

Finance and Public Administration Committee

28th Meeting 2023, (Session 6), Tuesday 7
November 2023

Circular Economy (Scotland) Bill – Financial Memorandum

Purpose

1. The Committee is invited to take evidence in relation to its scrutiny of the Financial Memorandum (FM) for the [Circular Economy \(Scotland\) Bill](#) from Lorna Slater MSP, Minister for Green Skills, Circular Economy and Biodiversity, and the following Scottish Government officials:
 - Ginny Gardner, Head of Circular Economy Unit,
 - Janet McVea, Head of Zero Waste Unit,
 - Alexander Quayle, Team Leader – Recycling, and
 - Gareth Heavisides, Circular Economy Team Leader.
2. The Committee previously took evidence on the FM at its meeting on [24 October 2023](#), when it heard from Dundee City Council, South Lanarkshire Council and West Lothian Council.
3. The evidence session with the Minister will provide an opportunity to further explore the potential costs associated with the measures introduced by the Bill, as set out in the [Financial Memorandum](#), and the issues raised by stakeholders in written and oral evidence to the Committee. Annex A sets out the information that should be included in a Financial Memorandum.

Background

4. The [Circular Economy \(Scotland\) Bill](#) was introduced on 13 June 2023 and requires Scottish Ministers to adopt measures to help develop a circular economy.
5. The Bill includes the following provisions, as highlighted in the [explanatory notes](#):
 - Circular economy strategy: placing a duty on Scottish Ministers to publish or refresh a circular economy strategy at least every 5 years.
 - Circular economy targets: developing statutory targets for the Scottish Ministers.
 - Restrictions on the disposal of unsold consumer goods: providing powers to limit the disposal of unsold goods.

- Charges for single-use items: creating a power to set a minimum charge for certain throwaway items.
 - Householder’s duty of care in relation to waste: making it a criminal offence for a householder to breach their existing duties of care under the Environmental Protection Act 1990, in relation to the transfer of waste, and creating a new fixed penalty regime to enforce these duties.
 - Household waste: requiring local authorities to comply with a code of practice on collection and recycling and giving local authorities a package of new responsibilities and powers, including powers for the Scottish Ministers to set recycling targets for local authorities.
 - Littering from vehicles: establishing a new civil penalty regime that will make the keeper of a vehicle liable to pay a civil penalty charge in respect of a littering offence committed from that vehicle.
 - Enforcement powers in respect of certain environmental offences: improving enforcement against fly-tipping and other waste crime through a power allowing the Scottish Environment Protection Agency (“SEPA”) and local authorities to seize vehicles involved in specified waste crime.
 - Reporting on waste, surpluses, etc: obtaining information about where waste is occurring through a power to require information which would lead to public reporting of waste and surplus by businesses (the intention is for this initially to be applied to information about food).
6. The Presiding Officer has ruled that the Bill requires a financial resolution. Crown consent is also needed. The Parliament has agreed that Stage 1 should be completed by 26 January 2024. A SPICe briefing on the Bill has been published and is available on the [Parliament’s website](#).
7. The [policy memorandum](#) explains that—
- “Building a more circular economy requires all parts of Scottish society to play their part. This Bill addresses that by placing requirements on, or enabling further action by, central and local government, businesses and householders. The Bill will primarily deliver enabling powers that will set a framework for taking action into the future. Where the Scottish Government is choosing to introduce powers to make regulations, rather than placing specific provisions on the face of the Bill, its intention is to take the opportunity to use public consultation and co-design processes (particularly for recycling provisions) that will take views from all relevant parts of society to ensure that effective regulations are developed.”
8. On 18 September, the Net Zero, Energy and Transport (NZET) Committee, which is lead committee for scrutiny of the Bill, [wrote to the Cabinet Secretary for Transport, Net Zero and Just Transition](#) highlighting concerns in relation to the level of detail included in the Bill—
- “The Committee notes that the Bill as drafted sets out high-level principles on the face of the Bill, leaving much of the details around proposed measures to be set out in secondary legislation. Whilst I recognise that some explanation behind the policy objectives can be found in the Policy Memorandum for the Bill, such framework legislation poses challenges for parliamentary scrutiny.”

9. The Minister for Green Skills, Circular Economy and Biodiversity [responded to the lead committee's letter](#) on 13 October, stating that “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”. The Annex to the Minister’s letter provides a list of provisions requiring secondary legislation, including the Scottish Government’s reasoning for the approach taken.
10. The lead committee’s call for views on the general principles of the Bill received 99 responses, which are available on the [Citizen Space](#). The lead committee took evidence on [26 September](#) from a panel of representatives from Scotland’s business community, on [3 October](#) from a panel of environmental regulators and on [31 October](#) from the Scottish National Investment Bank. It intends to continue taking evidence from stakeholders throughout the autumn and to also undertake fact-finding visits and an engagement event.
11. The Parliament agreed, on 8 February, that consideration of the Bill at Stage 1 be completed by 26 January 2024. As required by [Standing Orders](#) (Rule 9.6, 3A), the lead committee is required to publish its report on the Bill no later than the fifth sitting day before the Bill’s Stage 1 debate on the Bill, taking into account the views submitted by any other Committee, including those provided by this Committee on the Financial Memorandum.

Financial Memorandum

12. The [Financial Memorandum](#) (FM) for the Bill provides estimates of potential costs and savings arising from the Bill, applying to the Scottish Administration, Local Authorities, SEPA, individuals and businesses, as summarised on pages 26-30 of the FM.
13. Costs on the Scottish Administration are estimated at £1,557,000 over the first three years of implementation. Costs on Local Authorities are expected to amount to £227,000 (per local authority other than littering from vehicles) for the first 3 years, with total estimated savings ranging from £430,366 to £990,952 arising in total across Years 2 and 3. Costs to other bodies (SEPA) are estimated to reach £888,488 over the first three years, while costs to individuals and to businesses are not directly quantified in the FM “given the number of variables”. A number of costings remain subject to design of secondary regulations.
14. For example, in terms of the costs to local authorities of implementing charges for single-use items, the FM states that—

“Depending on the approach taken to introduce a minimum charge on single-use cups, there may also be a role for, and associated additional cost to, local authorities in enforcing the regulations. These costings will be subject to the scope of any secondary legislation following further assessment and

consultation, and therefore calculated as part of impact assessments undertaken in advance of secondary legislation.”

15. Similarly, the FM explains it is not possible to provide estimates about the extent of any additional costs or benefits to local authorities that would be associated with the introduction of enforcement tools for local authorities in relation to householders’ recycling obligations, which are also subject to secondary legislation and guidance from Ministers. It also states “however, it is expected that there would be both costs and benefits to local authorities in the use of these powers.”
16. Other examples include:
- on costs to other bodies, businesses and individuals, in relation to restrictions on the disposal of unsold consumer goods, the FM states that “Data on costs to business is limited and development of regulations would need to be underpinned by further research and engagement with businesses”.
 - on charges for single-use items, the FM states that “The costs on businesses will vary, depending on the regulations. It has not been possible to ascertain the level of these costs on businesses at this stage, but full consultation with affected parties would be carried out before the introduction of any environmental charge.”

Written submissions

17. As usual, the Committee ran a call for views on the FM, which closed on 21 August and included the following standard questions that this Committee asks on all Financial Memorandums:
- Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
 - If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?
 - Did you have sufficient time to contribute to the consultation exercise?
 - If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
 - Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
 - If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
 - Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

18. The call for views received [eight responses](#), from:

- Aberdeen City Council

- Aberdeenshire Council
- Dundee City Council
- Glasgow City Council
- South Lanarkshire Council
- West Lothian Council
- COSLA
- Scottish Courts and Tribunals Service

19. Most of the submissions received highlight potential underestimates in terms of expected costs, as well as significant uncertainty in relation to the financial implications of the Bill. Aberdeen City Council highlights, in their submission, that “The financial memorandum presents very high-level estimates with much of the costs still to be properly ascertained. This is especially true for the section on household waste and development of the new code of practice.” West Lothian Council’s submission argues that “Costs for Local Authorities will be highly dependent on the review of the code of practice, which is linked to the outcome of Packaging Extended Producer Responsibility (EPR) and consequent funding for packaging waste, which will be determined from what is deemed an ‘efficient and effective service’, which is also currently unknown at present.” Similar concerns were raised by Dundee City Council—

“The broad principles of EPR are to cover costs associated with collection, treatment and disposal of packaging and to drive more sustainable design for packaging, therefore this cannot be used to offset any costs occurring from compliance with the Code of Practice. Whilst the RIF fund [Recycling Improvement Fund] is intended to cover capital costs for required infrastructure changes, we feel that timing and profiling of this fund has been disjointed. £54 million of the fund has already been committed, however the new Code of Practice has not been agreed making it difficult for currently compliant LAs to assess future compliance and impact of any new model.”

20. The FM explains that—

“The Scottish Government is making available £70 million capital funding over 5 years through the Recycling Improvement Fund for local authorities to apply for funds to support improvements in the quantity and quality of recycling and reuse. Funds have so far been allocated to projects to provide new bins to support collection of multiple types of recycling, to upgrade vehicles or collection technology or to build facilities to sort and process recycling. [...] The Fund, which runs from 2021 to 2026, has so far allocated over £53 million to projects in 17 local authorities.”

21. It further states that “the potential financial impact of the new code can only be fully assessed once it is developed. However, if any future mandatory code did incur additional costs for local authorities, this should be viewed in the context of work that the Scottish Government is taking forward, in partnership with the other UK administrations, to introduce EPR schemes across a range of products and materials.”

22. All Councils submitting written evidence highlight enforcement costs, which appear to them to have been underestimated. The FM suggests that, to deliver the Bill's household waste requirements, additional Full Time Equivalent (FTE) enforcement officers may be required. The FM identifies this as a minimum of 2 extra officers per 150,000 population per local authority, costing £35,000 – £45,000 each and 1 FTE enforcement administration officer costed at £22,000 - £28,000 per local authority. However, Councils and COSLA note that a more realistic figure for the cost of an enforcement officer, including on-costs, is in the region of £55,000. South Lanarkshire Council, for example, currently employs “no enforcement administration officers so this would likely be an additional enforcement officer. Given the geography of South Lanarkshire, 2 enforcement officers per 150k population would be insufficient.”
23. While this Committee did not receive any submissions on the FM from the business community, [written submissions to the lead committee's call for evidence](#) do raise questions regarding the financial impact of the Bill. The [Federation of Small Businesses](#), for example, concludes in their submission to the lead committee, that “while [the Bill] offers various environmental and economic benefits, the associated obligations and costs can disproportionately affect smaller enterprises. Mitigation measures, including financial assistance, incentives, and support for adaptation, are essential to ensure that small businesses can thrive in a more circular economy.” The [Scottish Beer & Pub Association](#) raises concerns regarding “the potential impact of charges on single-use items, such a coffee cups on some of our members, particularly if there is additional requirements attached to a charge which equate to added costs for business (reporting functions/hypothecation of funds/administrative issues/additional collection facilities).”
24. The submissions received on the FM raised questions regarding the potential for the Bill to deliver savings to local authorities, particularly from littering fines, where “income assumptions appear to be based on 100% payment rate which is unlikely” (South Lanarkshire submission). Aberdeenshire Council argues that savings in relation to disposal costs are not relevant, “as the litter bins still require to be emptied and the streets still require to be cleaned therefore there would be no reduction in staff, vehicles or resources so the collection costs would remain the same.”
25. In their submission to the Committee, COSLA also notes that “The delays to the implementation of the Deposit Return Scheme and Extended Producer Responsibility inevitably impact on the objectives of the Bill and its impact. The margins of uncertainty are now greater as a result of delays to key Scottish and UK policies.”
26. In relation to the costs and savings within this Bill, the Committee will also be aware that a revised Fiscal Framework between the Scottish Government and Local Government is being developed, following the publication of the [Verity House Agreement](#) (VHA) on 30 June 2023. That agreement sets out—
- “The default position will be no ring-fencing or direction of funding, unless there is a clear joint understanding for a rationale for such arrangements ...

[and] additionally, current funding lines and in-year transfers will be reviewed ahead of the draft 2024-25 Budget Bill, with a view to merging into General Revenue Grant Funding.”

27. The VHA goes on to say that the Fiscal Framework will include “a presumption in favour of local flexibility where national approaches are being progressed, so far as is possible and effective” and highlights that “existing strategic and service level plans and associated reporting will be streamlined and refined.”

Evidence session on 24 October

28. On 24 October, the Committee heard from representatives from Dundee City Council, South Lanarkshire Council and West Lothian Council. Issues raised included the significant cost associated with acquiring and running new infrastructure facilities for waste management and treatment. Dundee City Council noted that “ensuring that everyone has the same type of infrastructure and could offer the same service would probably require more than double” the funds available through the recycling improvement fund.
29. Witnesses pointed to current challenges in collecting waste from flats, where due to multiple types of flat ownership it is difficult to ascertain who may be liable for fixed-penalty notices. The payment of fines is further complicated by deprivation and the ability to pay. South Lanarkshire Council explained that currently 10-15% of fines are paid and therefore questioned the assumption in the FM that 100% of fines would be returned to the council. The extent to which the FM fully recognises the costs of additional enforcement officers (and the extent to which they would also need to provide administrative services) was raised.
30. The Councils stated that education and awareness are key for the implementation of provisions in the Bill, particularly around recycling, and the Committee heard examples of Councils undertaking ‘door-knocking’ exercises. This is a costly and labour-intensive endeavour; however, it is seen as more effective than simply delivering printed communications. They further noted that education and awareness costs in the FM should also include provision for back-office staff and delivery of ongoing education programmes, given recycling rates tend to dip periodically.
31. As concluded by one of the witnesses at the session on 24 October, “the financial memorandum is really helpful, because it gives us much more scope for where to think but, at the moment, it is not the finished article that we could give to Parliament to consider”.

Next steps

32. The Committee will report its views to the NZET Committee later in November, to inform the lead committee’s Stage 1 report.

Committee Clerking Team
November 2023

Information to be included in FMs

1. [Rule 9.3 of Standing Orders](#) states in relation to Financial Memorandums that:
“2.A Bill must on introduction be accompanied by a Financial Memorandum which sets out best estimates of the costs, savings, and changes to revenues to which the provisions of the Bill would give rise, and an indication of the margins of uncertainty in such estimates. The Financial Memorandum must also include best estimates of the timescales over which such costs, savings, and changes to revenues would be expected to arise. The Financial Memorandum must distinguish separately such costs, savings, and changes to revenues that would fall upon—
 - (a) the Scottish Administration;
 - (b) local authorities; and
 - (c) other bodies, individuals and businesses.”
2. The accompanying [Guidance on Public Bills](#) notes that: “the Financial Memorandum should explain how these costs, savings, and changes to revenues arise, and what the implications are for the Scottish Consolidated Fund. For example, provision for a new or modified tax raising power could, assuming the power is used, significantly increase or reduce the amount of revenue paid into the Scottish Consolidated Fund. The discontinuation of a service or dissolution of an organisation could present potential savings to budgets and the Financial Memorandum should set out best estimates for these savings.”