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16 June 2023

Dear Edward

Thank you for the invitation to attend Committee on 13 June, to update on the current situation relating to the Deposit Return Scheme and to allow for scrutiny of The Deposit and Return Scheme for Scotland Amendment Regulations 2023.

I was pleased that the Committee unanimously agreed that the regulations should be recommended to Parliament. However, I note the concerns raised by the Committee relating to the sequencing of the required legislation to bring forward the date changes for the launch of the scheme to October 2025, following the UK Government failure to agree a full exclusion from the Internal Market Act (IMA). I can assure you that we will be bringing forward further amendment regulations to make the changes required to the coming into force date as soon as possible.

As I said at Committee, Gateway Reviews are not normally published. I recognise that exceptionally we did publish parts of previous DRS reviews. Going forward we will periodically share notes of Ministerial Strategic Assurance Groups to increase transparency of programme governance.

That said I am writing to Committee today to honour my commitment to sharing the findings and the Scottish Government response to a March 2023 Gateway Review. This information is attached in Annex A.

It is important to note that the review was conducted in the context of the target go live date of 16 August 2023. The Review team found two significant blockers to DRS delivery, lack of IMA exclusion and lack of clarity on display of pricing from the UK Government. These created uncertainty across the programme, uncertainty that fed into the system, slowing or pausing their preparations. This resulted in a delivery confidence assessment of Amber/Red based on the target date of 16 August, reflecting the feedback we got directly from many stakeholders at the time that led to our proposal to put back the launch date to March 2024.

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The next steps are to work with all the UK governments on alignment and interoperability to create certainty of scheme scope, requirements, and the timetable. On this I can inform the Committee that I met the Parliamentary Under Secretary of State for DEFRA on 14 June. She was not able to provide me with any assurance that the conditions that the UK Government are imposing on Scotland's scheme as part of their IMA decision would respect the Scottish Parliament's decisions. This includes critical scheme design issues, such as the level of the deposit.

As a consequence, at this stage it is not possible to say with any certainty what the level of deposit would be for the Scottish DRS. Nor was the Parliamentary Under Secretary able to clarify when the UK Government will make a decision on this issue, or the other critical conditions that have been imposed on our scheme. However, we did agree that Scottish and UK Government officials would continue to collaborate to develop workable solutions over the coming months.

I also encouraged the Parliamentary Under Secretary to meet with Circularity Scotland as part of her efforts to ensure that the Scottish expertise developed in the design of our system is taken into account in future discussions.

I hope you find the information provided useful.

Kind regards

LORNA SLATER

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Gateway Review Assurance Action Plan June 2023

Gateway review findings

The Review Team commented that this is an ambitious programme pioneering a new relationship between public and private sector. They concluded at the time of their report that there was no low-risk route to launch on 16 August as not all parts of the system were ready, that the lack of decision on IMA exclusion was a significant blocker affecting business confidence, and that a delay should be considered. This resulted in Delivery Confidence Assessment: AMBER/RED

The report noted 2 blockers and acknowledged that Scotland is trailing DRS for all UK nations and therefore implementation challenges are inevitable.

Blocker identified	Progress Status
Lack of ruling on Internal Markets Act (IMA) exclusion creates uncertainty that the scheme will go ahead. Retailers, producers and wholesalers are holding back investment decisions and plans to be ready for August. Granting of a late exclusion would mean August go-live will be unachievable.	UKG concluded a partial, time limited exclusion alongside a number of conditions relating to interoperability. Scottish Government concluded it was not possible to progress with vague and uncertain conditions and made the decision to delay scheme launch until October 2025 at the earliest.
Lack of clarity on pricing mean wholesalers and retailers are unwilling to be making IT changes until certainty is provided.	SG continue to engage UK Government on the need for a review of the Price Marking Order 2004 to reflect the introduction of DRS systems.

The report recommends consideration of options to amend or delay the scheme to respond to stakeholder readiness and concerns to ensure sufficient time for businesses to ready their own systems, and for a final decision to be communicated clearly and quickly by Ministers. It recommends that work is undertaken to ensure that there is a clear shared understanding of day 1 launch and that system-wide governance is refreshed to ensure it is focussed on the implementation phase of the scheme. This should be collaborative, focus on interdependencies and include system testing, and come together into a clear programme plan. Specifically, it was highlighted that the exemption process and communications approach should be reviewed, and that clarity was required on the scale and scope of the regulatory framework.

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A summary of the recommendations and Scottish Government response is below. The decision taken on 7 June to delay scheme launch until October 2025 at the earliest has changed the context for our response meaning that where a clear work plan was in place there is now uncertainty or a need to rescope the work required. Some of this is also reliant on collaboration with the UK Government.

Summary of Recommendations	Actions underway or planned	Progress Status
<p>Consider options to amend or delay the scheme. Final decision to be communicated clearly by Ministers</p>	<p>The Gateway Review heard the same concerns from stakeholders that they have raised with Scottish Government directly and through the media. This evidence fed into announcements made in April of a delay until 1 March 2024 to the launch of DRS and a range of measures to simplify the scheme for producers and retailers in response to these concerns.</p> <p>On 18 April 2023 the First Minister announced a delay to scheme launch until 1 March 2024. This was in response to stakeholder feedback on their readiness and the uncertainty created by lack of confirmation of Internal Market Act exclusion by UK Government.</p> <p>The full statement can be accessed here: https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-18-04-2023?meeting=15245&iob=130020#orscontributions_M1742E410P746C2483475</p> <p>On 20 April the Minister for Green Skills, Circular Economy and Biodiversity made a statement in Parliament announcing simplifications to the DRS scope to address the concerns of small producers, hospitality and wider system. Later that day the First Minister and the Minister for Green Skills, Circular Economy and Biodiversity met with a wide set of industry stakeholders to discuss these changes which on the whole were positively received.</p>	<p>Complete</p>

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Renew system wide governance	<p>Following feedback, the System Wide Assurance Group has been replaced with sector specific working groups and a Ministerial Strategic Assurance Group which met for the first time on 22 May 2023. The Executive Oversight Group has been retained.</p> <p>Together these groups provide:</p> <ul style="list-style-type: none"> • stakeholder engagement on operational issues (sectoral groups); • programme oversight (Executive Oversight Group) • strategic oversight (Ministerial Strategy Assurance Group) 	Complete

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	<p>They are supported by appropriate programme reporting and documentation including an operational issues log.</p> <p>These groups will continue to provide programme governance.</p>	
Clear shared understanding of scheme scope for day 1 launch	<p>The DRS Executive Oversight Group (EOG) has responsibility for defining a system wide target operating model that makes clear what will be operational when.</p> <p>Work for 1 March 2024 go live was progressing well however it will now be rescope and profiled.</p>	Rescope required due to UKG decision on IMA exclusion
System design for the flow of 20p through the system should be clearly communicated and tested	<p>The operational details of the scheme are the responsibility of the scheme administrator.</p> <p>Futher work will be required to understand the implications of the conditions that have been imposed by the UK Government on the scheme.</p> <p>The sector specific working groups will continue to work on the resolution of operational issues where practicable.</p>	Ongoing
Clarity given on the scale and scope of regulatory framework	<p>Futher work will be required to understand the implications of the conditions that have been imposed by the UK Government on the regulatory framework.</p>	Rescope required due to UKG decision on IMA exclusion

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Simplify the exemptions process	<p>Following feedback, the online application process has been simplified for retailers with premises less than 100m2 and food to go retailers with premises less than 280m2. Bulk applications are also now available for businesses with multiple premises, and Zero Waste Scotland has met with retailers and hospitality to support their bulk exemption applications.</p> <p>Further work is now required to assess the implications of the delay on the exemptions process.</p>	<p>Complete</p> <p>Paused due to UKG decision on IMA exclusion</p>
Renew communication strategy	The communications strategy and plan will be rescope in light of the revised launch plans for DRS in Scotland.	Rescope

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