

Dean Lockhart MSP
Convener
Net Zero, Energy and Transport
Committee The Scottish Parliament
Edinburgh
EH99 1SP

10 June 2022

Dear Dean

United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles: Single-use Plastics) Regulations 2022

Thank you for your letter of 26 May, in reply to mine of 6 May, confirming the Scottish Parliament's approval to proposals by the Scottish Ministers to consent to the making of UK secondary legislation to amend the United Kingdom Internal Market Act 2020, to create a new exclusion from the market access principles under that Act. Your letter raises a number of questions which I will address in turn.

1. Details of the broader exclusion that the Scottish Ministers had sought and the impact of it not being agreed.

Following discussions at officials level during Autumn 2021, and after consideration within the Resources and Waste Common Framework with all four governments, Scottish Ministers proposed an exclusion on 6 December 2021 that would cover future policy measures covering all single use products. This would have enabled the exclusion to apply not just to the bans established in our regulations but any future single use product bans.

However, after considering the proposed exclusion internally, the UK Government responded on 21 March 2022 to confirm agreement to an exclusion that was much narrower and limited to the scope of our regulations. Due to the length of time that the UK Government took to consider the proposal, there was insufficient time to discuss further within the Common Framework ahead of our ban coming into force on 1 June 2022. The effect was that of a unilateral UK Government decision relating to scope.

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This is not what we would expect in view of the agreed process for agreeing exclusions to the UK Internal Market Act 2020 within Common Framework areas¹. However, we recognise that this was the first use of this process and UK Government has undertaken a lessons learned exercise to try to ensure processes for future consideration of exclusions to the Act within Common Framework areas are improved.

The limitation of the current exclusion means it is highly likely further exclusions in this policy area will need to be sought through the Common Framework in the near future resulting in unnecessary delay and resource impacts.

2. Clarity regarding whether the Scottish Government's policy delivery of the ban on single use plastics has been slowed.

The Scottish Government notified the World Trade Organisation in August 2021 of the intention for relevant legislation to come into force on 1 June 2022. As you know, the Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021 (the Regulations) came into force on this date, after being laid before Parliament in November 2021. In the period between the laying and coming into force of the Regulations, Zero Waste Scotland ran a business campaign to raise awareness on how to prepare.

Unfortunately the UK Government did not agree to an exclusion in time for it to be in force for 1 June, which means there will be a gap while UK Parliamentary processes are completed. During this gap, which we expect to be short, the Regulations will not apply to any products which are manufactured or first imported into another part of the UK, and which can be lawfully supplied in that part of the UK. Once the exclusion from the UK Internal Market Act 2020 is in force, the prohibition of the supply of the listed single-use plastic products in the Regulations will apply to all products, regardless of where they originate from and whether they meet regulations in other parts of the UK.

Although we are encouraging businesses to take action now, this means the Regulations will not be fully effective until the exclusion comes into effect and full delivery of this policy measure will be delayed.

3. Why the framework has not yet been published and when it will be published.

The Resources and Waste Common Framework is not yet published for reasons beyond the Scottish Government's control. It can only be published after all four administrations have completed a review of the provisional framework documents and they have been cleared for publication by ministers. Scottish Government officials have completed their review of the document, and we await further updates from the UK Government.

4. Whether there have been any inter-governmental discussions on the exclusion outwith the framework.

¹ [Process for considering UK Internal Market Act exclusions in Common Framework areas - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

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The matter has also been discussed between senior policy officials in the four governments through existing intergovernmental structures. The Scottish Government used these meetings to impress on UK Government counterparts the need to proceed in a timely manner on the single use plastics exclusion following agreement on policy divergence in the framework.

A request was made by Scottish Ministers on 9 December to discuss the scope of the exclusion on a Ministerial bi-lateral basis with the UK Government. This was not possible until 16 May, after agreement had been reached on the scope of the exclusion.

5. *Regarding the development of the exclusion, the Committee also seeks details of—*

- *the process for agreeing the scope of the exclusion;*

The process for agreeing exclusions to the UK Internal Market Act 2020 sets out the process for considering and agreeing the scope of exclusions.²

- *who was involved in the discussions;*

Officials from all four UK administrations, including senior officials through the Senior Officials Programme Board, were involved in discussions.

Discussions were also elevated to Ministerial level through meetings of the Inter-Ministerial Group for Environment, Food and Rural Affairs towards the end of the process, following the agreed process for agreeing exclusions to the UK Internal Market Act 2020.

- *if there were any disagreements on the proposed exclusion (in addition to the disagreement on the breadth of the exclusion referred to above) and how they were resolved;*

There were no disagreements on the proposed exclusion (in addition to the disagreement on the breadth of the exclusion).

- *What further engagement is planned to ensure stakeholders are aware of the exclusion.*

² [Process for considering UK Internal Market Act exclusions in Common Framework areas - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

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A wide range of engagement is planned or has taken place already to raise stakeholder awareness of the exclusion, as part of wider efforts to help businesses and the public prepare for the Regulations. This includes adverts on social media platforms targeting businesses affected by the ban, direct communications and engagement with relevant organisations, and wider communication activities. Working with Zero Waste Scotland, we will continue to engage with key stakeholders to provide support to enable effective implementation of the Regulations.

I hope this information is of use to the committee.

Kind regards

LORNA SLATER

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