

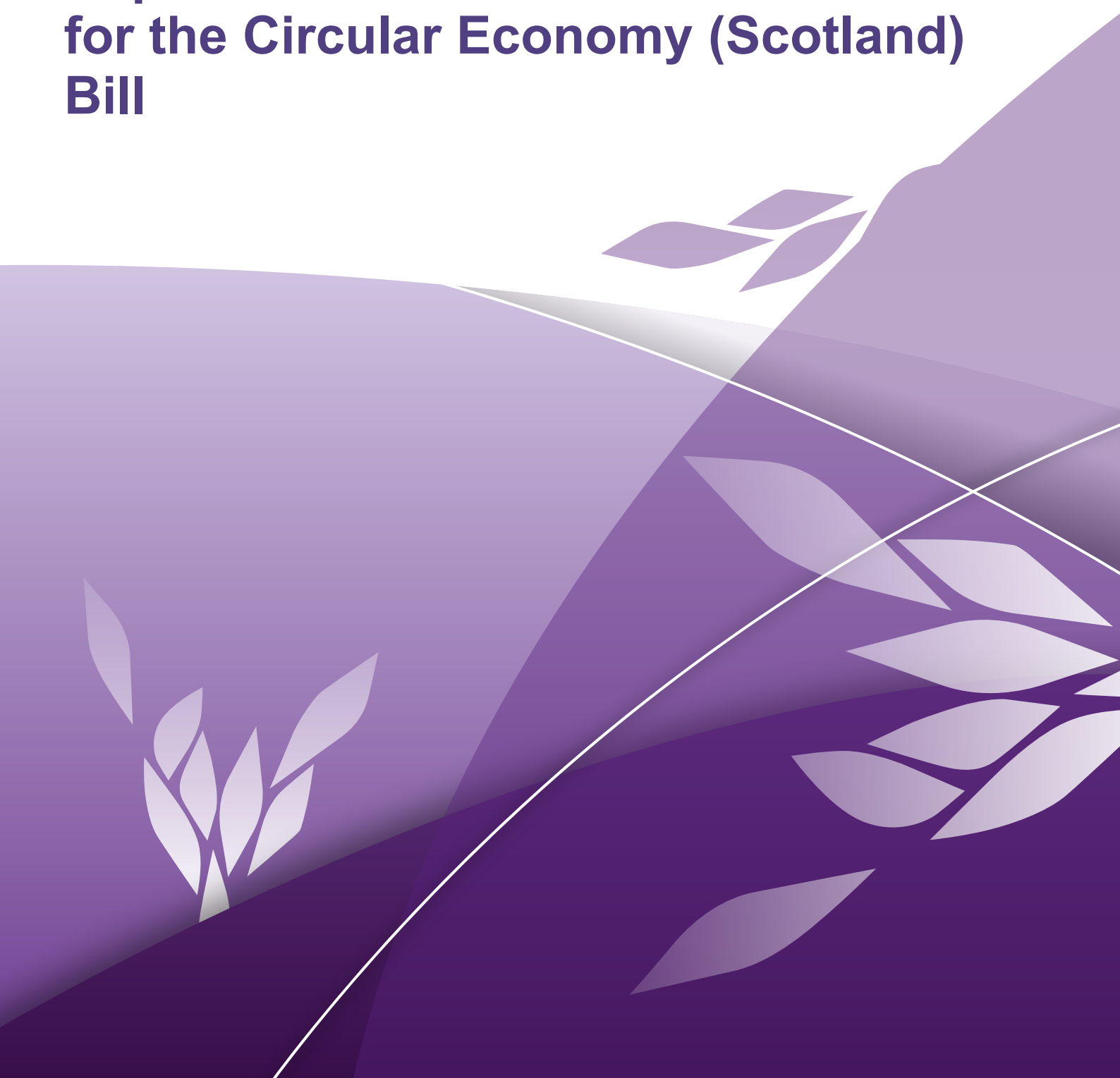


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Finance and Public Administration Committee

Report on the Financial Memorandum for the Circular Economy (Scotland) Bill



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Finance and Public Administration Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any report or other document containing proposals for, or budgets of, public revenue or expenditure or proposals for the making of a Scottish rate resolution, taking into account any report or recommendations concerning such documents made by any other committee with power to consider such documents or any part of them;

(b) any report made by a committee setting out proposals concerning public revenue or expenditure;

(c) Budget Bills; and

(d) any other matter relating to or affecting the revenue or expenditure of the Scottish Administration or other monies payable into or expenditure payable out of the Scottish Consolidated Fund.

(e) matters relating to public service reform and the National Performance Framework within the responsibilities of the Deputy First Minister and public administration.

2. The Committee may also consider and, where it sees fit, report to the Parliament on the timetable for the Stages of Budget Bills and on the handling of financial business.

3. In these Rules, “public expenditure” means expenditure of the Scottish Administration, other expenditure payable out of the Scottish Consolidated Fund and any other expenditure met out of taxes, charges and other public revenue.



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Introduction

1. This report sets out the conclusions of the Finance and Public Administration Committee in relation to our scrutiny of the estimated costs arising from the Financial Memorandum (FM) for the Circular Economy (Scotland) Bill ¹. The report is intended to inform Stage 1 consideration of the Bill by the Net Zero, Energy and Transport Committee, as lead committee.
2. The Circular Economy (Scotland) Bill was introduced on 13 June 2023 and requires Scottish Ministers to adopt measures to help develop a circular economy ².
3. The Committee ran a call for views on the FM from 3 July to 21 August 2023, which received eight responses ³. We also took oral evidence from representatives of Dundee City Council, South Lanarkshire Council and West Lothian Council on 24 October 2023 ⁴, and from the Minister for Green Skills, Circular Economy and Biodiversity and Scottish Government officials on 7 November 2023 ⁵. In follow-up to this evidence session, the Minister wrote to the Committee on 20 November 2023 with additional information ⁶.
4. We thank all those who took time to contribute their views, which have helped to shape our findings in relation to the Bill's FM. While much of this report focuses on the evidence heard regarding this particular FM, the Committee also takes the opportunity to raise more general issues around the use of framework legislation and its impact on parliamentary scrutiny.
5. The Circular Economy (Scotland) Bill is a 'framework bill', which leaves substantial detail to subsequent secondary legislation. The Scottish Government explains that the purpose of the Bill is to "introduce measures that require primary legislation to transition to a circular economy and modernise Scotland's waste and recycling services". The policy memorandum ⁷ states 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.
6. The FM for the Circular Economy (Scotland) Bill (hereafter referred to as 'the Bill') provides estimates of potential costs and savings arising from the Bill, applying to the Scottish Administration, local authorities, Scottish Environment Protection Agency (SEPA), individuals, and businesses. 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 three 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”. As explored in this report, some costs are dependent on the design of secondary regulations.

Lack of certainty and potential underestimates in the FM

7. A number of provisions in the Bill remain subject to co-design and therefore, as explored later in this report, do not have clear associated costs at this stage. However, evidence received by the Committee suggests that the FM underestimates costs in relation to enforcement, education and communication campaigns and the infrastructure required to ensure that local authorities are able to adhere to the mandatory code of practice.

Enforcement costs and potential income

8. The bill seeks to provide councils with additional powers to:
 - create a more effective enforcement model to tackle flytipping and other waste crime,
 - strengthen local authorities' enforcement powers in relation to household recycling by establishing a new civil penalty regime and fixed penalty notice procedure,
 - establish a new civil penalty regime that will make the keeper of a vehicle liable to pay a penalty charge in respect of a littering offence committed from that vehicle, and
 - enable potential enforcement of future regulations relating to throw away items (such as single use cups).
9. Each of the councils who submitted written evidence suggested that the FM appears to underestimate enforcement costs. Based on initial estimates made by Zero Waste Scotland, the FM states that local authority costs for enforcement officers to deliver the Bill's household waste requirements may be required, such as additional Full Time Equivalent (FTE) enforcement officers. The FM identifies this as a minimum of two extra officers per 150,000 population per local authority, costing £35,000 – £45,000 each and one FTE enforcement administration officer costed at £22,000 - £28,000 per local authority.
10. Analysis by local authorities, however, suggests that a more realistic figure would be around £55,000 a year per officer. South Lanarkshire Council argued that the costs associated with employing enforcement officers is not realistic due to the size and geography of the local authority and pointed to existing difficulties in recruiting staff for similar positions⁸. Witnesses further noted the need for corroboration when issuing penalties for littering, which necessitates enforcement officers to work in pairs. In addition, some local authorities do not currently have an enforcement administration post, which means administrative services will need to be provided by enforcement officers, with the potential for higher costs.
11. In response to the above concerns, the Minister argued in her evidence to the Committee that enforcement costs are at local authorities' discretion and that it is therefore for them to decide whether firmer enforcement is worthwhile⁹.

12. **The Committee notes the Scottish Government’s position that enforcement powers are needed to drive positive behaviour change and act as a deterrent. However, we expected to see much greater detail in the FM on the anticipated costs that could fall on local authorities with differing populations and geography, based on the assumption that these enforcement powers will be used.**
13. **Based on the evidence we received, the Committee believes that enforcement costs are likely to have been underestimated and, while we note the Minister’s argument that these powers would be used at local authorities’ discretion, they should nevertheless be accurately reflected in the FM. Ensuring that all local authorities are financially able to utilise the enforcement powers will be important if the Bill’s ambitions are to be delivered.**
14. Concerns were raised by witnesses regarding the potential for the Bill to deliver savings and income to local authorities. For example, Aberdeenshire Council suggested that savings in relation to collection 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” ¹⁰ .
15. The Bill introduces financial penalties for littering from cars and predicts that these will result in income to local authorities of £40,000 per year during Years 2 and 3. Witnesses noted that these “income assumptions appear to be based on 100% payment rate which is unlikely” and pointed out that between 10 and 15% of fines for similar offences are normally paid ⁸ . Scottish Government officials explained, during evidence to the Committee, that “when we were deliberating on the financial memorandum, it did not feel appropriate, in a sense, to assume that the penalty would not be paid”. In relation to non-payment of fines, they went on to say that they “have commissioned further research with partners to understand what those barriers are” ⁹ .
16. This raises questions regarding the accuracy of the estimates presented in the FM in relation to potential income from fixed penalty notices. Witnesses further noted that, where fines are not paid, the case is reported to the procurator fiscal, which may result in a fiscal fine, however, income from such fines do not reach the local authority’s budget. The interaction between national government, local government and SEPA was also highlighted as an area where further clarity would be welcome, given councils said they were unsure where responsibility for costs lie in a multi-agency approach, should any offence take place ⁸ .
17. The Committee heard that councils currently face significant difficulties trying to pursue littering fines “to the extent that it becomes a cost to us to get to a point at which we can recover the money” ⁸ . Witnesses pointed to particular challenges in collecting waste from flats where, due to multiple types of ownership, it is difficult to ascertain who may be liable for fixed-penalty notices. Flats were, in fact, singled out as posing the biggest challenge to local authorities in terms of household recycling obligations. Fixed penalty notices are not therefore considered a realistic option for this category of home, given the difficulties councils face in determining to whom to

issue the penalty and to refer to the procurator fiscal should a fine not be paid. The payment of fines is further complicated by deprivation and the ability to pay. West Lothian Council explained, in evidence to the Committee, that “the demographic group that is likely to be fined includes some of the customers that we find hardest to engage with in creating behavioural change. To be blunt, they face the dilemma of whether to pay fines or pay their rent”⁸.

18. **In line with the Parliament’s Standing Orders¹¹, the figures presented in any FM should be based on best estimates. The assumption in this FM of a 100% payment rate for fixed penalty notices is entirely unrealistic. Therefore, given that the level of income from fines assumed in the FM is not attainable, it should not be used to ‘off set’ some of the costs of enforcement, such as in relation to fly tipping. We consider this approach to identifying potential savings to be unsatisfactory.**
19. **The Committee notes the Minister’s commitment that feedback will be taken into account “in further work to develop more detailed proposals and secondary legislation, including assumptions in relation to collection rates of fixed penalty notices, which are not held centrally”⁶.**
20. **We ask the Scottish Government for information on timescales for undertaking further research on littering and fly-tipping, along with an explanation why the relevant research was not undertaken when the gap in information was first identified.**

Education and communication costs

21. The Scottish Government explains that, alongside enforcement, education and communication are also important ways in which to deliver the cultural and behavioural shift needed⁹.
22. As noted above, local authorities identified ‘flatted’ properties as the biggest concern in terms of household recycling, and one that cannot be easily tackled with the issuing of fixed penalty notices. As explained by Dundee City Council, where communal bins are concerned, contamination may be caused by one or several households or even passers-by, rendering fines ineffective. A further challenge faced by some local authorities relates to a high transient population of students and the need to educate such groups to improve recycling rates and prevent contamination and ‘wishcycling’. Investment is required not only in infrastructure, but also in communication – “there needs to be a lot more people on the ground to do that and engage”⁸.
23. Education and awareness-raising are considered to be the most effective tools for councils to improve household recycling rates, however, they come at considerable cost, due to the time and number of staff required to undertake such work. South Lanarkshire Council provided an example of a previous successful campaign related to the introduction of a new service standard which improved the quality of the material collected in recycling bins. However, it also noted that waste education

teams have since been affected by spending cuts, therefore the council no longer has the resources to provide the education and awareness required to improve recycling and prevent littering⁸.

24. The FM identified a figure of £2.95 per household to support communication of service changes¹. In her letter to the Committee of 20 November 2023, the Minister explains this is based “on the average cost of support that was provided by Zero Waste Scotland to communicate service changes in local authorities. It includes local communication costs (using existing design and templates); staff training; and additional staff to support implementation of the service change”⁶.
25. However, witnesses told the Committee that the £2.95 per household provided in the FM for communication is not an accurate reflection of actual costs, as education programmes involving staff at different stages of development and delivery are needed. The Committee heard that councils are deploying staff to provide education on the ground, at the point of recycling collection. Education programmes consisting of door-knocking exercises, the provision of leaflets and even one-to-one advice have generally been effective, however, they are labour intensive and costly, and can even be contentious at times. Furthermore, as noted by West Lothian Council, these are recurring expenses and such programmes must be revisited periodically, as recycling rates dip – “the messaging needs to be topped up regularly”⁸.

- 26. Evidence received suggests that further work is required in developing the costings for education and communication programmes. Engagement with the public will be a key element of implementing the policy, regardless of the outcome of the co-design process, therefore these should be taken into account and accurately quantified in the FM.**

Infrastructure investment and alignment with the code of practice

27. The Scottish Government’s policy intention is “to move away from the voluntary approach to Scotland’s Household Recycling Charter towards a mandated approach, by enabling the Scottish Ministers to place further requirements on local authorities regarding household collection services”⁷. This, they explain, will help support more consistent approaches to household recycling and ensure that householders are clearer about what they can recycle and how to do this.
28. As noted by Dundee City Council during oral evidence, “until all local authority services are aligned, it is difficult for everyone to use similar types of infrastructure [...] the code of practice for household waste recycling is key to that”⁸. Zero Waste Scotland calculated the cost of bringing all local authorities into alignment with the existing code of practice at £88.4 million. However, local authorities told the Committee that they were not consulted in relation to this calculation and suggested that this approach may lead to hidden costs in the FM. This is because the “assumption behind the figure is that we have a fully functioning back office”, however, “that function is not there in its entirety, so we are not starting from a level

playing field; we will have to go backwards and reinvest”⁸.

29. The Minister explained, in correspondence to the Committee, that the estimate is based on the number of households in local authorities yet to align their services with the existing code of practice, including the costs of containers (bins), a per household cost for communications, and short-term project management costs⁶.
30. In response to questions regarding the accuracy of the above estimate, the Minister stated that “the indicative figure of £88.4 million is quite good, and it is comparable to the £70 million that we have invested through the recycling improvement fund. The difference divided through the local authorities is a relatively modest amount. Members can see that the level of investment is proportionate to the kind of changes that we are looking for.” She further stated that “local authorities know where they are going to meet the existing code of practice” and pointed to the Recycling Improvement Fund (RIF), “which nearly all local authorities have had money from”⁹.
31. 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.¹
32. The Committee heard that Dundee City Council has been awarded £90,000 through the RIF to modernise telecommunications in vehicles, with a further bid being prepared for capital work in the household waste recycling centre. West Lothian Council has also received funds, which were mainly used to fund the roll-out of splitting commingled plastics, card, paper, tin and plastic bottles collection, with a further allocation for flatted properties. South Lanarkshire Council, however, has yet to apply for funds, due to “a timing issue”. The Council explained that they are currently in the middle of a review of waste services, which had been timed to coincide with the introduction of the deposit return scheme (DRS).
33. The Committee also heard that £21 million from the RIF was awarded to Glasgow City Council, due to its disproportionate impact on national targets. Since the publication of the FM, further awards have been made under the RIF, with £60.3 million now allocated to 21 local authorities.
34. In evidence to the Committee, local authorities welcomed the RIF, while noting “that is one element, but the £70 million is not sufficient for all of Scotland”. Dundee City Council explained that—

- ” It really depends on what the infrastructure requirements of each local authority are and whether they have been part of a previous investment cycle—with funds from Zero Waste Scotland or directly from the Scottish Government. The biggest issue is that ensuring that everyone has the same type of infrastructure and could offer the same service would probably require more than double that amount.⁸
35. The Committee heard that ensuring all local authorities are able to comply with the current voluntary code of practice requires investment in infrastructure for waste management and treatment, at considerable expense, with ongoing costs for running those particular infrastructure facilities. Dundee City Council estimated that “developing a very basic additional recycling facility, for instance, could cost £1.5 million to £2 million” and running such a facility would require “anywhere from five to 10 staff”. South Lanarkshire Council suggested this is a conservative estimate, if the purchase of land is to be factored in. Such infrastructure, however, would not, on its own, deliver the aims of the Bill, “it would be part of a wider plan”⁸.
36. As recognised by the Minister during evidence, the existing code of practice “will not enable Scotland to reach our waste target. It will need to be upgraded to the existing code of practice plus” and, while “the capital investment is broadly in line with the existing code of practice [...] the upgraded code will need more”⁹.
37. In their written submission, Dundee City Council pointed out that the “timing and profiling of [the RIF] 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 local authorities to assess future compliance and impact of any new model”¹². West Lothian Council pointed out to the Committee that, while the RIF has certainly helped local authorities put in place some of the required infrastructure, “if that model changes a bit, that money will be used, and we will need to apply for something else”⁸. It is unclear at present from where those additional funds might come.
38. When asked for further details regarding available funding, the Minister responded that “we certainly intend to allocate the remainder of the fund as efficiently and effectively as possible, but we would need to discuss what funding might follow on from that”. She pointed out that the RIF “builds on over £1 billion of funding provided through the former strategic waste fund between 2008 and 2022” and explained that the code of practice aims to achieve “a standardised experience” for people⁹. As part of the co-design process, local authorities may opt for standardised recycling processes across the country, which the Scottish Government argues would improve communication, increase recycling levels and provide opportunities for economies of scale, however, the costs for such an initiative may be prohibitive. During oral evidence, Dundee City Council referenced previous work on harmonisation across local authorities which was estimated to have costs “in the hundreds of millions, which took it out as an option”⁸.
- 39. The Committee notes the cost estimates from Zero Waste Scotland of bringing all local authorities into alignment with the existing code of practice would be £88.4 million. We are therefore unclear how much more**

funding will be required to support local authorities to meet any “further requirements” in the proposed mandatory code which the Scottish Government considers necessary to meet its waste targets.

40. **The Committee is concerned that this lack of clarity concerning the funding required for local authorities to align with a new, upgraded, mandatory code of practice could render the approach unaffordable and unsustainable.**
41. **We note that the vast majority of the RIF has already been allocated, however, 11 local authorities are yet to receive money, with less than £10 million left in the pot and high disparity between the amounts allocated to local authorities. The lack of headroom is particularly concerning given most of the funds available to implement changes have already been distributed and used, yet the co-design process has still to commence. The remaining RIF funding does not appear to be sufficient to support the significant improvements needed to implement any future mandatory code of practice.**

Lack of certainty and value for money

42. During oral evidence with local authorities, the Committee heard that “there is too much uncertainty, and there is not enough detail behind things at the moment”. Witnesses expressed concern “about the future, what the journey will continue to look like for waste services, our ability to be light enough on our feet, and whether we will be funded to achieve what we need to achieve”⁸.
43. Uncertainties in relation to the DRS and the United Kingdom (UK)-wide extended producer responsibility (EPR) scheme for packaging appear to have had a particular impact on local authorities. As mentioned earlier in this report, South Lanarkshire Council is yet to receive funds from the RIF, as they have faced challenges trying to establish what an efficient waste service would look like in the context of the upcoming schemes. They explained that “until we know what our service will look like, we will not know what we are applying for funding for. If we had applied for large-scale funding, it would not have been good timing for us because we might have made different decisions based on how the strategy goes”⁸.
44. We heard that delays associated with the DRS and the removal of glass from that proposed scheme have left councils in a position of needing to rethink their waste collection strategy. South Lanarkshire Council noted that if glass had been included in the scheme, that could have provided an opportunity to make efficiencies, since glass currently amounts to 60% of the material collected in the container bin (glass, plastics and cans).
45. Witnesses told the Committee that the EPR scheme creates further uncertainty, as it is not yet known how funds collected from producers will be distributed to local authorities. The scheme, which requires all producers of packaging to pay fees to a UK-wide administrator, is expected to allocate those fees to local authorities throughout the UK, however, as noted by the Minister, “those matters are still very

much under discussion”⁹. The Minister further noted that the UK Government is currently engaging with businesses on the development of the EPR scheme, however, as far as the current Bill is concerned, the FM is unable to provide a figure for the financial impact on businesses, with further engagement and research needed in relation to a number of provisions, including the restrictions on the disposal of unsold consumer goods and charges for single-use items.

46. Any changes to how packaging is produced that may arise from introduction of the EPR are expected to have consequences in terms of recycling. Therefore, these will have to be weighed up when recycling systems are being set up and contracts agreed. Given the lack of clarity on such issues, we heard that councils are being forced into short-term contracts which provide little value for money. Dundee City Council provided an example in relation to the ‘off-takes’ for recycling, with the local authority initially ensuring its previous contract did not run beyond August 2023, only to then return to the market for another short-term contract once the DRS was delayed. Another area of uncertainty relates to the ability to charge for the uplift of specific items, such as garden waste, which is currently a revenue stream for a number of councils.
47. Such uncertainties provide challenges to councils in terms of planning and procurement and, while they have indicated that they support the principles of the Bill, “the question is how the market reacts, where the cost and risk sit, and how local authorities are funded through it”⁸.

- 48. The introduction of the Bill and its interaction with related schemes, including the DRS and the UK-wide EPR, have created an uncertain environment which has led to local authorities entering into short-term contracts that can provide little value for money. This is an area that is not properly acknowledged in the FM. We ask the Scottish Government to respond to the concerns raised and to explain how they will ensure greater certainty in relation to future proposed schemes.**

Co-designing the detail

49. In her evidence to the Committee, the Minister stated that, given many of the Bill’s provisions are subject to the process of co-design, “the FM provides strategic-level cost-and-benefit data” which “will be refined as part of ongoing work with local authorities, householders, businesses and other stakeholders”⁹. The different elements included in the Bill will be further developed through separate co-design processes. Scottish Government officials explained, during oral evidence, that the first stage is to “agree with local authorities and other stakeholders how we will deliver the co-design”, a process expected to conclude in the first part of 2024, followed by the co-design of individual elements of the Bill⁹.
50. Witnesses have broadly welcomed the general principle of co-designing services. Local authorities emphasised that they “want to have an input into what services will look like”, while noting that, to deliver the aims of the Bill, co-design must include not only national and local government, but also markets, to ensure “not just

harmonising between local authorities but harmonising the waste system and the system for materials use and closing the circular economy loop”⁸ .

51. However, introducing legislation before the co-design process starts clearly impacts on the ability to accurately estimate the financial implications arising from the Bill, and to undertake effective parliamentary scrutiny. This is evident in the FM for this Bill, where clear estimates are not available, for example, in relation to householders’ recycling obligations, with the FM stating that “it is not possible at this stage to provide definitive 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”¹ .
52. When asked by the Committee how much confidence they have in the FM’s estimates, on a scale of zero to 10, where zero is no confidence and 10 is high confidence, witnesses marked the FM as 4 or 5 on the ‘confidence scale’, while admitting that it is difficult for the FM to provide more certainty at this stage, when much of the detail remains to be agreed⁸ . In answer to the same question, the Minister said she “would give a 10 for the FM, because it is a strategic one”⁹ .
53. The Minister was asked why the decision was taken to introduce this legislation prior to co-design, rather than bringing forward a bill that reflects the outcomes of the co-design process. The Minister responded that “the sensible process is to set out what our intentions are [...] and then we will work on the detail of each of them”⁹ .

54. **The Committee has reservations regarding the sequencing the Scottish Government has opted for in introducing this Bill. The choice to introduce primary legislation prior to completing or, in this case, even commencing the co-design process, means that financial estimates are not available at this stage, making financial scrutiny incredibly challenging, if not, impossible.**
55. **Scrutiny of this FM reinforces the concerns raised in our recent Pre-Budget Scrutiny 2024-25 report that “affordability does not appear to be a key factor in Scottish Government decision-making”¹³ . We note the Minister’s commitment, in relation to this Bill, that “any secondary legislation brought forward will be consulted on and will be accompanied by relevant impact assessments, including a BRIA [Business and regulatory impact assessment], setting out associated costs and benefits”⁶ . However, we do not feel this replaces the affordability assessment which should take place at the point of a Bill’s introduction.**
56. **The Committee is not convinced that the FM in its present form meets the requirements set out in the Parliament’s Standing Orders to provide “best estimates of the costs, savings, and changes to revenues to which the provisions of the Bill would give rise”¹¹ .**
57. **We request that the updates, committed to by the Minister in her letter of 20 November 2023ⁱ be provided to the Committee every six months. These**

updates should include updated information on the expenditure incurred to date, any changes in forecast costs and any savings arising from the Bill and the subsequent Act (subject to the Bill being passed) and relevant secondary legislation, until all provisions are operational.

i In the Minister’s letter of 20 November she commits to provide updates “as we progress ongoing work with local authorities, businesses and other stakeholders through, for example, the development of the Circular Economy and Waste Route Map”.

Scrutiny of Financial Memorandums for framework legislation

58. This Bill is one of a number of ‘framework bills’ introduced during the current parliamentary session. In the 2018 Scottish Government guidance on the drafting of primary legislation ¹⁴ the former Lord Advocate explained that—

” Legislation is the engine through which policies are translated into binding rules which govern us all. If legislation is to fulfil its purpose, it is essential that it reflects accurately the policy intention of the legislators and communicates clearly to the people who are affected by the legislation.

59. In contrast, framework legislation is described by the UK Government Cabinet Office Guide to Making Legislation as “a bill [...] that leaves the substance of the policy, or significant aspects, of the policy to delegated legislation [and] might amount to a series of powers providing for a wide range of things that could be done with the detail on what will be done, left to be set out in the regulations” ¹⁵ .

60. As we have noted in this and other recent reports, the increasing use of framework bills to seek ‘enabling’ powers to be used at some later date following a co-design process means that providing Parliament with an FM that sets out best estimates of the costs, savings and changes to revenues is significantly hampered.

61. During oral evidence to the Committee, the Minister recognised that “we cannot see exactly all the different ways in which the framework may be used down the line. We have the costs for looking strategically at the framework and indicative costs for some of the initial policies that we intend to introduce with the framework” and “we will get into the specific costs of each policy at the correct time, as the policies are developed” ⁹ .

62. The Committee does not disagree with the principles of co-design or engaging with stakeholders on policy proposals, both of which support better outcomes and improve decision making. We are, however, unconvinced by the argument that co-design and engagement must follow on from the legislative process instead of being used to inform and refine policy proposals in advance of legislation being introduced.

63. The increasing use of ‘framework’ bills that seek to provide future Governments with enabling powers and which do not, as a result, enable the best estimates of all the costs, savings and changes in revenue to be identified, effectively undermines Parliamentary scrutiny. It also risks the Parliament passing legislation which may in the end, once outcomes are fully understood, be unaffordable.

64. Ultimately, we consider that the increased use of framework bills, with no clear identification of the estimated costs of implementation, also poses long-term risks to the Scottish Budget, both now and for successive governments.

65. **The Committee is disappointed that the Scottish Government does not appear to have learned from the recommendations we have made in relation to our examination of previous FMs and post-legislative scrutinyⁱⁱ, where we set out our expectations around the level of financial data, clarity and transparency required. In the end, it will be for Parliament to decide whether, when voting on the general principles of a framework bill, the outcomes the bill seeks to deliver are such that they outweigh any financial or affordability considerations.**

ⁱⁱ **Letter on post-legislative scrutiny of the FM for the Children and Young People (Scotland) Bill (Early Learning and Childcare Provisions), Report on the FM for the National Care Service (Scotland) Bill, Letter on the FM for the Children (Care and Justice) (Scotland) Bill.**

- [1] Scottish Parliament. (2023). Financial Memorandum for the Circular Economy (Scotland) Bill. Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/circular-economy-scotland-bill/introduced/financial-memorandum-accessible.pdf>
- [2] Scottish Parliament. (2023). Circular Economy (Scotland) Bill [as introduced]. Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/circular-economy-scotland-bill/introduced/bill-as-introduced.pdf>
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