meeting was organised to provide an opportunity to engage directly with businesses as to their views on proceeding with a Scottish DRS without glass on 1 March 2024. If they do not wish to proceed then, we wish to understand what businesses plans are to deliver DRS in line with UK whether businesses will financially support Circularity Scotland in the event the scheme is delayed to align the a UK wide DRS – in October 2025 at the earliest.

Conditional Exemption to IMA for DRS

- On Friday 26 May 2023, the UKG granted a partial exemption for the DRS.
- A summary of the conditions are:
 - The materials included in all countries must be the same – meaning that Scotland cannot include glass
 - A maximum deposit limit to be agreed with the UK Government.
 - Processes are in place to allow deposits to be redeemed anywhere in the UK when other schemes are up and running.
 - Processes are in place to minimise the registration and reporting burden for producers, including only one administration fee required per participating company, and producers not required to join multiple schemes separately.
 - One marking (e.g. barcode) for use throughout all parts of the UK, and a single common UK logo, recognisable across all systems.

Desired Outcome from Meeting

- The information gathered at this meeting will help to decide whether the Scottish DRS can go ahead on 1 March 2024 and, if not, what businesses plans are to deliver a DRS along with the rest of the UK and whether businesses will support CSL until a UK wide DRS is introduced in October 2025 (at the earliest).
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Annex B

Welcome & Purpose of Meeting

Top Lines

- Thank you very much for meeting at such short notice.
- I am deeply frustrated and disappointed at the UK Government's decision to refuse a full IMA exclusion which would have allowed the scheme to have continued as designed and voted on by the Scottish Parliament.
- Despite detailed engagement over the last two years this is an eleventh hour attempt by the UK Government to sabotage Scotland's DRS.
- It is treating the Scottish Parliament and businesses trading in Scotland that are impacted by the DRS with contempt.
- We have always been clear that we will continue to work closely with the other UK nations as they establish their deposit return schemes to ensure schemes were aligned as much as possible when they were launched.
- However, we have been asked to align with a scheme that doesn't even exist.
- I am grateful to all businesses for the investment they have made in preparing for DRS.
- I remain committed to the benefits of a successful Deposit Return Scheme.
- I am keen to engage with you on your views around the current situation and to ensure that we understand how business feel we can best meet the environmental and economic aims of DRS given this situation

You may wish to invite the following people to offer views on behalf of their sector @

- **Large producers** – Gavin Partington – British Soft Drinks Association
- **Large Producers** – [REDACTED]– British Beer and Pubs Association

- **Large Retail** – Ewan MacDonald-Russel – Scottish Retail Consortium
- **Large Retail** – [REDACTED] – Aldi
- **Small Producers** – Joe Hind – Scotland Food and Drink
- **Small producers** – [REDACTED] – Society of Independent Brewers
- **Small Retail** – Pete Cheema – Scottish Grocers Federation
- **Small Retail** – [REDACTED] – Federation of Independent Retailers

Annex C

Discussion: Questions for Stakeholders

- I would like to use the time today to ensure I fully understand:
 1. What businesses views are on a go-live on 1 March 2024, without glass?
 2. If not and the desire is to align with a UK scheme, how will businesses work to ensure that this is possible including whether you will support Circularity Scotland until a UK wide DRS is introduced – which will be October 2025 at the earliest

Potential Follow Up Questions

- If DRS fail, how would you ensure that you have a vehicle to meet your obligations of a DRS in October 2025?
- If UK Government were unable to deliver a scheme in October 2025 would you still want alignment on timescales or would you support Scotland then going first?

Annex D

Additional Supporting Lines

TIMELINE FOR DECISION

- We are looking to provide certainty as soon as possible
- It is essential that we consider fully the implications of any decision.
- It is absolutely right we take the necessary time consult with businesses and scheme delivery partners on next steps. We are doing that at pace.

COMPENSATION

- We are grateful to all businesses for the investment they have made in preparing for DRS and we remain committed to the delivery of a successful Deposit Return Scheme.
- We are looking very seriously at where this leaves the viability of the Scottish scheme and talking to businesses, delivery partners and other organisations over the coming days and weeks.
- I intend to provide an update to parliament as soon as possible.

ALIGNMENT WITH UK SCHEMES

- We have always been clear that we will continue to work closely with the other UK nations as they establish their deposit return schemes to ensure schemes were aligned as much as possible when they were launched.
- However, the conditions imposed on us by the UK government make that impossible to do.
- We have been asked to align with a scheme that doesn't even exist.
- We have been asked to proceed with our scheme, without glass, but also ensure there is consistency of bar codes and logos across all schemes. Schemes that do not exist and are not even at the planning stage.

A SCOTTISH PILOT

- The UK Government says it wants Scotland to act as a pilot for DRS. It is not the intention of devolution that devolved nations simply act as a path-finders before the UK as a whole does it “properly”.
- Nevertheless, it is true that Scotland is very far ahead of UKG in developing the thinking and detail that turns plans into realities.
- There is much that other parts of the UK can learn and adopt from Scotland. Indeed the path to there being deposit return facilities available across the UK is swiftest and easiest if Scotland is able to proceed as this Parliament planned.
- So to use the language of the UKG what would a Scottish pilot look like? It would mean recognising that in core matters such as regulations, administrative set up, fees and budgets, logistics, contracts and much else besides Scotland has done much of the work.
- It would see the Scottish scheme given a fair wind to proceed as planned and on the basis on which it has evolved. It would allow for changes to the way it works in light of learning and experience. But in this version, a good faith version, it would rule out changes mid-course, without agreement and without being based on experience to date.
- That is not what we have been offered it seems. We have been offered inter-operability, but not as a shared, mutually agreed partnership approach. Scotland (and Wales) have been told that in matters of alignment there is one line that matters – that of England’s.
- That is not a pilot. It is a shifting of goal-posts, an undermining of certainty when what is needed is clarity. Is there a will to work more co-operatively? On the part of the UK Govt, it would be nice, but not seeing any evidence so far.

UNDERMINING DEVOLUTION

- The UK government’s decision undermines the right of this parliament to pass and deliver regulations in clearly devolved areas.
- The Scottish Parliament approved the Deposit and Return Scheme for Scotland Regulations in 2020 – before the introduction of the Internal Market Act. The Regulations are wholly within devolved competence.
- The problem at the heart of this issue is the UK Government’s hugely damaging Internal Market Act.
- The Internal Market Act radically undermines the powers of the Scottish Parliament, which is why this Parliament voted to withhold consent to it in 2020.

GATEWAY REVIEWS

- There have been a series of independent Gateway Reviews undertaken throughout the design of the Deposit Return Scheme, with the most recent carried out in March.
- The Scottish Government is considering carefully the recommendations from this review, and will share these and its response with the Net Zero, Energy and Transport Committee soon.
- Gateway Review teams normally speak with 12-15 interviewees including relevant commercial and external stakeholders (e.g. prime contractors and consultants).
- For the latest review, reviewers spoke to 45 people which included CSL, a range of producers, retailers, wholesaler, hospitality representatives, SEPA, Zero Waste Scotland and Scottish Government.

IMPACT ON PRODUCER FEES

- CSL are working on their revised producer fees based on glass being removed
- Current estimates are that increase will be less than they originally feared but still 10% to 20% for some producers
- CSL are speaking to producers to work through the detail should the scheme go ahead in March without Glass

COMPETITIVE DISADVANTAGE

- Removing Glass will put some businesses at a disadvantage as they only operate with cans but their competitors use glass
- This could have an impact on iconic businesses such as Tennents but potentially others.
- While many businesses have welcomed the removal of glass there is a danger it removes a level playing field for businesses

Annex E

Circularity Scotland

CSL LETTER OF 5 JUNE

- We have been working closely with Circularity Scotland to establish the viability of the scheme following the UK Government's last minute intervention.
- While removing glass has significant implications for our scheme, there are additional conditions imposed by the UK Government including agreeing to a cap on deposit levels and registration process.
- These conditions ask us to align with a scheme that doesn't yet exist – creating more uncertainty for business.
- It is important to listen to all businesses and understand the implications of these conditions, which is why my Government have been engaging with you regularly in recent days.

Annex G

Case for Glass

Top Lines

- Glass is one of the three main materials used to make single-use drinks containers and accounts for more than a quarter of all the containers due to be included in our Deposit Return Scheme.
- To put that into context, the Scottish DRS will include an estimated 560 million containers that reach the Scottish market each year.
- Of the 51 territories and countries operating deposit return schemes, 45 include glass.
- Even the UK Government's own analysis of deposit return schemes across the UK showed that the social benefits of reduced litter, emissions saved and to the economy are increased by 64% when glass is included (from £3.6bn to £5.9bn).
- Glass is one of the most common items to pollute our beaches and broken glass poses a hazard to the public and wildlife.
- It also poses a threat to local authority, private sector and voluntary clean-up crews. Including it in DRS will help reduce the amount of littered glass.

Increases the value of the scheme

- The DRS business case estimated that including glass in the DRS increases the net present value of DRS by £248m over 25 years compared to excluding glass.
- Circularity Scotland's financial model is predicated on the sale of the returned containers to recycling companies. By removing over 25% of the available material it is likely to endanger the scheme's financial viability.

Caters to public support

- There is broad public support for the inclusion of glass in the DRS in Scotland, an August 2019 survey published by Zero Waste Scotland demonstrated strong public support (85%) for the inclusion of glass.
- Given glass makes up more than a quarter of all containers in the scheme, including it will play an important part in normalising behaviour and increasing capture rates.

Inclusion of glass is standard practice in DRS

- The inclusion of glass in other Deposit Return Schemes is normal, of the 44 territories currently operating deposit return schemes, only four of them do not include glass. These are Kiribati, Netherlands, Norway & Sweden.
- We are pleased that Wales will also include glass in their scheme.
- Not including glass in the scheme will result in a narrower scheme in England, and runs counter to the Conservative's own manifesto.
- We will continue to work closely with the UK and devolved governments to maximise interoperability of the schemes when they go live, and hope that the UK government will, over time, follow the other UK nations and reconsider its decision to exclude glass.

Scotland's DRS has been designed to include glass

- We recognise that the costs of operating the scheme are higher when including glass, however the benefits of operating the scheme with glass are greater.
- The DRS business case estimated that including glass in the DRS increases the net present value of DRS by £248m over 25 years compared to excluding glass.

- The ECCLR Committee report recognised that it would be difficult and more expensive to phase in glass at a later point.
- The ECCLR Committee report also stated that the scheme 'should be as comprehensive as possible' which is advice which we have followed.
- Circularity Scotland and their primary logistics partner, Biffa, have included glass in all their planning. For example, the machinery and sites required to process glass have been acquired, along with the personnel to operate them.
- Retailers who have decided to use Reverse Vending Machines (RVMs) have also already purchased units designed to process glass, as well as PET plastic and metal.
- Delaying or removing the inclusion of glass at launch would potentially result in financial liability on the basis of assurances that glass will be included in DRS.
- Afore mentioned - Circularity Scotland's financial model is also predicated on the sale of the returned containers to recycling companies. By removing over 25% of the available material it is likely to endanger the scheme's financial viability.
- Including glass brings whole sectors of industry (e.g. wine, spirits) into the scope of DRS which makes the scheme further reaching and inclusive.

DRS will take pressure off of Local Authority Waste Services

- DRS will mean that local authorities will have less waste to handle, as well as reducing litter and associated clean-up costs, which is good for residents and council budgets.
- £46m of public money is spent every year removing litter and fly tipping from the Scottish environment.
- We are supporting local authorities to prepare for the introduction of the scheme and our £70m Recycling Improvement Fund is delivering one of the biggest investments in recycling in Scotland in a generation.
- Many deposit return schemes in Europe operate alongside kerbside collections including Norway, Germany and Croatia
- Local authorities have a regulatory requirement to collect and carry dry recyclable waste, including glass. There is a derogation from the requirement for separate collections for glass, and co-mingling is acceptable under certain conditions.
- To help inform planning for the introduction of DRS and the impact on kerbside recycling collection, Zero Waste Scotland are modelling different options for glass collection after DRS is operational. Any changes to kerbside glass collection should be informed by an assessment of the specific impacts in each local authority area. I am aware that there are a number of different collection systems across Scotland and one approach is unlikely to suit every location, but this modelling will help local authorities make informed decisions on the most effective and efficient way to meet the obligation to provide a glass recycling service. I am grateful to the many local authorities that have provided data to assist with this modelling. The outputs will be shared with all local authorities this Summer and Zero Waste Scotland will be available to discuss the implications and options with individual authorities.

DRS encourages a high-quality glass recycle

- Currently between 20-50% of glass is not suitable for closed loop recycling due to the way it is currently collected and processed in Scotland (Mixed & Crushed).
- Section 34 of the Environmental Protection Act 1990 already requires those handling waste to ensure that it is handled in a fashion that promotes high-value recycling, and will apply in relation to the handling of returned scheme packaging, including glass.
- DRS will significantly increase the quantity and quality of glass recyclate, creating an aggregated and high-quality feedstock for reprocessing – anticipated to be 1.3 million tonnes over 25 years



- A significant proportion of this is projected to be clear glass which we know to be in high demand.
- Local authorities will continue to collect glass containers not captured through deposit return, as required by the Environmental Protection Act 1990, through The Waste (Scotland) Regulations 2012
- Scotland’s Code of Practice for managing controlled waste makes clear that the use of recovered glass cullet in re-melt applications to create new glass products is considered an example of high-quality recycling and so should be prioritised. Current best practice is not to crush glass. While we think the existing Code of Practice is sufficient, if necessary we can consider revisiting it to make specific provision for DRS materials.

ANNEX H FMQ

Latest version of DRS FMQ is attached as a separate document in the briefing email to Private Office.

07 June 2023 – Ministerial Engagement Briefing – Ministerial Statement on the future of DRS

Key Message	Due to the eleventh-hour intervention by the UK government to change the parameters of Scotland’s deposit return scheme – both to remove glass from the scheme and to add significant uncertainty around essential parts of the scheme– it is clear that Scotland’s deposit return scheme in the scope and form passed by this Parliament cannot go ahead as currently planned.
Who	Circular Economy Minister Lorna Slater
What	Ministerial statement on the Future of Scotland’s DRS following UKG decision to grant a partial exclusion to the IMA.
Why	The exclusion does not enable Scottish DRS to proceed in the terms agreed by the Scottish Parliament .
Where	Scottish Parliament Chamber
When	7 June 2023, time TBC
Supporting Official	Elisabeth Campbell - [REDACTED] [REDACTED]
Attached documents	FMQ: separate document Annex A: Q&A Annex B: Summary of conditions in UKG letter



TOP LINES

- We have been left with no other option than to reset the timescale of DRS and delay the launch until October 2025 at the earliest.
- DRS will happen and I am disappointed that it will now take longer than needed and more limited than it should be.
- This is as a result of the UK Government's actions and intervention at the 11th hour.

EFFECT OF UK GOVERNMENT DECISION

- The removal of glass has significant implications on the scheme's operation – businesses have planned and invested millions on the basis of its inclusion.
- The conditions the UK Government has imposed creates even more uncertainty for businesses as the UK Government hasn't yet designed their scheme which we are to align to.
- The 11th hour intervention after almost two years of discussions erodes the confidence that there is a commitment from UK Government to act in good faith and with mutual respect for the devolved administrations.

FUTURE OF SCOTLAND'S DRS

- Due to the eleventh hour intervention by the UK government to change the parameters of Scotland's deposit return scheme – by removing glass from the scheme and adding uncertainty around even basic parts of the scheme (for example the 20p deposit retailer handling fees), Scotland's deposit return scheme as passed by this Parliament cannot go ahead.
- The FM and I met this morning with almost 100 retailers, producers and the hospitality industry to listen to their views on whether an alternative Scottish scheme, without glass could launch in March.
- Industry has said above all else they need certainty, that is what Scottish Government is working to establish and which the UKG has blown a hole in.
- Any changes to the scheme in relation to glass would need to be approved by the Scottish Parliament.

NEXT STEPS

- We have been left with no other option than to delay the launch of Scotland's DRS, until October 2025 at the earliest based on the UK Government's current stated aspirations
- I remain committed to interoperable DRS schemes across the UK provided that we can work in a spirit of collaboration not imposition.
- I have today written to NZET Committee in Parliament to say that we will be seeking to revisit the regulations that we laid in Parliament in mid-May which set our go-live date of 1 March and made other changes to the scheme.
- The immediate priority is to bring forward regulations to amend the go-live date and subsequently I will also be considering how to bring forward revised provisions to deal with the UK Government's exclusion of glass .
- My intention is to retain the substance of the regulatory framework that this Parliament voted for on the basis that there is much in there that could and should set the basis of other schemes, but I will need to consider in further detail how best to do that and bring

that to Committee, bearing in mind also that these regulations may have to change as a result of unilateral decisions by the UK Government.

INDUSTRY ENGAGEMENT

- The FM and I met with almost 100 stakeholders this morning from a broad range of sectors including retailers, producers and hospitality, in addition to the extensive industry engagement that was undertaken by ministers and officials last week to listen to their concerns and feedback.
- The views of industry have informed today's difficult decision to delay the scheme.
- We will continue to work closely with industry at every stage towards our journey to deliver Scotland's deposit return scheme.

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

CSL LETTER OF 5 JUNE SAYING DRS COULD PROCEED WITHOUT GLASS

- We have been working closely with Circularity Scotland and industry to establish the viability of the scheme following the UK Government's last minute intervention.
- While removing glass has significant implications for our scheme, there are additional conditions imposed by the UK Government including agreeing to a cap on deposit levels and registration process.
- These conditions ask us to align with a scheme that doesn't yet exist – creating more uncertainty for business.
- We need our scheme administrator to have the confidence of business, which is why the FM and I met with businesses this morning.
- We do not underestimate the progress that our delivery partners have made in recent years preparing for this scheme. This has been delivered by committed and professional individuals.
- I believe that the business sector sees the merits in working to maintain the progress they have made and to be able to use this as springboard for the future form of DRS.

FINANCIAL VIABILITY OF CIRCULARITY SCOTLAND (CSL)

- We have been working closely with Circularity Scotland and industry to establish the viability of the scheme following the UK Government's last minute intervention.
- Throughout the process, CSL has been a trusted partner with a demonstrated expertise and knowledge in its field.
- CSL is a not-for-profit company led by industry – therefore, it is entirely appropriate for industry rather than government to determine whether they continue to support a firm that has industry responsibility at its heart.

[REDACTED]

- CSL is a private not-for-profit company which is industry led and was designed to be funded by industry. It would not be appropriate for the Scottish Government to fund the company.

ALISTER JACK'S CONDUCT

- Alister Jack's job is to ensure devolution works smoothly – instead his obsession seems to be undermining devolution.
- He has been constantly misleading about the operation of the agreed and published IMA exclusions process; he has made inaccurate comments about the way glass is recycled in DRS which had to be corrected by Circularity Scotland.
- His latest bizarre intervention on BBC's Sunday Show was waving around a letter marked "private and confidential" from one of Scotland's leading drinks companies.
- The conduct of the Scottish Secretary has overshadowed our repeated attempts to have a constructive dialogue with UKG colleagues. As if the impositions on glass and unspecified conditions were not enough, added to that is a complete erosion of confidence that we can have conversations in good faith and mutual respect.
- It is extremely disappointing that Alister Jack is playing politics with such an important environmental policy.
- Until his intervention we were working constructively with other parts of the UK government to agree a full exclusion to the Internal Market Act.
- His accusation that glass would be used for aggregate is completely untrue and demonstrates a complete lack of understanding of how DRS operates and indeed, how our wider recycling legislation operates.
- Circularity Scotland, has consistently stated that they have set a target of 90 per cent for the remelting and reuse of glass from the scheme's launch, rising to 95 per cent post-launch.
- It would make no economic sense for a company collecting the waste as part of DRS to turn glass into a lower quality material, such as aggregate, when it can be sold for re-use as a higher quality material, such as new bottles.
- Mr Jack has continually misrepresented the Internal Market Act exclusion process by talking of formal requests when no such requirement exists.
- His own ministerial colleagues even acknowledged that the Scottish Government has followed the agreed process at all times.

ALIGNMENT WITH UK SCHEMES

- We have always been clear that we will continue to work closely with the other UK nations as they establish their deposit return schemes to ensure schemes were aligned as much as possible when they were launched.
- However, the conditions imposed on us by the UK government make that impossible to do.
- We have been asked to align with a scheme that doesn't even exist.
- We have been asked to proceed with our scheme, without glass, but also ensure there is consistency of bar codes and logos across all schemes. Schemes that do not exist and are not even at the planning stage.
- Wales and Scotland have been consistent in developing schemes on the pan UK basis we had at the outset. It is England which has stepped out of line.

COMPENSATION



- We are responding to a decision taken by the UK Government to give a partial exclusion from the Internal Market Act for DRS and that was not what the Scottish Government had been seeking
- For the reasons I have set out, the change in circumstances means it is no longer possible for us to proceed on the timescale we planned.
- In setting out how we respond to the UKG's decision on the exclusion it will of course be for Parliament to approve this course of action
- We are grateful to all businesses for the investment they have made in preparing for DRS..
- The Scottish Government remains committed to the delivery of a successful Deposit Return Scheme. The investment in preparing now can be utilised in the future.

[REDACTED] -

- Whilst we recognise the steps that businesses have taken to be ready for DRS, Ministers required to respond to the significantly changed circumstances. We do not consider that the action we have been required to take gives rise to any obligation to pay compensation

UNDERMINING DEVOLUTION

- The UK government's decision undermines the right of this parliament to pass and deliver regulations in clearly devolved areas.
- The Scottish Parliament approved the Deposit and Return Scheme for Scotland Regulations in 2020 – before the introduction of the Internal Market Act. The Regulations are wholly within devolved competence.
- The problem at the heart of this issue is the UK Government's hugely damaging Internal Market Act.
- The Internal Market Act radically undermines the powers of the Scottish Parliament, which is why this Parliament voted to withhold consent to it in 2020.
- It is now clear that the UK Government won't hesitate to use the Act undermine, override and re-write devolved legislation, disregarding four-nation agreements and good-faith engagement in Common Frameworks to so do.

The smoking ban analogy

- Going back to the early years of devolution Scotland introduced the ban on smoking in public places. The contemporary reports make familiar reading. Concerted lobbying against change; warnings of thousands of job losses, divided communities. Even death threats.
- And also loud rumblings of disquiet in Whitehall. Rumblings which came to no more than noise as it was accepted back then that Scotland had the right to legislate in areas which were devolved. There might have been disquiet but there was also a sufficient reservoir of respect.
- So the smoking ban came into place and 16 months later England followed suit.
- Can members imagine what might have happened back then if the UK Government had armed itself with the kinds of powers and attitudes that it has given itself now in its attempts to weaken the Scottish Parliament?
- No ban or a diluted ban. The defenders of the status quo smiling. The smoke free public places we take for granted now delayed or diluted.



A SCOTTISH PILOT

- The UK Government says it wants Scotland to act as a pilot for DRS. It is not the intention of devolution that devolved nations simply act as path-finders before the UK as a whole does it “properly”.
- Nevertheless, it is true that Scotland is very far ahead of UKG in developing the thinking and detail that turns plans into realities.
- There is much that other parts of the UK can learn and adopt from Scotland. Indeed the path to there being deposit return facilities available across the UK is swiftest and easiest if Scotland is able to proceed as this Parliament planned.
- So to use the language of the UKG what would a Scottish pilot look like? It would mean recognising that in core matters such as regulations, administrative set up, fees and budgets, logistics, contracts and much else besides Scotland has done much of the work.
- It would see the Scottish scheme given a fair wind to proceed as planned and on the basis on which it has evolved. It would allow for changes to the way it works in light of learning and experience. But in this version, a good faith version, it would rule out changes mid- course, without agreement and without being based on experience to date.
- That is not what we have been offered. We have been offered inter-operability, but not as a shared, mutually agreed partnership approach. Scotland (and Wales) have been told that in matters of alignment there is one line that matters – that of England’s.
- That is not a pilot. It is a shifting of goal-posts, an undermining of certainty when what is needed is clarity. Is there a will to work more co-operatively? Not so far but as we step out on this next stage of the journey to a Scottish DRS I would be delighted to see a more co-operative approach, a partnership rather than a power-play. .

GLASS

Benefits of including glass

- Glass is one of the three main materials used to make single-use drinks containers and accounts for more than a quarter of all the containers due to be included in our Deposit Return Scheme.
- To put that into context, the Scottish DRS will include up to 600 million glass bottles that reach the Scottish market each year.
- Of the 51 territories and countries operating deposit return schemes, 45 include glass.
- The UK Government’s own analysis of deposit return schemes across the UK showed that the social benefits of reduced litter, emissions saved and to the economy are increased by 64% when glass is included (from £3.6bn to £5.9bn).

Consequences of removing glass

- Removing glass means taking out up to 600 million bottles that would have been collected by the scheme, despite businesses in Scotland having invested millions of pounds in preparation to include them.
- Many of these bottles will unnecessarily end up as broken glass on our streets, our parks and our beaches.
- Glass is one of the most common items to pollute our beaches and broken glass poses a hazard to the public and wildlife.
- It also poses a threat to local authority, private sector and voluntary clean-up crews. Including it in DRS will help reduce the amount of littered glass.

[REDACTED]



- Zero Waste Scotland had previously estimated 560m glass bottles would be included in our DRS as part of the early policy development work.
- Given a number of years has passed since that research was undertaken, we have rounded the figure to 'up to 600m'.

Support for including glass

- A number of environmental groups support the inclusion of glass in DRS and criticised the UKG's decision to exclude glass from their DRS.
- The Association for the Protection of Rural Scotland: **[QUOTE]** *"Westminster's intention to exclude glass from the English system is a backward step... We urge the UK Government to follow Scotland's lead and to keep up with Wales by committing to deposit return for glass as well as cans and plastic bottles."* [20 Jan 2023]
- Greenpeace: **[QUOTE]** *"In what kind of world is collecting glass drinks containers not an essential part of a system designed to collect drinks containers?"* [20 Jan 2023]

POLICY DEVELOPMENT/INTERACTION WITH UKG TIMELINE

- 2019: The UK government proposed the inclusion of glass in their 2019 consultation on the UK wide deposit return scheme therefore we proceeded with the understanding that all nations of UK would include glass.
- May 2020: The Scottish Parliament legislated to create a deposit return scheme.
- December 2020: The UK Internal Market Act passed and did not receive consent from the Scottish or Welsh parliaments.
- Since July 2021: The Scottish Government has engaged with the UK Government on securing an exclusion from the Internal Market Act and has followed the agreed process which UK Ministers have publicly acknowledged.
- March 2022: UKG removed glass from their scheme
- January 2023: in their own consultation response, the UK government confirmed:
 - the Welsh scheme would include glass
 - the English scheme would not include glass
 - it is the responsibility of each nation of the UK to decide the scope of its own DRS.

UKG PLANS FOR DRS

- The UK Government's plans for a deposit return scheme is due to launch in October 2025.
- However, unlike most schemes worldwide, the English scheme excludes glass, which means they will miss out on many of the environmental benefits of the scheme.
- Even Conservative MPs agree that glass should be included in DRS with Philip Hollobone MP saying **[QUOTE]**: *"The omission of glass represents a real and serious threat to the effectiveness with which a DRS in England and Northern Ireland can realistically be delivered... represents the direct betrayal of a promise made by the Conservative Party to voters at the last general election."*
- We have always said we will work closely with the UK and devolved governments to maximise interoperability of the schemes when they go live.
- We hope that the UK government will, over time, follow us and Wales and reconsider its decision to exclude glass.
- As it stands, however, the terms of the letter received on 26 May means that for as long as England excludes glass so does Scotland

GATEWAY REVIEWS

- There have been a series of independent Gateway Reviews undertaken throughout the design of the Deposit Return Scheme, with the most recent carried out in March which of course was a review of the scheme with a timeline to this August, which we have already changed
- The Scottish Government will share the recommendations from this review, and its response with the Net Zero, Energy and Transport Committee soon.
- However, the very significant 11th hour changes by the UKG change the context of the gateway review enormously and so we are taking time to ensure that our response to its findings are best-fit to the direction of travel we are now embarked upon.
- Gateway Review teams normally speak with 12-15 interviewees including relevant commercial and external stakeholders (e.g. prime contractors and consultants).
- For the latest review, reviewers spoke to 45 people which included CSL, a range of producers, retailers, wholesaler, hospitality representatives, SEPA, Zero Waste Scotland and Scottish Government.

Annex B

Summary of conditions in UKG letter re IMA exclusion

- 1. Maximum cap on deposit levels will have to be agreed with the rest of the UK before the Scottish scheme launches to ensure maximum interoperability and ease of use for consumers**
 - More detail required to fully understand the parameters of this.
 - Scotland does not have the legislative powers to allow the **scheme administrator to set the deposit level**
 - Scottish scheme would provide evidence to inform the deposit level in rUK.
- 2. Containers in scope are consistent across all schemes, with materials covering PET plastic, aluminium, and steel cans only**
 - Significant issues with removal of glass.
 - We are assessing the impact on scheme viability.
- 3. Processes are in place for collections and refunds of scheme items sold and returned in any part of the UK, with scheme administrators reconciling to ensure fair distribution of payments;**
 - All nations shared this intent and agreed to work towards this goal.
 - This would best be achieved by collaboration across scheme administrators.
 - If it is not possible to do this by collaboration, then new legislation would be required to deliver this kind of interoperability.
 - There are currently no powers for the UK to make any DRS regulations for Scotland (even with consent of Scottish Ministers) so if new legislation was needed, it would need to be primary legislation which would take time to put in place and most likely that could be done before October 2025.
- 4. Processes are in place to minimise the registration and reporting burden for producers, including only one administration fee required per participating company, and producers not required to join multiple schemes separately**
 - All nations shared this intent and agreed to work towards this goal.
 - Would need further discussion with UKG on detail.
 - It is unclear at this stage if this could require new legislation.
- 5. One marking (e.g., barcode) for use throughout all parts of the UK**

- There is nothing in Scottish DRS Regulations about barcodes and Scotland does not have the power to legislate on this (as it is reserved).
- It is up to businesses what stock keeping units they use. Some businesses already have different barcodes for distinct parts of the UK, in the same way that they also do for various products (e.g., single cans vs multi-pack cans).
- Would need further discussion with UKG on detail.
- Producers can currently use UK barcodes under the Scottish scheme. As this comes with a higher risk of fraud, some producers have chosen to create Scottish barcodes.
- Those not using a Scottish barcode currently are required to pay a surcharge to CSL due to increased fraud risk.

6. A single common UK logo, recognisable across all systems

- We share this intent.
- Labelling powers are reserved, so Scotland cannot (and has not) introduced any labelling requirements.
- We have stated many times that we would like a common UK-wide logo.
- Would need further discussion with UKG on detail.

Other considerations on interoperability that are not mentioned in the UKG letter include:

Trading standards:

- the issue around the price marking order creates a barrier to trade where Scotland launches first (because current interpretation requires different price markings on price marked pack in England vs Scotland). We have been asking UKG to resolve this for approx. 10 months.

Low volume products:

- Scotland laid draft amended DRS Regulation (17 May) for low volume products.
- means that there could be different rules in different countries for what is in / out.
- Would need further discussion with UKG on detail.

Online takeback:

- Officials have been working with Defra to try to make sure our Regulations align with theirs; however their policy is not set yet so hard to currently ensure alignment.

13 June 2023 - Minister for Green Skills, Circular Economy and Biodiversity appearance at the Net Zero, Energy and Transport Committee

Minister for Green Skills, Circular Economy and Biodiversity appearance at the Net Zero, Energy and Transport Committee – 13 June 2023

<i>Date and Time of Committee Appearance</i>	13 June 2023 09:30
<i>Where</i>	T4.40-CR2 [REDACTED]



<p>Purpose of Evidence session</p>	<p>Given the media and parliamentary interest in the Scottish Government’s announcement that the DRS will be delayed until 2025 as a result of intervention by the UK government, we can expect that Committee will wish to scrutinise the implications for the future of the scheme.</p> <p>Amendments to the DRS regulations were laid before parliament on 17th May. The Committee is required to scrutinize the updated legislation and this will be its first available opportunity. While the regulations set out that DRS will be delivered in March 2024, this update still needs to be approved by committee and parliament to avoid the scheme having to be delivered this August.</p> <p>Additionally, in a letter dated 24th March, the Committee wrote to you requesting information on the findings of the Deposit Return Scheme’s most recent Gateway Review. Your letter to the committee of 9 June committed to providing this information before the end of the Parliamentary session.</p> <p>In later agenda item the Committee will also be considering an SSI on EPR (the Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2023)]. You have not been asked to discuss EPR, and it is unlikely that the subject will be raised. However, lines to take have been included within the briefing in case needed.</p>
<p>Official Support Required</p>	<p>David McPhee, Deputy Director, Deposit Return Scheme [REDACTED], Head of DRS Policy Unit [REDACTED], SGLD [REDACTED]</p>
<p>Comms Support/Media handling</p>	<p>No proposed comms</p>

Briefing Contents

<p>Annex A</p>	<p>Committee Agenda Page 3-4</p>
<p>Annex B</p>	<p>Opening remarks (3 mins) <i>Attached separately</i></p>



Annex C	Background Briefing Contents Page
Annex D	Question Areas <ul style="list-style-type: none"> • Internal Market Act exclusion • Regulations • Gateway Review • Future of DRS • EPR
Annex E – I	Annex E: UK Internal Market Act and policy development timeline Annex F: Background briefing Annex G: Defra Letter Annex H: Compensation further detail Annex I: Stakeholder feedback

ANNEX A
Committee Agenda
Net Zero, Energy and Transport Committee
Meeting Agenda

- 21st Meeting, 2023
 - **Date:** Tuesday, June 13, 2023
 - **Session:** 6
 - **Location:** T4.40-CR2 [REDACTED]
 - **Start time:** 09:30am

- 1 Decisions on taking business in private

The Committee will decide whether to take items 5 and 6 in private.

The Committee will decide whether to consider its work programme in private at its next meeting.

The Committee will decide whether its consideration of a draft report on 'Scotland's electricity infrastructure: inhibitor or enabler of our energy ambitions?' should be taken in private at future meetings.

- 2 Scotland's Deposit Return Scheme

The Committee will take evidence on Scotland's Deposit Return Scheme and the [Deposit and Return Scheme for Scotland Amendment Regulations 2023](#) [draft] from—

- Witnesses

Lorna Slater, Minister for Green Skills, Circular Economy and Biodiversity, Scottish Government

[REDACTED], Solicitor, Scottish Government

David McPhee, Deputy Director, Deposit Return Scheme, Scottish Government



[REDACTED], Head of UK Frameworks, Constitution and UK Relations Division, Scottish Government

[REDACTED], Head of Deposit Return Scheme Policy Unit, Scottish Government

Clerk Paper 1267KB pdf posted 08/06/2023 (Ref: NZET/S6/23/21/1)

[REDACTED]

5. 3 Subordinate legislation

6.

Lorna Slater (Minister for Green Skills, Circular Economy and Biodiversity) to move—S6M-09033—That the Net Zero, Energy and Transport Committee recommends that the Deposit and Return Scheme for Scotland Amendment Regulations 2023 [draft] be approved.

7. 4 Subordinate legislation

The Committee will consider the following negative instrument—

Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2023 (SSI 2023/160)

Clerk Paper 3148KB pdf posted 08/06/2023 (Ref: NZET/S6/23/21/3)

ANNEX B

Opening remarks

Attached as a separate word document

ANNEX C

Background Briefing Contents Page

Annex D	Question Areas	Page Number
	<ul style="list-style-type: none">1) Internal Market Act exclusion2) Regulations3) Gateway Review4) Future of DRS5) EPR	<p>Page 7 -8</p> <p>Page 8 -15</p> <p>Page 15-16</p> <p>Page 16</p> <p>Page 16 -17</p>
Annex E – I	<p>Annex E: UK Internal Market Act and policy development timeline</p> <p>Annex F: Background briefing</p> <p>Annex G: Defra Letter</p> <p>Annex H: Compensation further detail</p> <p>Annex I: Stakeholder feedback</p>	<p>Page 18 - 23</p> <p>Page 24 -26</p> <p>Page 27 -29</p> <p>Page 30 -31</p> <p>Page 32</p>



ANNEX D Question Areas

1. INTERNAL MARKET ACT EXCLUSION

TOP LINES

- We have been left with no other option than to reset the timescale of DRS and delay the launch until October 2025 at the earliest, when the UK Government says it will aim to launch its own scheme.
- DRS will happen but we are frustrated and disappointed that it will now take longer than needed and more limited than it should be.
- This is a result of the UK Government's actions and intervention at the 11th hour.
- The views of industry have also informed the difficult decision to delay the scheme.

[REDACTED]

We are still assessing the significant implications of the UKG's decision on the scheme and will continue to engage with businesses etc

EFFECT OF UK GOVERNMENT DECISION

- The removal of glass has significant implications on the scheme's operation – businesses have planned and invested millions on the basis of its inclusion.
- The additional conditions the UK Government has imposed created even more uncertainty for businesses as the UK Government hasn't yet designed their scheme which we are supposed to align to.
- The 11th hour intervention after almost two years of discussions erodes the confidence that there is a commitment from UK Government to act in good faith and with mutual respect for the devolved administrations.

UNDERMINING DEVOLUTION

- The UK government's decision undermines the right of this parliament to pass and deliver regulations in clearly devolved areas.
- The Scottish Parliament approved the Deposit and Return Scheme for Scotland Regulations in 2020 – before the introduction of the Internal Market Act. The Regulations are wholly within devolved competence.
- The problem at the heart of this issue is the UK Government's hugely damaging Internal Market Act.
- The Internal Market Act radically undermines the powers of the Scottish Parliament, which is why this Parliament voted to withhold consent to it in 2020.
- It is now clear that the UK Government won't hesitate to use the Act to undermine, override and re-write devolved legislation, disregarding four-nation agreements and good-faith engagement in Common Frameworks to do so.
- Scotland would be able to proceed with its current DRS if we were still members of the EU, just like other EU member states who already have deposit return schemes,
- Unlike the Internal Market Act, EU single market rules do not prevent member states from implementing schemes like DRS which have proportionate environmental objectives

UK GOVERNMENT'S 11TH HOUR INTERVENTION (response to story in Herald on Sunday 11 June)

- A reminder that the Scottish Parliament approved the Deposit and Return Scheme for Scotland Regulations in 2020 – before the introduction of the Internal Market Act.
- And the Regulations are wholly within devolved competence.
- The article in the Herald (11 June) clearly shows that Scottish Ministers raised concerns on the impact of the Internal Market Act on devolved policy.
- That is exactly why we began discussions in July 2021 for an exclusion from the IMA under the Resources and Waste Common Framework.
- Up until January 2023, the UK Government acknowledged that it was for each nation of the UK to decide the scope of its own DRS.
- But it was the 11th hour intervention of the UK Government, after almost two years of discussion, that undermined the right of the Scottish Parliament to pass and deliver regulations in clearly devolved poli

2. REGULATIONS

- These amendments, laid on 17 May, follow substantial engagement and feedback from industry, as I set out in my statement on 20th April.
- The amendments delay the launch date and simplify the scheme in response to stakeholder concerns.

THE AMENDMENT REGULATIONS:

GO LIVE DATE

- Amend the full implementation date for DRS to 1 March 2024 after consideration of impacts on scheme success and businesses;
- We heard a range of views from business with some businesses asking for a delay and some businesses asking for the scheme to go ahead in August
- In line with the new implementation date, amend the first year registration deadline for producers, as well as the date for review of the 2020 Regulations
- Makes transitional provisions in relation to producer applications received before these regulations come into force;
- At the point we laid the regs, particularly given the uncertainty caused by the delay from the UK Government to agree an IMA exclusion, we had decided that moving the launch date to 1st March was the most effective action
- Many businesses have invested to make DRS a reality and, in coming to that judgement, we believed it was important that we realised the environmental benefits of this scheme as soon as practicable
- Clearly the context has now changed, and we have been left with no other option than to reset the timescale of DRS and delay the launch until October 2025 at the earliest, when the UK Government says it will aim to launch its own scheme. We are frustrated and disappointed that it will now take longer than needed and more limited than it should be.
- We will bring further draft regs to Parliament to change that date to October 25 at the earliest and to make other consequential changes due to delayed launch date.

[REDACTED]



- The current set of regulations changes the date of the scheme launch to 1 March 2024, so that the scheme will no longer be required to go live on 16 August 2023.
- In addition to changing the go-live date, there are a number of knock-on changes that need to be reflected throughout the regulations.
- I explored options with my officials to withdraw these draft regulations and to lay a further set of draft regulations to reflecting last week's decision to delay the go-live date
- Withdrawal of these regulations and the laying of a new set would have meant that there was only a very short amount of time left for Parliament to scrutinise new draft regulations before summer recess containing the various descoping changes to DRS that had already been agreed with business.
- **[REDACTED]**
 - We have been rightly critical of the UK Government who have sought to impose conditions on the inter-operability of our scheme with a future DRS scheme, without being clear as to what the details of their scheme are
 - We are committed to Scotland having a DRS, and so it is important for those continuing discussions on interoperability and for completeness, that our DRS regulations – are amended to effect the changes agreed with business We recognise that the conversations with UK Government may lead to further amendments to these regulations and we will continue to work with the UK government in good faith to agree any such changes.
 - However, if recent history is anything to go by, these changes may be imposed upon us.
- **[REDACTED]**
 - It is important that our DRS regulations –are amended to give effect to the changes agreed with business – so that the scope of our scheme is clear
 - This gives substance to further discussions.
 - Our immediate priority following this is to bring forward regulations to amend the go-live date

Subsequently we will also be considering whether any further amendments will be required in order to deal with the UK Government's interoperability conditions. In terms of parliamentary timetabling, withdrawing and re-laying the regulations would have involved asking Parliament to agree to a very rushed scrutiny period. This way, Parliament has sufficient time to scrutinise both these regulations and the subsequent amendments to the go-live date.

[REDACTED]

We will reset the timescale of DRS and delay the launch until October 2025 at the earliest, when the UK government says it will aim to launch its own scheme. We remain committed to the delivery of a successful Deposit Return Scheme and we will bring forward revised provisions to deal with UK Government's interoperability conditions at a later date. We will continue to make the case, along with our Welsh colleagues, for the environmental benefits of including glass in a UK-wide scheme.

ONLINE TAKEBACK

- In response to stakeholder concerns about the deliverability of takeback obligations, replaces the previous distance takeback obligations.



- The obligation is now restricted to the largest grocery retailers, defined as those designated by the Groceries Supply Code of Practice. The obligation also and only applies to purchases by eligible customers, defined as those who self-identify as having a disability or are aged 66 and over. There are also new provisions to set expiry dates for the obligation to provide a takeback service, to set a minimum threshold for collection of scheme packaging (21 articles), and to allow the right to refuse above a reasonable maximum.
- A large retailer is defined as having an annual turnover in the preceding financial year exceeding £1 billion with respect to the retail supply of groceries in the United Kingdom, or a subsidiary of such a retailer. These retailers account for over 96% of total UK grocery sales, and already have legal obligations in relation to wider Scottish and UK legislation.
- All retailers have their own obligations under the Equality Act 2010 to those with protected characteristics. It is the responsibility of individual retailers to consider any obligations that they may have with regard to the provision of a takeback service for their customers. Any retailer may voluntarily provide a takeback service.
- A takeback service must be provided to customers who state to the large retailer that they are aged 66 and over or have a disability. This means that those customers who are more likely to be dependent on grocery deliveries, or for any reason are unable to travel to shops, will be able to redeem deposits paid on containers.
- Just under one fifth of Scotland's population is 66 and over. Setting the eligibility criterion for online takeback to those aged 66 and over is in line with feedback from stakeholders and the UK state pension age.
- Retailers may voluntarily provide a takeback service to any customer should they choose to.
- The obligation specifies that takeback is free of charge and is funded by an online retail handling fee.
- However, large retailers can charge a further 'collection' deposit to be returned upon collection of a minimum number of containers.
- The obligation is triggered by the sale of a scheme article by a large retailer by means of distance retail sale and consumers aged 66 and over or with a disability will be able to return a 'reasonable' number of containers, no matter where they were purchased, provided that they request the takeback within 6 months from the date of purchase.
- A 'reasonable' number is no less than 21 and the maximum amount must take into account the method of storage or collection used by the large retailer. Any retailer can voluntarily provide a takeback service and, if doing so, will be bound by the same obligations.

LOW VOLUME PRODUCTS

- To reduce regulatory costs for specialist products and preserve consumer choice, amendments insert a definition of a low volume drink product as products of which there are sales to consumers in Scotland of fewer than 5,000 units per year and excludes a 'low volume product' from the definition of a scheme article;
- This change was asked for by business
- While it will particularly help small producers it will apply to producers of all sizes. For example specialist product lines from large producers will also not require to carry a deposit.
- Any producer that wishes to apply a deposit to their low volume products can still do so. We would encourage this where possible.
- Producers must still register with SEPA to sell products in Scotland, in line with all other drinks covered by DRS. This is because SEPA must still regulate this aspect of the scheme to ensure it is applied fairly, for all producers. However, the registration fee will



be waived for businesses with a turnover under £85,000 per year, as is currently the case.

- Producers must still provide information on the volume of their products sold in Scotland, either directly to SEPA or via Circularity Scotland.
- Allowing products with sales of under 5000 units per year to be exempt from carrying a deposit would mean that 44% of drinks producers, primarily the smallest drinks producers, could be exempt from applying a deposit to any of their products, and around 80% of all drinks producers could be exempt from applying a deposit to at least one of their products
- Only 0.5% of scheme articles (around 13 million containers) would be affected by this change, meaning that there would be a very minimum impact on the material covered by the scheme.
- 5000 units per year equates to sales of fewer than 100 units per week. We therefore expect this impact to be very low and primarily affect specialist retailers and hospitality businesses, who were among those that requested we consider removing deposits on specialist products.
- There is the potential for greater consumer confusion. However, many of the products affected are sold in hospitality settings where the deposit is not charged to the consumer, and will already have a long cut-over period as they tend to flow more slowly through the drinks supply chain.

MINIMUM CONTAINER SIZE

- In response to implementation challenges related to small drinks containers, we now exclude drinks containers of under 100ml from the definition of a scheme article, which removes smaller containers from the scheme. This is a change from the previous 50ml minimum size;
- This is a change that was requested by drinks producers.
- It will reduce complexity and remove the operational challenges associated with small containers. It also addresses the concerns by retailers that small containers may not be accepted by reverse vending machines.
- We estimate that it will remove approximately 0.2% of total scheme articles from the scheme, so will have a minimal effect overall.
- The change brings us in line with many of the other countries who have DRS schemes.
- [If pressed] We are also in discussion with Defra and other devolved nations regarding interoperability of our schemes – this is an example of where learning in Scotland is being taken on board elsewhere in the UK.

HOSPITALITY RETAILERS

To simplify the scheme for hospitality retailers, amendments remove the duty to act as a return point for retailers where they sell 90% or more of their scheme articles for consumption on their premises;

- It is already the case that any retailer that sells drinks exclusively on the premises does not need to operate a return point.
- This change expands this exemption to also cover premises that sell a small number of off-sales – up to 10% of sales.
- Other hospitality venues will also have the ability to apply for an exemption through the existing exemptions system, which already has a streamlined process for food to go and hospitality businesses.
- Off sales that are made online do not count towards the total number of sales for the purposes of calculating the total sales for this exemption

- Amendments also require hospitality retailers to retain scheme packaging in which scheme articles were sold for collection by producers or a scheme administrator, in line with the obligation for producers, or a scheme administrator, to collect this material;

[REDACTED]

- Many premises have multiple uses and it would not be appropriate for them to not act as a return point given the amount of articles they will sell
- The aim of this exemption is to remove a significant amount of hospitality while still maintaining a suitable set of return points for customers
- Any hospitality venue not automatically exempted can apply for an exemption in the normal way

RIGHT TO REFUSE SCHEME PACKAGING IN CERTAIN CIRCUMSTANCES

- To enable certain premises to act as return points, amendments make provision to allow return point operators to refuse to accept returns of scheme packaging, based on packaging material type, where accessing the premises with that material type for the purpose of returns poses a risk to food safety or health and safety;
- This is in response to feedback from locations such as schools and leisure centres, that wish to act as return points but are unable to do so under current Regulations.
- This new provision aligns with the policy intention that a premises should not be put at significant risk being in breach of health and safety or food safety as a result of operating a return point.
- We expect the effect of this provision will be to increase the number of return points available, since currently a return point operator that cannot accept a material type onto the premises for food safety or health and safety reasons must apply for a full exemption from operating a return point.
- A return point operator which makes use of this new provision must clearly display which materials they do not accept, the reason why, and the nearest return point which accepts this material, in order to ensure that there is a minimal impact on the consumer's ability to return the item.
- Retailers will still be able to apply for a full exemption from return point obligations should they wish to do so.

OTHER

- Amendments make a small number of other minor amendments to the original Regulations.

[REDACTED]

- These amendments contain the package of changes which reflect feedback from industry partners, and, crucially, without these amendment Regulations, Scotland's DRS would still go live on 16 August this year.
- The amendment regulations that we are discussing today were brought in to reduce the challenges the scheme was facing. The delay that they to 1 March 2024 was due to the fact that we were still awaiting a decision from the UK Gov on an IMA exclusion. Taken together, the delay to launch and the changes made in these regulations aim to de-risk the DRS and support businesses. The changes targeted the remaining big challenges that the scheme is facing:
 - ;
 - clarity from UKG on pricing display / trading standards
 - time to enable whole system testing and process readiness
 - small producer and hospitality concerns; and



- retailer readiness and
- poor customer experience if the scheme is launched before businesses are adequately prepared.

The change in the go live date from 16 August to 1 March 2024 ensures that DRS will not come into force now this year AND captures some other changes that we think it reasonable to assume would be features of the later scheme.

[REDACTED]

- Due to the eleventh-hour decision from the UK Government to force us to exclude glass from our scheme, we are left with no option but to push back the launch of the scheme even further, to 2025. This will require a further amendment to the DRS regulations to change the date to 1 October 2025.

Regulation Timetable / Summary of Process

17 May Regulations -SSI 1	Further set for date change – SSI 2
Laid in Parliament on 17 May	Laid in Parliament 29 June (as soon as the SSI being considered today is approved by the Parliament made (signed))
DPLRC Technical Scrutiny 30 May	TBC - After recess
NZET Scrutiny on 13 June	TBC - After recess
Plenary Session likely Wednesday 28 June	TBC - After recess
Target coming into force date 30 June	TBC - After recess

- SSI 1 seeks to make the amendments as set out in detail above, in line with feedback from stakeholders. It also seeks to delay the launch date from August 2023 to March 2024 (now an interim arrangement which will be amended by SSI 2).
- SSI 1 will go through a plenary session during the last week of June before its target coming into force date of 30 June.
- The SSI 2 will seek to only delay the launch date to 2025.
- Officials will make the necessary arrangements to lay SSI 2 in Parliament as soon as practicable after SSI 1 is signed (we cannot do this any sooner, because SSI 2 will refer back to SSI 1). This will ensure SSI 2 is laid prior to Summer recess. Further stages of parliamentary consideration will be confirmed in due course and will take place following recess.
- **If pressed on why SSI 2 has to be laid so late:** laying SSI 2 before 29 June would require SSI 1 to be considered at plenary next week (commencing 19 June). In turn, this would have required this committee to report on its findings before the parliamentary cut off on Thursday 15th at midday. Similar timescales would have been required had we withdrawn and re-laid new regulations.

Interaction with Civic Government (Scotland) Act 1982

A PQ was recently received asking SG what assessment it has made of any interaction between section 67 of the Civic Government (Scotland) Act 1982 and the provisions of its proposed Deposit Return Scheme. Lines to take:

- Scotland's Deposit Return Scheme would be a major part of our efforts to reduce littering, cut emissions and build a more circular economy. It would reduce littering by a third and increase recycling rates of single-use drinks containers towards 90%.



- Section 67 places a duty on any person to take reasonable care of property and to hand to the police in circumstances where they take possession of the property without the authority of the owner, in circumstances which make it reasonable to infer that the property has been lost or abandoned
- The key issue under section 67 is that property has to be lost or abandoned
- Any littered bottles or cans are not property which has been lost or abandoned - they have been discarded by the owner and therefore section 67 is not relevant.
- Circumstances would be different if the bottles or cans were on private property – such property is also not lost or abandoned. The property also might not clearly have been discarded because the occupier/owner might be waiting to collect the bottles or cans together

IMPACT ASSESSMENTS

- A suite of impact assessments has been updated to reflect the Deposit and Return Scheme for Scotland Amendment Regulations 2023, which make provision to change the implementation date of the scheme to 1 March 2024, alongside a number of simplification measures.
- You have received updated versions of the Islands Communities Impact Assessment, Fairer Scotland Impact Assessment and Equalities Impact Assessments alongside a supplementary analysis to the Business and Regulatory Impact Assessment in light of the amendments laid in May. These impact assessments are in the process of being published.
- *[If required]* Impact assessments were completed at pace to inform the Regulations brought before you today. They are based on the best available data, published evidence, and engagement with businesses and other stakeholder groups

3. GATEWAY REVIEWS

Top line

- I acknowledge the outstanding commitment to share with Committee our response to the March Gateway Review.
- Given the very clear call from all stakeholders for certainty, I believe it is important to make sure that our response and action plan for the Review recommendations best reflects the position the UK Government has put us in.
- I will write the Committee before Parliamentary recess sharing the review findings and our response.

Sharing the Review findings and response

- Given the decision by the current UK Government to exclude glass and to set out several interoperability conditions, the pathway on which we are now embarked is very different from the context in which the Gateway Review was carried out.
- The Gateway Review carried out in March identified the lack of decision on IMA exclusion as a significant blocker to progress. The lack of ruling by Trading Standards on shelf edge pricing was also identified as a key blocker.



- Running alongside the Gateway Review we continued to engage with stakeholders, listening to their concerns and to understand the genuine operational issues around delivery.
- As you know, this resulted in the First Minister announcing a delay to the launch until March 2024 on 18 April.
- On 20 April I announced a set of changes to the scheme to address stakeholder concerns. We then embarked on the work necessary to deliver the programme with these changes.
 - We revised the Governance replacing the System Wide Assurance Group with the Ministerial Strategic Assurance Group and sector specific operational groups;
 - we developed the amendment Regulations we have discussed today to change the scheme scope and bolstered Scottish Government resource to ensure go.
 - And we focussed programme delivery on 1 March launch.
- Exceptionally we published a previous report but Gateway reviews are not typically published.
- The whole context has fundamentally changed since the March Review.
- Given the very clear call from all stakeholders for certainty, I believe it is important to make sure that our response to the Review best reflects the position we are now in.
- I will however write the Committee before Parliamentary recess sharing the recommendations and our response.

About the Review

- There have been a series of independent Gateway Reviews undertaken throughout the design of the Deposit Return Scheme, with the most recent carried out in March.
- The independent project reviewers spoke to 45 people which included CSL, a range of producers, retailers, wholesaler, hospitality representatives, SEPA, Zero Waste Scotland and Scottish Government.

4. FUTURE OF SCOTLAND'S DRS

- We remain committed to interoperable DRS schemes across the UK .
- I remain keen to work with the other UK nations in spirit of collaboration, not imposition, to see how we can maximise interoperability while recognising the decisions this Parliament has made.
- The FM and I met with more than 80 stakeholders last week from a broad range of sectors including retailers, producers, and hospitality, and the overwhelming feedback from businesses at that meeting was the UKG exclusion of glass and new conditions on interoperability created too much uncertainty to be ready for a March 2024 launch and since the delivery of DRS is an industry led project, these views are critical.
- We will continue to work closely with industry at every stage towards our journey to deliver Scotland's deposit return scheme.

WORKING WITH THE UKG

- I wrote to the UK Government last week, to urge ministers to reset a climate of trust and good faith to galvanise and retain the knowledge that has been built in Circularity Scotland and DRS partners in Scotland.
- We remain committed to a relationship that should be co-operative, based on shared learning and mutual agreement.

- I am meeting with Minister Pow tomorrow to discuss the next steps to ensure DRS can be introduced both in Scotland and across the whole of the UK by October 2025.

5. EPR

[REDACTED]

- These regulations support introduction of extended producer responsibility for packaging, which will see producers paying more than £1bn a year to local authorities across the UK to fund collection and recycling services for packaging waste.
- Packaging EPR will also incentivise businesses to reduce excess packaging and design and use packaging that is easy to reuse and recycle.
- These regulations will help ensure that we collect the data we need from producers about the packaging materials that they place on the market in the course of 2023, to inform the fees they will pay once the scheme goes live.
- The Committee will recall considering regulations on this subject which came into force on 28 February.
- Subsequent work with our partners in the other UK administrations, and industry scrutiny following the laying of those regulations, identified a number of necessary amendments to the regulations and the analogous legislation that was laid in the other UK parliaments.
- Working with the other UK administrations, we have developed this SSI, and analogous legislation to be made in the other UK nations, to provide clarity to businesses regarding their obligations, remove some potential loopholes, and ensure producers submit all the information required.
- This is complex policy representing a significant advance on our existing producer responsibility system and I am sure Members will agree it was right that we take this early opportunity to correct these minor errors since they have become apparent.

[REDACTED]

- At the time of laying the original regulations before Parliament, and at the point of Committee scrutiny, it was not yet clear that the regulations required amendment.
- This is a complex issue and it took time for us, and our partners in the other UK administrations, to consider the points raised by industry, assess their validity, and decide if any amendment was required.
- These regulations correct issues that could have applied in certain edge cases, such as packaging imported by a producer and then discarded without ever being placed on the market. We have taken this early opportunity to correct the regulations on these issues.
- For the vast majority of cases the regulations work as expected and producers have had the benefit of time to prepare to meet their reporting obligations, where applicable, by 1 October of this year.

ANNEX E

BACKGROUND BRIEFING

COMPENSATION



- We are responding to a decision taken by the UK Government to give a partial exclusion from the Internal Market Act for DRS and that was not what the Scottish Government had been seeking.
- At the eleventh hour the UKG change the scope Scotland's DRS by excluding glass and creating new untested conditions for interoperability with schemes in the rest of the UK which do not yet exist.
- This very significant change in circumstances means it is no longer possible for us to proceed on the timescale we planned.
- In setting out how we respond to the UKG's decision on the exclusion it will of course be for Parliament to approve this course of action.
- We are grateful to all businesses for the investment they have made in preparing for DRS.
- The Scottish Government remains committed to the delivery of a successful Deposit Return Scheme and the investment in preparing now can be utilised in the future.
- The overwhelming feedback from businesses was they could not prepare for a March launch and, since the delivery of DRS is an industry led project, these views are critical. A considerable majority of businesses supported a re-set of the date to match that of the UK's stated target of October 2025 at the earliest.
- Whilst we recognise the steps that businesses have taken to be ready for DRS, Ministers were required to respond to the significantly changed circumstances.
- We do not consider that the action we have been required to take gives rise to any obligation to pay compensation.

[REDACTED]

- The Scottish Government has received legal advice on matters relating to DRS on an ongoing basis as appropriate.
- The content of any legal advice is confidential. By long-standing convention, successive Scottish and Westminster Governments have not disclosed the source or content of legal advice other than in the most exceptional circumstances.

[REDACTED]

It is a very long established position that legal advice that the Scottish Government receives is not published. That has been the position not just for the Scottish Government but also the UK Government and is reflected in the Ministerial Code. There is a strong public interest in the Government being able to discuss and take policy decisions in full possession of thorough and candid legal advice, in ensuring Government decisions are taken in a fully informed legal contest and for that advice to be confidential to them as it would be to any client.

SEPA REGISTRATION REFUNDS

Holding line: We are still assessing the significant implications of the UKG's decision on the scheme and will continue to engage with businesses etc

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]



- [REDACTED]
- [REDACTED]

CSL SAYING DRS COULD PROCEED WITHOUT GLASS

- We have been working closely with Circularity Scotland and industry to establish the viability of the scheme following the UK Government's last minute intervention.
- While removing glass has significant implications for our scheme, there are additional conditions imposed by the UK Government including agreeing to a cap on deposit levels and registration process.
- These conditions ask us to align with a scheme that doesn't yet exist – creating more uncertainty for business.
- We need our scheme administrator to have the confidence of business, which is why the FM and I met with businesses last week.
- We do not underestimate the progress that our delivery partners have made in recent years preparing for this scheme. This has been delivered by committed and professional individuals.
- I believe that the business sector sees the merits in working to maintain the progress they have made and to be able to use this as springboard for the future form of DRS.

FINANCIAL VIABILITY OF CIRCULARITY SCOTLAND (CSL)

- Throughout the process, CSL has been a trusted partner with a demonstrated expertise and knowledge in its field.
- I have written to them to thank their staff for their hard work to get to a position where DRS was ready to launch in Scotland and to express my deep regret that we are now in this position.
- CSL is a not-for-profit company led by industry – therefore, it is for industry rather than government to determine whether they continue to support a firm that has industry responsibility at its heart.

[REDACTED]

- CSL is a private not-for-profit company which is industry led and was designed to be funded by industry. It would not be appropriate for the Scottish Government to fund the company.

ALISTER JACK'S CONDUCT

- Alister Jack's job is to ensure devolution works smoothly – instead his obsession seems to be undermining devolution.
- He has been constantly misleading about the operation of the agreed and published IMA exclusions process; he has made inaccurate comments about the way glass is recycled in DRS which had to be corrected by Circularity Scotland.
- His latest bizarre intervention on BBC's Sunday Show was waving around a letter marked "private and confidential" from one of Scotland's leading drinks companies.
- The conduct of the Scottish Secretary has overshadowed our repeated attempts to have a constructive dialogue with UKG colleagues. As if the impositions on glass and

unspecified conditions were not enough, added to that is a complete erosion of confidence that we can have conversations in good faith and mutual respect.

- It is extremely disappointing that Alister Jack is playing politics with such an important environmental policy.
- Until his intervention we were working constructively with other parts of the UK government to agree a full exclusion to the Internal Market Act.
- His accusation that glass would be used for aggregate is completely untrue and demonstrates a complete lack of understanding of how DRS operates and indeed, how our wider recycling legislation operates.
- Circularity Scotland, has consistently stated that they have set a target of 90 per cent for the remelting and reuse of glass from the scheme's launch, rising to 95 per cent post-launch.
- It would make no economic sense for a company collecting the waste as part of DRS to turn glass into a lower quality material, such as aggregate, when it can be sold for re-use as a higher quality material, such as new bottles.
- Mr Jack has continually misrepresented the Internal Market Act exclusion process by talking of formal requests when no such requirement exists.
- His own ministerial colleagues even acknowledged that the Scottish Government has followed the agreed process at all times.

A SCOTTISH PILOT

- The UK Government says it wants Scotland to act as a pilot for DRS. It is not the intention of devolution that devolved nations simply act as path-finders before the UK as a whole does it “properly”.
- Nevertheless, it is true that Scotland is very far ahead of UKG in developing the thinking and detail that turns plans into realities.
- There is much that other parts of the UK can learn and adopt from Scotland. Indeed the path to there being deposit return facilities available across the UK is swiftest and easiest if Scotland had been able to proceed as this Parliament planned.
- So to use the language of the UKG what would a Scottish pilot look like? It would mean recognising that in core matters such as regulations, administrative set up, fees and budgets, logistics, contracts and much else besides Scotland has done much of the work.
- It would have seen the Scottish scheme given a fair wind to proceed as planned and on the basis on which it has evolved. It would allow for changes to the way it works in light of learning and experience. But in this version, a good faith version, it would rule out changes mid-course, without agreement and without being based on experience to date.
- That is not what we have been offered. We have been offered inter-operability, but not as a shared, mutually agreed partnership approach. Scotland (and Wales) have been told that in matters of alignment there is one line that matters – that of the UK Government’s.
- That is not a pilot. It is a shifting of goal-posts, an undermining of certainty when what is needed is clarity.

GLASS

Welsh Government continuing with a glass scheme

- Wales and Scotland have been consistent in developing schemes in good faith on the pan UK basis we had at the outset. It is the UK Government’s scheme for England which has stepped out of line to exclude glass.

- Wales are at an earlier stage than we are on DRS and once it comes to drafting the regulations and doing the detailed design it will very likely face the same barriers that we are now dealing with.
- The Internal Market Act applies in the same way in Wales as it does in Scotland

Benefits of including glass

- Glass is one of the three main materials used to make single-use drinks containers and accounts for more than a quarter of all the containers due to be included in our Deposit Return Scheme.
- To put that into context, the Scottish DRS will include up to 600 million glass bottles that reach the Scottish market each year.
- The Strategic Environmental Assessment Addendum published in December 2021 shows that glass will account for 1.3 MtCO₂e carbon savings over 25 years, almost 32% of the total carbon savings the scheme.
- Of the 51 territories and countries operating deposit return schemes, 45 include glass.
- The UK Government's own analysis of deposit return schemes across the UK showed that the social benefits of reduced litter, emissions saved and to the economy are increased by 64% when glass is included (from £3.6bn to £5.9bn).

Consequences of removing glass

- Removing glass means taking out up to 600 million bottles that would have been collected by the scheme, despite businesses in Scotland having invested millions of pounds in preparation to include them.
- Many of these bottles will unnecessarily end up as broken glass on our streets, our parks and our beaches.
- Glass is one of the most common items to pollute our beaches and broken glass poses a hazard to the public and wildlife.
- It also poses a threat to local authority, private sector and voluntary clean-up crews. Including it in DRS will help reduce the amount of littered glass.
- The estimated revised Net Present Value (NPV) of the Scottish Deposit Return Scheme is approximately £337 million after the exclusion of glass, representing a reduction of 41% from the scheme NPV with glass (post sales volume and size exemptions). The Scotland DRS business case had estimated an NPV value of £615 million including glass.

[REDACTED]

- Zero Waste Scotland had previously estimated 560m glass bottles would be included in our DRS as part of the early policy development work.
- Given a number of years has passed since that research was undertaken, we have rounded the figure to 'up to 600m'.

Support for including glass

- A number of environmental groups support the inclusion of glass in DRS and criticised the UKG's decision to exclude glass from their DRS.
- The Association for the Protection of Rural Scotland: **[QUOTE]** *"Westminster's intention to exclude glass from the English system is a backward step...We urge the UK Government to follow Scotland's lead and to keep up with Wales by committing to deposit return for glass as well as cans and plastic bottles."* [20 Jan 2023]
- Greenpeace: **[QUOTE]** *"In what kind of world is collecting glass drinks containers not an essential part of a system designed to collect drinks containers?"* [20 Jan 2023]

[REDACTED]

The UK Government has put us in an impossible situation at the 11th hour giving an unworkable partial exclusion from the IMA, despite us engaging with their process in good faith. We were left with no choice but to delay the scheme.

This is a matter for the bank and CSL

SUPPORT FOR SCOTLAND'S DRS

- There continues to be strong support for Scotland's DRS from the public, businesses, and civil society.
- Polling carried out in February showed that 70% of Scots support Scotland's DRS.
- A poll on 3-5 June showed 47% wanted DRS with glass, 13% a DRS without glass and 25% no DRS at all (15% didn't know).
- Businesses remain committed to the implementation of a DRS:
 - British Soft Drinks Association [QUOTE]: *"BSDA members have long supported the introduction of an industry-led, interoperable DRS run on a not-for-profit basis to help support a circular economy, reducing litter and increasing recycling"* (7 June)
- Environmental organisations have expressed their disappointment with the further delay to the policy:
 - Friends of the Earth Scotland [QUOTE]: *"The UK Government's disastrous intervention into this simple scheme undermines the people of Scotland & shows that the environmental crisis we're facing is not being taken seriously."* (7 June, Twitter)
 - Marine Conservation Society [QUOTE]: *"Scotland's deposit return scheme delayed again - our seas will have to continue to pay the price of our waste. We're in a climate and nature emergency - we need action not more delays. We call on governments across the UK to do better for our ocean."* (7 June, Twitter)
 - Action to Protect Rural Scotland [QUOTE]: *"This is a bleak day for anyone who cares about Scotland's litter crisis, or indeed the global climate crisis. If we cannot implement such a tried and tested measure, what chance do we have to deliver the much more challenging tasks that lie ahead?"* (7 June Twitter)

ANNEX F

UK INTERNAL MARKET ACT

Summary of conditions in UKG letter re IMA exclusion

- 1. Maximum cap on deposit levels will have to be agreed with the rest of the UK before the Scottish scheme launches to ensure maximum interoperability and ease of use for consumers**
 - More detail required to fully understand the parameters of this.
 - Scotland does not have the legislative powers to allow the **scheme administrator to set the deposit level.**
 - Scottish scheme would provide evidence to inform the deposit level in rUK.
- 2. Containers in scope are consistent across all schemes, with materials covering PET plastic, aluminium, and steel cans only**
 - Significant issues with removal of glass.
 - We are assessing the impact on scheme viability.



3. **Processes are in place for collections and refunds of scheme items sold and returned in any part of the UK, with scheme administrators reconciling to ensure fair distribution of payments;**
 - All nations shared this intent and agreed to work towards this goal.
 - This would best be achieved by collaboration across scheme administrators.
 - If it is not possible to do this by collaboration, then new legislation would be required to deliver this kind of interoperability.
 - There are currently no powers for the UK to make any DRS regulations for Scotland (even with consent of Scottish Ministers) so if new legislation was needed, it would need to be primary legislation which would take time to put in place and most likely that could be done before October 2025.

4. **Processes are in place to minimise the registration and reporting burden for producers, including only one administration fee required per participating company, and producers not required to join multiple schemes separately**
 - All nations shared this intent and agreed to work towards this goal.
 - Would need further discussion with UKG on detail.
 - It is unclear at this stage if this could require new legislation.

5. **One marking (e.g., barcode) for use throughout all parts of the UK**
 - There is nothing in Scottish DRS Regulations about barcodes and Scotland does not have the power to legislate on this (as it is reserved).
 - It is up to businesses what stock keeping units they use. Some businesses already have different barcodes for distinct parts of the UK, in the same way that they also do for various products (e.g., single cans vs multi-pack cans).
 - Would need further discussion with UKG on detail.
 - Producers can currently use UK barcodes under the Scottish scheme. As this comes with a higher risk of fraud, some producers have chosen to create Scottish barcodes.
 - Those not using a Scottish barcode currently are required to pay a surcharge to CSL due to increased fraud risk.

6. **A single common UK logo, recognisable across all systems**
 - We share this intent.
 - Labelling powers are reserved, so Scotland cannot (and has not) introduced any labelling requirements.
 - We have stated many times that we would like a common UK-wide logo.
 - Would need further discussion with UKG on detail.

Other considerations on interoperability that are not mentioned in the UKG letter include:

Trading standards:

- the issue around the price marking order creates a barrier to trade where Scotland launches first (because current interpretation requires different price markings on price marked pack in England vs Scotland). We have been asking UKG to resolve this for approx. 10 months.

Low volume products:

- Scotland laid draft amended DRS Regulation (17 May) for low volume products.
- means that there could be different rules in different countries for what is in / out.
- Would need further discussion with UKG on detail.

Online takeback:

- Officials have been working with Defra to try to make sure our Regulations align with theirs; however their policy is not set yet so hard to currently ensure alignment.

TIMELINE OF DECISIONS

2019

Conservative manifesto:

“We will crack down on the waste and carelessness that destroys our natural environment and kills marine life. We will increase penalties for fly-tipping, make those on community sentences clean up their parks and streets, and introduce a deposit return scheme to incentivise people to recycle plastic and glass.”

August: Initial UK Government consultation

Materials and drinks in scope

26) The consultation document described how a DRS could promote a step change in the behaviours of both producers and consumers, and contribute to higher recycling rates for in-scope materials. The consultation proposed that the materials included in a DRS could be:

- *polyethylene terephthalate (PET) and High-Density polyethylene (HDPE) plastic bottles*
- *steel and aluminium cans*
- *glass bottles*

2020

May: The Scottish Parliament legislated to create a deposit return scheme in May 2020.

December: The UK Internal Market Act passed in December 2020 and did not receive consent from the Scottish or Welsh parliaments.

2021

July: The Scottish Government began engagement with the UK Government on securing an exclusion from the Internal Market Act.

July: UK Government consultation results document

In response to what should be included as part of the deposit item, most respondents agree that plastic bottle caps on plastic bottles should be and similar numbers think the same about aluminium bottle caps on glass bottles.

2022

March: UK Government Extended Producer Responsibility for Packaging consultation response

Taking these concerns into consideration, England and Northern Ireland will not include glass in their DRS. Glass drinks bottles will be in scope of EPR, which will place targets on producers in relation to glass recycling and require them to pay for the cost of managing glass packaging generated by households.

2023

January: UK government response to consultation on introducing a Deposit Return Scheme in England, Wales and Northern Ireland

- *Size of containers in scope of DRS: All-in (50ml – 3l) across England, Wales and Northern Ireland.*

- *Materials in scope of DRS – England and Northern Ireland: Polyethylene terephthalate (PET) bottles; steel and aluminium cans.*
 - *Materials in scope of DRS – Wales: Polyethylene terephthalate (PET) bottles; steel and aluminium cans; and glass bottles.*
- Since waste management is a devolved policy area, it is the responsibility of each nation of the UK to decide the scope of its own DRS in a way that fits its policy needs*

ANNEX G

DEFRA LETTER

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



T: 0300 244 4000
E: scottish.ministers@gov.scot

Rt Hon Dr Thérèse Coffey MP
Secretary of State for Environment, Food and Rural Affairs

Rt Hon Rebecca Pow MP
Parliamentary Under Secretary of State (Minister for Environmental Quality and Resilience)

6 June 2023

Dear Secretary of State for Environment, Food and Rural Affairs and Minister for Environmental Quality and Resilience

As set out in the First Minister's letter to the Prime Minister on Friday 2nd June and my letter to you on Saturday 27th May, we are extremely disappointed that UKG has not agreed to a full exclusion from the Internal Market Act for Scotland's Deposit Return Scheme (DRS). The Scottish Government engaged in this process in good faith with the expectation that Scotland's devolved powers would be respected. I continue to believe that this is the wrong decision for the Scottish DRS, for future DRS across the UK and ultimately for the environment.

I have also previously made it clear that I believe that the UK Government has often acted in way which is contrary to good collaboration in relation to the DRS Internal Market exclusion.

I recognise, however, that you have made and now re-iterated your decision on IMA and however disappointing I believe that to be, I am determined to continue to work collaboratively to share experience and explore what that means for the scope, timing and



terms of our Scottish DRS. I do not doubt that we share recognition of the significant benefits to our environment and the quality of our neighbourhoods that are at stake.

As the First Minister set out in his letter of 2 June, the Scottish Deposit Return Scheme in Scotland is in genuine jeopardy due to the decision not to provide a full exclusion. The removal of glass is a significant risk to the scheme. However, for present purposes I wish to highlight the wider uncertainty around interoperability conditions and the challenge they pose for the delivery of a Scottish Scheme.

The number one request from businesses is to have certainty to allow them to plan and prepare for the scheme. I am sure you will appreciate that it is impossible to provide that certainty to business if we are required to align to other UK schemes that are not yet defined could be subject to multiple changes before they go live.

However, I want to continue to do all that we can to try and provide businesses with the certainty they need to allow us to develop our DRS plans and benefit from increased recycling and reduced litter. If the UK Government does genuinely wish Scotland to act as a “pilot” for the UK scheme from March 2024, as has been suggested in some media, you will, I am sure, recognise the need to provide us with operational certainty on issues around interoperability.

I am aware officials have ramped up the engagement on interoperability in recent days. However, I believe that a ministerial level meeting on Wednesday morning would be hugely helpful to understand what confidence you can give me around putting in place a process to work through the interoperability conditions in a collaborative way.

In particular, I would like to discuss whether it would be possible in a very short timescale to agree:

- The approach to a maximum deposit level which would avoid an increased risk of fraud while also avoiding the need for our scheme administrator and businesses to adjust their business models significantly when the England, Wales and Northern Ireland schemes launch;
- The size threshold for items in the scheme – noting that we have recently announced a move to 100ml as the minimum size of container, providing evidence as to why this is a sensible approach, while parts of the UK are suggesting 150ml as the minimum;
- The approach to low volume sales given that we have worked hard with the sector to identify an approach which maximises scheme articles while also minimising the impact on small producers (i.e. setting the low volume threshold at 5,000 units per annum); and
- What is meant by the requirement for businesses to only register once for the scheme and the practical implications of this, given that only one Scheme Administrator currently exists.

I would also welcome a discussion on other ongoing issues such as issues related to trading standards rules, which businesses need to be able to prepare for a March 2024 launch and have noted that they would need this at least 6 months before launch.

If there is a genuine will to see Scotland as a pathfinder in developing DRS in the UK, I

know that you will appreciate that the norm would be for the that pathfinder to then inform subsequent schemes based on experience, evaluation and shared learning. Above all the way that schemes evolve would be based on agreement. That is very different from embarking on a scheme and then finding the ground rules changed and imposed on it after the scheme is up and running, forcing Scottish businesses to comply with a totally different set of regulations, unconnected to the evidence gathered by the Scottish scheme itself. If there is a will to take the former approach then I believe that the detailed work that we have carried out could be valuable throughout the UK. But I would need very firm assurances on that, as you will recognise.

I am sure that there are further issues that might emerge as we seek to work through all the implications of alignment and interoperability. Just as important as the specific details is also agreeing a process by which we can share experience and crucially agree alignment in a collaborative way.

There is prize on offer here. DRS is a proven way of improving our environment. There is, even at this critical moment, an opportunity to build on the considerable experience we have developed in Scotland, to provide businesses with the certainty they need, and to deliver the scheme with due heed to the regulations approved by the Scottish Parliament, which can in turn be springboard for DRS across the UK.

I will make myself available at any point tomorrow morning to have this discussion. I look forward to your response.

Kind regards



Annex H

FURTHER BACKGROUND ON COMPENSATION

From FM's BBC interview on 11 June

LK: But First Minister, there are many things right now that voters in Scotland are deeply unhappy about your handling of. Whether that is not being able to build ferries, stranding island communities, whether it is proposing a recycling scheme that business put up red flags about for months and has now been delayed until October 2025, whether that's not happening in the health service—

HY: Let's just take that deposit return scheme. That is just an example of frankly how devolution is becoming unworkable. We had regulations passed by the Scottish Parliament, which included glass within our deposit return scheme, only for the UK government at the eleventh hour trying to sabotage that scheme. That is just another demonstration and a pattern of behaviour that we are battling against the UK government that is determined to undermine devolution.

LK: Except many people in business here in Scotland say actually it's not the UK government that sabotaged it. I mean, Tesco for example, one of the biggest companies in the country UK-wide, they wanted a much more joined-up approach, and the boss of the Scottish retail sector has said today, "The scheme has been bedeviled by a rush to unachievable dates and a failure to take on board businesses' reasonable and practical suggestions". That's on you.

HY: Let me address that point about business. We are asking, of course, the polluter to pay. So, we are asking the producer to pay, as opposed to the taxpayer to pay, for those broken glasses, the glass bottles that you see in your streets or your parks or your beaches. So, I can understand where there would be some resistance from business.

LK: Are you going to pay compensation to businesses who've lost out, who spent millions of pounds getting ready for a scheme that is now not going to happen?

HY: We don't believe there's a case for the Scottish Government to need to compensate because the action we've had to take is because of that eleventh-hour last-minute intervention from the UK Government, which has meant that a Scottish scheme, unfortunately, isn't viable.

AFTER THAT INTERVIEW FOLLOWING LINES WERE ISSUED

A Scottish Government spokesperson said:

"The UK Government's eleventh hour intervention has left us no choice but to postpone the launch of Scotland's deposit return scheme and the overwhelming feedback from businesses was they could not prepare for a March 2024 launch.

"We are grateful to businesses for the investment they have made. The Scottish Government remains committed to the delivery of a successful deposit return scheme and the investment made to date can be utilised in the future.

"We do not consider that the action we have been required to take gives rise to any obligation to pay compensation."

Background

The Scottish Government has not received any requests for compensation.

The Scottish Government has published correspondence with the UK Government seeking an exclusion for Scotland's DRS from the Internal Market Act, alongside a detailed timeline of our engagement: <https://www.gov.scot/publications/internal-market-act-correspondence/>

Annex H

Support to delay to March 2024

Scottish Whiskey Association [QUOTE]: "This is a very welcome announcement by the First Minister, who has listened to the concerns voiced by industry on the alcohol marketing consultation and the Deposit Return Scheme.

"The delay until March 2024 and full review in the coming months will enable us to work with government to ensure DRS is aligned with other systems across the UK and to once again

look at the exclusion of glass, which the experience of international schemes tells us will help to simplify the scheme, and reduce the cost for businesses and consumers.” (18 April)

Society of Independent Brewers (SIBA) [Quote]: “Today’s announcement by the First Minister that the Scottish Deposit Return Scheme (DRS) will be delayed until March next year gives small breweries time to at least catch their breath and begin to prepare for its introduction.” (18 April)

Support for delay to October 2025 to align with the rest of the UK.

British Soft Drinks Association[QUOTE]: “We welcome the decision to delay DRS Scotland to align with DRS across the rest of the UK in October 2025. BSDA members have long supported the introduction of an industry-led, interoperable DRS run on a not-for-profit basis to help support a circular economy, reducing litter and increasing recycling and they have made significant investments of money, resource and time over the last few years to help get DRS off the ground” (28 May)

Night Time Industries Association [QUOTE]: “NTIA Scotland welcomes the news that the Scottish Government’s DRS scheme will be delayed in its current form until at least October 2025 until a UK wide set of standards can be agreed” (7 June)

14 June 2023 - Minister for Green Skills, Circular Economy and Biodiversity – Meeting with UKG Minister for Environmental Quality and Resilience

Date and Time of Meeting	14 June 2023 15:15-15:45
Where	Microsoft Teams Join on your computer, mobile app or room device Click here to join the meeting [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Purpose of meeting	To discuss the implications of the UK Government’s IMA exclusion to the Scottish DRS, interoperability with the UK DRS and next steps.
Official Support Required	David McPhee, Deputy Director, Deposit Return Scheme [REDACTED], Head of DRS Policy Unit

Comms Support/Media handling	No proposed comms
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Briefing Contents

Annex A	Meeting Agenda and Top Lines
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ANNEX A

Meeting Agenda and Top Lines

1. Impact of delay of DRS in Scotland and way forward
2. Collaborative Approach to Interoperability
3. DMO Selection

Opening context

[REDACTED]

- As a result of the conditions set for a UK Internal Market Act exclusion, the Scottish Government have been left with no other option than to reset the timescale of DRS and delay the launch until October 2025 at the earliest.
- I am extremely frustrated and disappointed that DRS will now take longer than needed, and see this as an unacceptable attack on devolution.
- Nevertheless, I hope that we both share the view that DRS is critical to protecting our environment and improving recycling – in all parts of the UK – and that if possible we should work together to ensure effective DRS' across the UK.

1. Impact of delay of DRS in Scotland and way forward

- I must impress upon you the seriousness of the situation for many businesses in Scotland, having made hundreds of millions of pounds of investment ahead of scheme launch in a matter of months.
- The greatest impact is upon Circularity Scotland, who have gone from being on the brink of launching the UK's first DRS, to the brink of insolvency.
- You will know the very serious risk that this poses to schemes across the UK in terms of business confidence and future financing.

Certainty

- Businesses have consistently told me that they need certainty, commitment and confidence to move forward with preparations for any DRS scheme.
- Businesses need confidence in order to commit to investing and preparing for an October 2025 launch.
- **To build private sector confidence I propose a short statement from both Ministers stating they met, are strongly committed to DRS and agreed both governments will work together to achieve schemes which are as interoperable as possible while also recognising the devolved nature of environmental matters.**

Collaborative Approach to Interoperability

- **I am fully committed to interoperability** – so long as this means conditions are not imposed on devolved nations.
- I know that officials have been working closely to work through the relevant issues and emphasise that this work must be done at pace.
- **I would like us to agree to task officials to work through interoperability issues at pace on a four nations basis, with decisions taken collaboratively.**
- Additionally, I would welcome a commitment to ensuring we have strong governance and engagement processes in place across nations.
- **I would also like to ask officials to ensure that solutions already developed in Scotland – with industry – are shared to ensure that schemes elsewhere in the UK can learn from experiences in Scotland**
[REDACTED]

2. **DMO Selection/CSL**

- CSL wrote to us both this week setting out the challenges they are facing to set out the risk of a permanent loss of DRS capability in the UK, and the significant barriers posed to future finance and investment.
- **I would welcome the opportunity to explore how we can ensure that capability and investment is not lost.**

[REDACTED]

22 June 2023 - Ministerial Engagement Briefing: Lorna Slater, Minister for Green Skills, Circular Economy and Biodiversity - Briefing for meeting with Biffa

What	To meet with Biffa following the administration of CSL to understand how they can continue to support Scotland’s DRS
Where	MS Teams, Click here to join the meeting
When	Thursday 22 June 2023 15:30 – 16:00
Key Message(s) and structure	We are committed to working with industry, including Biffa, to deliver a successful DRS in Scotland and welcome your views on how we can ensure capability and investment is not lost moving forward.
Who	Maxine Mayhew – Chief Operating Officer - Biffa [REDACTED]– DRS Commercial Lead - Biffa
Why	Biffa have outlined they are still committed to supporting a Scottish DRS and would like to have an open discussion on next steps. This meeting provides an opportunity to discuss how Biffa can work with SG, next steps regarding DRS infrastructure/resource and financial implications of the delay to the scheme launch.

Expected outcome	Biffa to be reassured that the Scottish Government is committed to continuing to work with them to deliver a successful DRS in 2025. An understanding of the challenges Biffa face following the administration of CSL.
Supporting officials	Kevin Quinlan – Director – Deposit Return Scheme [REDACTED] – Team Leader – DRS Online and Retail Policy Team
Briefing contents	Annex A: Proposed meeting structure & top lines
Media Handling / Social Media	NA

Annex A – Proposed Meeting Structure & Top Lines

You will chair

1. Opening Context
2. Future of the scheme and timetable
3. Biffa – investment, operations & next steps
4. Impact of CSL administration

1. Opening Context (15:30 – 15:35)

- As a result of the conditions set for a UK Internal Market Act exclusion, the Scottish Government have been left with no other option than to reset the timescale of DRS and delay the launch until October 2025 at the earliest.
- I am extremely frustrated and disappointed that DRS will now take longer than needed, and we see this as an unacceptable attack on devolution.
- **I am aware of the seriousness of the situation for Biffa and I am grateful for your support on DRS and I am glad we are getting the opportunity to discuss today.**

2. Future of the scheme and planned timetable (15:35 – 15:40)

- We have been left with no other option than to reset the timescale of DRS and delay the launch until October 2025 at the earliest, when the UK Government says it will aim to launch its own scheme.
- DRS will happen but we are frustrated and disappointed that it will now take longer than needed and more limited than it should be.
- Alongside not granting a glass exemption, the UK Government also imposed a number of conditions on Scotland’s DRS that are vague and unworkable. This includes a requirement to align the value of the deposit with the rest of the UK, even though they are unable to say what that will be.
- The conditions imposed are arbitrary, were not discussed with us, and no evidence to substantiate them has been produced. It seems clear that they acted in bad faith, with a view to undermining Scotland’s scheme and the decisions made by this Parliament.
- **The immediate priority is to bring forward regulations to amend the go-live date to October 2025.** Further changes will be required down the line as a result of the conditions being imposed on the scheme by Westminster.

- **Nevertheless, I want to reassure you that the Scottish Government remains committed to DRS, and will continue to work with industry to ensure that the scheme is a success.**

Interoperability

- **We remain committed to interoperable DRS schemes across the UK provided that we can work in a spirit of collaboration not imposition.**
- I met with the UK Government Minister for Environmental Quality and Resilience last week, and we agreed that our officials should immediately work through the technical details around interoperability.
- A Four Nations workshop with officials will be held in Edinburgh this coming Tuesday (27 June), to work through interoperability issues in a positive and collaborative manner.

4. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

4. Impact of CSL administration (15:55 – 16:00)

- A process is underway to appoint administrators to CSL, leaving their staff in an extremely difficult position.
- This is an unforgiveable consequence of the UK Government's 11th hour intervention which undermined our deposit return scheme, made progress impossible, and is now resulting in these jobs being lost.
- We warned the UK Government repeatedly that a failure to agree an exclusion to the UK Internal Market Act would jeopardise the scheme.
- Since then, CSL has been working tirelessly to identify a viable business model and they have kept us informed throughout.
- We worked closely with Circularity Scotland and industry to establish the viability of the scheme following the UK Government's last-minute intervention.
- While CSL said the scheme could be delivered we were also told by the vast majority of businesses we met with that delivery in March 2024 was not possible with such late changes and uncertainty.
- This is clearly a concerning time for staff at Circularity Scotland and we have been in regular contact with Circularity Scotland and will continue to do so through this challenging period for them and their staff.
- **We are providing PACE support for CSL staff which is the Scottish Government's initiative for providing advice and guidance to people at risk of redundancy.**
- **We are also exploring how we can ensure that capability and investment is not lost, and I would welcome your views on how we can ensure this.**

25 July 2023 - Ministerial Engagement Briefing: Lorna Slater, Minister for Green Skills, Circular Economy and Biodiversity - Meeting with eNGOs – DRS

What	Meeting with a number of eNGOs to update on Deposit Return Scheme following the Scottish Government's decision
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	to delay the launch until October 2025.
Where	Microsoft Teams Click here to join the meeting
When	Tuesday 25 July 2023 15:15 – 15:45
Key Message(s) and structure	<ul style="list-style-type: none"> • We have been left with no other option than to reset the timescale of DRS and delay the launch until October 2025 at the earliest, when the UK Government says it will aim to launch its own scheme. • The views of industry have also informed the difficult decision to delay the scheme. • I am are frustrated that it will now take longer than needed to implement the scheme. • I am committed to delivering DRS in Scotland. • I am keen to continue engagement with eNGOs on DRS and ensure the benefits of the DRS are realised.
Who	<p>Attendees:</p> <ul style="list-style-type: none"> • Sarah Doherty - Association for the Protection of Rural Scotland • Kimberly Pratt – Friends of the Earth Scotland • [REDACTED]– Marine Conservation Society • Phoebe Cochrane – Scotland Environment Link • Jenni Hume – ReLoop • Kimberly Pratt – Friends of the Earth Scotland • [REDACTED] – Association for the Protection of Rural Scotland <p>Apologies:</p> <ul style="list-style-type: none"> • [REDACTED] – Marine Conservation Society • Kat Jones – Association for the Protection of Rural Scotland
Why	<ul style="list-style-type: none"> • To update eNGOs on the latest Scottish Government position • Justify decision to delay and align with UKG • To seek eNGO views on the new scheme timeline and influence UKG
Expected outcome	<ul style="list-style-type: none"> • Ensure that eNGOs are clear on our response to UK Government position • Clear understanding of eNGO views/priorities re DRS given the new timeline for delivery
Supporting officials	Kevin Hughes, Policy Manager, DRS Operational Delivery Team [REDACTED] [REDACTED], Policy Officer – DRS Operational Delivery Team
Briefing contents	<ul style="list-style-type: none"> • Annex A: Agenda & top lines • Annex B: Suggested Questions & Additional Lines
Media Handling / Social Media	N/A

Annex A

Agenda & Top Lines

5. **Welcome**
6. **Scottish Government's current position**
7. **Next Steps for DRS**
8. **Engagement Going Forward**
9. **Next Meeting / Close Call**

1. **Welcome**

- Thank you for attending
- Keen to update since our last meeting on Friday 2 June

2. **Scottish Government's current position**

- The UK Government letter, which landed at 9:45 pm on Friday 26 May after being briefed on all Friday, outlined that the UK Government will not allow a full exclusion to the Internal Market Act for the Scottish DRS as voted through by the Scottish Parliament.
- They offered a conditional and partial temporary exclusion – essentially mandating the removal of glass from DRS and alignment with other UK schemes that do not exist yet.

IMA - Glass

- There is a clear environmental and economic case for including glass in the DRS.
- Businesses have planned and invested millions on the basis of its inclusion.
- We are considering our options in respect of the inclusion of glass in our DRS.
- The Welsh Government remain committed to including glass in its DRS. Officials are in regular contact with Welsh Government colleagues and will continue to monitor the situation closely.

IMA - Alignment with rUK Schemes

- The UK Government's partial exclusion also imposed a number of conditions on Scotland's DRS that are vague and unworkable. This includes a requirement to align the value of the deposit with the rest of the UK, even though they are unable to say what that will be.
- Regulations for DRS schemes in the rUK have not been laid in Parliament as yet.
- The conditions imposed are arbitrary, were not discussed with us, and no evidence to substantiate them has been produced.
- It seems clear that they acted in bad faith, with a view to undermining Scotland's scheme and the decisions made by the Scottish Parliament.
- Nonetheless, I remain committed to an interoperable DRS schemes across the UK provided that we can work in a spirit of collaboration not imposition.

Industry opinions

- The views of industry also informed the difficult decision to delay the scheme.
- While CSL said the scheme could be delivered without glass, we were also told by the vast majority of businesses we met with that delivery in March 2024 was not possible with such late changes and uncertainty.
- The First Minister and I met with more than 80 stakeholders in June across a range of sectors including retailers, producers and hospitality.
- The overwhelming feedback from businesses at that meeting was the UKG exclusion of glass and the vague and unworkable conditions imposed by Westminster made a March 2024 launch impossible.

- We will continue to work closely with industry at every stage towards our journey to deliver Scotland's deposit return scheme.

Impact on Circularity Scotland

- Administrators have been appointed to Circularity Scotland (CSL).
- We warned the UK Government repeatedly that a failure to agree an exclusion to the UK IMA would jeopardise the scheme.
- CSL worked tirelessly to identify a viable business model and kept us informed throughout.

3. Next Steps for DRS

Regulations

- Amended DRS Regulations were laid in the Scottish Parliament on 30 June which amended the launch date from 1 March 2024 to 1 October 2025.
- In addition the regulations also allowed for the removal of the provision which meant SEPA would retain and 'roll over' registration fees that had already been paid until the new launch date. Parliament have yet to scrutinise these regulations due to parliamentary recess.
- It was decided to lay a further set of regulations rather than withdraw the previous one and re-lay before recess, to allow a proper amount of time for parliamentary scrutiny and to keep in line with changes to DRS that had already been agreed with businesses.

Alignment with rUK

- I remain committed to an interoperable DRS schemes across the UK provided that we can work in a spirit of collaboration not imposition.
- Officials across the four nations are meeting regularly to ensure alignment across UK schemes where necessary and desirable – whilst respecting that waste management is a devolved competency.

Appointment of a Scheme Administrator

- A new scheme administrator will be appointed in due course.
- There is no set timeline for this process currently.
- We are assessing whether it makes sense to align the timeline for the appointment for a scheme administrator with the appointment of scheme administrators across the UK.

4. Engagement going forward

- I would like to continue to meet with eNGOs on a quarterly basis to discuss DRS matters.
- In terms of engagement with other stakeholder groups, we are reviewing the Scottish Governance model to determine how it can be adapted to incorporate the 4 Nations engagement groups to ensure a joined-up approach.
- We will ensure that eNGOs are included in this updated model and hope to share more information in due course.

5. Next meeting / Close Call

- As we tend to meet quarterly, we have a meeting scheduled for August. I was keen to speak to you before August to update on DRS – hence why we have meet today.
- I suggest we meet again in October.
- Summarise call and next steps.
- Thank participants for continued engagement and their time today.

Suggested Questions & Additional Lines

Suggested Questions you may wish to ask:

- What can your organisations do to potentially influence a positive change in the UK Government's position?
- What are your thoughts with regard to alignment/interoperability of deposit return schemes? (priorities/concerns).

IMA Teach In

- eNGOs have requested a second IMA teach session, following the success of a previous session which took place on Thursday 15 June. This has been organised for Wednesday 9 August, 11:00 – 13:00.

Welsh Government continuing with a glass scheme

- Wales and Scotland have been consistent in developing schemes in good faith on the pan UK basis we had at the outset. It is the UK Government's scheme for England which has stepped out of line to exclude glass.
- Wales are at an earlier stage than we are on DRS and once it comes to drafting the regulations and doing the detailed design it will very likely face the same barriers that we are now dealing with.
- The Internal Market Act applies in the same way in Wales as it does in Scotland.
- Mark Drakeford, when asked about how Wales would manage this issue, said [QUOTE]: "If they were to invoke it, there would be very serious questions for the UK Government, why so late in the day? Why are they doing this now? When right up until now, they have recognised the fact that we were going to include glass because that is what the consultation that we did jointly with them said we should do. The English Government is the outlier here. The question is for them, and of course, we will have to explore that with them should that be their decision."
- Different deposit return schemes work successfully within the European Union. There is no problem having schemes that differ within a single market. The problem is that the Tories are using Brexit and their Internal Market Act to undermine devolution.

Legal Advice on IMA decision

- The Scottish Government has received legal advice on matters relating to DRS on an ongoing basis as appropriate, including prior to any changes to the scheme being announced.
- The content of any legal advice is confidential. By long-standing convention, successive Scottish and Westminster Governments have not disclosed the source or content of legal advice other than in the most exceptional circumstances.
- There is a strong public interest in the Government being able to discuss and take policy decisions in full possession of thorough and candid legal advice, in ensuring Government decisions are taken in a fully informed legal context and for that advice to be confidential to them as it would be to any client.

Question 7.

All correspondence between Fergus Ewing or his office and the Scottish Government regarding the deposit return scheme between March 1 and the date of this FOI?

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



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Fergus Ewing MSP
[REDACTED]parliament.scot

Our Reference: 202300340228
Your Reference: [REDACTED]
Deposit Return Scheme

2 March 2023

Dear Fergus

Thank you for your correspondence of 24 January 2023 regarding your constituent's concerns about the implementation of Scotland's Deposit Return Scheme (DRS). Please accept my apology for the delay in responding to your correspondence. I trust you and your constituent will find the information in my reply helpful.

My officials replied to Mr [REDACTED] correspondence (ref: 202200332925) in January. In the event he has not received this response, please ask him to contact the Scottish Government and my officials will be more than happy to send him a copy.

I would also like to take this opportunity to provide a further update to you and your constituent regarding DRS.

The scheme will be a major part of our efforts to cut emissions and build a more circular economy. It will reduce littering by a third and increase recycling rates of single-use drinks containers from the current rate of approximately 50% towards 90%.

I understand that implementing DRS is a big change to manage, particularly for small businesses, which is why a range of measures have been put in place to support them.

The Scottish Government and Circularity Scotland, the industry-led scheme administrator, have recently taken a number of practical steps to reduce the implementation and financial burden of the scheme for businesses. My [recent letter](#) to MSPs sets out many of these.

In addition, Circularity Scotland announced last week (21 February) a £22 million package



of cash flow support to help give drinks producers the clarity and confidence they need to be part of the scheme.

This includes:

- removal of the day one and month one charges for all producers, up to a threshold of three million units per year
- providing two month credit terms on deposits and fees up to the same volume threshold to reduce the working capital impact on all producers
- 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, alleviating administrative burden

In December 2021, following feedback from industry, the launch date was extended by Parliament to August 2023 to give businesses more time to prepare. I have outlined below the progress which has been made since then and where additional support for businesses is available.

In December of last year, in response to feedback from producers, I [wrote to the Net Zero, Energy and Transport committee](#), setting out further steps to make the scheme more efficient and reduce costs, while ensuring that environmental benefits are still delivered. This included a reduction in producer fees by Circularity Scotland by 8%, 30% and 40% than originally planned for glass, PET plastic and metal containers respectively.

There will be no registration fee for producers with an annual turnover of £85,000 or lower. A producer will be charged for each individual container placed upon the Scottish market, so their charges will be proportionate to the size of the business meaning a small producer like a craft brewery will pay less than a larger producer.

I am proposing to bring forward amendments to the DRS regulations so that initially only the largest grocery retailers will be obliged to provide a takeback service. All other businesses will be exempt.

There have been a number of incorrect assumptions made about the scheme recently, so I would like to take this opportunity to clarify the following points. Only the very largest producers (those making more than 10 million units per year) would be required to underwrite costs.

We want businesses to be ready for the scheme going live on 16 August. However, the Scottish Environment Protection Agency (SEPA) 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.

Circularity Scotland is strongly encouraging producers to adopt a scheme logo on their labels, to help consumers identify containers in scope, and to visually demonstrate to consumers the producers' support for the scheme. But producers do not have to change their labelling for the Scottish market, and can continue to use existing barcodes if they choose to.

Following engagement with the UK government, we have clarity on how VAT will be applied to deposits. We are working closely with the UK Government to resolve this issue, and are seeking action to minimise risk to the Scottish scheme.

We will continue to work intensively with Circularity Scotland and industry to resolve any outstanding concerns ahead of the launch date.

Circularity Scotland has a dedicated customer support helpline if businesses need advice in relation to the scheme – 0141 401 0899 – and their [website](#) provides valuable and comprehensive information about the scheme.

More information about producer obligations can be found at depositreturn.scot.

I am committed to continuing to work closely with businesses and others to ensure that we have pragmatic solutions in place to implement this transformational scheme which will help us achieve our net zero ambitions.

Kind regards



LORNA SLATER

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

 **Scottish Government**
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Fergus Ewing MSP
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Our Reference: 202300344027
Your Reference: [REDACTED]

7 March 2023

Dear Fergus

Thank you for your email dated 17 February 2023 about your constituent's concerns regarding the implementation of Scotland's Deposit Return Scheme (DRS). I trust you and your constituent will find the information in my reply helpful.

The Scottish Government and Circularity Scotland, the industry-led scheme administrator, have recently taken a number of practical steps to reduce the implementation and financial burden of the scheme for small businesses.

These were set out in my [recent letter](#) to MSPs.

In December 2021, following feedback from industry, the launch date was extended by Parliament to August 2023 to give businesses more time to prepare. I have outlined below the progress which has been made since then and where additional support for businesses is available.

The scheme will be a major part of our efforts to cut emissions and build a more circular economy. It will reduce littering by a third and increase recycling rates of single-use drinks containers from the current rate of approximately 50% towards 90%.

Also, in December of last year, in response to feedback from producers, I [wrote to the Net Zero, Energy and Transport committee](#), setting out further steps to make the scheme more efficient and reduce costs, while ensuring that environmental benefits are still delivered. This included a reduction in producer fees by Circularity Scotland by 8%, 30% and 40% than originally planned for glass, PET plastic and metal containers respectively.

The environmental benefits supporting the inclusion of glass are compelling. The inclusion of glass will save over 1.2 megatonnes CO2 equivalent over 25 years. DRS will also reduce the amount of harmful glass litter in our environment.

In addition, DRS will significantly increase the quantity and quality of glass recyclate, creating an aggregated and high-quality feedstock for reprocessing. This will include clear glass which we understand to be in high demand. Regarding a specific remelt target, we consider the existing environmental regulations are sufficiently robust to ensure the production of quality recyclate.

We do not believe an enhanced kerbside scheme could deliver the level or rate of improvement that we will see through DRS. Packaging recycling rates have stalled, including for glass, and the current producer responsibility system is not driving improvement. DRS should deliver an 85% collection rate for glass by the second full year of operation at the latest.

We also do not consider that there will be extensive switching away from glass containers to other materials as a result of DRS. Format decisions are driven by a range of considerations including practicality, convenience, brand preference and presentation of the product. Indeed, the impact on material choice could be greater if glass were left outside the scope of DRS, creating an incentive to switch towards glass.

Circularity Scotland is strongly encouraging producers to adopt a scheme logo on their labels, to help consumers identify containers in scope, and to visually demonstrate to consumers the producers' support for the scheme. But producers do not have to change their labelling for the Scottish market, and can continue to use existing barcodes if they choose to.

However, producers need to be aware of the risks of continuing to use existing barcodes, particularly those sold across the UK, which is why there is a payment for producers continuing to use an existing UK wide barcode for sales in Scotland.

Circularity Scotland have announced that day 1 payments for producers choosing to use their existing barcodes will be reduced by two thirds - from 2.4 months of fees to 3 weeks of fees. A day 1 payment is not required from producers introducing a new barcode.

There is also a dedicated customer support helpline if businesses need advice in relation

to the scheme – 0141 401 0899 – and their [website](#) provides valuable and comprehensive information about the scheme.

More information about producer obligations can be found at depositreturn.scot.

I am very encouraged by the fact that 660 businesses have registered, representing more than 95 per cent of products sold in Scotland.

I am committed to continuing to work closely with businesses and others to ensure that we have pragmatic solutions in place to implement this transformational scheme which will help us achieve our net zero ambitions.

Kind regards



LORNA SLATER

Minister for Green Skills, Circular Economy and
Biodiversity
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Fergus Ewing MSP
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Our Reference: 202300343502

15 March 2023

Dear Fergus Ewing MSP

Thank you for your letter to the First Minister of 15 February, written with the support of fellow parliamentarians, Ms Christine Grahame, Mr Maurice Golden, Mr Brian Whittle, Ms Claire Baker, Mr Paul O'Kane and Mr Liam McArthur, on Scotland's Deposit Return Scheme (DRS). I am responding as the Minister responsible for Scotland's DRS.

You will be aware of my letter to the Net Zero, Energy and Transport Committee on 6 March (<https://www.parliament.scot/-/media/files/committees/health-social-care-and-sport-committee/scotlandsdepositreturnschemeletterfromminister.pdf>) providing an update on a number of matters related to Scotland's DRS. I confirmed, as part of the Scottish Government's standard, good practice approach to ongoing assurance of the DRS programme, that a further gateway review will take place in the week commencing 13 March 2023. This is in line with the last report's recommendations for a review to take place in February 2023 or close to that date. The Scottish Government will consider



carefully the recommendations from this review, and will share these and its responses with the Committee in due course.

I am aware that the Permanent Secretary replied to you and some fellow parliamentarians on 6 March in response to your letters of 15 and 21 February on Scotland's DRS. The Permanent Secretary confirmed that written authority from the Scottish Ministers (the equivalent of a Ministerial Direction) has not been sought. The Permanent Secretary set out his satisfaction on processes to assure feasibility and delivery, including the above-mentioned gateway review, as well as his satisfaction on regularity – that the scheme is being developed as per the Regulations approved by Parliament – and, with regards public money, that the necessary sources of funding are in place, consistent with policy intent, and as per the Budgets agreed by Parliament. I would encourage you to take up his offer to arrange a meeting with the delivery teams of Circularity Scotland Limited (CSL) and Scottish Environment Protection Agency (SEPA) who would be happy to discuss the detailed points you raise.

Turning to the legal opinion of Aidan O'Neill KC, you are aware that the Scottish Parliament approved in 2020 the Deposit and Return Scheme for Scotland Regulations which were made under the Climate Change (Scotland) Act and passed by Parliament in 2009. The DRS Regulations were made for the purposes of environmental protection and the Scottish Government is satisfied that they are within devolved competence. The UK Government's response of 20 January 2023 on introducing a deposit return scheme for England, Wales and Northern Ireland (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1130296/DRS_Government_response_Jan_2023.pdf) recognises that “waste management is a devolved policy area and it is the responsibility of each nation of the UK to decide on the approach to a DRS that fits its policy needs”.

The Scottish Government is considering the issues raised by Mr O'Neill and we have noted his views regarding an exclusion from the Internal Market Act (IMA) for DRS. Scottish Government is satisfied that the proper processes have been, and are being followed to address relevant interactions between Scotland's DRS regulations and the UK Internal Market Act. As I set out in my letter of 6 March to the Net Zero, Energy and Transport Committee, there is an established process for agreeing exclusions from the IMA which we have been following in relations to Scotland's DRS since we first raised the need for an exclusion in 2021. On 28 February, the Scottish Government published correspondence and a timeline setting out the steps that have been undertaken to secure an exclusion under the agreed process (<https://www.gov.scot/publications/internal-market-act-correspondence/>). On 6 March, I attended the Inter-Ministerial Group (IMG) on Environment, Food and Rural Affairs and again pressed the UK Government for urgent clarity on its support for an exclusion, and by the end of March at the latest. UK Government Ministers acknowledged that Scottish Government has followed the agreed process and suggested a decision would be made shortly.

Scottish Government is keeping progress on DRS under continual review. I fully understand that implementing a new policy like DRS is a big change to manage, especially for small businesses, which is why, as I set out in my statement to Parliament on 1 March (<https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=14174>), a range of measures have been put in place to support them.

I understand there are still concerns among producers, and particularly the smallest companies affected by the scheme. Scottish Government has always said that we will take a pragmatic approach to implementation, to ensure as many businesses as possible can be

part of the scheme.

I will continue to listen and respond to industry feedback and will continue to explore any further feasible, fair and legal options available to support all businesses to comply with the scheme.

I remain committed to working constructively with members across the Parliament to ensure this transformational scheme is a success and helps us achieve our net zero ambitions.

Kind regards



LORNA SLATER

From: [REDACTED] <[REDACTED]@parliament.scot> **On Behalf Of** Ewing F (Fergus), MSP
Sent: 06 March 2023 16:47
To: Minister for Green Skills, Circular Economy and Biodiversity <MinisterGSCEB@gov.scot>
Cc: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: Deposit Return Scheme

Dear Lorna

I am writing to express my deep concern over the recent introduction of stringent and punitive payment terms by Circularity Scotland for the Deposit Return Scheme. As Minister for Green Skills, Circular Economy and Biodiversity, I believe it is your responsibility to ensure that such actions are taken in the best interest of Scottish businesses and consumers.

It has been brought to my attention that Circularity Scotland approached companies to sign up to the producers agreement for the Deposit Return Scheme. However, at a very late stage, they sought to introduce these new payment terms which have caused alarm among industry stakeholders.

I understand these terms will mean retailers won't, as promised, get paid for returned items within 7 days but will have to wait a month causing real cash flow problems. Further if there's a dispute an appeal process may see yet further delay of up to 73 days and that assumes the process works.

Given the potential impact of these payment terms on businesses, it is imperative that the Scottish Government provides clarity on its role in this decision-making process. I would like to know if you, as Minister, approved or were asked to approve these payment terms? Were you consulted on these altered terms? Did you agree? If you were not consulted should you have been? Will you step in to rescind these newly imposed draconian terms and if not do you not agree they increase further the chances of some smaller shops closing down?

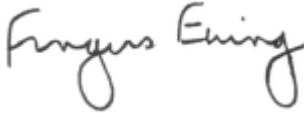
It is concerning that businesses were approached to sign up to the producers agreement before the introduction of these payment terms. It begs the question whether the Scottish

Government is willing to make it increasingly difficult for businesses to operate in the country?

I urge you to provide a thorough explanation for the introduction of these payment terms and to take swift action to address any issues or concerns that businesses may have.

Thank you for your attention to this matter.

Yours sincerely,



Fergus Ewing MSP

Member of Scottish Parliament for Inverness and Nairn

Office of Fergus Ewing MSP, 112 Church Street, Inverness, IV1 1EP

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



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Fergus Ewing MSP
Fergus.Ewing.msp@parliament.scot

Our Reference: 202300346203
Your Reference: Deposit Return Scheme

29 March 2023

Dear Fergus

Thank you for your correspondence of 6 March 2023 regarding the implementation of Scotland's Deposit Return Scheme (DRS). I trust you will find the information in my



reply helpful.

The scheme will be a major part of our efforts to cut emissions and build a more circular economy. It will reduce littering by a third and increase recycling rates of single-use drinks containers from the current rate of approximately 50% towards 90%.

I understand that implementing DRS is a big change to manage, particularly for small businesses, which is why a range of measures have been put in place to support them.

The Scottish Government and Circularity Scotland, the industry-led scheme administrator, have recently taken a number of practical steps to reduce the implementation and financial burden of the scheme for businesses. My [recent letter](#) to MSPs sets out many of these.

In addition, Circularity Scotland has announced a package of support to improve cashflow for producers which equates to £22m of support. This includes:

- 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, alleviating administrative burden.

There is no registration fee for producers with an annual turnover of £85,000 or lower or producers that only fill and seal single-use drink containers at point of sale. For all other producers, the registration fee will be £365 (annually).

In December, Circularity Scotland announced new producer fees that are 8%, 30% and 40% lower than originally planned for glass, PET plastic and metal containers respectively.

Circularity Scotland's producer fee is charged for each individual container, so will be proportionate to the size of the business. So a small producer like a craft brewery will pay less than a larger producer for example.

Under the DRS Regulations, payment terms are entirely a commercial matter between Circularity Scotland and retailers. The Scottish Government was not, and should not, be consulted on such commercial arrangements between private companies. It would be highly inappropriate for Scottish Ministers to be involved in these discussions.

The payment terms have been informed by other DRS schemes around the world and Circularity Scotland held discussions with industry representatives in advance of issuing the contract. Payment terms do not represent a change from the information submitted in Circularity Scotland's draft operational plan and assessed as part of their application to be a scheme administrator.

In December, in response to feedback from producers, I [wrote to the Net Zero, Energy and Transport committee](#), setting out further steps to make the scheme more efficient and reduce costs, while ensuring that environmental benefits are still delivered. This

included a reduction in producer fees by Circularity Scotland by 8%, 30% and 40% than originally planned for glass, PET plastic and metal containers respectively.

We want businesses to be ready for the scheme going live on 16 August. However, the Scottish Environment Protection Agency (SEPA) 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.

Circularity Scotland has a dedicated customer support helpline if businesses need advice in relation to the scheme – 0141 401 0899 – and their [website](#) provides valuable and comprehensive information about the scheme.

I am committed to continuing to work closely with businesses and others to ensure that we have pragmatic solutions in place to implement this transformational scheme which will help us achieve our net zero ambitions.

Kind regards



LORNA SLATER

From: [REDACTED]<[REDACTED]@parliament.scot> **On Behalf Of** Ewing F (Fergus), MSP
Sent: 10 March 2023 12:01
To: Minister for Green Skills, Circular Economy and Biodiversity <MinisterGSCEB@gov.scot>
Cc: [REDACTED]<[REDACTED]@hnmedia.co.uk>; [REDACTED]<[REDACTED]@hnmedia.co.uk>; Permanent Secretary <PermanentSecretary@gov.scot>; [REDACTED]@circularityscotland.com
Subject: DRS - Waste recycling in the Highlands

Dear Minister,

Waste recycling in the Highlands

I have been contacted by companies that currently provide various recycling services in the Highlands. They cover all materials from glass and plastic through to construction and industrial – everything except hazardous waste.

They have concerns about how the Deposit Return Scheme (DRS) will impact upon this existing system. First of all, there may be job implications as they lose business to BIFFA, a company owned by a USA hedge fund.

Second, they have many hundreds of customers and provide a pretty good and personal service. These business relationships, as I know from my own time running my own small business, take years or decades to build up. They have contacted Circularity Scotland to

ask how the DRS system will collect glass and work the recycling. Circularity Scotland said they should ask BIFFA.

BIFFA said that they have not got all arrangement in place because they are waiting for Circularity Scotland to provide the details. So, Circularity Scotland are blaming BIFFA and BIFFA are blaming Circularity Scotland and there is now only about 5 months to go to the supposed start date.

In particular, they were asked if BIFFA have got the lorries needed. I am advised that it can take a year for a new lorry to be delivered. They need to hire drivers and the recruitment and training process is time consuming. How will they do that before August?

Given that there are hundreds of businesses in the Highlands who have existing arrangement for recycling, and also that BIFFA are not prepared to take over, I submit that if you do not intervene and pause and halt this scheme now, it will result in a chaos and shambles in August.

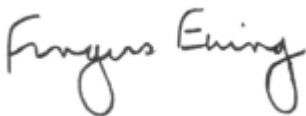
I am copying this letter to the CEO of Circularity Scotland and the Permanent Secretary and to the local press and call upon you to state or have Circularity Scotland state how this DRS will work, because there are a great many businesses that are genuinely worried about how they will deal with this, particularly with glass, when their current good arrangements are disrupted.

Unfortunately, it appears to all – everyone I speak to – that this scheme is plainly unworkable. What is really sad is that the work currently understated is highly effective in recycling and not one business wants to do anything other than maximise that process. However, it appears to me that the current DRS will make matter much worse as will, my constituents and other companies spread across the Highlands believe is the case.

I look forward to hearing from you.

Yours sincerely,

Fergus Ewing MSP



Fergus Ewing MSP

Member of Scottish Parliament for Inverness and Nairn

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



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Fergus Ewing MSP
Fergus.Ewing.msp@parliament.scot

Our Reference: 202300346906
Your Reference: DRS – Waste recycling in the Highlands

6 April 2023

Dear Fergus

Thank you for your correspondence of 10 March 2023 regarding your concerns about the implementation of Scotland's Deposit Return Scheme (DRS). I trust you will find the information in my reply helpful.

Scotland's DRS is a major endeavour and a change that affects thousands of businesses across the country. I understand the concerns some businesses have and the need for clarity. We continue to work to support businesses to deliver the scheme and to identify further feasible, fair and legal options to support small businesses.

The scheme will be a major part of our efforts to cut emissions and build a more circular economy. It will reduce littering by a third and increase recycling rates of single-use drinks containers from the current rate of approximately 50% towards 90%.

I understand that implementing DRS is a big change to manage, particularly for small businesses, which is why a range of measures have been put in place to support them.

The Scottish Government and Circularity Scotland, the industry-led scheme administrator, have recently taken a number of practical steps to reduce the implementation and financial burden of the scheme for businesses. My [recent letter](#) to MSPs sets out many of these.

Like similar schemes around the world, this is an industry-led scheme that is being delivered and funded by industry, led by the scheme administrator, Circularity Scotland. This approach had cross-party support when the Deposit Return Regulations were approved by Parliament in 2020.

Circularity Scotland was set up by industry in 2021 to deliver the scheme. It is a membership organisation, and its members include most of Scotland's largest drinks producers, importers, wholesalers and retailers as well as trade organisations. Circularity



Scotland is responsible for the costs of the scheme for developing and constructing the logistics network that will support the effective operation of the scheme. Notable progress made by Circularity Scotland includes:

- Circularity Scotland is developing and constructing the logistical network that will support the effective operation of the scheme:
- It has signed contracts with Reverse Logistics Group (RLG) for the scheme IT system and with Biffa for operations, logistics, and plastics reprocessing.

An extensive tender process was carried out by Circularity Scotland over a period of around 12 months and was open to businesses of all sizes. Circularity Scotland and Biffa are jointly engaged with local authorities, many existing waste and logistics operators and retailers. They are seeking to use existing infrastructure as much as possible.

Any company that wishes to participate in the DRS activities should contact the DRS enquires team at Biffa and this will be discussed with Circularity Scotland.

As I am sure you will appreciate the Scottish Government are unable to comment on specific business or contractual issues. Decisions by Circularity Scotland regarding their contracts are for them - this is entirely appropriate for a scheme that has industry responsibility at its heart.

We want businesses to be ready for the scheme going live on 16 August. However, the Scottish Environment Protection Agency (SEPA) 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.

In regards to a grace period for small producers the DRS launch on the 16 August is set out in legislation to apply to all producers. Changing the fundamental approach of the scheme to exempt some producers from that agreed by Parliament raises a number of issues about how this would work as it would potentially give different producers a competitive advantage relative to other producers.

These issues must be fully explored to ensure the scheme is fair and legal for all businesses. That is why the focus has been on providing support to help producers to comply with the scheme.

The environmental benefits supporting the inclusion of glass are compelling. The inclusion of glass will save over 1.2 megatonnes CO2 equivalent over 25 years. DRS will also reduce the amount of harmful glass litter in our environment.

In addition, DRS will significantly increase the quantity and quality of glass recyclate, creating an aggregated and high-quality feedstock for reprocessing. This will include clear glass which we understand to be in high demand. Regarding a specific remelt target, we consider the existing environmental regulations are sufficiently robust to ensure the production of quality recyclate.

We do not believe an enhanced kerbside scheme could deliver the level or rate of improvement that we will see through DRS. Packaging recycling rates have stalled, including for glass, and the current producer responsibility system is not driving improvement. DRS should deliver an 85% collection rate for glass by the second full year of operation at the latest.

We also do not consider that there will be extensive switching away from glass containers to other materials as a result of DRS. Format decisions are driven by a range of considerations including practicality, convenience, brand preference and presentation of the product. Indeed, the impact on material choice could be greater if glass were left outside the scope of DRS, creating an incentive to switch towards glass.

Circularity Scotland has a dedicated customer support helpline if businesses need advice in relation to the scheme – 0141 401 0899 – and their [website](#) provides valuable and comprehensive information about the scheme.

I am committed to continuing to work closely with businesses and others to ensure that we have pragmatic solutions in place to implement this transformational scheme which will help us achieve our net zero ambitions.

Kind regards



LORNA SLATER

From: [REDACTED] <[REDACTED]@parliament.scot> **On Behalf Of** Ewing F (Fergus), MSP
Sent: 17 March 2023 09:56
To: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: DRS - the Hospitality Sector.
Importance: High

Dear Permanent Secretary,

Deposit Return Scheme

Further to my email regarding the recycling sector yesterday, I have since heard from the Head of Scottish Hospitality Group Mr Stephen Montgomery.

I would be grateful if you can let me know if it is the case that the gateway review team has not engaged the Scottish Hospitality Group?

Can you possibly check with Mr Montgomery to see if the various other groups he works with have, likewise, not been consulted by the review either

Please note that I am getting a very clear picture that the present Gateway review process is seriously defective in itself in that it appears not to consult vast swathes and sectors of people in the business world who represent those whose businesses will be impacted - many of which businesses fear for their survival.

It is not clear whether the previous processes were likewise defective. However my recollection was that a larger number of stakeholders were consulted in the one done last May. Can you please advise if that is so, and if so, why are fewer being consulted now in this one?

Are both being overseen or led by Roy Brannen?

Please note it is my intention to lodge a series of Parliamentary questions regards any trade body that has not been consulted in this vital gateway review, and also in due course, draw this in my view, serious, omission to the attention of the relevant parliament committee who recently took evidence from the minister.

I note that in her evidence to the committee on Tuesday morning this week Minister Slater said the review would be completed "imminently" and this timing matches with what I have heard from a stakeholder that was consulted - who is incidentally extremely irritated about how the Minister has represented the views of their organisation.

It appears as though this review is a partial review excluding numerous key players and voices; and also that it is being rushed though, when, especially in the light of the forthcoming election of a new FM and Cabinet it would seem entirely inappropriate to rush it out, as the new incoming team may have a different approach to all of this, as you will be aware.

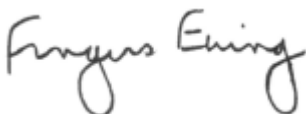
In fact two of the potential FMs may want to halt, pause and review the scheme as I have long advocated.

I think that because I have alerted you to the apparent shortcomings of the review there is at least an opportunity to sort them now before finalising the review, and I shall in due course share this correspondence with the committee in case they wish to make further inquiries and take further evidence including from yourself.

I would be most grateful for a very detailed reply to this letter and the other ones which I have sent, in view of the urgency of the time scales that you are apparently intent on pursuing.

I look forward to hearing from you.

Yours sincerely,



Fergus Ewing MSP

Member of Scottish Parliament for Inverness and Nairn

Office of Fergus Ewing MSP, 112 Church Street, Inverness, IV1 1EP

Telephone: [REDACTED]





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From: Maria Doyle <[REDACTED]@gov.scot> **On Behalf Of** Permanent Secretary
Sent: 21 March 2023 16:08
To: Ewing F (Fergus), MSP <Fergus.Ewing.msp@parliament.scot>
Cc: Permanent Secretary <PermanentSecretary@gov.scot>; [REDACTED] <[REDACTED]@parliament.scot>
Subject: RE: DRS - the Hospitality Sector.

Dear Mr Ewing,

Please see the attached letter on behalf of the Permanent Secretary, JP Marks.

Kind regards,

Maria

Permanent Secretary
John-Paul Marks

E: permanentsecretary@gov.scot
Fergus Ewing MSP
E: Fergus.Ewing.msp@parliament.scot

21 March 2023

Dear Mr Ewing

Thank you for your emails regarding the Deposit Return Scheme (DRS), including how the gateway review team have engaged with the relevant sectors, including hospitality and recycling.

Engagement across sectors, including directly with yourself, Parliament and interested MSPs, is vitally important. While there has been intense engagement across sectors through a variety of mediums, I am continuing to encourage the DRS Programme Team and the DRS delivery bodies to do more. Your input is appreciated and I have asked my office to facilitate a meeting for you with Circularity Scotland Limited (CSL) and SEPA, to hear first-hand the work that is being undertaken. I certainly found it invaluable in my understanding of the scheme to have visited CSL and SEPA recently to hear directly from them what is underway, and the risks and opportunities being worked through.

As part of the DRS consultation and development of the scheme since 2020, there has been a range of forums for representatives across sectors to comment and discuss



issues. This includes the waste and recycling sector through the Waste and Resources Sector forum. In addition to speaking directly to CSL or Biffa, it is also open to representatives of businesses within the recycling sector to raise queries or concerns on any policy issue with the Scottish Government through this forum. I agree, it is important that this dialogue continues, including directly with Ministers, so that concerns can be heard, and I would encourage participation from all those who have an interest.

We know that there remains a number of concerns and questions from the hospitality sector, which teams are working to address. Last week, the Minister for Green Skills, Circular Economy and Biodiversity hosted a meeting with hospitality groups, attended by a range of organisations, to hear their views on risks and opportunities and to discuss the direct impact. I expect to see these opportunities for engagement to continue.

As you will be aware, major programmes within the Scottish Government are subject to regular Gateway Reviews. I have looked at the Gateway Review process for this particular scheme, including the interviews and interactions to date. A standard Gateway Review would speak to 12- 15 interviewees including relevant commercial and external stakeholders. The May 2022 Gateway Review included interviews with 30 stakeholders, widening the perspectives of the review. This most recent Gateway Review included interviews with over 45 people covering a wide selection of stakeholders from a variety of bodies including retail, hospitality, wholesale and producer sectors, and focused on operational readiness. As you'd rightly expect, the team and Ministers will consider carefully the recommendations of this review and share these and the Government's response with the Net Zero, Energy and Transport Committee. I will of course share your and others' representations with the team too. I have heard from other groups who are separately taking the opportunity to make representations. I can confirm that these will all be considered by the team, and included in the advice to Ministers.

I have noted your recent email on behalf of cross party MSPs. As is right and proper, I have passed this for response to the Minister for Green Skills, Circular Economy and Biodiversity. I have also asked the team to take forward your wish, along with cross party colleagues, to meet with CSL and SEPA and they will look to arrange that as soon as possible. You are of course welcome to share this letter with your cross party colleagues.

I thank you for taking the time to write to me and for your ongoing engagement on this matter. Best wishes,



JP Marks
Permanent Secretary to the Scottish Government

From: Ewing F (Fergus), MSP <Fergus.Ewing.msp@parliament.scot>
Sent: 21 March 2023 16:37
To: Permanent Secretary <PermanentSecretary@gov.scot>
Cc: [REDACTED] <[REDACTED]@britglass.co.uk>; Golden M (Maurice), MSP <Maurice.Golden.msp@parliament.scot>; Baker C (Claire), MSP <Claire.Baker.msp@parliament.scot>; Grahame C (Christine), MSP <Christine.Grahame.msp@parliament.scot>; McArthur L (Liam), MSP <Liam.McArthur.msp@parliament.scot>; Hoy C (Craig), MSP <Craig.Hoy.MSP@Parliament.scot>
Subject: Re: DRS - the Hospitality Sector.

Dear Permanent Secretary,

Thanks for your reply which I am now sharing with my colleagues fellow MSPs straight away. We suggested meetings on the morning this coming Monday (27th March) - and I wonder if that is something that can be agreed? It is pretty hard to coordinate a time that suits four MSPs and I rather hope that CSL and SEPA and the Gateway Team can accommodate us on Monday. Obviously there is urgency around this matter and that's why we sought to accommodate an early meeting and sought that on Monday next week.

May I also please ask if you can just clarify that we Cross Party MSPs will have an opportunity to feed in our concerns directly to the Gateway Review Team as I am not wholly clear from your reply if this is the case. It is not often that MSPs from four parties come together in this way, and I hope that this request can be accommodated, not least because there is growing and mounting concern amongst parties that the company CSL is entirely unaccountable, that it keeps information secret and that it refuses to answer questions that are in turn being asked by businesses and people around the country.

Secondly, on a related matter, I have engaged further just yesterday in a conference call, with the British Glass Federation who have a wealth of knowledge about the current system. This relates to the recycling of glass and the existing Packaging Recovery Notes. (PRN and PERN) system and the planned Extended Producer Responsibility Scheme - and the UK Government's plans to continue with the PRN system until at least 2026/2027.

I know that the BGF intend to contact you or may already have, in order to seek to submit their views to the Gateway Review process. My view is this is essential, not least because it appears clear that CSL have not understood the interaction between the existing UK PRN system and the proposed DRS in Scotland only. It appears to me as if this may be a further breach of UKIMA in the impact the Scottish scheme will undoubtedly have on the UK trade in recycled glass in particular. It is my understanding that BGF can provide a submission of the detail of this argument and related further practical problems, and do so with considerable authority and weight.

So I would respectfully request that the BGF be also afforded an opportunity to submit their views. You refer in your reply to "intense engagement across sectors through a variety of mediums." However, my understanding is that BGF have not had the opportunity to participate in this engagement, though they will best speak for themselves in this area.

That can and I believe should be put right urgently, though I fear that the defects in the DRS scheme as proposed for Scotland are either irremediable or not capable of being remedied by the intended start date of 16th August. And that the scheme is probably illegal on numerous grounds as I have argued before.

I am copying this letter, therefore, to [REDACTED] at the BGF for his information as well as to my MSP colleagues.

An early clarification about the meetings to take place I hope on Monday would be appreciated. Thanks again for the reply.

Yours sincerely

Fergus Ewing MSP
Sent from my iPad



From: [REDACTED] <[REDACTED]@parliament.scot>
Sent: 21 March 2023 09:42
To: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: Cross Party Letter - DRS

Dear Permanent Secretary,

We thank you for your letter of the 6th March and note all you say. We have had a chance to meet and discuss the letter together and all agree that we would wish to take up the offers of meetings.

We remain of the view that the Deposit Return Scheme (DRS) is not sufficiently developed or prepared that it can or should go ahead in August as planned. We believe that there are serious defects in the scheme design and that it will have significant and materially adverse impacts especially upon a range of smaller businesses, and on price hikes for consumers, which defects cannot be dealt with simply by a 'pragmatic regulatory approach' nor by a further period of time within which to return the Producers Agreements, welcome though both of these changes are.

We would in addition to meeting with Circularity Scotland, SEPA and Scottish Government Officials, also request that it would be helpful for us to have an opportunity to express our concerns to the person or persons conducting the Gateway review. We appreciate that this is an internal process, and that the review is intended to guide Ministers in their decision making. However the review, like its predecessors, is a very important document and the scheme itself is of enormous public interest. We assume that it, like its predecessors will be made public. (We hope that it will be made public immediately unlike its predecessor which was not made public until December last year having been completed in June).

We would also wish to make sure that the various stakeholders that have helped us in our Parliamentary work on DRS, have and all have, the opportunity to be heard in the Gateway Review, and so may well wish to recommend that some of them be added to the list of those whose views are sought in the further Gateway review process. We will check with them whether they were in fact consulted, and if not may revert to you requesting that they should be consulted in this gateway review which is being commenced this week.

In making this request of you, we appreciate that the person conducting the review may not be in a position, or even permitted, either to offer opinions or answers on points that we choose to make. However, we do believe that it may be of value to allow us the opportunity to be heard, as we are as elected representatives of the four main parties in Scotland and are all very much attune to the myriad of concerns expressed to us by constituents and others. We note that the previous review was conducted by Roy Brannen the Director of Net Zero and Transport.

In order to make progress we would offer that two meetings be held, first with Circularity Scotland and SEPA and then, after that, with Mr Brannen and the Scottish Government officials.

That would allow us to seek responses from Circularity Scotland and SEPA, and, if they are not forthcoming, or do not appear to us to be adequate, we can express our views to that effect to Mr Brannen and his officials at a later meeting. That sequence of meeting would appear to be logical and beneficial to us.

We would offer the morning of Monday the 27th March for both meetings, perhaps the first at 9 30 for one hour and the second at 11 am for the same time approx.

Meetings of this duration would enable each of the four of us to express concerns and also raise questions in the hope of obtaining answers.

We would respectfully point out that our attempts to obtain direct answers in the Parliamentary Chamber from the Minister have not, on several occasions, resulted in such answers actually being forthcoming - and that is the view of us all.

We hope that these requests are seen reasonable and that they add an element of transparency and accountability to the process of development of the best policy approach to achieve objectives of increasing recycling in an efficient, user friendly and cost effective fashion - something that we all believe will not be achieved by the DRS as it currently is designed.

We await hearing from you.

Yours sincerely

Fergus Ewing MSP
Claire Baker MSP
Maurice Golden MSP
Liam McArthur MSP

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

 **Scottish Government**
Riaghaltas na h-Alba

T: 0300 244 4000
E: scottish.ministers@gov.scot

Fergus Ewing MSP
Fergus.Ewing.msp@parliament.scot

Our Reference: 202300354770
Your Reference: Deposit Return Scheme

4 May 2023

Dear Fergus

Thank you for your emails of 17 April to the First Minister Humza Yousaf, and the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy Neil Gray; and of 28 March to John Paul Marks Permanent Secretary. I note that you have outlined your concerns

regarding the Deposit Return Scheme. I am replying on their behalf as the Deposit Return Scheme is within my Ministerial Portfolio responsibility. My apologies for the short delay in replying.

As mentioned in previous responses to you from the Permanent Secretary and the Director of Environment and Forestry, I would welcome a meeting to discuss your concerns. I understand, however, that your preference is to engage either with other Ministers or my officials in isolation from me about policies within my remit. As I'm sure you will understand as this policy is my responsibility it is right and proper that your engagement is directly with me.

If you wish to accept my offer of a meeting I would be grateful if you would contact my Private Office via email at MinisterGSCEB@gov.scot to make the necessary arrangements.

Kind regards



LORNA SLATER

From: Ewing F (Fergus), MSP <Fergus.Ewing.msp@parliament.scot>

Sent: 17 April 2023 11:00

To: [REDACTED] <[REDACTED]@parliament.scot>; Gray N (Neil), MSP <Neil.Gray.MSP@Parliament.scot>

Subject: Fwd: Scottish DRS UK Internal Market Act Exemption. URGENT

Dear Humza and Neil ,

I see that this attached letter has been sent to you Humza, but that it has also gone to Conservative and Labour MSPS. So I thought I should , before tomorrow, emphasise its importance to you in the light of your expected announcement.

This is a devastating critique of the DRS. (one of many). As you can see a major inward investment of £30M to Scotland. is at risk because of DRS scheme and the outrageous actions of CSL - anti competitive actions , which are almost certainly illegal and which will inevitably become public very shortly. The ignorance of CSL of the interactions of the proposed Scottish DRS and the existing UK PRN /re-melt schemes is negligent and will if unchecked , lead to redundancy notices being issues to workers in Scotland shortly all of whom will blame the Scottish Government. I think I also know where the investment of up to £30Million is planned to be made. Irrespective of anything else, several seats we hold there will likely be at risk if this becomes public knowledge.

The attached letter also outlines just a few of the innumerable practical problems relating to the scheme and its operation - problems that have not and in my view will not be sorted certainly not by August if ever.

Last Friday when I raised DRS on the conference call you held for MSPs MPs etc you said you disagreed with my views.

At no time have you asked to meet me - but I have a host of other examples of the detritus and economic carnage that this scheme will cause - if you want to hear about them. My views are actually the views of the vast majority industry - and I referred on Friday to the letter from the SWA CoC CBI FSB and many others. I doubt you will hear about them in such a clear fashion, from officials who in my view, from the outset during the previous Session of Parliament, have quite patently failed to warn Ministers of the grave problems of pursuing DRS in this fashion. Inevitably there will be an inquiry at some stage and all of this will come out in the wash.

I have spent much of the past 2 years working with companies in all the many sectors and I can tell you that there is almost universal opposition to the scheme going ahead in August. Even some of the soft drinks companies - (who incidentally will GAIN from the scheme in the short term, because DRS recyclate items are not PRN able) who say they want the scheme to go ahead in August - would actually privately prefer a halt, pause for at least 18 months and review - rather than going ahead as planned in August. The reason they are not saying so is apparently that some at least are afraid about how it would "look" regards their ERG commitment if they come out for what they actually prefer in practice.

If you are minded to announce a delay there is, again, an almost universal view that it must NOT be for a short period and that it will take at least 18 months to sort out and that UK alignment or at least major inter-operability are essential to avoid fraud, double bar codes and labelling, SKUs, stocking logistic and other extra costs.

I fear the worst of all will be the extra costs to the public. The Business letter refers expressly to this. I fear it will be a kind of SG Poll tax and that this is something from which we would never recover for very obvious reasons. The poorest who have no cars and cannot shop around will be hit hardest, as will rural and island dwellers.

A short delay some have told me - particularly supermarkets - would be worse than useless.

I am of course ready always to meet you or Neil to discuss this and other aspects.

For what its worth, Humza, I can see several possible political "off-ramps" which would allow you to construct a narrative regarding a halt pause for at least 18 months, and review, but which would be consistent - entirely consistent - with the efficacious delivery of our policy objectives with which few disagree.

So if you or Neil whom I gather is your trusted lieutenant wish to discuss even at this late stage, I am happy to do so.

Good luck.

Fergus
Sent from my iPad

Begin forwarded message:

From: [REDACTED] <[REDACTED]@mkd32.co.uk>

Date: 17 April 2023 at 09:39:10 BST

To: alister.jack.mp@parliament.uk, enquiries@ukgovscotland.gov.uk, ministerforgsceb@gov.scot, therese.coffey.mp@parliament.uk, First Minister

<firstminister@gov.scot>

Cc: suella.braverman.mp@parliament.uk, "Slater L (Lorna), MSP"
<Lorna.Slater.MSP@parliament.scot>, [REDACTED]@drydenaqua.com,
[REDACTED]<[REDACTED]@maltha.nl>, David Harris
<david.harris@circularityscotland.com>, [REDACTED]<[REDACTED]@britglass.co.uk>,
[REDACTED]<[REDACTED]@nickisouterassociates.co.uk>,
[REDACTED]<[REDACTED]@hotmail.com>, "Grahame C (Christine), MSP"
<Christine.Grahame.msp@parliament.scot>, "Ewing F (Fergus), MSP"
<Fergus.Ewing.msp@parliament.scot>, "Golden M (Maurice), MSP"
<Maurice.Golden.msp@parliament.scot>, [REDACTED]<[REDACTED]@renewi.com>,
[REDACTED]<[REDACTED]@sibelco.com>, [REDACTED]<[REDACTED]@britglass.co.uk>,
yvette.cooper.msp@parliament.uk, "Sarwar A (Anas), MSP"
<Anas.Sarwar.msp@parliament.scot>, humsa.yousaf.msp@parliament.scot,
[REDACTED]<[REDACTED]@mkd32.co.uk>

Subject: Scottish DRS UK Internal Market Act Exemption

[REDACTED]
[REDACTED]

[REDACTED]
• [REDACTED]
• [REDACTED]
• [REDACTED]

Yours Sincerely

[REDACTED]

[REDACTED]

MKD32 Ltd
Demmon Glass Recycling Ltd
Immediate Past President, British Glass Manufacturers Confederation
Glass Representative, Advisory Committee on Packaging

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From: [REDACTED] <[REDACTED]@parliament.scot> **On Behalf Of** Ewing F (Fergus), MSP
Sent: Tuesday, June 6, 2023 4:41 PM
To: First Minister <FirstMinister@gov.scot>
Cc: [REDACTED]@innisandgunn.com; [REDACTED]@[REDACTED].com
Subject: Re: DRS

Dear First Minister

Over the past two years I have spent considerable time listening to business and their concerns about DRS.

I attach a letter from Dougal Sharp of Innis and Gunn, a leading Scottish Brewer.

I have worked with Dougal and you will know his analysis.

This is because our DRS scheme is needlessly complex , unlike those operating in other countries, the extra costs will simply be passed to the public - the consumer.

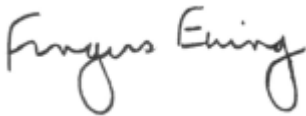
The costs he estimates, as considerable

He also sets out a clear analysis about the significant and serious practical issues that will arise in the use of RVMs.

I would be most grateful for your comments on these matters

Finally he sets out an alternative approach of merely adding a small amount to each item, which would raise massive revenue sufficient to make the current scheme work better. It presently works well in many respects as kerbside collection, deployed by most local authorities and is simpler and easier to use than DRS and is one that uses the existing services of refuse collection rather than building a brand new (and additional system). This proposal is surely worthy of consideration at a Scottish and UK level.

I appreciate your consideration in this matter.



Fergus Ewing MSP

Member of Scottish Parliament for Inverness and Nairn

Office of Fergus Ewing MSP, 112 Church Street, Inverness, IV1 1EP

Telephone: [REDACTED]



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T: 0300 244 4000
E: scottish.ministers@gov.scot

Fergus Ewing
Fergus.Ewing.msp@parliament.scot
Our Reference: 202300360951
Your Reference: Scotlands Deposit Return Scheme

30 June 2023

Dear Fergus

Thank you for your correspondence of 6 June 2023 to the First Minister, regarding the implementation of Scotland's Deposit Return Scheme (DRS).

The First Minister has asked me to respond as the Minister with responsibility for DRS.

The proposal to introduce a DRS forms part of the Scottish Government's wider ambitions to develop a more circular economy which keeps products and materials circulating in a high-value state of use for as long as possible - maximising resources to benefit the economy and the environment. In doing so, we will also stop these containers from littering our beaches, waters, and parks.

We have been left with no other option than to reset the timescale of DRS and delay the launch until October 2025 at the earliest, when the UK Government says it will aim to launch its own scheme. DRS will happen but we are frustrated and disappointed that it will now take longer than needed and more limited than it should be.

The removal of glass has significant implications on the scheme's operation – businesses have planned and invested millions based on its inclusion. The conditions the UK Government has imposed creates even more uncertainty for businesses as the UK Government has not yet designed their scheme which we are supposed to align to.

We remain committed to interoperable DRS schemes across the UK provided that we can work in a spirit of collaboration not imposition.

Kind regards



LORNA SLATER

From: [REDACTED] <[REDACTED]@gov.scot> **On Behalf Of** Minister for Green Skills,
Circular Economy and Biodiversity

Sent: 21 June 2023 09:58

To: Ewing F (Fergus), MSP <Fergus.Ewing.msp@parliament.scot>; Minister for Green Skills, Circular Economy and Biodiversity <MinisterforGSCEB@gov.scot>

Cc: Baker C (Claire), MSP <Claire.Baker.msp@parliament.scot>; McArthur L (Liam), MSP <Liam.McArthur.msp@parliament.scot>; Golden M (Maurice), MSP <Maurice.Golden.msp@parliament.scot>; Grahame C (Christine), MSP <Christine.Grahame.msp@parliament.scot>

Subject: RE: Cross Party Letter Re DRS Meeting

Good morning [REDACTED]

Thank you for your email.

TG.22 has been booked for this meeting which I understand has remote facilities.

Kind regards

[REDACTED]- Private Secretary to the Minister for Green Skills, Circular Economy and Biodiversity - Lorna Slater MSP

Scottish Government | St Andrew's House, Regent Road, Edinburgh EH1 3DG | Email: MinisterGSCEB@gov.scot

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From: [REDACTED] <[REDACTED]@parliament.scot> **On Behalf Of** Ewing F (Fergus), MSP

Sent: Tuesday, June 20, 2023 3:10 PM

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

Cc: Baker C (Claire), MSP <Claire.Baker.msp@parliament.scot>; McArthur L (Liam), MSP <Liam.McArthur.msp@parliament.scot>; Golden M (Maurice), MSP <Maurice.Golden.msp@parliament.scot>; Ewing F (Fergus), MSP <Fergus.Ewing.msp@parliament.scot>; Grahame C (Christine), MSP <Christine.Grahame.msp@parliament.scot>

Subject: FW: Cross Party Letter Re DRS Meeting

Good afternoon [REDACTED],

Hope this finds you well.

Fergus Ewing, Maurice Golden, Claire Baker and Liam McArthur would be most grateful to press ahead with the meeting with the Minister on 27th June at 11.45 in person please.

Liam McArthur would be grateful if he can participate remotely please We are awaiting the reply from Christine Grahame who may wish to attend as well, I will keep you updated.

Grateful if you can confirm this is in order.

Kind regards,

[REDACTED]

Office Manager to Fergus Ewing MSP for Inverness and Nairn

Email: [REDACTED]@parliament.scot

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From: ministerforgsceb@gov.scot

Date: 16 June 2023 at 11:31:13 BST

To: "Ewing F (Fergus), MSP" <Fergus.Ewing.msp@parliament.scot>

Cc: "Baker C (Claire), MSP" <Claire.Baker.msp@parliament.scot>, "Golden M (Maurice), MSP" <Maurice.Golden.msp@parliament.scot>, "McArthur L (Liam), MSP" <Liam.McArthur.msp@parliament.scot>, "Grahame C (Christine), MSP" <Christine.Grahame.msp@parliament.scot>, ministerforgsceb@gov.scot

Subject: RE: Cross Party Letter Re DRS Meeting

CAUTION: This e-mail originated from outside of The Scottish Parliament. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Mr Ewing

Can I check whether you are able to attend this meeting with Ms Slater on 27 June at 11:45am please – I can't see that we've had a response, my apologies if we have missed it.

I would be grateful if the other attendees who haven't yet responded can confirm their attendance or otherwise, please.

Kind regards

[REDACTED] - Private Secretary to the Minister for Green Skills, Circular Economy and Biodiversity - Lorna Slater MSP

Scottish Government | St Andrew's House, Regent Road, Edinburgh EH1 3DG | Email: MinisterGSCEB@gov.scot

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From: [REDACTED] <[REDACTED]@gov.scot> **On Behalf Of** Minister for Green Skills, Circular Economy and Biodiversity
Sent: Monday, May 22, 2023 6:04 PM
To: Ewing F (Fergus), MSP <Fergus.Ewing.msp@parliament.scot>; Minister for Green Skills, Circular Economy and Biodiversity <MinisterforGSCEB@gov.scot>
Cc: Baker C (Claire), MSP <Claire.Baker.msp@parliament.scot>; Golden M (Maurice), MSP <Maurice.Golden.msp@parliament.scot>; McArthur L (Liam), MSP <Liam.McArthur.msp@parliament.scot>; Grahame C (Christine), MSP <Christine.Grahame.msp@parliament.scot>
Subject: RE: Cross Party Letter Re DRS Meeting

Good afternoon

Thank you for your email which we shared with Ms Slater.

Grateful if you can confirm if Tuesday 27 June at 11:45am (in person or via Teams) is suitable to meet with Ms Slater, please?

Kind regards

[REDACTED] - Private Secretary to the Minister for Green Skills, Circular Economy and Biodiversity - Lorna Slater MSP

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From: [REDACTED] <[REDACTED]@parliament.scot> **On Behalf Of** Ewing F (Fergus), MSP
Sent: 17 May 2023 13:17
To: Minister for Green Skills, Circular Economy and Biodiversity <MinisterforGSCEB@gov.scot>
Cc: Baker C (Claire), MSP <Claire.Baker.msp@parliament.scot>; Golden M (Maurice), MSP



<Maurice.Golden.msp@parliament.scot>; McArthur L (Liam), MSP
<Liam.McArthur.msp@parliament.scot>; Grahame C (Christine), MSP
<Christine.Grahame.msp@parliament.scot>; Ewing F (Fergus), MSP
<Fergus.Ewing.msp@parliament.scot>

Subject: Cross Party Letter Re DRS Meeting

Importance: High

17th May 2023

Lorna Slater MSP

Minister for Green Skills, Circular Economy and Biodiversity

Dear Lorna,

On behalf of the Cross Party Group of MSP's Claire Baker, Maurice Golden, Christine Grahame, Liam McArthur and myself I am writing to thank you for the offer of a Ministerial meeting to discuss DRS. Each of us have serious concerns about the workability of the scheme as it is proposed, and about the impacts that we believe it is likely to have upon people, business, and the environment.

A meeting would be a useful opportunity to discuss these.

I am also asked to say that we felt it was unfortunate that the Permanent Secretary did not afford us an opportunity to contribute to the March Gateway Review as we requested, on three occasions, but hope to have sight of the Review documents as soon as possible, as we gather this was completed some time ago now.

We should also say that in seeking that opportunity to contribute to the Gateway Review directly we did not state that we preferred not to meet yourself as suggested in your letter. Our primary aim is to seek to influence the current DRS policy and approach in a way that it successfully delivers on the policy objectives which we support, and which are broadly supported by virtually all.

We look forward to hearing from you as to what date or dates may be suitable.

Thank you.

Yours sincerely,

Fergus Ewing MSP

Claire Baker MSP

Maurice Golden MSP

Liam McArthur MSP

Christine Grahame MSP

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From: [REDACTED] <[REDACTED]@parliament.scot> **On Behalf Of** Ewing F (Fergus), MSP

Sent: 01 March 2023 11:20



To: Permanent Secretary <PermanentSecretary@gov.scot>
Cc: [REDACTED] <[REDACTED]@parliament.scot>
Subject: FW: Cross Party Letter - Deposit Return Scheme
Importance: High

Good Morning,

I would be grateful if I can talk to the Permanent Secretary's PA this morning if possible please, can you provide a phone number please?

Can you let me know when a reply will be issued to the attached letter please?

Yours sincerely,

[REDACTED]

Office Manager to Fergus Ewing MSP for Inverness and Nairn

Email: [REDACTED]@parliament.scot

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06 March 2023 – Email Correspondence from Fergus Ewing MSP

From: Ewing F (Fergus), MSP <Fergus.Ewing.msp@parliament.scot>
Sent: 06 March 2023 09:57
To: Permanent Secretary <PermanentSecretary@gov.scot>
Cc: [REDACTED]<[REDACTED]@oneooneretail.co.uk>;
[REDACTED]<[REDACTED]@blairbowman.com>;
[REDACTED]<[REDACTED]@sgfscot.co.uk>;
[REDACTED]<[REDACTED]@parliament.scot>;
[REDACTED]<[REDACTED]@parliament.scot>;
[REDACTED]<[REDACTED]@parliament.scot>
Subject: DRS

Dear Permanent Secretary,

I refer to my previous correspondence and wish to draw to your attention a further recent and alarming development.



Circulatory Scotland. (CSL) without consultation with retailers such as the Scottish Grocers Federation , have now changed the rules with regard to their commercial terms of repayment to retailers of payments for returned containers (deposits).

Hitherto, as I can prove from extracts from the CSL website, such repayment was to be made to retailers (and in hospitality sector too I believe) within 7 days.

However in the course of the last few days, they have unilaterally changed this to one month, where Reverse Vending Machines are used.

RVMs have been procured by retailers on the basis of the previous assurances that such payments would be made in 7 days. Payment in one month is of course a very serious matter impacting upon cash flow. Retailers will effectively fund the costs for an additional three weeks - and that in perpetuity.

There are other new provisions introduced as well, with regard to appeals. The delay if there is a dispute , and the appeal process must be invoked, in a worst case scenario could be 73 days.

Even if payments are made on time, which given the fact DRS is in a shambolic state and now where near ready to be implemented properly seems unlikely in the extreme, the serious commercial problems regards cash flow created by this unilateral alteration to promised Terms and Conditions is a most serious matter.

If there are disputes - and it seems to be pretty certain these will arise frequently given the shambles the scheme is in- then the impact on retailers of having to invoke the appeals process could be terminal. Moreover, given the number of return points - believed to be about 15000 - if there are problems leading to appeals - then it seems to me that the process will become totally clogged up, unable to cope, and that the whole system will fail. Given the myriad of problems of the scheme, this , I am afraid, is not a remote scenario. I have in Government had some experience of systems failure when I became the Rural Secretary in 2016 and the IT system for administering the CAP payments to farmers failed. That was sorted out but it took two to three years to do that.

Complex systems involving IT often fail. I am not sure how anyone can have sufficient confidence that the new systems yet to be put in place to administer this DRS will work. IF they do not work the whole thing would very quickly need to be scrapped in its entirety. That would be the most ignominious humiliation that I can possibly envisage for any Government.

The Minister asserts that the scheme is an industry scheme. The industry representatives I have been in contact with have not been consulted, far less the architects of this latest rule change. Indeed, it will seriously damage their businesses, and I noted that one lady shop=keeper went to the Press in the last few days, to say that the impacts of DRS may force her to close. So the Ministers assertion is false.

That raises potential issues under the Ministerial Code, which I have not as yet considered fully , partly in the hope that you will intervene, as I and MSPs from the other three main parties have urged you to do well over a fortnight ago now.

I submit that this major change in the commercial arrangements for the operation of the scheme is highly irregular and therefore smacks of bad governance - one of the criteria regards Ministerial Direction.

In addition to that, it is not clear whether you or the Minister were consulted, advised informed of these changes. CSL are not accountable at all to the Scottish Parliament. They are not subject to FOI. I trust that you will investigate this. If you need any more information I can obtain it for you.

I would be grateful if you can now advise if you consider that as the Accountable Officer under the Public Finance Manual, a Ministerial Direction must be sought should SG Ministers wish to proceed to seek to implement this disastrous scheme on the intended date in August.

Yours sincerely

Fergus Ewing MSP
Inverness and Nairn.

Sent from my iPad

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09 May 2023 – Email Correspondence to Fergus Ewing

From: [REDACTED] <[REDACTED]@gov.scot> **On Behalf Of** Permanent Secretary

Sent: 09 May 2023 15:47

To: Ewing F (Fergus), MSP <Fergus.Ewing.msp@parliament.scot>; Permanent Secretary <PermanentSecretary@gov.scot>

Cc: Baker C (Claire), MSP <Claire.Baker.msp@parliament.scot>; Golden M (Maurice), MSP <Maurice.Golden.msp@parliament.scot>; McArthur L (Liam), MSP <Liam.McArthur.msp@parliament.scot>

Subject: RE: DRS Gateway Review

Dear Mr Ewing

Apologies for the delay. The response to your request was issued on the 4th of May, please see attached.

Best wishes.

[REDACTED]

[REDACTED] (he/him)

Private Secretary to The Permanent Secretary

The Scottish Government

PermanentSecretary@gov.scot

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From: [REDACTED] <[REDACTED]@parliament.scot> **On Behalf Of** Ewing F (Fergus), MSP
Sent: 09 May 2023 15:27
To: Permanent Secretary <PermanentSecretary@gov.scot>
Cc: Baker C (Claire), MSP <Claire.Baker.msp@parliament.scot>; Golden M (Maurice), MSP <Maurice.Golden.msp@parliament.scot>; McArthur L (Liam), MSP <Liam.McArthur.msp@parliament.scot>
Subject: FW: DRS Gateway Review

Dear Permanent Secretary,

We are still awaiting a reply to our letter of the 28th March. I would be grateful if you can tell us when the reply will be issued please?

Yours sincerely,

Fergus Ewing MSP

From: [REDACTED] <[REDACTED]@parliament.scot> **On Behalf Of** Ewing F (Fergus), MSP
Sent: 25 April 2023 13:16
To: [REDACTED] <[REDACTED]@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>
Subject: FW: DRS Gateway Review

Good afternoon [REDACTED],

I'd be grateful if I can have a quick chat with you in relation to the below letter please which is awaiting a reply?

Thank you.

Kind regards,

[REDACTED]

Office Manager to Fergus Ewing MSP for Inverness and Nairn

Email: [REDACTED]@parliament.scot

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From: Ewing F (Fergus), MSP <Fergus.Ewing.msp@parliament.scot>
Sent: 14 April 2023 09:05
To: Permanent Secretary <PermanentSecretary@gov.scot>
Cc: [REDACTED]<[REDACTED]@parliament.scot>
Subject: Fwd: DRS Gateway Review

Dear permanent Secretary

I refer to my letter attached of 28th March and would be pleased to receive your reply

My assistant [REDACTED] will contact you Private office this morning to ascertain when that will be issued

I note that the main business bodies in Scotland have this morning written once again to the FM calling for a halt delay and review

Yours sincerely

Fergus Ewing MSP
Sent from my iPhone

Begin forwarded message:

From: "Ewing F (Fergus), MSP" <Fergus.Ewing.msp@parliament.scot>
Date: 28 March 2023 at 16:25:18 BST
To: permanentsecretary@gov.scot
Cc: "Baker C (Claire), MSP" <Claire.Baker.msp@parliament.scot>, "Golden M (Maurice), MSP" <Maurice.Golden.msp@parliament.scot>, "McArthur L (Liam), MSP" <Liam.McArthur.msp@parliament.scot>

Subject: DRS Gateway Review

Dear Permanent Secretary

We are writing once again to repeat our request that we have the opportunity to put our views and concerns to those officials conducting the current Gateway review.

In our original letter we specifically asked for this, and not simply a meeting with the Minister and her officials. In your reply you did not directly address our request.

We between us represent parties which have the support of around 9 out of 10 in the electorate in our country. The fact that we have worked together in this way, something that is in itself uncommon and infrequent, is surely of some significance.

The Gateway Review is an internal document but one that will be published. It is of huge significance. We wish to have the chance to contribute to that.

We therefore hope that we may be afforded this opportunity in early course.



As was most recently illustrated by the evidence session this morning before the Net Zero and Transport Committee at which Mr David Harris, CEO of CSL, and three of his colleagues gave evidence, the DRS is in a state of unreadiness and in our view the only sensible course now is to halt, pause and review the scheme. We are far from certain that the views of many of those in our country who are or will be impacted by this scheme have been heard.

As their elected representatives we can perhaps help to fill that gap.

We hope that this request is seen as reasonable and will be acceded to

Yours sincerely,

Fergus Ewing MSP
Claire Baker MSP
Maurice Golden MSP
Liam McArthur MSP

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15 August 2023 – Email correspondence from Fergus Ewing MSP

From: [REDACTED] <[REDACTED]@parliament.scot> **On Behalf Of** Ewing F (Fergus), MSP
Sent: 15 August 2023 13:01
To: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: DRS - Enquiry to FM, SG response

Dear Permanent Secretary,

I am writing today to bring to your attention a matter of real concern. I have copied below my letter sent to the First Minister on the 6th June in which I attached a detailed letter from Dougal Sharp of Innis and Gunn a leading Scottish brewer. I wrote to the First Minister at the request of Dougal Sharp, his letter is also attached in which he sets out very helpfully alternative approaches to the DRS as it will go forward in the coming years.

My letter to the First Minister is clear and deserving of a detailed reply and a meeting to go over these serious matters.

The reason I am writing to you as Permanent Secretary today is because on the 30th of June I received the attached reply from Minister Lorna Slater. The reply bears no relation to my letter whatsoever. It is completely irrelevant.

I would therefore be grateful to understand if you feel this letter of reply is acceptable in that it completely ignores my letter - in such a way that it is an insult to me as an MSP and to anyone reading this letter.

Is this something that you can intervene on? And if not what other remedies are there where ministerial replies are wholly irrelevant to the questions asked?



I would be grateful for your response.

Thank you.

Yours sincerely,

Fergus Ewing MSP

Member of Scottish Parliament for Inverness and Nairn

Office of Fergus Ewing MSP, 112 Church Street, Inverness, IV1 1EP

Telephone: [REDACTED]

