

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/JJ/1805/22

Climate Change, Environment, and Infrastructure Committee
Legislation, Justice and Constitution Committee
Economy, Trade, and Rural Affairs Committee
Equality and Social Justice Committee

31 May 2022

Dear Llyr,

I am writing in response to a letter of 10 May from the Chair of Climate Change Committee, Environment, and Infrastructure Committee with regards the single use plastic bans and the potential exclusion under the draft Waste and Resources Framework. (**Please see annex A** below).

During 2020, the Welsh Government consulted on plans to introduce regulations to ban or restrict the sale to end users of these commonly littered single use plastic items:

- cutlery (including forks, knives, spoons, chopsticks and sporks)
- plates (including bowls, platters and trays)
- stirrers
- drinking straws
- expanded polystyrene food and drinks containers
- cotton buds
- balloon sticks, and
- items made of oxo-degradable plastics.

Our Programme for Government reiterated our commitment to legislate to abolish the use of more commonly littered, single use plastics. I remain committed to bringing forward such legislation early in this Senedd term.

Regarding the Scottish Government's request for an exclusion under the Common Frameworks Process, under the UK Internal Market Act 2020 (UKIMA), an exclusion requires a Statutory Instrument, which must be laid by the Secretary of State for Environment in the UK Parliament. I have now received a letter from Minister Prentice of the UK Government seeking the formal consent from Welsh Ministers (as required by UKIMA) which I intend to give.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Any consent would be without prejudice to the ongoing UKIMA litigation. Our position remains that we do not consider UKIMA has the impact on the Senedd's competence that it purports to have. By agreeing to the UK Government exclusions SI, we are not changing this position. I consider that while the litigation is ongoing, there is a need to co-operate and engage on the exclusions process.

Following feedback to our consultation, I also propose to include a ban on the sale of wet wipes which contain plastic and single use plastic carrier bags in the planned legislation. My officials are currently undertaking a rapid evidence review and they are engaging with stakeholders on the inclusion of these additional measures.

I have copied this letter to the Legislation, Justice and Constitution Committee.

Yours sincerely,

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

ANNEX A

1. Can you provide an indication of when the provisional Framework for Resources and Waste will be made available for scrutiny and explain the reason for the ongoing delay in its publication?

Answer: It is expected that the Resources and Waste Frameworks will be agreed at official level during the Summer. It is, however, important to note that in order to publish the Framework for scrutiny, portfolio Ministerial clearance will be required from all four Governments.

2. While we acknowledge the request for the exclusion originated from the Scottish Government, it appears the Welsh Government will be relying on the exclusion to progress its proposals to ban SUPs. Can you confirm that this is the case?

Answer: As I outline in my letter above, our position remains that we do not consider UKIMA has the impact on the Senedd's competence that it purports to have, and by agreeing to the UKG exclusions SI, we are not changing this position.

However, I consider that while the litigation is ongoing, there is a continued need to co-operate and engage on the exclusions process.

3. In the absence of the Resources and Waste Common Framework, can you outline the processes for considering and agreeing the exclusion?

Answer: The process followed was as laid out in the UKIMA Exclusions Process previously shared with Committees.

In her letter, the Minister for Rural Affairs, and North Wales, and Trefnydd refers to the Welsh Government's disappointment at the "narrow nature of the exclusion".

4. Can you provide details of the exclusion and explain in what way it is narrower than you and your counterpart in the Scottish Government had hoped for?

Answer: Under the terms of UKIMA, the UK Government has decided to grant a narrow exclusion limited to the items in the Scottish Governments regulations.

The disappointment, which I share with Minister for Rural Affairs, and North Wales, and Trefnydd, is because under the Common Frameworks and UKIMA, any further policy deviation in this policy area will mean a return to the beginning of the exclusion negotiation process, taking time away from the development of the policies themselves.

As I have outlined above, our position is we do not consider UKIMA has the impact on the Senedd's competence that it purports to have. Nevertheless, while the litigation is ongoing, we recognise a need to co-operate and engage on the exclusions process.

The Process for considering UK Internal Market exclusions in Common Framework areas sets out that the four governments are able to engage the dispute resolution mechanism within the relevant Framework if desired.

5. Can you clarify whether the dispute resolution mechanism was utilised with a view to securing a wider exclusion? If not, why was this?

Answer: I can confirm it was used.

6. Can you explain whether and how the “narrow nature of the exclusion” will impact on the scope of the proposed ban on SUPs in Wales?

Answer: As stated above, our position remains that we do not consider UKIMA has the impact on the Senedd’s competence that it purports to have. Therefore, the narrow nature of the exclusion will not impact on any proposed ban of SUPs in Wales.

Under the Act, amendments to the schedules containing exclusions require the approval of both Houses of the UK Parliament. The Secretary of State is responsible for ensuring that draft regulations are put before the UK Parliament. Before making regulations, the Secretary of State must seek the consent of the devolved administrations.

7. What discussions have you had with the UK Government about the timing of draft regulations that will give effect to the exclusion?

Answer: The Scottish Government have already laid regulations banning a list of single use plastic items which come into effect on 2 June 2022. I understand the UK Government intends to lay the SI as close as possible to that date.

8. Can you confirm that you will notify the Senedd when the draft regulations are laid before the UK Parliament?

Answer: Yes, I will prepare a Written Statement.

9. Can you confirm that you will seek the views of the Senedd before deciding on whether to give consent to the Secretary of State making the regulations? If so, can you provide an indication of when this is likely to be and what process you intend to follow?

Answer: Regarding the Scottish Government’s request for an exclusion under the Common Frameworks Process, under UK Internal Market Act 2020 (UKIMA), an exclusion requires a Statutory Instrument, which must be laid by the Secretary of State for environment in the UK Parliament. I have now received a letter from Minister Prentice of the UK Government seeking the formal consent from Welsh Ministers which I intend to give.

I have included other Senedd Committees with a likely interest to this consent in this response.

In September 2021, you told us the Welsh Government's response to the consultation on the proposed ban on SUPs, including next steps, would be published in October 2021. Again, in December 2021, you said the response would be published in January 2022. The response is still to be published.

10. Can you confirm the timing of the publication of the response and explain the reason for the ongoing delay?

Answer: I wish to be able to share detailed plans and an indicative timetable for how I intend to take forward this policy in light of the consultation responses. You will see in my answers above why I have not been able to do that so far.

I anticipate publishing the responses over the summer period.