

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

Edward Mountain MSP  
Net Zero, Energy and Transport  
Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

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Dear Edward

Thank you for your letter of 18 September 2023, to the Cabinet Secretary for Transport, Net Zero and Just Transition, seeking clarification on a number of issues following the Committee's scrutiny of the Circular Economy (Scotland) Bill on 12 September 2023. I am replying as Minister with responsibility for the Bill and welcome this opportunity to provide further detail.

The Bill provides a combination of detail on the face of the Bill with a framework for future action in certain areas supported by delegated powers, the use of which will be underpinned by co-design with stakeholders including local authorities, businesses and householders. In the attached Annex I have set out current thinking on these matters alongside consideration about the Internal Market Act and Programme for Government. I look forward to discussing further with the committee in due course.

**Lorna Slater**

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## Delegated Powers

### Charges for Single-Use Items:

This provision inserts a new section into the Climate Change (Scotland) Act 2009 to give Scottish Ministers enabling powers to make regulations requiring suppliers of goods to charge for single-use items provided in connection with those goods or as a container or packaging for those goods.

Using primary legislation to introduce charges on specific items would be resource intensive for both Ministers and Parliament and hinder the ability to act swiftly and effectively, for example when new products or new types of single-use packaging for goods emerge on the market.

We intend to bring forward regulations under this provision to introduce charges for single-use cups filled with a beverage at the point of supply, for example, in a cafe. Work on a range of impact assessments to inform proposals to introduce a charge on single-use beverage cups will begin this year. This will build on the work that began in 2018 with the establishment of the Expert Panel on Environmental Charging and Other Measures which recommended a charge as part of a range of measure to tackle our dependence on single-use cups in their first report. Since 2022, the Single-Use Disposable Cups Charge Advisory Group has provided advice and expertise to support progress on the implementation of a charge.

### Restrictions on the Disposal of Unsold Goods

This provision inserts a new section into the Climate Change (Scotland) Act 2009 to give Scottish Ministers the enabling power to make provision prohibiting or restricting the disposal of unsold consumer goods.

It is expected that any initial SSIs under this power would focus on those products with greatest environmental impact and will be informed by improved data, in part by forthcoming UK-wide waste data tracking legislation and as result of other bill provisions such as those relating to reporting on waste and surplus. There would also need to be alternatives available to landfill and incineration for goods impacted by regulations in order to avoid any unintended consequences, such as associated transportation requirements where reuse or recycling alternatives are not available in Scotland. Any potential regulations would be required to be informed by further consultation, including with business. It is anticipated that regulations would apply to durable goods, with a focus on those that can be reused, for example, textiles. This is similar to the existing French model.

This is not a blanket ban on the disposal of these goods as this could be disproportionate and difficult to enforce. To be effective, regulations using this power will require further research to understand the flows of goods, knowledge of how producers/retailers currently destroy and/or redistribute goods and an understanding of how those operating in the system, including the third sector, would react to, and be able to handle, increased amounts of goods available for reuse.

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Making provision by secondary legislation will give flexibility to respond to changes in markets and sectors.

### Duty to Make Information Publicly Available

This provision is aimed at encouraging evidence based actions and innovation to tackle wasteful practices and increase efficiencies. It will highlight publicly where surplus and waste is occurring in the supply chain and this has potential to create new opportunities to develop uses for surplus or waste to be seen as a valued resource which is vital in a circular economy.

The Policy Memorandum identifies that food waste is a particular priority given the significant contribution to carbon emissions associated with this waste stream. I recognise that some businesses already report on food waste on a voluntary basis and as such any regulations would need to take into account existing processes to avoid being burdensome to those who have set up reporting processes.

The consultation also highlighted that the focus should be on items that have the highest environmental and social costs as well as reuse potential. As such this would be targeted at substantial waste streams that have a significant impact, not waste or surplus that is produced in small quantities. Consultation responses highlighted that textiles, which have a significant carbon impact, should also be considered for future regulation. As a significant contributor to waste arisings, construction could also be a potential candidate.

Any regulations would also need to take into account the potential need for exemptions, for example for smaller businesses.

### Circular Economy Targets

This section provides enabling powers for Scottish Ministers to set targets on themselves that relate to the Circular Economy through secondary regulations. The Bill sets out a non-exhaustive list of potential areas that targets could cover. These are:

- Reducing the consumption of materials
- Increasing reuse
- Increasing recycling
- Reducing waste

Before any regulations are brought forward we intend to develop, and consult upon, a monitoring and indicator framework. This will ensure there is an agreed understanding of the relevant methodologies and datasets that would be an appropriate basis for setting targets and/or measures. The Committee would be invited to scrutinise any such proposed monitoring and indicator framework should it choose to do so during the consultation.

The provisions also require that in considering targets, Scottish Ministers must have regard to the desirability of the economy being one in which there is sustainable consumption and increased reuse and recycling (on the same basis as that used for the Circular Economy strategy).

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## Targets for Waste Collection Authorities Relating to Household Waste Recycling

Section 13(2) of the Bill also amends the 1990 Act by inserting a new section that gives the Scottish Ministers enabling powers to make regulations to set targets for waste collection authorities in relation to recycling, similar to the existing approach in Wales.

Any such targets would need to be achievable and fair and take into account local authorities different starting points, varied geographies and demographics. It is also important to recognise that improvements to recycling rates will require infrastructure and service changes. As such, any targets would therefore be the product of co-design with local authorities and stakeholders and would not apply before 2030 to ensure the principles of achievability and fairness are delivered.

The nature of setting targets and indicators for measuring progress also means that setting these out in primary legislation would be inflexible.

## Complementary Delegated Powers Related to Enforcement Provisions

These provisions complement the principal policies and provisions in the Bill to ensure effective and flexible policy delivery subject to appropriate conditions and limits. They provide for technical and procedural details and allow for flexibility in implementation whilst avoiding the need to have to repeatedly bring forward primary legislation to make relatively minor changes to delivery mechanisms.

Sections 11 introduces a range of related provisions to aid in the enforcement of existing household waste requirements in the Environmental Protection Act 1990. They make provision for a civil regime of written warnings and penalties, as well as a fixed penalty notice procedure, as alternatives to criminal prosecution, which is currently the only option available to local authorities. These alternative enforcement options are already available to local authorities in England and Wales. These provisions are largely set out on the face of the Bill, but there are certain regulation-making powers in new sections 46ZC and 46ZD(6), as well as an enabling power to issue guidance in new section 46ZE which supplement the provision set out in the Bill. Such regulations would be used to set out the various details of the civil penalty charge scheme including the amount of penalty charge, discounts and surcharges, procedure, form and content of notices and the periods for payment and other procedural matters such as appeals. The power in section 46ZD(6) relates to the amount of the fixed penalty and the form of the fixed penalty notice. These regulations will be brought forward after engaging in co-design with local authorities and may also require to be changed with time. The details to be contained in such regulations would not be appropriate for primary legislation nor would primary legislation provide the necessary degree of flexibility.

Section 14 modifies the 1990 Act to insert new sections that provide for civil liability for littering from a vehicle. This will allow a civil penalty charge to be imposed on the registered keeper of a vehicle from which an offence of leaving litter has been committed and the bulk of the detail of the scheme is set out in the Bill provisions. Certain matters however are reserved to secondary legislation such as fine amounts, discounts and surcharges, procedures and exemptions from liability. These will be co-designed with the enforcement bodies. Setting out the finer detail of a civil penalty regime in regulations is fairly typical as the detail within them may need to be refined from time to time to ensure it works properly throughout Scotland on the ground and also to take into account changing circumstances. For example, it may be necessary to raise fine amounts or revise forms and procedures.

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Section 10 modifies the existing duty of care provision in the 1990 Act to make a breach of the householder duty of care a criminal offence. This addresses an existing enforcement gap in relation to fly-tipping and brings the Scottish provision in line with that in England and Wales. Section 10 also provides for a fixed penalty notice regime in relation to this new criminal offence. The associated regulation-making power in new sections 34ZC(9) and (16) allows for an increase in the level of fixed penalty associated with the fixed penalty notice and allows for changes to the definition of the authorised officer to ensure proper enforcement. There currently are no plans to use these in the medium term and they are in keeping with similar provision in other related fixed penalty notice procedures such as those for littering and flytipping.

Section 15 inserts a new provision into the Environment Act 1995 to ensure better enforcement of waste crime by allowing for constables, SEPA officers and local authority officers to search and seize vehicles, and their contents, where it is believed the vehicle is or is about to be used in the commission of relevant offences. These are detailed provisions with limited regulation-making powers to allow for the Scottish Ministers to extend or narrow the range of offences in respect of which the powers can be exercised and also to make regulations in relation to the handling of any seized property.

As the nature and types of environmental crime are always evolving this allows flexibility to extend powers to where either the Scottish Parliament or UK Parliament has already chosen to make a criminal offence. Procedural arrangements in relation to seized property are matters which may be subject to frequent amendment and will require a level of detail which makes them appropriate to be addressed by means of secondary legislation.

## **UK Internal Market Act**

With regard to the UK Internal Market Act 2020 (UKIMA), the CE Bill does not contain any provisions on the face of the Bill which would trigger the application of the UKIMA.

The Bill contains certain regulation-making powers and therefore when those powers are to be exercised we will consider the impact of the UKIMA on any proposed provisions – in particular in relation to:

- restrictions on the disposal of unsold goods;
- charges on single-use items;
- requirements to make information publicly available on waste.

We engaged the other Governments of the UK on the Bill through the Resources and Waste Common Framework. The Scottish Government remains committed to Common Frameworks and working together, on the basis of respect for devolution, in line with the frameworks principles agreed by JMC(EN) Ministers in October 2017. The impact of UKIMA on any regulations under the Bill will also be affected by any policy changes in other nations of the UK within this policy area. Therefore, any analysis of the impact of UKIMA will not be static and it will evolve over time depending on what other UK nations do, for as long as the Act remains in force. The Common Framework will support those policy discussions and will allow the impact of UKIMA on policy proposals for Scotland to be understood and mitigated as best they can.

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## Programme for Government

The Committee also asked about interactions with the Programme for Government. As well as mentioning the Circular Economy Bill itself, the Programme for Government also identifies the Circular Economy & Waste Route Map and the National Litter and Flytipping strategy as priorities. Legislative requirements linked to both these documents have already been included in the draft Bill. On the issue of single-use vapes, a 4-nations consultation was launched on 12 October, which included questions regarding a ban on the sale and supply of single use vapes, and other appropriate measures needed to reduce the environmental impacts. Though we have agreed to work together to consider a range of options to tackle the impacts, up to and including a ban, Scottish Ministers already have existing powers which could allow for certain actions to be taken on vapes.

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