

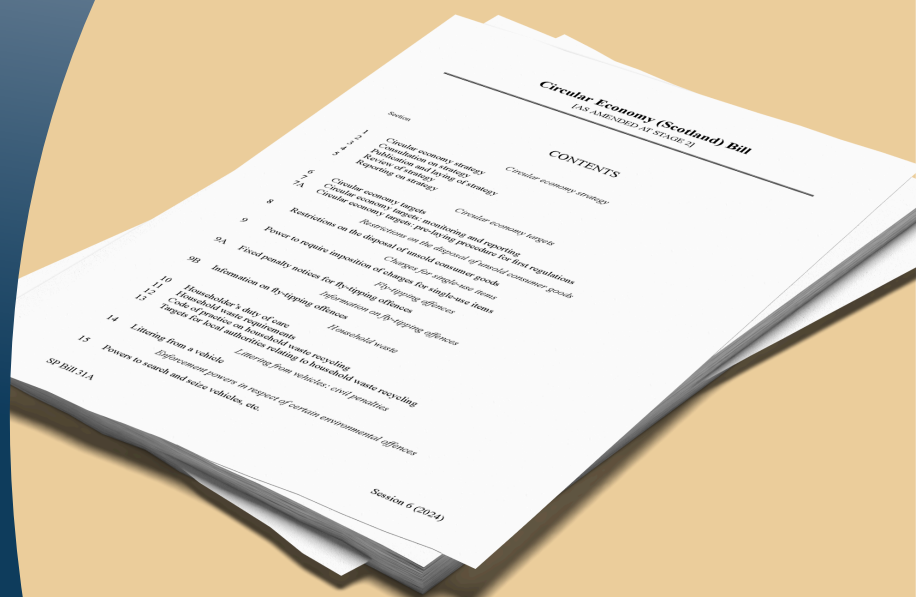


SPICe Briefing
Pàipear-ullachaidh SPICe

Circular Economy (Scotland) Bill: Consideration prior to Stage 3

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This briefing summarises consideration of the Circular Economy (Scotland) Bill in advance of Stage 3.



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Summary and background

This briefing looks at the Circular Economy (Scotland) Bill ahead of Stage 3 proceedings in the Scottish Parliament, scheduled to take place on 25 June 2024.

Background to the Bill

The [Circular Economy \(Scotland\) Bill](#) was introduced on 13 June 2023. A [SPICe briefing on the Bill as introduced](#) is available.

Key provisions of the Bill are:

- A requirement for a **Circular Economy Strategy** with associated consultation, review and reporting requirements.
- Powers to introduce **circular economy targets** with associated monitoring and reporting.
- Powers to introduce **restrictions on the disposal of unsold consumer goods** for the purpose of reducing waste.
- Powers to introduce **charges for single-use items** (expected to be initially used to introduce a charge for disposal beverage cups).
- A **new criminal offence for a householder to breach their duty of care in relation to household waste**, and new fixed penalty regime for that offence.
- Introduction of **new enforcement measures around household waste disposal** and recycling (fixed penalty and civil penalty charges).
- A new statutory **code of practice on household waste recycling**.
- Powers to set **targets for local authorities** relating to household waste recycling.
- Introduction of a new **civil penalty charge for littering from a vehicle**.
- Powers to introduce **mandatory public reporting requirements for businesses** in respect of waste and surpluses.
- Powers to enable enforcement authorities to **seize and search vehicles** to tackle waste crime.

Consideration at Stage 1

The Net Zero, Energy and Transport (NZET) Committee was the lead Committee scrutinising the Bill at Stage 1 and [published its Stage 1 report on 28 February 2024](#). The report made a number of detailed recommendations.

Detailed information about the NZET Committee's scrutiny, including its Call for Views and minutes of Committee meetings where evidence was taken from stakeholders and the Scottish Government [is set out on the Scottish Parliament website](#).

The Scottish Government [responded to the NZET Committee report on 14 March 2024](#).

Members of the Scottish Parliament [debated the general principles of the Bill on 20 March 2024](#) and [voted to agree the general principles of the Bill](#).

Consideration at Stage 2

The Bill as amended at Stage 2 [was posted on the Scottish Parliament website on 28 May 2024](#).

Minutes of Stage 2 proceedings, which were held in the NZET Committee over four meetings in May 2024, set out which amendments were agreed to, amendments disagreed, amendments withdrawn, and provisions of the Bill agreed without amendment:

- [Minutes of proceedings on 7 May 2024](#)
- [Minutes of proceedings on 14 May 2024](#)
- [Minutes of proceedings on 21 May 2024](#)
- [Minutes of proceedings on 28 May 2024](#)

The following sections describe how the Bill was amended during Stage 2 proceedings. It also summarises other key areas of the debate at Stage 2, for example where proposed amendments were withdrawn on the basis of the Scottish Government committing to give further consideration to a proposal or issue. The briefing does not detail all amendments that were put forward where these were not agreed or where there was no commitment to consideration in advance of Stage 3.

Amendments agreed 'without division' indicates where Members unanimously agreed an amendment. Amendments agreed 'by division' indicates where a majority, but not all Members supported an amendment.

Circular Economy Strategy (sections 1-5 of the Bill)

- **Requirement to have regard to circular economy targets in preparing the strategy - amendment agreed**

An amendment proposed by the Scottish Government (amendment 139) was agreed, adding a new sub-section, 3D, to section 1 of the Bill (requirement for a circular economy strategy). It sets out that "In preparing the circular economy strategy, the Scottish Ministers must have regard to the circular economy targets imposed by regulations made under section 6". The amendment was agreed without division.

The Minister said that the NZET Committee had "called for a clearer link in the bill between the strategy and the targets" in its Stage 1 report, and this amendment responded to that by putting a specific obligation on ministers to have regard to the targets in preparing the strategy.

- **Provision to have regard to behavioural change required to meet the objectives of the strategy - amendment agreed**

An amendment proposed by the Scottish Government (amendment 138) was agreed, which adds a new section 1(3C) to the Bill, setting out that "In preparing the circular economy strategy, the Scottish Ministers must have regard to the desirability of encouraging the kinds of behavioural changes which would be required to meet the objectives set out in the strategy". The amendment was agreed without division.

The Minister said that the NZET Committee had emphasised the importance of behavioural change in its Stage 1 scrutiny and the Scottish Government agreed with that view.

- **Requirement to have regard to the waste hierarchy in preparing the circular economy strategy - amendment agreed**

An amendment proposed by the Scottish Government (amendment 136) was agreed, adding a requirement to the Bill for Scottish Ministers to have regard to the 'waste hierarchy' in preparing the circular economy strategy. The amendment was agreed by division.

Section 1(3A) of the Bill as amended would require Scottish Ministers to have regard to the following waste hierarchy:

- (a) waste prevention
- (b) preparing for re-use
- (c) recycling
- (d) other recovery, including energy recovery
- (e) disposal

The Minister set out that this amendment was responding to a recommendation of the

NZET Committee in its Stage 1 report, that circular economy policy “must focus action and resources on measures further up the waste hierarchy than is currently the case.”

The Minister agreed that "focusing action high up the waste hierarchy is crucial" and said that the description of the waste hierarchy set out in the amendment derives from article 4 of the EU Waste Framework Directive.

More background on the 'waste hierarchy' (including how it features in other aspects of Scottish environmental law) [can be found in the SPICe Bill briefing](#).

- **Requirement to have regard to just transition principles in preparing the circular economy strategy - amendment agreed**

An amendment proposed by the Scottish Government (amendment 137) was agreed, adding a new sub-section (section 1(3B)) to the Bill requiring that in preparing the circular economy strategy, Scottish Ministers "must have regard to the just transition principles set out in section 35C of the Climate Change (Scotland) Act 2009". The amendment was agreed by division.

This amendment was in response to a recommendation at Stage 1 by the NZET Committee that just transition principles be integrated to section 1 of the Bill.

Section 35C of the Climate Change Scotland Act 2009 (as amended) sets out that the “just transition principles” refer to the importance of taking action to reduce net Scottish emissions of greenhouse gases in a way which—

- (a) supports environmentally and socially sustainable jobs,
- (b) supports low-carbon investment and infrastructure,
- (c) develops and maintains social consensus through engagement with workers, trade unions, communities, non-governmental organisations, representatives of the interests of business and industry and such other persons as the Scottish Ministers consider appropriate,
- (d) creates decent, fair and high-value work in a way which does not negatively affect the current workforce and overall economy,
- (e) contributes to resource efficient and sustainable economic approaches which help to address inequality and poverty.

The Minister also made some broader comments on the relationship between circular economy and just transition principles:

“ More widely, our approach to just transition planning is guided by our just transition planning framework and the national just transition outcomes that are described in that framework. I would like to provide reassurance that circular economy principles are, therefore, being considered as part of on-going just transition planning work, particularly in relation to supporting economic, job, place and environmental outcomes.”

- **Reference to "things" in attributes of a circular economy replaced with "goods, products and materials"**

Amendments proposed by Sarah Boyack MSP (amendments 94, 95, 96 and 97) were

agreed to replace the use of the word "things" in four places in section 1 of the Bill with the phrase "goods, products and materials".

Whilst the Bill itself does not technically include a definition of 'a circular economy', section 1 (3) of the Bill as introduced set out that in preparing the circular economy strategy, the Scottish Ministers must have regard to the desirability of the economy being one in which:

- processes for the production and distribution of **things** are designed so as to reduce the consumption of materials
- the delivery of services is designed so as to reduce the consumption of materials
- **things** are kept in use for as long as possible to reduce the consumption of materials and impacts on the environment
- the maximum value is extracted from **things** by the persons using them
- **things** are recovered or, where appropriate, regenerated at the end of their useful life.

The use of "things" in the above sub-sections (emphasis added) was amended in each case to read "goods, products and materials". The Scottish Government agreed that making this change would bring "additional clarity" to section 1. The amendments were agreed without division.

Equivalent amendments were made to section 6 of the Bill on circular economy targets, set out later in the briefing.

- **Requirement for remedial measures where objectives of the strategy are not being met - amendment agreed**

An amendment proposed by Mark Ruskell MSP (amendment 189) was agreed relating to requirements on Scottish Ministers to periodically report on progress against the circular economy strategy. New section 5 (aa) will require Scottish Ministers, in reporting on progress with the strategy, to set out "where any objectives have not been met, the measures the Scottish Ministers propose to meet those objectives".

The amendment was agreed without division. The Minister agreed this change would "strengthen the reporting requirements for the circular economy strategy".

- **Commitments made to consider further changes in advance of Stage 3**

The Minister also made a number of commitments to reflect on proposed amendments or discuss them with Members in advance of Stage 3. These included:

- To consider how the circular economy strategy could take into account the extra-territorial impact of consumption in Scotland, noting evidence taken by the NZET Committee at Stage 1, for example about overseas impacts of waste exports
- Member amendments were proposed which would specify sectors the circular economy strategy should cover, or align the approach with the sectors required to be included in Climate Change Plans under existing climate legislation. The Minister argued that the Bill should not specify particular sectors, in order to allow for future strategies to respond to priority sectors at that time based on their impact, but committed to look at, for example, how criteria for identifying key sectors could be included in the Bill rather than naming sectors themselves.

- To reflect on how the consultation requirements in respect of the circular economy strategy might be broadened, including reflecting on arguments made by Members at Stage 2 that international organisations, and human rights and environmental experts from the Global South should be consulted.

The Minister also committed to consider how certain issues could be progressed outwith the Bill, including:

- How work to **promote refillable containers** will be developed as part of the circular economy strategy
- How energy policy is reflecting or "signposting" issues around the **demand for "transition minerals"** for decarbonisation, such as the social and environmental implications of lithium demand for batteries
- To consider what more might be done via existing frameworks for procurement to embed high **standards of "due diligence"** with regard to environmental protection and human rights in supply chains.

Circular Economy Targets (sections 6-7 of the Bill)

- **Duty to introduce circular economy targets (not just powers) - amendment agreed**

Section 6(1) of the Bill as introduced set out that "The Scottish Ministers may by regulations make provision imposing targets on the Scottish Ministers relating to developing a circular economy".

An amendment proposed by Douglas Lumsden MSP (amendment 81) was agreed which changed "may" to "must", so the Bill would set an obligation for Scottish Ministers to introduce circular economy targets. The amendment was agreed to without division.

The Minister set out that the Scottish Government was content that there should be a duty, and not just a power to set targets, stating that:

“ Given the transformative change that is required to move from a linear to a circular economy, statutory targets will provide a strong focus for action and certainty in direction of travel across policy. Any targets would be set by future regulations, would be subject to detailed consultation and would sit alongside a monitoring framework that would inform policy choices and allow us to prioritise action on areas such as consumption reduction.”

- **Super-affirmative procedure introduced for initial regulations setting circular economy targets - amendments agreed**

Amendments proposed by Bob Doris MSP (amendments 147 and 150) were agreed to which set a 'super-affirmative' procedure for the first regulations introduced setting legal circular economy targets. The amendments were agreed to without division.

There is no set 'super-affirmative' procedure, so the details need to be set out in legislation.

New section 7A of the Bill sets out the pre-laying procedure for such initial regulations. Where the Scottish Ministers propose to lay before the Scottish Parliament a draft of a statutory instrument containing the first regulations setting circular economy targets under section 6(1), the Scottish Ministers must, before doing so:

- lay before the Parliament a copy of the proposed regulations, and a statement setting out their reasons for proposing to make those regulations
- specify a period (the “representation period”) during which representations on the proposed regulations may be made to them, which must be at least 90 days

Following that, before laying the proposed regulations before the Parliament, Scottish Ministers must have regard to any representations on the proposed regulations made to them, any resolution relating to those regulations passed by the Parliament, and any report relating to those regulations published by any committee of the Parliament before the expiry of the representation period. The Scottish Ministers must also, when laying such proposed regulations, lay a statement setting out details of any such representations,

resolutions or reports, changes (if any) they have made to the proposed regulations in response, and the reasons for those changes.

This procedure is consistent with the 'super-affirmative' procedure in the Bill for scrutiny of regulations introducing new single-use charges, which itself was based on a procedure set out in [the Climate Change \(Scotland\) Act 2009](#) - used to introduce [initial Scottish Deposit Return Scheme Regulations in 2020](#).

In introducing the amendments, the Member explained that this would provide for enhanced Parliamentary scrutiny of initial circular economy targets, highlighting this was a recommendation of the NZET Committee at Stage 1. The Minister said the Scottish Government was happy to support the amendments in line with the Committee's recommendations.

- **Increasing reuse and refurbishment added to illustrative areas where targets may be set - amendments agreed**

Section 6(3) of the Bill as introduced set out a non-exhaustive list of the areas that targets (set by regulations) may relate to, as: reducing the consumption of materials, increasing reuse, increasing recycling and reducing waste.

Amendments proposed by Ben Macpherson MSP (amendments 125 and 126) were agreed to, adding "increasing refurbishment" and "increasing repair" (respectively) to this. The amendments were agreed to without division. The Member highlighted that these were thematic areas raised as requiring action during Stage 1 evidence.

The Minister said that although the list in section 6(3) simply sets out examples of possible target areas and is not intended to be exhaustive, refurbishment and repair should be referenced, "given their potential significance in focusing actions further up the waste hierarchy".

- **Targets may prioritise sectors and systems most likely to contribute to a circular economy - amendment agreed**

An amendment proposed by Ben Macpherson MSP (amendment 127) was agreed to, adding further illustrative provision to section 6, setting out in a new section 6(3)(aa) that Regulations setting targets may "prioritise sectors and systems under section 1(4)" - i.e. "sectors and systems most likely to contribute to developing a circular economy".

The Member set out the rationale that those priority sectors and systems, considered in developing the circular economy strategy, would also need to be considered in setting any legal targets.

The amendment was agreed to without division, with the Minister stating the Scottish Government was generally supportive of the aims of the amendment.

- **Reference to "things" in relation to attributes of a circular economy replaced with "goods, products and materials" - amendments agreed**

Amendments proposed by Sarah Boyack MSP (amendments 100, 101, 102 and 103) were agreed to replace the use of the word "things" in four places in section 6 of the Bill with the phrase "goods, products and materials".

Whilst the Bill itself does not technically include a definition of 'a circular economy', section

6 (2) of the Bill as introduced set out that in considering the imposition of circular economy targets, the Scottish Ministers must have regard to the desirability of the economy being one in which—

- processes for the production and distribution of **things** are designed so as to reduce the consumption of materials
- the delivery of services is designed so as to reduce the consumption of materials
- **things** are kept in use for as long as possible to reduce the consumption of materials and impacts on the environment
- the maximum value is extracted from **things** by the persons using them
- **things** are recovered or, where appropriate, regenerated at the end of their useful life.

The use of "things" in the above sub-sections (emphasis added) was amended in each case to read "goods, products and materials". The Scottish Government agreed that making this change would bring "additional clarity" to section 6 (as with the equivalent amendments made to section 1, summarised earlier in the briefing). The amendments were agreed to without division.

- **Commitments made to discuss further issues in advance of Stage 3**
- An amendment proposed by Monica Lennon MSP (amendment 144, not moved) would have added "increasing the uptake of free reusable diapers" to the non-exhaustive list of areas where circular economy targets may be considered. The Member said that in the UK, 3 billion disposable nappies go to landfill every year, and highlighted a scheme in North Ayrshire as an example of how uptake of reusables can be successfully supported, arguing more needed to be done to encourage roll out of such examples. The Minister asked the Member not to press the amendment but agreed to meet to discuss "whether it is about its inclusion in the bill through amendments or about a wider programme of work that we need to do".
- An amendment proposed by Mark Ruskell MSP (amendment 196, moved and subsequently withdrawn) would have required bodies in receipt of public funds to report on how they were taking action to move up the waste hierarchy. The Minister said the Scottish Government recognises "the importance of encouraging businesses to play their part in developing a more circular economy", but was concerned about the capacity of smaller businesses to meet additional reporting requirements. The Minister said, however, that she was "happy to explore alternatives and potential options involving working through the grants process... and talking to enterprise agencies about a more targeted approach". The amendment was withdrawn on that basis.
- An amendment proposed by Bob Doris MSP (amendment 197, not moved) would have created a duty on Scottish Ministers to, by regulations, require large companies operating in Scotland to report on their scope 3 emissions i.e. indirect emissions within the value chain of an organisation. The Minister said the Scottish Government could not support the amendment but referenced ongoing UK-wide work in this area, and committed to look at developments in EU law raised by the Member.

Restrictions on the disposal of unsold goods (section 8 of the Bill)

Section 8 of the Bill was agreed at Stage 2 without amendment.

- **Agreement to discuss relevance to food products in advance of Stage 3**

An amendment proposed by Sarah Boyack MSP (amendment 104, moved and subsequently withdrawn) would have excluded "food products" from any future regulations under section 8 of the Bill, regarding restrictions on the disposal of unsold goods.

The Member argued that there were existing voluntary initiatives in which unsold food is redistributed by charities, for example, and highlighted concerns in the hospitality and retail sectors about the potential impacts of future restrictions.

The Minister said that the Scottish Government did not consider the amendment to be workable as written but agreed to discuss the issue with the Member in advance of Stage 3.

Power to require charges for single-use items (section 9 of the Bill)

Section 9 of the Bill was agreed at Stage 2 without amendment.

- **Agreement to consider biodegradable items in advance of Stage 3**

An amendment proposed by Graham Simpson (amendment 25, not moved) would have exempted items that are biodegradable from single-use charges introduced by regulations. The Member argued that the purpose of this section of the Bill was presumably not to target biodegradable items.

The Minister said that this exemption would create a loophole in the legislation, stating:

“ Without a specified environment or time frame and a proper definition, the term “biodegradable” is problematic, as it is unclear. Mr Simpson mentioned compostable and biodegradable products, but those are two very separate things. Typically, products that are referred to as biodegradable are single use, with their own set of waste management charges. The majority of materials that are found in any litter stream are, eventually, biodegradable, but we need to consider how many years those products take to degrade.”

However, the Minister agreed to discuss the issue further in advance of Stage 3.

New sections on flytipping (sections 9A and 9B)

Amendments proposed by Murdo Fraser MSP (amendments 201 and 203 - moved on the day by Douglas Lumsden MSP as Murdo Fraser was unable to attend) were agreed to, adding new sections 9A and 9B to the Bill, regarding flytipping.

Murdo Fraser MSP consulted on the below areas (broadly, penalties for flytipping offences and reporting and other data requirements) [as part of a wider consultation on a proposed Members Bill on flytipping in 2022](#).

- **New section 9A - increasing maximum Fixed Penalty Notice amounts**

New section 9A modifies the Environmental Protection Act 1990 to increase the maximum amount at which the fixed penalty for a flytipping offence can be set by ministers from level 2 to level 3 on the standard scale, thereby increasing the maximum fixed penalty that might be set by secondary legislation from £500 to £1,000.

NB/ The offence commonly referred to as 'flytipping' is the criminal offence of "unauthorised or harmful deposit, treatment or disposal" of waste, set out in section 33 of the Environmental Protection Act 1990.

The Minister supported this amendment, recognising that flytipping is "a scourge" and stating that increasing maximum levels for Fixed Penalty Notices (FPNs) is consistent with the Scottish Government's commitment "to ensure there is an effective enforcement regime". The Minister also highlighted that FPNs are not the only enforcement tool, that they are not intended to be used to tackle serious waste crime, and that SEPA has the power to impose up to £40,000 Variable Monetary Penalties.

- **New section 9B - information on flytipping offences**

New section 9B of the Bill inserts a new section 71A into the Environmental Protection Act 1990, giving Scottish Ministers powers to require a relevant authority to provide them with "such information as Ministers may specify" about:

- Cases where the authority has exercised any of its functions under section 59 of that Act (this section gives local authorities powers to require the removal of waste from private land)
- Cases where the authority has exercised any of its functions in respect of any contravention of section 33(1)(a) or (c) - i.e. Flytipping offences or the offence of keeping or managing "controlled waste in a manner likely to cause pollution of the environment or harm to human health".

In requiring information, the Scottish Ministers may specify the period to which the information is to relate, and the date by which it must be provided.

Section 9B (3) sets out a non-exhaustive list of what the information required by Ministers may include, as:

- (a) the number of contraventions of section 33(1)(a) or (c) reported to the relevant

authority

- (b) the location of contraventions of section 33(1)(a) or (c) reported to the authority
- (c) what action (if any) has been taken by the authority in response to the reported contraventions
- (d) the number of fixed penalty notices issued by the authority under section 33A in response to the reported contraventions
- (e) the number of fixed penalties paid in response to such notices, and
- (f) the number of reports made by the authority of offences under section 33(1)(a) or (c).

The Scottish Ministers may not exercise their power to request information under this section in relation to a particular relevant authority more than once in any period of 12 months. "Relevant authority" means a waste collection authority in relation to functions under section 59 of the 1990 Act, or in relation to flytipping offences, a local authority, Loch Lomond and the Trossachs National Park Authority, or a person specified by Order under section 33A(13).

The aim is to improve the collection of data on flytipping and improve the evidence base. The Minister supported the amendment, noting "the importance of developing a national understanding " of the level of flytipping in Scotland. She also said that work is already underway through [the National Litter and Flytipping Strategy \(published 2023\)](#) to improve data collection, although this is currently reliant on voluntary reporting.

- **Agreement to discuss a national reporting requirement in advance of Stage 3**

An amendment was also proposed by Murdo Fraser MSP (amendment 204, not moved) which would have required Scottish Ministers to lay an annual report in the Scottish Parliament including data on flytipping incidences and enforcement. The Minister said that the Scottish Government was happy to work with the Member on that proposal, but could not support the amendment as it was written. The amendment was not moved on that basis.

Householder's duty of care (section 10)

Section 10 was agreed to without amendment.

- **Agreement to discuss means of checking a waste carrier's credentials in advance of Stage 3**

Section 10 of the Bill makes it a criminal offence for a householder to breach their duty of care in relation to household waste. That duty of care requires that an occupier of domestic property must, "as respects the household waste produced on the property, take reasonable steps to secure that any transfer of waste is only to an authorised person or to a person for authorised transport purposes".

An amendment proposed by Jackie Dunbar MSP (amendment 129, moved and subsequently withdrawn) set out to clarify that a person could discharge that duty through requesting a copy of a waste carrier's documentation or identification authorising them to carry waste.

The Minister said that householders "can—and should—already check a waste carrier's registration details, and they can confirm those details on SEPA's website to ensure that they are using a legitimate service", and said awareness raising was needed of this. However the Minister also committed to work with the Member on something that might be supported in this area.

Household waste requirements (section 11 of the Bill)

- **Duty for guidance to be produced on use of new household waste enforcement powers in consultation with waste collection authorities - amendments agreed**

Section 11 of the Bill introduces the potential for both civil penalty charges (a non-criminal monetary penalty) and fixed penalty notices for incorrectly using waste collection services. This would enable local authorities to issue penalties for failure to comply with obligations in relation to household waste and recycling.

The Bill as introduced set out that the Scottish Ministers "may" issue guidance on the operation of those penalty regimes - which would be applicable to waste collection authorities (mainly local authorities).

An amendment proposed by Maurice Golden MSP (amendment 55) was agreed to replace the word "may" with "must" - creating a duty for Scottish Ministers to issue guidance on the operation of these enforcement mechanisms.

A further amendment, proposed by Jackie Dunbar MSP (amendment 160) was agreed to requiring Scottish Ministers to consult waste collection authorities on the development of the above-mentioned guidance on section 11 enforcement powers.

Both amendments were supported by the Scottish Government and agreed to without division. The Minister said, regarding the consultation amendment, that the Scottish Government's general approach "would be to consult local government on any regulations" and said the consultation would also involve COSLA.

Code of Practice on Household Waste Recycling (section 12 of the Bill)

- **Recognition of provision for local differences - amendment agreed**

Section 12 of the Bill requires Scottish Ministers to prepare and publish a code of practice setting out the standards expected of, and steps to be taken by, local authorities in carrying out their waste management functions in so far as they relate to the collection and recycling of household waste. The Policy Memorandum sets out that this code would seek to establish "consistent collection systems" and address issues such as inconsistent definitions of materials.

An amendment proposed by Douglas Lumsden MSP (amendment 89) was agreed to, adding a new sub-section stating that "The code may make different provision for different purposes or different local authority areas".

The Member described that the NZET Committee had heard evidence at Stage 1 about differences between local authorities in relation to recycling and waste management, for example citing island communities, and said there should be potential for flexibility within the code in relation to those differences.

The Minister supported the amendment, stating that "local flexibility is very much in the spirit of the Verity house agreement" ([the partnership agreement between COSLA and the Scottish Government](#)), and the amendment was agreed to without division.

Local authority recycling targets (section 13)

- **Removal of powers to fine local authorities for failure to meet targets - amendments agreed**

Section 13 of the Bill gives Scottish Ministers powers to, by regulations, set targets for local authorities in relation "to their carrying out of their waste management functions in so far as they relate to the recycling of household waste".

In the Bill as introduced, section 13(3)(d) set out that such regulations could "impose liability on a local authority to pay a penalty to the Scottish Ministers if a target imposed under the regulations is not achieved", with section 13(3)(h) setting out that regulations may also make provision for appeals against such penalties.

Amendments proposed by the Scottish Government (amendments 165 and 166) removed the powers to introduce fines and the associated appeals provision. The Minister said that this had followed "constructive engagement between the Scottish Government and COSLA on the development of an improvement programme in relation to household recycling".

The Minister also recognised that the NZET Committee had raised concerns about the prospect of penalising councils at Stage 1.

The amendments were agreed to without division.

New section creating powers to introduce Fixed Penalty Notices for supplying banned environmentally harmful items (section 16A)

An amendment proposed by the Scottish Government (amendment 169) was agreed to which introduces a new section 16A to the Bill.

Section 16A would enable regulations introduced under section 140 of the Environmental Protection Act 1990 - which can be used to ban environmentally harmful products - to also introduce Fixed Penalty Notices as an enforcement tool. The fixed penalty amount may not exceed level 3 on the standard scale (currently £1000).

These powers were used to ban certain single-use plastics e.g. single-use plastic cutlery in Scotland under [the Environmental Protection \(Single-use Plastic Products\) \(Scotland\) Regulations 2021](#), and are [expected to be used to introduce a ban on single-use vapes in 2025 subject to Parliamentary approval](#).

The Minister explained that this amendment was being introduced in response to requests from local authorities, in the context of the single-use plastics ban, and also issues raised by Trading Standards during the consultation on banning the sale of single-use vapes.

The Minister said:

“ At present, the only option for local authorities is to report any offences under those kinds of regulations for prosecution. Amendment 169 would add a new provision to the bill to provide a regulation-making power for ministers to enable local authorities to issue fixed-penalty notices to individuals or businesses for offences in those kinds of regulations. It would allow for more effective and proportionate enforcement of those offences and would give powers to local authorities that already exist in the rest of the United Kingdom.”

The amendment was agreed to without division.

New section applying various public body duties to Zero Waste Scotland (section 17A)

Amendments proposed by the Scottish Government (amendments 174 and 180) were agreed which create a new section 17A of the Bill, and Schedule to the Bill respectively. Combined, the new section and Schedule modify multiple pieces of legislation so that various public sector duties apply to Zero Waste Scotland e.g. Freedom of Information requirements, the sustainable procurement duty and public appointment standards.

These amendments are linked to (and follow from) [a reclassification of Zero Waste Scotland by the Office for National Statistics \(ONS\) in April 2023](#). The ONS assessed the classification status of Zero Waste Scotland (at the request of the Scottish Government) and concluded that the body is subject to public sector control (for so long as Scottish Ministers are a member of the company, and appointment of directors must be approved by the Scottish Ministers in advance), and is a "non-market producer, as it is majority funded by the Scottish Government and covers less than 50% of its production costs from sales". As such, Zero Waste Scotland Limited has been classified by the ONS as a public sector organisation.

In its Policy Memorandum for the Bill, the Scottish Government stated an intention to introduce amendments at Stage 2 to confer on Zero Waste Scotland the relevant powers and duties which apply to other public bodies.

The Minister said in speaking to the amendment:

“ In particular, Zero Waste Scotland will be subject to the requirements of the Freedom of Information (Scotland) Act 2002, its ministerial board member appointments will be regulated by the Commissioner for Ethical Standards in Public Life in Scotland and its board members will be required to comply with a code of conduct. It will be required to maintain or improve women’s representation on its board and carry out impact assessments for island communities when exercising its functions. It will also be required to have a records management plan, to provide information on expenditure and the exercise of functions and to comply with statutory public procurement requirements. It is our intention also to ensure that Zero Waste Scotland is subject to equalities duties, but those cannot be imposed via amendments in the bill and will be imposed separately under secondary legislation.”

Waste infrastructure review

- **Agreement to discuss a waste infrastructure report in advance of Stage 3**

An amendment proposed by Maurice Golden MSP (amendment 207, moved and subsequently withdrawn) would have required the Scottish Ministers to "prepare and publish a waste reprocessing infrastructure report", setting out policies and proposals for the use and development of waste reprocessing infrastructure, and mapping out current and proposed waste infrastructure at a national level.

The Member cited [the independent review published in 2022 of incineration infrastructure in Scotland \(which was commissioned by the Scottish Government\)](#), and said that this approach should be mirrored across all waste reprocessing infrastructure to help identify opportunities and needs for different technologies and sectors e.g. Anaerobic digestion.

The Minister said the Scottish Government supported the "ambition to increase the visibility of existing and planned waste reprocessing infrastructure" but did not agree with the amendment as drafted. The Minister said she would value more time to consider the amendment more carefully in advance of Stage 3. The amendment was withdrawn on that basis.

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