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**26 May 2022**

Dear Claire,

## **UK Internal Market Act Exclusions Process**

Many thanks for your letter of 4 May, which sets out a number of questions following my recent update to your committee. I will take your points in turn, but before I do, it is important to underline that it is wholly inconsistent with the principles and practice of devolution since 1999 that devolved legislation must rely on the views of UK Ministers before it can have its intended effect. Indeed, the UK Government has itself admitted that the exclusion is necessary to ensure that "...the Scottish Government's environmental policy aims are not undermined by UK-wide regulation".<sup>1</sup>

- 1. We note that you state that "agreement on policy divergence was reached through the provisional Resources and Waste common framework last autumn" and ask whether the lead committee considering the regulations were informed of this as part of their scrutiny of the regulations in December 2021.*

Agreement on policy divergence was reached last Autumn but further work was required through the common framework process to confirm the scope of an exclusion. The Minister for Green Skills, Circular Economy and Biodiversity confirmed this work was ongoing during her appearance at the Net Zero, Energy and Transport Committee meeting on 30 November 2021.

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<sup>1</sup> Department for Levelling Up, Housing and Communities, *Intergovernmental Relations Quarterly Report Quarter 1 2022*, 26 May 2022

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1078721/CP\\_M0522992596-001\\_Intergovernmental\\_Relations\\_-\\_Quarterly\\_Report\\_25M\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1078721/CP_M0522992596-001_Intergovernmental_Relations_-_Quarterly_Report_25M_1_.pdf)

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This was the first time a framework had been used to address proposed policy divergence and a potential exclusion from the Internal Market Act. My officials are, along with their opposite numbers in the UK Government, the Senedd Cymru and the Northern Ireland Executive, drawing on the learning from this process to ensure that in future there is greater clarity as to how decisions are being reached, recorded, and communicated within individual common frameworks.

- 2. We note that you state that the exclusion “should allow the Scottish regulations to operate as intended” but that Scottish Ministers made the case for a broader exclusion and ask that you provide details of that broader exclusion and the impact of it not being agreed.*

Scottish Ministers made the case for a broader exclusion for future policy measures covering all single-use products.

The exclusion unilaterally determined by UK ministers – there was no role for devolved governments, is narrower in scope which means it is highly likely further exclusions in this policy area will need to be sought through the common framework process in the near future resulting in further time and resource commitments.

- 3. We note that you state that “policy delivery in Scotland could be slowed while UK ministers determine devolved policy for England” and ask for 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 the Regulations to come into force in June 2022 and they will do so.

However, despite the need for an exclusion being first identified in the autumn of 2021...the UK government process to bring an exclusion from the impact of the UK Internal Market Act 2020 into force will not be concluded by the time the Regulations come into force on 1 June. This means the Regulations will not be fully effective when they come into force and full delivery of this policy measure will be delayed. The gap between the Regulations and exclusion coming into force is subject to the completion of relevant UK Parliament procedures.

- 4. Why the resource and waste common framework has not been published despite it being operational and whether the evidence and conclusions reached in the common framework in relation to the single use plastic regulations will be published especially with regards to the case for a broader exclusion.*

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.

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In the Scottish Government's view there was entirely insufficient discussion of scope before UK ministers' unilateral decision— the primary objective in the first instance should have been to ensure that an exclusion was in place, then to agree the scope of any such exclusion. UK Ministers unilaterally determined that the scope of the exclusion would be tightly drawn round the regulations, rather than taking a more pragmatic approach to simply exclude a defined policy area from the Act in line with the request. This was presented not as a proposal for discussion, but as the final word on the matter. The time taken for UK Ministers to reach a conclusion on the exclusion precluded further discussion on scope, given the commencement date.

The case for a broader exclusion was made using information available in the public domain such as the impact assessments published alongside the consultation for the regulations. No further publications are planned.

*5. Whether there have been any inter-governmental discussions on the exclusion outwith the provisional Resources and Waste Framework.*

The matter has also been discussed between senior policy officials in the four governments through existing intergovernmental structures and at the Efra inter-ministerial group. 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.

*6. Whether the Scottish Government and UK Government are expecting that the exclusion will be in place before the SSI on single-use plastics comes into force on 1 June.*

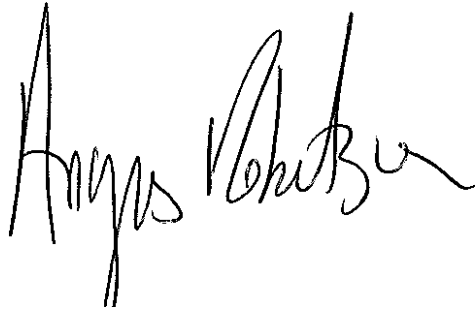
The exclusion will not be in place before the SSI on single-use plastics comes into force on 1 June. The UK Government intends to lay the exclusion SI before the UK Parliament on 8 June, and it will come into force once the relevant UK Parliamentary procedures are completed.

The Scottish Government regulations will not be fully effective during the gap between their coming into force and the exclusion coming into force. The Scottish Government is working to engage with stakeholders to ensure that the changing effect of the regulations is understood, and that while UKG has not introduced an exclusion in time for 1 June, it should follow soon, and the ban will be fully effective.

I hope this information is of use to the committee.

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Yours sincerely,



**Angus Robertson**  
**Cabinet Secretary for Constitution, External Affairs and Culture**

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