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Net Zero, Energy and Transport Committee

Stage 1 Report on the Circular Economy (Scotland) Bill



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Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Net Zero and Just Transition, with the exception of matters relating to just transition; on matters relating to land reform, natural resources and peatland, Scottish Land Commission; Crown Estate Scotland, and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands; and on matters relating to energy within the responsibility of the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy.



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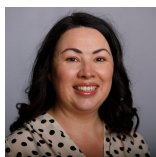
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Membership changes during Bill consideration

1. The following are no longer Net Zero, Energy and Transport Committee Members but took part in Stage 1 consideration —
 - Liam Kerr MSP (resigned 29 June 2023)
 - Ash Regan MSP (resigned 30 October 2023)

Executive Summary

2. The Net Zero, Energy and Transport Committee gives a qualified welcome to the Circular Economy (Scotland) Bill. With an estimated 98% of Scotland's material use derived from virgin materials, Scotland urgently needs to become a more circular nation: on environmental grounds and to realise our net zero ambitions. Having reviewed the evidence, and listened to a broad cohort of stakeholders from the public, private and third sectors, we are persuaded that legislative action is necessary to help make this change. Given the clear urgency required to address the severity of the issue, the Scottish Government must look at additional opportunities to act.
3. The measures proposed by the Scottish Government in this Bill are well intended and most should have a positive impact. However, the Committee remains unconvinced that the Bill on its own will create the systems-wide change needed in Scotland to fully close the loop. There is a heavy focus in the Bill on waste management, littering and flytipping; less so on tackling consumption and concrete measures to encourage repair and reuse. We also believe care must be taken to strike the correct balance between encouraging behavioural change of consumers and the underlying responsibilities of producers. Producers must be responsible for the materials they create and distribute. We acknowledge that the Scottish Government already has some existing legislative levers (for example in relation to producer responsibility) and that some other actions can be taken forward without new legislation, as set out in the Scottish Government's draft Circular Economy and Waste Route Map to 2030. We also recognise that some key matters are reserved and that the Scottish Government must work within the requirements of the UK Internal Market Act.
4. The Scottish Government has brought forward this Bill largely as framework legislation, meaning that a number of key details are not found on the face of the Bill, but will be brought forward as subordinate legislation. The Committee has sought to scrutinise both the general principles of the Bill and give some consideration to potential future secondary legislation. This has presented a challenge. It is difficult to express an informed view on the Bill's interplay with UK Internal Market requirements. That will take place when powers created by the Bill are used, and subordinate legislation is laid in the Scottish Parliament. It is also hard to scrutinise the financial implications of potential future secondary legislation stemming from any framework Bill, as the Finance and Public Administration Committee underlined in their report.
5. Whilst some Committee Members found what sometimes seemed like a lack of detail on the face of the Bill disappointing, others welcomed the opportunity this ought to provide for the Scottish Government and key stakeholders to shape future legislation together, under a process of co-design. All Members agree that the Scottish Parliament must have ample opportunity to consider regulations derived from these enabling powers, including having meaningful opportunity to consult widely on the most complex ones. In some cases, this will require amending the Bill to create space for enhanced and meaningful consultation and scrutiny.
6. A statutory circular economy strategy and targets are welcome inclusions in the Bill. Voluntary approaches have been largely insufficient in driving the scale and pace of

changes required. Given the relationship between both provisions, the Committee believes the Bill should be clearer on how targets and the strategy will speak to each other, to support a joined up approach. Setting the right statutory targets will be crucial and we call for the Bill to be amended, to give the Scottish Parliament more time to consider any proposals brought forward in this area. We also want the Scottish Government to explain why it has not made the imposition of targets a duty: in our view it should be a “must” rather than a “may” power.

7. The Bill must avoid unintended consequences. We heard concerns from business and other stakeholders about the potential impact of provisions on charges for single-use items, disposal of unsold consumer goods and mandatory reporting of waste data. The Committee heard compelling evidence regarding the environmental, social and economic rationale for these powers, but the Scottish Government must work constructively and pragmatically with industry and listen to their suggestions before bringing regulations forward. A circular economy cannot be achieved unless the Scottish Government takes businesses with it on this journey. The Scottish Government must also think strategically about the application of these provisions to prioritise waste streams from industries such as clothing and construction, where targeted interventions will have the most impact in delivering more circularity.
8. We support the Scottish Government’s ambitions in Sections 10 and 11 of the Bill regarding household waste. The Committee agrees that all householders must fully embrace the shared endeavours to increase recycling and tackle flytipping. The use of penalties must be proportionate and not at the expense of wider engagement with households.
9. The Bill offers the opportunity for a household recycling and waste management system in Scotland that is both more consistent across council boundaries and more ambitious overall, including embracing reuse and repair more systematically. Proposals for a statutory code of practice and local targets are therefore welcome. The current fragmented approach risks confusing households and undermining efforts to establish consistently high-quality service delivery nationwide. However, the Scottish Government must work collaboratively with local government in establishing mandatory service standards and setting local targets to reflect local circumstances and the principles of the Verity House Agreement. It must also make sure the resources and investment required to deliver consistency are available.
10. We also support additional measures to tackle littering and more serious forms of waste crime. But unless these are backed up with additional resources to enforce them, they will fall short of expectations.

Conclusions and recommendations

A Framework Bill

11. **The Circular Economy (Scotland) Bill is, in large part, a framework Bill. In many key areas, it sets out broad principles but leaves some of the key details to be developed in future. We note the concerns some committees have expressed this session about the challenges to effective scrutiny that framework Bills can pose.**
12. **In the case of some provisions in the Bill, the Committee is content with this framework approach on the basis that subordinate legislation appears to be the best tool for the job. In other cases, the Scottish Government may have opted for this approach because it has yet to finalise a comprehensive approach to a particular policy through co-design with key stakeholders.**
13. **For some of us, this raises concerns that the Bill is being put forward as partly a stop-gap, in order to expedite the process once policy is finalised. For others, this is a pragmatic approach; to keep up the momentum towards a circular economy by creating the broad legal powers the Scottish Government will need, but allowing for policy to be further refined following consultation before detailed regulations are made. What we all agree on is on ensuring that, in the case of each new regulation-making power proposed in the Bill, Parliament has suitable opportunity to ensure regulations made under it are robust and fit for purpose.**
14. **The Minister for Green Skills, Circular Economy and Biodiversity's commitment to co-design with key stakeholders any future subordinate legislation proposed under the Bill is welcome. However, given that the Bill creates powers exercisable for the long term, the Committee seeks clarification from the Scottish Government as to how this commitment can be guaranteed and whether a suitable amendment to the Bill would help underwrite that commitment. In any case, pre-legislative engagement is no guarantee that the subordinate legislation finally laid before the Parliament will be sufficiently fit for purpose. Ordinary procedures for scrutiny of subordinate legislation would provide very limited opportunity to identify and correct any shortcomings.**
15. **Should the general principles of the Bill be agreed to, the remaining stages of the Bill provide an opportunity for some provisions in the Bill to be amended either to put more detail on its face or to strengthen the scrutiny process around important order-making powers. We make more specific recommendations in these areas in the rest of the report and ask the Scottish Government to give them careful consideration.**
16. **Framework Bills also pose a challenge in terms of assessing their likely financial impact, in terms of future regulations. The Finance and Public Administration Committee has taken the view that the Financial Memorandum for this Bill is not adequate, especially in terms of providing best estimate of financial costs and benefits to key stakeholders, such as**

business and local government. We think this could be usefully mitigated by the Scottish Government committing to providing the Parliament with robust costings when regulations are brought forward under key order-making powers and, again, ensuring that the Parliament has enough time to consider and take evidence on these.

17. We support the recommendation of the Finance and Public Administration Committee that the updates the Minister committed to provide to that Committee should be sent every six months and these 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." The Net Zero, Energy and Transport Committee recommends these updates are also provided to this Committee and to future Committees with responsibility for waste and implementation of a circular economy.
18. The framework nature of the Bill also means the Committee cannot express an authoritative view as to whether regulations made under the Bill (if enacted) would be likely to trigger the market access principles within the UK Internal Market Act 2020, with a risk of undermining their effectiveness. But we consider that this is clearly a possibility. Whilst we hope any differences could be aired and resolved in advance, our prior experience scrutinising Scotland's deposit return scheme raises concerns about levels of trust and confidence between the UK and Scottish Governments. The Parliament should have adequate time to scrutinise any new regulations proposed under the Bill that may have internal market consequences.
19. We also call on both governments to work together to make Common Frameworks operate as they were intended to do; to enable both high-level cooperation on a general policy area within the United Kingdom but also to allow divergence within mutually agreed bandwidths, to enable different parts of the UK to pioneer different approaches. Issues such as the circular economy are too important and urgent to be undermined. We will be writing separately to the Scottish Government with our views on the new Resources and Waste Common Framework, including lessons - both positive and negative - to be learned from post-Brexit intergovernmental working on matters such as the Scottish Government's deposit return scheme and the recent cross-administrative announcement on banning single-use vapes.
20. The Committee recommends that the Scottish Government should seek advice from the Office for the Internal Market on the detail of the Bill at the earliest opportunity and whilst the Bill is still proceeding through Parliament. If the Bill becomes law, the OIM should also be consulted during development of any regulations made under key provisions in the Bill (for instance on charges for single-use items).

Sections 1-5 - Circular Economy Strategy

Section 1(1)

21. **The Committee welcomes the principle of placing a strategy to achieve a circular economy on a statutory basis. However, delivery of the strategy will be vital. The strategy must tackle over-consumption, identify and prioritise system-wide approaches, and focus on the entire value chain. It must focus action and resources on measures further up the waste hierarchy than is currently the case. It must also ensure the burden of achieving this is not disproportionately applied to consumers. Producers must be accountable for the environmental impacts of the products they make. They should be encouraged to design and manufacturing products that are more repairable, reusable and recyclable.**
22. **The Committee recommends there should be a clearer statutory link between the strategy and the targets proposed under Sections 6-7 of the Bill.**

Section 1(2)

23. **It is important that the circular economy strategy be informed by best available evidence and the Committee recommends the Scottish Government reflect on how reference to data could strengthen the requirements of the strategy, with particular regard to Scotland's international carbon footprint. The Committee recommends the Scottish Government clarify the progress of its commitment in the 2020 publication "The Environment Strategy for Scotland: Vision and Outcomes" ¹ to "gather evidence on the nature of Scotland's international environmental impact". ²**
24. **The Committee recommends the Bill be amended at Section 1(2) to include a requirement for the strategy to state how it has applied Just Transition principles. We further recommend Section 1(3) should include adherence to just transition principles as a desirable characteristic of a circular economy.**
25. **The Committee recommends amendments are made to Section 1(2) to include a requirement for the strategy to include detail on how it will encourage behaviour change. We emphasise the importance of education and awareness-raising and believe these must be adequately resourced.**
26. **The Committee also recommends the Scottish Government consider the proposals made for content of the strategy made to us in evidence and in particular that—**
 - **It should inspire business and investment confidence;**
 - **It should focus on actions further up the waste hierarchy;**
 - **It should account for and respond to local and geographical needs and variations.**

Section 1(3)

27. The Committee believes there are a number of other characteristics desirable in a circular economy and recommends the Scottish Government consider the proposals made by stakeholders to include reference to international impact and environmental impact.

Section 1(4)

28. The Committee notes the Scottish Government's view that the phrase "sectors and systems" provides flexibility to work in a strategic way across supply chains. However, we recommend that the Bill should include a set of criteria for identifying priority sectors and systems. These sectors and systems should also link to the targets proposed at Sections 6-7 of the Bill.
29. The Committee notes the Scottish Government has already produced a list of priority sectors for the circular economy in its Climate Change Plan update.³ The Committee recommends the Scottish Government clarify the status of its commitment to produce sector-specific roadmaps for the industries it cited as priorities in its response to recommendations on the previous Climate Change Plan update. The Scottish Government said this would take place alongside its work to develop a Waste Route Map.

Section 1(5)

30. The Committee welcomes the requirement for the strategy to align with the Climate Change Plan and the Environmental Policy Strategy prepared under Section 47 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. The Committee notes calls for alignment with other Scottish Government strategies and policies, and recommends the Scottish Government consider these.
31. The Committee recommends the Scottish Government clarify the phrase "so far as is practicable" in Section 1(5). It is not clear how priority will be determined where two strategies have potentially opposing aims. We also recommend that the Scottish Government clarify whether other strategies, including those above, will be required to align with future Circular Economy Strategies.

Section 1(6)

32. The Committee recommends the Scottish Government reflect on whether having "regard" to the circular economy strategy when making policy and legislation is sufficient to ensure its policies and proposals are given due consideration and influence.

Section 2

33. We do not believe Section 2 of the Bill as drafted will place suitable obligations on the Scottish Government to undertake the level of consultation required to ensure the strategy is fit for purpose. This ambiguity, particularly on who must be consulted, should be remedied at Stage 2.

Section 3

34. **The Committee is of the view that progress towards a circular economy must continue at pace. The Committee recommends the Scottish Government clarify when it intends to produce the first circular economy strategy proposed in the Bill.**
35. **The Committee believes there should be a robust model of governance for the circular economy strategy and that Parliamentary scrutiny can support this. We recommend the Scottish Government clarify how it intends to afford Parliament the opportunity to scrutinise draft circular economy strategies.**

Section 4

36. **The Committee believes the proposals for review and revisions of the strategy are appropriate.**

Section 5

37. **The Committee believes the circular economy strategy should have regular and meaningful reporting requirements. We call on the Scottish Government to clarify its reasoning for a 30 month reporting period.**

Section 6-7 - Circular Economy Targets

Section 6(1)

38. **We are supportive in principle of statutory circular economy targets. We recognise the Scottish Government's intention to devise targets and to provide for these in secondary legislation. However, setting targets should be an obligation, not an option. Given the importance of statutory targets as a mechanism for enacting transformative change, we recommend amendments are made at Stage 2 to Section 6(1) to specify the Scottish Ministers "must", rather than "may" create targets. The Committee further recommends timescales for the introduction of targets, proportionate with the urgency of the issue, are specified.**
39. **The Committee understands the need for a robust approach to setting targets and supports rigour. We also recognise the imperative for action and results on reducing carbon emissions and living more sustainably. We have been presented with suggestions for targets which already align with existing reporting requirements. The Committee recommends the Scottish Government consider the proposals which have been made to the Committee for specific targets. We also request clarification of which public environmental bodies will be involved in the target-setting process.**

Section 6(4)

40. **The Committee believes regulations to introduce statutory targets should be subject to an enhanced form of parliamentary scrutiny and recommends**

provision is made at Stage 2 for use of a super-affirmative procedure for regulations setting the initial targets under this Section of the Bill.

Section 7

41. The Committee welcomes the intention to monitor and report on progress towards meeting targets, as well as the proposal for a monitoring framework aligned with the Environment Strategy framework highlighted in the Policy Memorandum.
42. However, these details are not on the face of the Bill and this Section lacks specificity. Section 7(2) does not specify the reporting period. Section 7(3) says the report should include "any action" Ministers will take to achieve targets which have not been achieved. This does not mandate action, but rather requires reporting *if* action is taken. The Committee recommends this Section is revised to include more certainly and mandate action to meet targets that have not been achieved.

Section 8 - Restrictions on the disposal of unsold consumer goods

43. We are supportive of Section 8 of the Bill in principle. Clearly, it is in nobody's best interests for perfectly reusable materials and products to be disposed of rather than redistributed or repurposed. Restrictions could be an effective way of reinforcing measures that many businesses are already putting in place to prevent wastage while also delivering economic and social benefits.
44. The Committee recommends any regulations or actions taken under this provision should be accompanied by detailed guidance for all organisations potentially involved. These should be developed in consultation with them.
45. The transition to a circular economy must put communities at its heart. To that end, we were enthused by the social enterprises and charities from the reuse and repair sectors leading the way in tackling consumption, and encouraging more sustainable ways of living. It was encouraging to hear of the impact of these organisations in their local areas, and their ambitions to increase their reach in the future. This work should be supported and we call on the Scottish Government to use the circular economy strategy to create the conditions and funding mechanisms to allow these organisations to thrive and encourage others to follow their lead.

Section 8(2) - Proposed Section 78A(1)

46. The Scottish Government has said it will undertake research, engagement and consultation in creating regulations under this provision. It has also said that it anticipates reflecting international practice in prioritising the types of goods to be subject to regulations. The Committee recommends the Scottish Government include in the Bill a commitment to prioritising use of the regulation-making powers based on criteria such as the potential lifecycle carbon intensity of goods and social and environmental impacts at

home and abroad.

47. The Committee is content with the use of affirmative procedure for future regulations under Section 8(2). However, the Committee requests the Scottish Government commits to sharing an early draft of regulations and any supporting analysis before formally laying the instrument in Parliament.

Section 8(2) - Proposed Section 78A(2-4)

48. It is not clear to the Committee why the Scottish Government has already decided food will not be subject to a form of ban on the destruction of unsold goods. The Committee recommends the Scottish Government clarify the basis for its intention not to use regulations to restrict the destruction of unsold food.

Section 8(2) - Proposed Section 78A(5)

49. We are conscious that proposed restrictions may impose additional burdens on businesses and in particular SMEs. The Minister said measures are only intended to apply to larger businesses with the capabilities and resources to absorb these additional responsibilities. We therefore call on the Scottish Government to ensure this issue is explored in its research, engagement and consultation in developing regulations. We also call on the Scottish Government to clarify how it would define a 'larger business' under this provision.
50. It is not clear why "consumer" is defined differently than in the Consumer Scotland Act 2020 and the Committee asks the Scottish Government to clarify the reason for this difference.
51. The Committee also recommends the Scottish Government must produce detailed guidance for businesses expected to comply with restrictions on the disposal of unsold goods. This guidance should also be developed in consultation with affected stakeholders and be incorporated into the consultation requirements in the proposed Section 78A(7).

Section 8(2) - Proposed Section 78A(5)(b)

52. Regulations introduced under these powers should not incentivise the exporting of waste in order to avoid domestic restrictions on disposal. The Committee recommends that criteria for making regulations should be expanded to include a requirement that regulations should not cause the exporting of goods for disposal.

Section 8(2) - Proposed Section 78A(6)

53. The Committee recommends SEPA must be provided with suitable resources to undertake new enforcement duties and seeks assurances from the Scottish Government that additional capital and revenue funding will be made available for SEPA to undertake these and other new

enforcement duties in the Bill.

Section 8(2) - Proposed Section 78A(7)

54. **Without proper engagement, the Scottish Government risks undermining its ambitions around unsold goods by not securing the confidence of businesses. It is therefore crucial that the Scottish Government listen to their concerns and work with them to ascertain how best to ensure regulations operated effectively in practice. To that end, we are supportive of proposals for amendments to Section 78A(7) to apply a specific duty on Scottish Ministers to consult with businesses, retailers and charities, in addition to any other persons it deems appropriate when drafting future regulations. This consultation should be required to include assessment of the following—**
- Product safety (for example with Office for Product Safety and Standards and Consumer Scotland);**
 - Chemical regulation requirements; and**
 - Financial or other support requirements for organisations engaged in reuse and redistribution such as third sector or community groups.**

Section 9 - Charges for Single-Use Items

55. **We support in principle the introduction of additional charges for some single-use items. It is clear that overconsumption of single-use items represent a significant barrier to progress towards a circular economy and net zero aspirations. However, the introduction of additional charges for single-use items must go hand-in-hand with other measures to promote reusable alternatives as a social norm and a positive choice.**
56. **The Committee agrees with the need for a strategic approach to use of the powers in Section 9. We note the the Scottish Government has committed to developing a ‘Product Stewardship Plan’ by 2025/26 in the 2030 Routemap which will set out a strategic approach to tackling problematic products. The Committee supports a pragmatic and evidence-based approach to the use of the power, with an initial focus on non-essential items and asks the Scottish Government to clarify what other items are under consideration.**
57. **It is essential that the Scottish Government consults extensively with industry prior to the Scottish Government laying future regulations. It must put in place safeguards to protect vulnerable groups from any unintended consequences resulting from charges.**
58. **The Committee welcomes recent announcements regarding a proposed ban on disposable vapes.**
59. **We are unclear about the potential for how these provisions may interact with the market access principles of the UK Internal Market Act. It is critical**

therefore that implications are identified as early as possible in the policy development process. Both the Scottish and UK Governments must thereafter work together through agreed Common Frameworks processes to avoid market access issues. The Committee believes the Scottish Government should also be seeking the view of the Office for the Internal Market at the appropriate point in policy development.

Section 9(4) - Section 87A(1)(b) - use of net proceeds

60. We agree with the principle that proceeds raised through single-use charging should be retained by the suppliers of goods. Whilst we are content that proceeds are used for environmental purposes, we also recognise that other good causes could be supported through this provision. We call on the Scottish Government to reflect on this ahead of Stage 2.
61. We welcome the inclusion of a super-affirmative procedure in this Section to allow stakeholders and Parliament to closely examine the implementation of proposed measures.
62. We call on the Scottish Government to explore what support it can provide through the Bill and other non-legislative measures to address current barriers around the uptake of reusable alternatives, including what more it can do.

Sections 10-11 - Household Waste

63. The Committee cautiously welcomes provisions in the Bill to create a new fixed penalty and civil penalty regime for enforcement of disposal of household waste requirements. The Committee is aware of the significant environmental and economic impact of contaminated waste and the need to design interventions to encourage householders to improve recycling behaviours. However, the use of civil and fixed penalties should be considered only once all other options to engage with householders have failed. The Committee seeks clarity on intended enforcement approaches for communal bins.
64. The Committee notes that often a lack of information is the main barrier to householders recycling correctly. A lack of consistency in local recycling services also creates confusion. The Committee recommends the Scottish Government launch a national awareness campaign that aims to inform the public about these new provisions and good recycling behaviours. The Committee requests the Scottish Government consider how this programme could also dovetail into future work to standardise local authority recycling provision through the statutory Code of Practice.
65. The Committee agrees with recommendations from the Delegated Powers and Law Reform Committee that amendments are made at Stage 2 to stipulate that guidance introduced under Section 46ZE is subject to prior consultation with local authorities.

Section 12 - Code of Practice on household waste recycling

66. The Committee welcomes the provision to create a statutory Code of Practice as a vehicle for greater standardisation of household waste recycling provision in Scotland, to improve local authority performance and help public understanding of services available. The Circular Economy and Waste Route Map 2030 suggests the code will be delivered by 2025/26 and the Committee recommends this time scale is included on the face of the Bill to prevent delay and prioritise action.
67. Resource constraints pose a significant barrier for local authorities. The Committee agrees with the Finance and Public Administration Committee that the Recycling Improvement Fund will not on its own deliver the finances local authorities require to deliver the policy intentions behind the Code of Practice. The Scottish Government must ensure the actions to be taken by local authorities under the Code of Practice are fully funded and of equal benefit to all local authorities.
68. The Committee recommends that a uniform kerbside bin collection approach is established across all Scottish local authorities. The overall aim of Scotland's future recycling system must be to achieve maximum consistency wherever possible, unless there are specific local needs that require a different approach. The Committee calls on the Scottish Government to explore these aspects of service provision with COSLA as part of its co-design process of the Code of Practice. The Committee agrees with the Finance and Public Administration Committee this co-design could have been undertaken prior to the introduction of the Bill to provide Parliament and stakeholders with clarity around costs.
69. While offering support for the concept of a Code of Practice to standardise recycling services, the Committee is disappointed in the focus of the ambition and action so far down the waste hierarchy. The Committee recommends the Scottish Government reconsider the focus of the Code of Practice to incorporate mandatory actions and consistency on reuse and repair facilities and services.

Section 13 - Targets for local authorities relating to household waste recycling

Section 13(2) - Section 47B(1) - Targets

70. We are supportive in principle of the Scottish Government's proposals for the implementation of statutory local targets. It is clear to us that interventions are needed to break through the current plateau of local authority recycling rates. The Committee also agrees with COSLA that action further up the waste hierarchy which prevents the need for recycling is also important and would reduce the burden on local authorities and consumers.

Section 13(2) - Section 47B(4) - Target setting

71. Whilst targets should be ambitious, they must also be realistic if they are to

achieve the desired performance improvements from local authorities. The Scottish Government must collaborate with local authorities to design targets reflective of local needs. This engagement must explore the level of additional resource needed to meet the agreed targets.

Section 13(2) - Section 47B(3)(d-h) Enforcement of targets

72. We are aware of the pressures local authorities are facing which makes increasing recycling performance challenging. The prospect of penalising councils for failing to meet targets seems counterproductive and only serves to exacerbate existing constraints on local authority budgets. And yet, we have seen the success of this approach in Wales. The Committee calls on the Scottish Government to adopt an approach which captures the benefits of both penalties and incentives.

Section 13(2) - Section 47B(6) - definitions

73. The Committee believes that reuse and recycling are different approaches, yet appear to have been conflated in the Bill's definition of recycling. This may lead to weakening of or failure to set specific targets on reuse. The Committee recommends the Scottish Government separate out the two definitions but include statutory requirements for local targets for both concepts. These must be agreed collaboratively with local authorities and reinforced with financial support from the Scottish Government to increase local authority capacity to roll out these services.

Section 14 - Littering from a vehicle: civil penalties

74. The Committee welcomes the Scottish Government's inclusion of new enforcement powers in the Bill to tackle littering from a vehicle. However, the Committee is concerned that enforcement authorities have already identified practical issues in implementing these new powers. A lack of resources and guidance will not ensure the consistent and robust approach to enforcement the Scottish Government hopes to achieve through these provisions.
75. The Committee is concerned, as the Finance and Public Administration Committee highlighted, that estimates of revenues raised are based on optimistic assumptions civil penalties will be paid in full.

Sections 15-16 - Enforcement powers in respect of certain environmental offences

76. The Committee welcomes additional powers conferred on enforcement authorities through this Section of the Bill. It is our hope that these measures will be an effective and useful addition to SEPA and local authorities in tackling perpetrators of waste crime. However, the Scottish Government must ensure it's playing its part by fully funding enforcement authorities to undertake their roles to full effect.
77. Processes for waste carrier permits must be strengthened. The Committee is supportive of the Scottish Government's intentions to reform current

licensing arrangements to ensure they are sufficiently robust. The Committee notes evidence from SEPA requesting that the Environmental Authorisations (Scotland) Regulations 2018 are added to the applicable laws for which enforcement powers can be used, and calls on the Scottish Government to explore this proposal ahead of Stage 2.

78. The Committee recommends the Scottish Government consider the suggestion by SEPA that amendments could be made to the Environment Act 1990 to ensure those responsible for the flytipping were also responsible for removal of waste.

Section 17 - Duty to make information publicly available

79. The Committee agrees in principle with provisions giving powers to regulate for new mandatory reporting requirements relating to waste and surplus. The Committee considers that new reporting measures could hold a number of positive benefits if designed and implemented well. However the Scottish Government must listen to suggestions from the business sector on how future requirements should be implemented in practice and work collaboratively with the sector in drafting regulations.
80. The Committee considers there is a risk that new administrative processes as a result of reporting requirements could disproportionately affect small and medium enterprises. The Committee is concerned that additional costs and complexities resulting from mandatory requirements could cause undue harm to many smaller Scottish businesses. We are sympathetic to the proposed introduction of exemptions or other mechanisms such as phased introduction, reporting thresholds or means of simplifying any requirements on small and medium enterprises.

Overall conclusions on the general principles of the Bill

81. The Committee supports the general principles of the Bill although scrutiny of this partly framework Bill has been challenging. This is on the understanding that the Scottish Government will consider and respond positively to our recommendations on enhancing Parliament's ability to scrutinise and consult on key regulations brought forward under the Bill if it becomes an Act. We also want the Scottish Government to commit to ensuring the Parliament receives robust costings as early as possible for any such regulations.

Introduction

82. The [Circular Economy \(Scotland\) Bill](#) was introduced on 13 June 2023 by Màiri McAllan MSP, then the Cabinet Secretary for Transport, Net Zero and Just Transition. The Bill was accompanied by—
- [Policy Memorandum](#)
 - [Explanatory Notes](#)
 - [Delegated Powers Memorandum](#)
 - [Financial Memorandum](#)
 - [Statement on Legislative Competence](#)
83. The Policy Memorandum says its purpose is to facilitate progress towards a circular economy in Scotland. It says that a more circular economy—
- “cuts waste, carbon emissions and pressures on the natural environment;
 - opens up new market opportunities, improves productivity, increases self sufficiency and resilience by reducing reliance on international supply chains and global shocks; and
 - strengthens communities by providing local employment opportunities and lower cost options to access the goods Scotland needs.”⁴
84. The Parliamentary Bureau referred the Bill to the Net Zero, Energy and Transport Committee to consider and report to the rest of the Parliament on the Bill's general principles. The Delegated Powers and Law Reform and Finance and Public Administration Committees have separately reported on aspects of the Bill relevant to their remit, and the main points they raised are considered further below.

Consideration by the Net Zero, Energy and Transport Committee

Oral and written evidence

85. On 27 June, we agreed a call for views on the Bill, which was launched on 30 June. It was split in two: a detailed set of questions aimed at professional organisations and stakeholders, plus an online discussion with the public. The call closed on 1 September. We received 123 submissions of written evidence and 98 people took part in the online discussion.
86. We agreed initial witnesses on 27 June and further witnesses on 26 September. We held ten evidence sessions on the Bill—
- [On 26 September 2023](#): representatives of Scotland's business community;
 - [On 3 October 2023](#): statutory environmental bodies the Scottish Environment

Protection Agency (SEPA) and NatureScot, and also from Zero Waste Scotland;

- [On 31 October 2023](#): the Scottish National Investment Bank (SNIB);
- [On 7 November 2023](#): Consumer Scotland;
- [On 14 November 2023](#): representatives of environmental, social and non-governmental organisations;
- [On 21 November 2023](#): two panels: first the Convention of Scottish Local Authorities (COSLA), the Society of Local Authority Chief Executives and Senior Managers (SOLACE) and private waste companies, then a panel of local authorities.
- [On 28 November 2023](#): two panels: first an international / rest of UK panel of stakeholders involved with circular economy policy, then a panel of academic experts in the circular economy and the UK internal market;
- [On 5 December 2023](#): Lorna Slater MSP, Minister for Biodiversity, Circular Economy and Green Skillsⁱ and Scottish Government officials.

87. We put on record that amongst the representatives of business we invited to give evidence was Amazon UK. They are a major employer in Scotland and an important contributor to our retail economy. We were sure they would have an interesting story to tell about their place in the circular economy and were keen to hear it. Despite our best efforts to find a slot that would suit them, Amazon UK repeatedly indicated that they were not available to give evidence. This is disappointing and somewhat surprising, given Amazon UK's significant resources including a very active public affairs department. We acknowledge that they did, in the end, provide written evidence which says they have "...made every effort to provide comprehensive and informative answers...." to the Committee.⁵

Visits and engagement

88. As well as taking formal evidence, we visited—

- the Binn Group, a waste and resource management company, at its site in Glenfarg, Perthshire on 8 November;
- the Edinburgh Remakery, the Edinburgh Tool Library and a refill shop called WeighToGo in Leith, Edinburgh on 20 November; and
- Change Waste Recycling, a recycling and waste management company at its office in Edinburgh on 30 November.ⁱⁱ

On 15 November, we also held an online engagement event with small and medium-sized enterprises (SMEs) taking more circular approaches to products and

ⁱ References to "the Minister" in this report are, unless otherwise stated, to Ms Slater

services.ⁱⁱⁱ

Committee visits



Source: Scottish Parliament (2023)

89. We also acknowledge a thoughtful introductory briefing on the circular economy from Dr Catherine Weetman of Rethink Global at our 2023-24 Business Planning Day on 4 September.
90. We are grateful to everyone who contributed to scrutiny of the Bill.

ii Themes explored on visits can be found in Annexe C.

iii Themes explored during the event can be found at Annexe D.

What is a 'circular economy'?

91. A briefing from the Scottish Parliament Information Centre (SPICe) says that—
- ” “Exact definitions or models of how a circular economy is expressed can differ, but generally the emphasis is on circularity of resource use, minimising or designing out waste, and doing so in a way that addresses the twin climate and nature crises.” ⁶
92. The opposing concept to a circular economy is a linear model of consumption where products are bought, used, and thrown away as waste. This means more virgin materials must be extracted from ecosystems to be manufactured. It means more production and more consumption.

Why do we need a more circular economy?

93. Scotland's current performance on the circular economy is set out the Circularity Gap Report Scotland 2022 from Zero Waste Scotland. ⁷ It states that Scotland's per capita material footprint is nearly double the global average at 21.7 tonnes ⁸ and that Scotland is only 1.3% 'circular', meaning more than 98% of materials in Scotland are extracted from virgin resources. ⁹
94. Clearly therefore, Scotland current level of material consumption is unsustainable and inconsistent with wider policy goals, in particular addressing the climate and biodiversity crises. The Circularity Gap Report suggests that increasing circularity could help to reduce emissions in Scotland by up to 43%. ¹⁰

Calculating circularity

95. According to the SPICe Bill Briefing, there are two main ways of calculating a country's carbon emissions—
- ” **Production-based emissions:** often referred to as territorial emissions, are calculated by adding up all the emissions that are produced within a country (e.g. emissions produced from industry, manufacturing, energy production, transport etc.).
- Consumption-based emissions:** often referred to as a "carbon footprint" are calculated by adding up all the emissions associated with the goods and services consumed within that country (e.g. emissions from the products and service we buy and consume).” ¹¹
96. There is much focus in climate policy on production-based emissions, mainly because this is the basis for national accounting under the UN's Paris Agreement 2015 ¹² and associated legal targets. Production-based emissions are the basis of the national targets set out in the Climate Change (Scotland) Act 2009. This approach can however cause issues where a state reduces its production-based

emissions without reducing its consumption emissions; for instance by decarbonising its own industry but increasing imports of goods and services made abroad in a carbon-intensive way. This is sometimes called "offshoring".¹³

97. Section 37 of the Climate Change (Scotland) Act 2009 requires the Scottish Government to make an annual report on national consumption-based emissions. Recent reports show that consumption emissions are larger than production-based emissions.¹⁴

The waste hierarchy

98. The waste hierarchy is a method of prioritising action to prevent waste. According to the SPICe Bill Briefing—

“Under the waste hierarchy, waste prevention through efficient use and reuse of resources, recycling and recovery of value should be prioritised in that order, with landfill or other disposal a last resort”¹⁵

The Waste Hierarchy



Source: SPICe Briefing on the Circular Economy (Scotland) Bill.

99. The briefing also states—

“Section 34 of the Environmental Protection Act 1990 (as amended) makes it the duty of everyone (with the exception of occupiers of domestic properties as respects the household waste produced at those properties) who produces, keeps or manages controlled waste, or as a broker or dealer has control of such waste, to take reasonable measures to apply the waste hierarchy. Producers of waste also have a duty under the Act to take reasonable steps to increase the quantity and quality of recyclable materials.”¹⁶

The wider policy landscape

100. Achieving a more circular economy involves pulling on a number of policy levers, engaging both devolved and reserved competence. There are also important international obligations and standards that domestic circular economy policy must either adhere to or give regard to. One example of such consideration is alignment with the UN Sustainable Development Goals.¹⁷
101. Regulation of waste management and recycling are devolved areas. However, many of the levers further up the waste hierarchy which could be used to prevent or design out waste are within reserved areas, such as fiscal policy, product labelling and standards, and trade policy. The intersection between devolved and reserved competence can be complex.
102. There are also some areas that are devolved but where regulation has historically taken place UK-wide, to achieve policy coherence and maintain the UK internal market. Brexit has also led to UK-wide regulatory approaches being developed in areas formerly regulated at an EU level. An example of this is the expected roll out of Extended Producer Responsibility (EPR) across the UK in 2025. The policy intention behind EPR is to increase producer responsibility for the environmental costs of the items they make and incentivise them to adopt more sustainable practices.
103. Sections 50 and 51 of the Environment Act 2021 allow for the establishment of producer responsibility regimes.^[1] According to the draft Circular Economy and Waste Route Map to 2030—
- ” “Producer responsibility schemes are currently in place UK-wide for packaging, waste electrical and electronic equipment (WEEE), batteries, and end-of-life vehicles (ELVs). We are working with the UK and devolved governments on reforms to these schemes which will help drive circular economy outcomes. The first will be EPR for packaging, which is being implemented from 2025 on a four nations basis across the UK.”¹⁸
104. A consultation on extended producer responsibility for packaging closed in March 2021¹⁹ and the results of this contributed to the development of draft regulations.²⁰ The recently closed consultation²¹ on draft regulations was "undertaken jointly by the UK Government, the Scottish Government, the Welsh Government and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland." The UK Environmental Law Association said the results of this should inform the development of the Bill.²²
105. There was support for ensuring that the responsibility for materials throughout their lifecycle, including costs of disposal, remained with producers. The interaction with proposed extended producer responsibility was a theme of comments on several provisions of the Bill.²³
106. Even at a purely devolved level, circularity is complex as it relates to other policy goals and initiatives, particularly - as already noted - tackling the climate and biodiversity crises but also, for instance, achieving a just transition^{iv} away from a

high carbon emission-based economy. In 2016, the Scottish Government sought to bring all this together in the strategy paper, 'Making Things Last'.²⁴

107. The legislative actions set out in the Bill are part of a framework of actions the Scottish Government has proposed to progress towards a circular economy. Alongside consultation on the Bill in 2022, the Scottish Government also undertook a parallel consultation exercise on proposals for a Circular Economy Waste Route Map to 2025 and beyond.²⁵ When the Committee embarked on scrutiny of the Bill, the Scottish Government indicated that a final version of the route map would be published before the end of 2023. The Scottish Government instead published a further draft on 18 January 2024²⁶ and, because of this, we requested, and obtained, a short extension to the Stage 1 deadline to allow time to consider this further draft. The consultation on this latest draft closes on 15 March 2024.²⁷

Journey to a Circular Economy Bill

108. A Circular Economy Bill has been a long-standing commitment of the Scottish Government. The Bill was first promised as part of the Programme for Government 2016-17.²⁸ The Covid-19 pandemic delayed progress on the proposed Bill originally consulted on by the Scottish Government in 2019.²⁹
109. In 2022, the Scottish Government began re-consulting on proposals for the Bill, seeking views on thirteen separate policy proposals.³⁰ An analysis of the consultation responses was published in November 2022.³¹
110. Two proposals in the 2022 consultation not taken forward in the Bill were on—
- establishment of circular economy public body; and
 - business recycling collection zoning.
111. The Scottish Government's reasons for omitting these proposals from the Bill can be found in the Policy Memorandum.³²
112. Another measure not taken forward in the Bill was on giving the Scottish Ministers and/ or local authorities powers to incentivise household recycling, for example through waste charging.³³ The Policy Memorandum does not discuss why this proposal has not been taken further. However, the draft 2025 Routemap set out a proposal to review waste and recycling service charging by 2024. This commitment has been included in the draft 2030 Routemap with an extended timescale for delivery (2024/25).³⁴

iv A just transition seeks to ensure that the benefits of a green economy transition are shared widely, and provides support to those who stand to lose out economically from the transition.

Overview of the Bill and general views

113. The Bill contains 20 Sections—

- Sections 1 to 5 – creates a new duty for Scottish Ministers to prepare and publish a circular economy strategy;
- Sections 6 and 7 – provides a new power for Scottish Ministers to create statutory circular economy targets;
- Section 8 – provides a new regulation-making power for Scottish Ministers to restrict the disposal or destruction of unsold goods;
- Section 9 –confers new regulation-making powers for Scottish Ministers to introduce additional charges for single-use items;
- Section 10 – establishes new criminal offence for householders failing to meet their obligations around the disposal of waste as set out in the Environmental Protection Act 1990;
- Section 11 - creates a new fixed penalty regime and civil penalty regime in relation to failure to comply with household waste requirements under section 46 of the Environmental Protection Act 1990;
- Section 12 - introduces new obligations for Scottish Ministers to prepare a statutory code of practice on recycling to be followed by local authorities in undertaking their waste collection duties.
- Section 13 - provides powers for Scottish Minister to set statutory recycling targets for local authorities.
- Section 14 – creates a new civil penalty regime for tackling littering from a vehicle;
- Section 15 and 16 – creates new enforcement powers for SEPA and local authorities in relation to certain environmental offences;
- Section 17 – provides regulation-making powers for Scottish Government to set new obligations for reporting of information relating to waste; and
- Sections 18 to 20 – final and auxiliary provisions.

114. Further information on these provisions can be found in the SPICe Bill briefing. ³⁵

115. General views on the Bill were that it was well-intentioned and some of its provisions would have a positive impact. However, in many areas it was not thought to prioritise efforts upstream in the waste hierarchy or address the root causes of circularity. ³⁶ The Minister told us there were several provisions which focused on reduced consumption or reuse including the strategy proposed at Sections 1-5 and the proposed targets at Sections 6-7, ³⁷ as well as the wider policy framework - the Routemap - existing outside the Bill. ³⁸

A Framework Bill

What is a framework Bill?

116. Whilst some new duties are directly set out on the face of the Bill, some of the most important - or potentially most important - aspects of the Bill arise from new order-making powers being created and given to the Scottish Ministers. The Bill confers 16 such powers, as listed in Annexe E of this report. The Bill therefore largely meets the definition of a "framework Bill". The UK Cabinet Office has said that a framework Bill is primary legislation that—

” “... consists primarily of powers and leaves the substance of the policy, or significant aspects of it, to delegated legislation...” ³⁹

117. The Minister told us the Bill—

” “.. will *establish the legislative framework* to support Scotland's transition to a zero waste and circular economy, significantly increase reuse and recycling rates, and modernise and improve waste and recycling services.” ⁴⁰

[Emphasis added]

118. There are arguments for and against Bills being framework Bills and these were rehearsed during Stage 1 scrutiny. Broadly put, the main argument in favour is flexibility. The main argument against is the reduced opportunity for scrutiny, including financial scrutiny.

Flexibility

119. Framework legislation can be used to deal with policy areas where there may be shifts in priorities over time without necessitating new primary legislation or where the relevant policy area is relatively volatile, for instance because of current or anticipated technological advances. This is a relevant consideration in the context of circular economy policy. ⁴¹ Governments may also seek to use it where they simply have not yet determined in any detail what policy in a particular area is to be. The legislation sets down a marker of future intention but does not commit the government to specific actions. In this connection, it should be noted that governments in the UK usually draft order-making powers as non-mandatory: they are "may" powers, not "must" powers, and this is the case with the Circular Economy (Scotland) Bill.

120. Subordinate legislation can enable governments to be nimble, allowing them to respond to fast-developing emergency situations, as we saw during the Covid-19 pandemic, and make laws quickly. It is not clear whether this is an important consideration in the context of creating a circular economy. Instead, some stakeholders suggested that another possible advantage of using secondary legislation rather than putting measures on the face of the Bill is that it would create further opportunities for consultation or "co-design", i.e. government and stakeholders working together on drafting a new order or regulations permitted under the new Act. ⁴²

121. Overall, there is no question that subordinate legislation has a place in the range of tools available to governments. It is a question of whether, in each individual case where a new power is proposed, the Parliament is persuaded that it is right to give the government the broad power, rather than, by way of amendment—
- insisting that the proposed new law should be set out on the face of the Bill;
 - narrowing the way the power can be used; or
 - subjecting the power to additional scrutiny measures in the event of it being used.
122. During Stage 1, we heard of support for specific measures being subject to order-making powers rather than being laid out on the face of the Bill. One example was on charges for single-use items where new products or environmental challenges may become clear over time.⁴³

Scrutiny, including financial scrutiny

123. The less detail there is on the face of a Bill, the less there is to scrutinise. This is one of the main concerns raised about framework Bills, alongside a perception that they are becoming a more common way to make law. In relation to a recent Scottish Government Bill (the National Care Service Bill), the Delegated Powers and Law Reform Committee commented that there was "insufficient detail on the face of the Bill and within the Bill documents to allow for meaningful parliamentary scrutiny"⁴⁴. It said this was—
- ” "... unacceptable and risks setting a dangerous precedent, undermining the role of the parliament." ⁴⁵
124. During Stage 1 of the Circular Economy (Scotland) Bill, stakeholders raised concerns of this nature. They questioned whether it was possible to carry out good quality scrutiny of the Bill, given the lack of detail on its face in many areas.⁴⁶ The recent case of proposals for a new Scottish deposit return scheme (now considerably delayed) was raised as an example of the problems that can arise when important and technically complex lawmaking in this policy area is left to subordinate legislation.⁴⁷

Scrutinising the Circular Economy (Scotland) Bill as a framework Bill

125. The Circular Economy (Scotland) Bill's status as largely a framework Bill has affected scrutiny in two main areas—
- Gauging the financial impact of the Bill and, with this, scrutiny of the Financial Memorandum; and
 - Attempting to assess the the Bill's interaction with the UK Internal Market Act 2020 ("the Internal Market Act").

Financial impact of the Bill and accuracy and usefulness of Financial Memorandum

126. It is hard to gauge the financial impact of the Bill - positive or negative- when much will depend on how quite broadly defined powers created by the Bill will be used, and when they will be used. This was an issue the Finance and Public Administration Committee considered when they reported on the Bill's Financial Memorandum. An FM must provide "best estimates" of the financial impacts of a Bill in various defined areas. The Minister said that—

“.. the bill, as a framework bill, sets out strategic intentions and actions. The costs in the financial memorandum are therefore also at that level. At the detailed level of policy implementation, there would be another full set of business and regulatory impact assessments for Parliament to scrutinise.” ⁴⁸

127. As that Committee noted when it took evidence on the FM from the Minister, it has no role in scrutinising the financial impact of secondary legislation. ⁴⁹ The Minister told us this was a matter of parliamentary process and said "maybe the issue is one that we should address, so that that committee can provide such oversight". ⁵⁰

128. The Finance and Public Administration Committee concluded that—

“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.” ⁵¹

129. This theme also arose in our own evidence-taking. For instance, COSLA said they did not believe the Financial Memorandum covered the full costs of the Bill. They said that, without knowledge of how powers created by the Bill would be used, it was hard to determine the cost. ⁵²

The UK Internal Market Act

130. The Internal Market Act creates two key market access principles which operate in the post-Brexit environment: the mutual recognition principle and the non-discrimination principle. ⁵³ These—

“...serve to disapply relevant requirements in one part of the UK when goods or services are lawfully provided in another part of the UK. The principles will permit access to the Scottish market of goods and services which originate elsewhere in the UK under different regulatory conditions. This is likely to have a substantial impact on the effectiveness of devolved regulatory regimes.” ⁵⁴

131. Nothing in the Act is a direct limitation on the Scottish Parliament's competence: it does not stop the Scottish Parliament passing a law in relation to matters that are devolved. However, it may have an impact on whether that law is effective in relation to goods and services which come from another part of the UK. ⁵⁵ The Act provides a mechanism for devolved governments to request an exclusion from the

operation of the principles in relation to the proposed exercise of a new power.

132. It was widely accepted during Stage 1 that the Internal Market Act has the potential to significantly affect the operation of the Bill if it were to become law: potentially a "massive impact" according to some stakeholders.⁵⁶ It was noted that there had been no mention of the Act in the Bill's Policy Memorandum.⁵⁷ We also heard that timescales for introduction of any measures in regulations would have to be considered in the context of activity in the rest of the UK.⁵⁸
133. The Minister told us that the Bill itself had no interaction with the Internal Market Act.⁵⁹ She said the impact of the Act would be assessed in the light of any proposed regulations under powers conferred by the Bill.⁶⁰ This crystallises a key problem of scrutiny for the Committee: it is difficult to express an informed view to Parliament on the risks the Internal Market Act *might* pose to the successful implementation of the Bill (if enacted) without a clear idea of how Ministers intend to use the powers under the Bill.
134. Some evidence stressed the importance of early inter-governmental collaboration and engagement on proposed regulations to avoid conflicts.⁶¹ In a post-Brexit landscape, engagement of this type is expected to take place primarily through processes laid down under the relevant Common Framework. These are mechanisms for the UK and devolved governments to mutually agree some amount of regulatory consistency for policy areas where returning EU powers are within devolved competence, whilst acknowledging and allowing policy divergence.⁶² It was anticipated when they were first proposed that frameworks should "lead to a significant increase in decision-making powers for the devolved administrations."⁶³
135. We sought views on areas of potential conflict should powers under the Bill be exercised in a particular way, and also on what exemptions the Scottish Government ought to be asking for. Stakeholders understandably found it difficult to provide definitive answers but a number of observations were made. We heard views that the Act—
- Was being inconsistently applied, in terms of permitting exclusions.⁶⁴ The Scottish Wholesale Association noted the "...advent of the Internal Market Act has already led to two different approaches being taken by Westminster in respect of an exclusion from IMA for the Single-Use Plastic Regulations and a conditional temporary exclusion to the Scottish Deposit Return Scheme."⁶⁵
 - Should allow for automatic exemptions to introduce policy with "environmental or public health benefits".⁶⁶ Dr Aileen McHarg, Professor of Public Law and Human Rights at Durham University, said while exemptions were an option (and there were other policy candidates for automatic exemptions)⁶⁷, she also suggested governments could "expand those opportunities to argue that in a particular circumstance the environmental or public health objectives.... outweigh any adverse effects on competition."⁶⁸
 - Need not prevent development of a circular economy across the UK. It was suggested different approaches could drive standards up in other areas given the right conditions⁶⁹, but it was stated this was not the "political context" right

now.⁷⁰

- Was focused on actions at the point of sale and that mechanisms to reduce waste beyond this need not necessarily engage the Act (for example take back schemes which returned responsibility to producers).⁷¹
- Should not impede legislating and policy making on the grounds an exclusion may not be secured. Some stakeholders argued that the right order was first to determine the preferred policy and the necessary legal change to accompany this and then to seek an exclusion.⁷²

136. For her part, the Minister thought regulations stemming from the following provisions might engage the Internal Market Act⁷³ —

- restrictions on the disposal of unsold goods (although we also heard the Scottish Government believes this may not require an exemption from the Internal Market Act⁷⁴);
- charges on single-use items (although again, the Minister said "...we can draft the legislation for single-use cup charges in a way that does not affect or come into contact with the Internal Market Act and would therefore not require an exemption"⁷⁵); and
- requirements to make information publicly available on waste.

137. We sought to explore what discussions had taken place so far between the two governments in relation to powers in the Bill under Common Framework processes. It appears the most relevant Framework in relation to a circular economy will be the Resources and Waste Common Framework⁷⁶ although others, such as the Chemicals and Pesticides and the Procurement Common Frameworks might also apply, depending on exactly how a power is exercised.⁷⁷ We heard that officials had discussed the provisions of the Bill through the Resources and Waste Common Framework working group⁷⁸ but that the Office for the Internal Market (an office created under the Internal Market to work with all governments in the UK) had not yet been consulted.⁷⁹ The Minister told us that—

” “We consider the role the OIM could play in respect of devolved policy analysis on a case by case basis, but the Scottish Government already undertakes rigorous policy impact assessment, including IMA risks.”⁸⁰

138. Correspondence we received from the Minister on 13 October said that—

” "... the CE Bill does not contain any provisions on the face of the Bill which would trigger the application of the UKIMA [ie the Internal Market Act]. The Bill contains certain regulation-making powers and therefore when those powers are to be exercised we will consider the impact of the UKIMA on any proposed provisions.....The impact of UKIMA on any regulations under the Bill will also be affected by any policy changes in other nations of the UK within this policy area. Therefore, any analysis of the impact of UKIMA will not be static and it will evolve over time depending on what other UK nations do, for as long as the Act remains in force. The [Resources and Waste] Common Framework will support those policy discussions and will allow the impact of UKIMA on policy proposals for Scotland to be understood and mitigated as best they can." ⁸¹

139. The Scottish Government considered that the UK Government had "ignored" ⁸² processes set out under the Resources and Waste Common Framework during discussions on the deposit return scheme. The Minister also set out some other concerns about how the Framework had so far been working. ⁸³ Despite this, she expressed confidence that processes under the Framework would enable discussions on the proposed future use of powers under the Bill. ⁸⁴ She told the Committee the Bill had been "highlighted" as part of engagement with other nations through the Framework. ⁸⁵
140. Professor McHarg, said that the non-statutory nature of common frameworks meant they could be "...trumped by the statutory powers or the legal powers that are available to the different parties." ⁸⁶ She said the impact of the Internal Market Act had been to "...undermine co-ordination through the common frameworks process because, in practice, it privileges decisions made by the UK Government...". ⁸⁷

Effective scrutiny of powers created under the Bill

141. The Parliament's agreeing to a framework Bill in practice amounts to an agreement to give the Scottish Government - and future Scottish Governments - powers to repeatedly make new laws, often on important and consequential matters, with limited opportunity for Parliamentary scrutiny. Scrutiny is limited in two main senses—
- it is strictly time-limited: usually 40 calendar days (unless there is a recess period of 5 days or more during the 40-day period, in which case the clock is stopped for recess). This gives very little time for meaningful consultation.
 - unlike Bills, orders or regulations laid under an Act cannot be amended: they can only be accepted in full or rejected.

During Stage 1, the Committee considered ways of ensuring effective scrutiny of future regulations proposed by way of powers under the Bill.

Strengthening consultation

142. The Policy Memorandum sets out the Scottish Government's rationale for using a

framework structure. It says—

” “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.” ⁸⁸

143. In her evidence to the Finance and Public Administration Committee, the Minister discussed the sequence of legislation followed by consultation. ⁸⁹ That Committee noted in its report on the Financial Memorandum that this was not optimal, saying it made scrutiny of the financial information accompanying the Bill “...incredibly challenging, if not, impossible”. ⁹⁰
144. The Minister also said she was confident Parliament could still achieve “extensive scrutiny” of secondary legislation “if MSPs decide that that is needed”. ⁹¹ In practice, this would normally be done by the Committee tasked to scrutinise the policy aspects of a particular instrument, as best it can within the maximum of 40 days that is typical for most subordinate legislation. This would not usually be the Finance and Public Administration Committee.
145. Some Acts of the Scottish Parliament have contained powers to make subordinate legislation under a “super-affirmative” procedure. There is no set definition of “super-affirmative” but in essence it means any process that gives the Scottish Parliament more opportunity to scrutinise orders or regulations laid in the Parliament. In most, if not all, cases this includes giving the Parliament more days than the default of 40 days set out in Standing Orders to complete consideration of the instrument. In doing so, it gives whichever committee is scrutinising the instrument increased opportunity to seek views on it.
146. Of the 16 new powers created in the Bill, one would be subject to a super-affirmative procedure. This is the power to introduce initial regulations on charging for single-use items. ⁹² It stipulates a requirement to lay a draft of regulations in Parliament for 90 days (“the representation period”). No fewer than 30 days must be days on which the Parliament is not dissolved or in recess. ⁹³ Prior to laying final regulations, the Scottish Ministers must account for ⁹⁴ and report on ⁹⁵ representations made to them during the representation period, resolutions of the Parliament or reports by Parliamentary committees.
147. The process is very similar to that used for initial regulations on the deposit return scheme. The Scottish Retail Consortium and the Scottish Wholesale Association were critical of how this had worked out. ⁹⁶ They said the process had seemed rushed, with too many witnesses, and too little opportunity to discuss the proposals in detail. Ewan MacDonald-Russell of the Scottish Retail Consortium said—

” “There were lots of opportunities to provide evidence in writing, but it was difficult for the Committee to have the time to scrutinise our perspectives properly and effectively but also to get everything that it needed for that process.” ⁹⁷

Conclusions and recommendations - A Framework Bill

148. **The Circular Economy (Scotland) Bill is, in large part, a framework Bill. In many key areas, it sets out broad principles but leaves some of the key details to be developed in future. We note the concerns some committees have expressed this session about the challenges to effective scrutiny that framework Bills can pose.**
149. **In the case of some provisions in the Bill, the Committee is content with this framework approach on the basis that subordinate legislation appears to be the best tool for the job. In other cases, the Scottish Government may have opted for this approach because it has yet to finalise a comprehensive approach to a particular policy through co-design with key stakeholders.**
150. **For some of us, this raises concerns that the Bill is being put forward as partly a stop-gap, in order to expedite the process once policy is finalised. For others, this is a pragmatic approach; to keep up the momentum towards a circular economy by creating the broad legal powers the Scottish Government will need, but allowing for policy to be further refined following consultation before detailed regulations are made. What we all agree on is on ensuring that, in the case of each new regulation-making power proposed in the Bill, Parliament has suitable opportunity to ensure regulations made under it are robust and fit for purpose.**
151. **The Minister for Green Skills, Circular Economy and Biodiversity's commitment to co-design with key stakeholders any future subordinate legislation proposed under the Bill is welcome. However, given that the Bill creates powers exercisable for the long term, the Committee seeks clarification from the Scottish Government as to how this commitment can be guaranteed and whether a suitable amendment to the Bill would help underwrite that commitment. In any case, pre-legislative engagement is no guarantee that the subordinate legislation finally laid before the Parliament will be sufficiently fit for purpose. Ordinary procedures for scrutiny of subordinate legislation would provide very limited opportunity to identify and correct any shortcomings.**
152. **Should the general principles of the Bill be agreed to, the remaining stages of the Bill provide an opportunity for some provisions in the Bill to be amended either to put more detail on its face or to strengthen the scrutiny process around important order-making powers. We make more specific recommendations in these areas in the rest of the report and ask the Scottish Government to give them careful consideration.**
153. **Framework Bills also pose a challenge in terms of assessing their likely financial impact, in terms of future regulations. The Finance and Public Administration Committee has taken the view that the Financial Memorandum for this Bill is not adequate, especially in terms of providing best estimate of financial costs and benefits to key stakeholders, such as business and local government. We think this could be usefully mitigated by the Scottish Government committing to providing the Parliament with robust costings when regulations are brought forward under key order-**

making powers and, again, ensuring that the Parliament has enough time to consider and take evidence on these.

154. We support the recommendation of the Finance and Public Administration Committee that the updates the Minister committed to provide to that Committee should be sent every six months and these 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." The Net Zero, Energy and Transport Committee recommends these updates are also provided to this Committee and to future Committees with responsibility for waste and implementation of a circular economy.
155. The framework nature of the Bill also means the Committee cannot express an authoritative view as to whether regulations made under the Bill (if enacted) would be likely to trigger the market access principles within the UK Internal Market Act 2020, with a risk of undermining their effectiveness. But we consider that this is clearly a possibility. Whilst we hope any differences could be aired and resolved in advance, our prior experience scrutinising Scotland's deposit return scheme raises concerns about levels of trust and confidence between the UK and Scottish Governments. The Parliament should have adequate time to scrutinise any new regulations proposed under the Bill that may have internal market consequences.
156. We also call on both governments to work together to make Common Frameworks operate as they were intended to do; to enable both high-level cooperation on a general policy area within the United Kingdom but also to allow divergence within mutually agreed bandwidths, to enable different parts of the UK to pioneer different approaches. Issues such as the circular economy are too important and urgent to be undermined. We will be writing separately to the Scottish Government with our views on the new Resources and Waste Common Framework, including lessons - both positive and negative - to be learned from post-Brexit intergovernmental working on matters such as the Scottish Government's deposit return scheme and the recent cross-administrative announcement on banning single-use vapes.
157. The Committee recommends that the Scottish Government should seek advice from the Office for the Internal Market on the detail of the Bill at the earliest opportunity and whilst the Bill is still proceeding through Parliament. If the Bill becomes law, the OIM should also be consulted during development of any regulations made under key provisions in the Bill (for instance on charges for single-use items).

Sections 1-5 - Circular economy strategy

Section 1(1) - Creation of a statutory circular economy strategy

158. Section 1 of the Bill places a new statutory duty on Scottish Ministers to "prepare" a circular economy strategy. According to the Policy Memorandum, the strategy would—

- "Bring together legislative and non-legislative actions around the circular economy;
- Set out a clear indication of priority sectors and direction of travel for businesses and wider stakeholders; and
- Support the delivery of the vision and outcomes in other areas such as Scotland's Environment Strategy, the Biodiversity Strategy and Waste Route Map." ⁹⁸

159. There was support for the principle of legislating to mandate the creation of a strategy. ⁹⁹ Themes for consideration included—

- Justification for placing the strategy on a statutory footing; ¹⁰⁰
- Whether its purpose and outcome were sufficiently clearly defined; ¹⁰¹
- Whether it should replicate or more closely mirror the framework for setting targets, producing and refreshing a strategy and reporting on progress in the Climate Change (Scotland) Act 2009. ¹⁰²

Should the strategy be on a statutory footing

160. Making Things Last is the current Scottish Government strategy on a circular economy which was produced and has operated without statutory basis. ¹⁰³ However, some stakeholders questioned its effectiveness and its voluntary nature was identified as the primary reason for this. ¹⁰⁴

161. A legally-binding strategy was viewed as essential to—

- Mandate the creation of a long term vision by the Scottish Government; ¹⁰⁵
- Provide a single point of reference for all intended action to deliver a circular economy; ¹⁰⁶
- Ensure meaningful buy-in from across society. It would also enable collaboration amongst businesses, communities and the third sector to work with Government in reaching their ambitions. ¹⁰⁷
- Enabling investment through providing policy visibility; ¹⁰⁸ and
- Identifying actions for key sectors. ¹⁰⁹

162. Some questioned the necessity of a strategy on a statutory basis.¹¹⁰ We heard that funding existing programmes to enhance and promote a circular economy across sectors and industries could also have the desired effect.¹¹¹

Section 1(2) - Content of the strategy

163. Section 1(2) lists the content the strategy must contain. It was suggested this Section should also state some of the "other matters" in relation to the development of a circular economy on the face of the Bill. These included—

- Assessment of the international impact of Scotland's consumption;¹¹²
- Just transition principles;¹¹³ and
- Links to the targets (discussed in the [SECTION 6-7 CIRCULAR ECONOMY TARGETS](#) part of this report).¹¹⁴

164. We also heard views on other aspects of "other matters"—

- Education and behaviour change;
- The strategy must inspire business and investment confidence; and
- The strategy must account for local and geographical variations.

Assessments of the international impact of Scotland's consumption

165. We heard the strategy should have a global outlook and play a beneficial role in supporting the transition to a circular economy internationally.¹¹⁵ The strategy was viewed by stakeholders as an opportunity to accurately assess the impact of Scotland's consumption, which includes imported products and materials derived from complex global supply chains.¹¹⁶ Despite the impacts of Scotland's consumption being felt internationally, current climate targets, which are based on territorial emissions, do not account for this offshoring.
166. In its 2020 publication "The Environment Strategy for Scotland: Vision and Outcomes"¹¹⁷, the Scottish Government commits to "...gather evidence on the nature of Scotland's international environmental impact."¹¹⁸ It is not clear from the latest progress report on the strategy whether this step has been taken.¹¹⁹ It does however say a further consultation on the strategy will be published in early 2024.

Just transition principles

167. There was support for including a commitment to just transition principles in the Bill to ensure workers were not left behind in the journey to a more sustainable future. This included inserting wording to 'do no harm' with regards to Scotland's workforce and wider global impacts.¹²⁰

Education and behaviour change

168. Stakeholders said the strategy should support public understand of the meaning of a circular economy and individual's role in it through education and behaviour change.¹²¹ It was recognised that this would be a significant challenge.¹²²
169. Northern Ireland and Finland were both identified as examples of best practice in rolling out circular economy strategies with a strong emphasis on education to encourage behaviour change.¹²³
170. However, we also heard evidence on the risk of putting disproportionate expectations of individuals and consumers within the Bill in relation to behavioural change. Stakeholders told us the greater onus should be on businesses, producers and service providers if the strategy is to create truly transformational change.¹²⁴ For example, the Wellbeing Economy Alliance said—
- ” “Very little responsibility is put on businesses, especially the larger corporations that drive consumption, embed planned obsolescence in their products, and make a disproportionate impact on the nature and climate emergency.”¹²⁵
171. The Scottish Youth Parliament said the Bill—
- ” “...should not focus on penalising consumers. Instead, it should concentrate on ensuring businesses and producers are responsible for their waste and have sustainable products and services.”¹²⁶
172. One of the criticisms of the Finance and Public Administration Committee was that it considered the cost of education and communication programmes had been underestimated.¹²⁷ The Minister told us “I have committed to revisiting the numbers in the financial memorandum that the FPAC highlighted to me”.¹²⁸

Local and geographical needs

173. The pathways to a circular economy at local and regional level vary significantly. We were told the strategy must account for this to achieve equality of opportunity to participate in and collectively enjoy the financial and environmental benefits of a circular economy.¹²⁹ To achieve this, we heard the Scottish Government should engage with local communities and empower them with the resources required.¹³⁰ The operation of tool libraries, reuse hubs and other voluntary organisations were noted as having a particularly noticeable impact within local communities in enabling a 'sharing economy'.¹³¹ Opportunities to reuse and repair should be as accessible as recycling. We heard that at present, many people do not have somewhere nearby, or know of somewhere nearby, to reuse, share and recycle many products.

Inspiring business and investor confidence

174. Representatives of Scottish businesses said the strategy offered an opportunity to

clarify policy direction which would enable businesses to plan and invest in their infrastructure and practices.¹³² As part of our online engagement event with circular economy SMEs, we heard about the innovative ways businesses were implementing more sustainable and regenerative methods to support the transition to a circular economy. They told us the strategy provided an opportunity to support their growth and share best practice.¹³³ Scotland's enterprise agencies and the SNIB indicated they were ready to support businesses to realise their ambitions around the circular economy.¹³⁴

Section 1(3) - Desirable characteristics of a circular economy

175. Section 1(3) lists characteristics of a desirable economy which the Scottish Government must "have regard to" in preparing the strategy. It was questioned whether "have regard to" was sufficiently strong language.¹³⁵ In evidence, further suggestions for criteria in Section 1(3) were presented. These included—

- Support regeneration of natural systems and takes account of the "biological economy";¹³⁶
- Prioritise action at the top of the waste hierarchy; and
- Account for international responsibilities.

Prioritise action at the top of the waste hierarchy

176. Section 1(3) includes a range of characteristics of the circular economy the Scottish Government must consider in preparing the strategy.¹³⁷ We heard there should be more emphasis on actions further up the waste hierarchy, such as reducing consumption and promoting the reuse of materials.¹³⁸

177. Scottish Environment LINK proposed adding—

- ” (f) the production, distribution and end of life management of things is carried out in such a way as to avoid the leakage of materials into the environment,
- (g) polluting and harmful materials and chemicals, and materials which the production of which causes pollution are phased out,
- (h) the content of materials including harmful chemicals, is transparent and traceable to facilitate safe repurposing and reuse of goods and materials.”

178. Friends of the Earth Scotland suggested replacing "things" in s1(3)(e) with "goods, products, and materials".¹³⁹

179. The Minister told us that "reducing consumption of materials is the fundamental driver for the strategy and for the national targets" and that the waste hierarchy would be embedded in the strategy.¹⁴⁰

Account for international responsibilities

180. Stakeholders suggested Section 1(3) should include global considerations and the aim to 'do no harm'.¹⁴¹ A joint submission from international charities Scottish Catholic International Aid Fund (SCIAF) and Siembra Colombia also suggested this provision could also be strengthened by placing a requirement on Scottish Ministers to ensure the strategy "must have regard for the goal of promoting international realisation of human rights in supply chains".¹⁴²

Section 1(4) - Sectors and systems

181. We heard the strategy should be systems-wide if it was to be truly transformational.¹⁴³ Section 1(4) says in preparing the strategy and its objectives, the Scottish Ministers should give consideration to "sectors and systems" and how they may deliver a circular economy.¹⁴⁴ It does not state which sectors and systems must be covered by the strategy.
182. Some stakeholders were supportive of the strategy being underpinned by sector specific plans.¹⁴⁵ It would provide the clarity on the pathways for each sector and the challenges they faced in progress towards a circular economy recognising some industries would find transformation harder than others.¹⁴⁶
183. Sectors referenced in evidence included—
- **Construction;**¹⁴⁷ - Subject to annual variations, we heard construction accounts for a significant proportion of waste in the Scottish economy.¹⁴⁸ The Committee was concerned at the imbalance in the Bill between obligations on industry and individuals. The Minister undertook to consider this further.¹⁴⁹ The Minister said the Scottish Government considered construction a high priority in relation to the imposition of public waste reporting and committed to consider further evidence received by the Committee.¹⁵⁰ However, the latest draft of the Circular Economy and Waste Route Map reduces the specificity of what will be required of the construction industry and delays action when compared with the 2022 draft.¹⁵¹
 - **Soils**¹⁵² - Soil , we were told, is the second highest source of landfilled waste, but more effective circular use of this as a resource could lead to climate and environmental benefits.¹⁵³ Nourish Scotland said soil should be a "key pillar" of the Bill and Scottish Environment LINK suggested amendments to the Bill on soil.¹⁵⁴
 - **Fisheries, aquaculture and other marine sectors as well as sectors having significant impacts on the marine environment** - we heard concerns about the impact that microplastics or 'nurdles' were causing in coastal communities in Scotland.¹⁵⁵
 - **Agriculture;**¹⁵⁶

- **Food;** ¹⁵⁷
- **Retail;** ¹⁵⁸
- **Manufacturing;** ¹⁵⁹
- **Textiles;** ¹⁶⁰ and
- **Chemicals.** ¹⁶¹

184. The Scottish Government said that many of these sectors also operate within a wider "system", which was the rationale for the phrasing used in Section 1(4). ¹⁶² By looking at the system, regulations could target the wider supply chain and drive focus further up the waste hierarchy. ¹⁶³
185. The legislation requiring a comparable strategy for reaching Scotland's climate change emission targets includes a list of the sectors of the economy which must be covered. The Climate Change (Scotland) Act 2009 ¹⁶⁴ says the Scottish Government's target delivery document, the Climate Change Plan, must include specific chapters in relation to sectors of the economy and the emissions produced.
186. The most recent iteration of the Plan provides a list of the Scottish Government's priority sectors—
- ” “As has been recommended by a number of stakeholders, including the Advisory Group on Economic Recovery, the Decoupling Advisory Group and Scottish Environment Link, we will embed circular economy principles into our wider green recovery, prioritising areas with the biggest opportunities: construction; agriculture/food and drink; energy and renewables; procurement; skills and education; and plastics.” ¹⁶⁵
187. In March 2021, the Scottish Government wrote to the Session 5 Environment, Climate Change and Land Reform Committee and said, "Work is underway on the development of roadmaps for each of the priorities listed, which will be taken forward alongside the development of the 2025 Routemap." ¹⁶⁶
188. A draft routemap was produced for consultation in 2022 ¹⁶⁷ and then again in 2024. ¹⁶⁸ Neither mention the sector specific roadmaps for the priority areas listed by the Scottish Government.

Section 1(5) - Policy coherence

189. Section 1(5) indicates the strategy "must be prepared with a view to achieving consistency, so far as practicable, between the objectives and plans set out in the strategy and—
- the climate change plan prepared under Section 35 of the Climate Change (Scotland) Act 2009; ¹⁶⁹

- the environmental policy strategy prepared under Section 47 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021; ¹⁷⁰ and
 - any other strategy or plan which the Scottish Ministers consider to be relevant." ¹⁷¹
190. Stakeholders were supportive of this but it was also noted the circular economy strategy may have conflicting ambitions to other policies. ¹⁷² The hierarchy in such cases is not clear.
191. There was support for specific reference to the Climate Change Plan on the face of the Bill, noting the importance of coherence with wider net zero objectives. ¹⁷³
192. However, we also heard Section 1(5) needed to also reflect the cross-cutting nature of the circular economy by creating linkages across other strategies and policy areas. Suggestions included—
- **Scottish Biodiversity Strategy** ¹⁷⁴ - There was support for specific alignment with the biodiversity strategy.
 - **National Strategy for Economic Transformation and 'New Deal for Business'** ¹⁷⁵ - businesses said embedding economic principles would ensure they were at the heart of the Scottish Government's considerations around the strategy. Creating alignment was thought to help avoid unintended consequences.
 - **UK-wide developments** ¹⁷⁶ - such as Extended Producer Responsibility and an expected interoperable deposit return scheme.
193. The Committee is also of the view the strategy must align with the New Deal with Local Government – Verity House Agreement. ¹⁷⁷

Section 1(6) - Accounting for the strategy in policy making and legislation

194. We heard the phrase "have regard to" was weak, an alternative suggestion was "The Scottish Ministers must act in accordance with the circular economy strategy in making policies (including proposals for legislation) unless particular circumstances dictate otherwise." ¹⁷⁸

Section 2 - Consultation

195. Section 2 of the Bill says the Scottish Ministers must publish a draft strategy and consult with—
- such persons as they consider appropriate; and

- the general public.¹⁷⁹

196. There was support for consultation on the strategy.¹⁸⁰ It was thought stakeholder engagement should begin early in the policy formulation process, and continue once the strategy was in place to monitor the impacts from its implementation on a rolling basis.¹⁸¹
197. It was suggested the Bill needed to place more specific obligations on the Scottish Ministers to consult with industries and sectors as part of developing the strategy.¹⁸² This included looking beyond traditional waste management audiences, and including international stakeholders .¹⁸³

Section 3 - Publication and laying

198. Section 3(1) sets out conditions and procedures for publication of the strategy, including laying this in the Scottish Parliament. Section 3(2) states the requirement to publish a strategy in Section 3(1) "must be complied with before the end of the period of 2 years beginning with the day on which this Section comes into force".¹⁸⁴ However, the date on which this provision will come into force is not stipulated in the Bill and will be determined through regulations which are not subject to any parliamentary procedure.¹⁸⁵ This means there is no clear date by which the first strategy should be delivered.
199. We heard concerns from the UK Environmental Law Association that this should be expedited.¹⁸⁶
200. Furthermore, it is important that the Scottish Parliament has an opportunity to consider whether the strategy is capable of delivering the transformational change needed to transition to a circular economy. We note this is common practice for other statutory strategies such as the Climate Change Plan.¹⁸⁷

Section 4 - Review of the strategy

201. Section 4 of the Bill lays out duties for how the Scottish Government must review its strategy. Section 4(2) stipulates that the Scottish Government must revise its strategy at least every five years.¹⁸⁸
202. The provision of a five-year cycle for the review of the strategy, with the flexibility to refresh sooner if appropriate, was broadly accepted by stakeholders.¹⁸⁹ However, we heard the need to renew the strategy to reflect current economic and technological landscape must be balanced with the need for long-term certainty to allow confident industry investment.¹⁹⁰

Section 5 - Reporting on the strategy

203. Section 5 of the Bill sets out procedures for the Scottish Government to undertake in reporting progress on delivery of proposed actions in the circular economy strategy. Section 5(1) specifies that the Scottish Ministers must report "as soon as practicable" after the end of a reporting period. Section 5(3) sets the reporting deadline at 30 months.¹⁹¹ Stakeholders were supportive of regular reporting requirements¹⁹² with some suggesting this should happen annually.¹⁹³
204. Stakeholders were clear that a robust framework for monitoring and evaluation was needed.¹⁹⁴ It was proposed that this monitoring framework should include—
- Detail of how the strategy and associated actions were contributing to the targets proposed at Sections 6 and 7 of the Bill;¹⁹⁵
 - Clearly defined outcomes narrating actors responsible for delivery;¹⁹⁶
 - A suite of performance indicators that were evidence-based and established using a common methodology;¹⁹⁷ and
 - A strong focus on data collection to inform the ongoing design of the strategy into the future.¹⁹⁸
205. There were also strong calls for vigorous governance of the circular economy strategy provided by an independent oversight body.¹⁹⁹ For example, the Climate Change Committee is tasked with providing scrutiny of the Scottish Government's progress in meeting its climate change targets. There was support for a similar model to be deployed for the circular economy strategy. Scottish Environment LINK suggested the Scottish Government adopt a similar model of governance to that set out in the new Litter and Flytipping Strategy.²⁰⁰
206. The Scottish Government was of the view that the role and function being proposed were already being undertaken by Zero Waste Scotland and Environmental Standards Scotland. Zero Waste Scotland was classified as a public sector organisation last year and the Policy Memorandum accompanying the Bill says—
- ” "... our assumption is that any Scottish Government obligations, such as strategy or targets, set in this Bill would be likely to fall within the scope of [Environmental Standards Scotland]'s work." ²⁰¹

Conclusions and Recommendations - Circular Economy Strategy

Section 1(1)

207. **The Committee welcomes the principle of placing a strategy to achieve a circular economy on a statutory basis. However, delivery of the strategy will**

be vital. The strategy must tackle over-consumption, identify and prioritise system-wide approaches, and focus on the entire value chain. It must focus action and resources on measures further up the waste hierarchy than is currently the case. It must also ensure the burden of achieving this is not disproportionately applied to consumers. Producers must be accountable for the environmental impacts of the products they make. They should be encouraged to design and manufacturing products that are more repairable, reusable and recyclable.

208. The Committee recommends there should be a clearer statutory link between the strategy and the targets proposed under Sections 6-7 of the Bill.

Section 1(2)

209. It is important that the circular economy strategy be informed by best available evidence and the Committee recommends the Scottish Government reflect on how reference to data could strengthen the requirements of the strategy, with particular regard to Scotland's international carbon footprint. The Committee recommends the Scottish Government clarify the progress of its commitment in the 2020 publication "The Environment Strategy for Scotland: Vision and Outcomes" ²⁰² to "gather evidence on the nature of Scotland's international environmental impact". ²⁰³
210. The Committee recommends the Bill be amended at Section 1(2) to include a requirement for the strategy to state how it has applied Just Transition principles. We further recommend Section 1(3) should include adherence to just transition principles as a desirable characteristic of a circular economy.
211. The Committee recommends amendments are made to Section 1(2) to include a requirement for the strategy to include detail on how it will encourage behaviour change. We emphasise the importance of education and awareness-raising and believe these must be adequately resourced.
212. The Committee also recommends the Scottish Government consider the proposals made for content of the strategy made to us in evidence and in particular that —
- It should inspire business and investment confidence;
 - It should focus on actions further up the waste hierarchy;
 - It should account for and respond to local and geographical needs and variations.

Section 1(3)

213. The Committee believes there are a number of other characteristics desirable in a circular economy and recommends the Scottish Government

consider the proposals made by stakeholders to include reference to international impact and environmental impact.

Section 1(4)

214. **The Committee notes the Scottish Government's view that the phrase "sectors and systems" provides flexibility to work in a strategic way across supply chains. However, we recommend that the Bill should include a set of criteria for identifying priority sectors and systems. These sectors and systems should also link to the targets proposed at Sections 6-7 of the Bill.**
215. **The Committee notes the Scottish Government has already produced a list of priority sectors for the circular economy in its Climate Change Plan update.²⁰⁴ The Committee recommends the Scottish Government clarify the status of its commitment to produce sector-specific roadmaps for the industries it cited as priorities in its response to recommendations on the previous Climate Change Plan update. The Scottish Government said this would take place alongside its work to develop a Waste Route Map.**

Section 1(5)

216. **The Committee welcomes the requirement for the strategy to align with the Climate Change Plan and the Environmental Policy Strategy prepared under Section 47 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. The Committee notes calls for alignment with other Scottish Government strategies and policies, and recommends the Scottish Government consider these.**
217. **The Committee recommends the Scottish Government clarify the phrase "so far as is practicable" in Section 1(5). It is not clear how priority will be determined where two strategies have potentially opposing aims. We also recommend that the Scottish Government clarify whether other strategies, including those above, will be required to align with future Circular Economy Strategies.**

Section 1(6)

218. **The Committee recommends the Scottish Government reflect on whether having "regard" to the circular economy strategy when making policy and legislation is sufficient to ensure its policies and proposals are given due consideration and influence.**

Section 2

219. **We do not believe Section 2 of the Bill as drafted will place suitable obligations on the Scottish Government to undertake the level of consultation required to ensure the strategy is fit for purpose. This ambiguity, particularly on who must be consulted, should be remedied at Stage 2.**

Section 3

220. **The Committee is of the view that progress towards a circular economy must continue at pace. The Committee recommends the Scottish Government clarify when it intends to produce the first circular economy strategy proposed in the Bill.**
221. **The Committee believes there should be a robust model of governance for the circular economy strategy and that Parliamentary scrutiny can support this. We recommend the Scottish Government clarify how it intends to afford Parliament the opportunity to scrutinise draft circular economy strategies.**

Section 4

222. **The Committee believes the proposals for review and revisions of the strategy are appropriate.**

Section 5

223. **The Committee believes the circular economy strategy should have regular and meaningful reporting requirements. We call on the Scottish Government to clarify its reasoning for a 30 month reporting period.**

Sections 6-7 - Circular economy targets

224. Provisions in Section 6 and 7 of the Bill confer enabling powers to the Scottish Ministers to create statutory circular economy targets in secondary legislation. Future regulations to establish targets are subject to the affirmative procedure.²⁰⁵ The Policy Memorandum says the introduction of statutory targets "provides a strong focus for action and certainty in direction of travel across policy".²⁰⁶

Section 6 - Development of statutory targets

Section 6(1) - Imposition of statutory targets

225. Section 6(1) of the Bill states that "the Scottish Ministers may by regulations make provision imposing targets on the Scottish Ministers relating to developing a circular economy".²⁰⁷ The draft 2030 Routemap states—

” “From 2025, we will set new circular economy targets to at least 2030. New targets may include consumption, reducing waste, reuse and recycling locally and nationally, and consider both material-specific and emission-based targets. In addition, a monitoring and indicator framework will be developed over 2024/25. This will allow more holistic tracking of Scotland’s consumption levels and wider measures of circularity”.

226. There was support among stakeholders for the introduction of statutory circular economy targets.²⁰⁸ Targets were also viewed as an opportunity to drive behaviour change further up the waste hierarchy.²⁰⁹ However, some stakeholders expressed

concerns about additional requirements placed on businesses and local authorities from binding targets and called for consultation to mitigate against unintended consequences.²¹⁰

227. We heard that targets in isolation would not achieve desired outcomes. It was suggested targets should be aligned with and specifically referenced in the strategy to be created at section 1.²¹¹

A duty to set targets

228. Section 6(1) states Ministers "may" make regulations to set targets. The Delegated Powers and Law Reform Committee noted that this is a discretionary power and that this approach differed to other climate change targets primary legislation.²¹² In response to queries from that Committee, the Minister said—

” Framing this as a power rather than a duty allows for a sufficient degree of flexibility to take account the range of factors that would need to be considered in advance of setting a particular target.”²¹³

229. The draft Circular Economy and Waste Route Map 2030 states it is a "priority action" to set new circular economy targets from 2025.²¹⁴
230. There was support for strengthening this Section of the Bill to make Section 6(1) a requirement.²¹⁵

Targets on the face of the Bill

231. A theme in several submissions was that targets should be included on the face of the Bill.²¹⁶ The Bill currently allows Ministers to set targets through secondary legislation. There was support for this approach from organisations such as SEPA²¹⁷ and Zero Waste Scotland²¹⁸ who said it would allow for further research and engagement to be undertaken to avoid unintended consequences.
232. This approach differs from that used to set emissions reduction targets. The Minister told us the context in which those targets were included on the face of the Climate Change (Scotland) Act 2009 was different. One element of this was those targets only involved looking at one metric - carbon emissions. She suggested circular economy targets could involve a number of metrics such as "consumption targets and sectoral targets".²¹⁹ She also referred to the need to ensure actions to achieve targets were within devolved competence.²²⁰

What should the targets be?

233. Stakeholders told us rigorous and effective targets would be—
- Focused at the top of the waste hierarchy²²¹ ;
 - Specific, with measurable timescales and indicators;²²²

- Realistic; in order for them to be achievable. ²²³
- Cognisant of the international nature of supply chains, and account for materials imported from beyond our borders; ²²⁴ and
- In alignment with and incorporate existing targets ²²⁵ and those in development ²²⁶.

234. Suggestions for specific targets included—

- National reuse and repair targets; ²²⁷
- Food waste; ²²⁸ and
- Carbon and material-based consumption reduction targets. ²²⁹

Re-use targets

235. Circular Communities Scotland advocated for a re-use target, noting the application and operation of such a target in Flanders, Belgium. ²³⁰ The draft Circular Economy and Waste Route Map to 2030 includes a specific commitment to “Review the feasibility of setting reuse targets (from 2025)”. ²³¹

Consumption-based carbon emission reduction targets

236. The Minister said there is currently no consensus on methodologies or data around consumption targets and further work would be required “to decide what the targets would be, how they would be effective and fit within our devolved powers and how we would measure and report on them”. ²³² A number of stakeholders also pointed to the lack of available and reliable data as justification for leaving the setting of targets to secondary legislation. ²³³

237. However, some circular economy targets could, like climate change targets, be based on carbon emissions. We heard particularly strong support for consumption-based carbon reduction targets to be written into the legislation. ²³⁴ The Scottish Government already has a process for measuring and reporting on these as required by Section 37 of the Climate Change (Scotland) Act 2009 and publishes annual reports under this legislation using this data. ²³⁵ Friends of the Earth Scotland were supportive of starting with a familiar metric. ²³⁶ They noted this would also address the problem of ‘offshoring’ as a means to hit targets as it would require measurement of the carbon footprint of imports. ²³⁷ This was called for in a joint letter signed by 24 environmental NGOs. ²³⁸

238. Zero Waste Scotland highlighted the importance of measuring the carbon intensity of materials diverted from waste as well as the physical weight. ²³⁹ The submissions from Friends of the Earth Scotland and from SCIAF and Siembra Colombia suggested a consumption based carbon reduction target could be a

reduction in Scotland's global carbon footprint to net zero by 2045. An interim target of 75% by 2030, based on 1998 levels was also suggested.²⁴⁰ Aberdeenshire Council said that introducing consumption-based targets would also require national communications to support it, as the public are familiar with the need for recycling but less so with the need to reduce consumption.²⁴¹

Material consumption reduction targets

239. Targets for material-based consumption reduction were also proposed and we heard of international examples of statutory material-based targets.²⁴² Scottish Environment LINK said the reliability of material-based data was improving.²⁴³
240. It was suggested such a target could be reduction in material consumption to 8 tonnes per person per year by 2045 (57% reduction), with an interim target of 13 tonnes per person per year (30% reduction) by 2030, based on 2017 levels.²⁴⁴

Section 6(2) - Considerations when setting the targets

241. Like Section 1(3), Section 6(2) lists a set of characteristics desirable in a circular economy which the Scottish Government "must have regard to" in setting the targets. It was questioned whether "have regard to" was sufficiently strong language.²⁴⁵ Action to Protect Rural Scotland suggested this should be amended to "....must seek to achieve an economy in which....".²⁴⁶
242. As with Section 1(3) it was suggested this provision could also be strengthened by placing a requirement on Scottish Ministers to consider international impacts of the Scottish economy and just transition principles.²⁴⁷

Section 6(4) - Setting targets in secondary legislation

243. Section 6(1) allows Ministers to set targets for a circular economy in regulations subject to the affirmative procedure.
244. We explored whether the Scottish Government had considered the use of a super-affirmative procedure for setting targets. The Minister said this was not the intention.²⁴⁸
245. Despite the limitations in comparison to primary legislation, super-affirmative procedure allows for more time for consideration of instruments than the affirmative procedure. It is possible as suggested above that consumption based emission targets could be set. If these were set through secondary legislation, it is unclear how they might interact with existing carbon emission reduction targets. This interaction would need to be explored by Parliament in coming to conclusions on proposed regulations. There are also a questions over the parity of targets set using different legislative procedures.

Section 6(5) - Consultation on statutory targets

246. Section 6(5) sets out that before introducing secondary legislation establishing statutory targets, the Scottish Ministers must consult with—
- "such persons as they consider appropriate; and
 - the general public." ²⁴⁹
247. Many stakeholders emphasised the importance of extensive and meaningful consultation to help shape targets. ²⁵⁰ Stakeholders that commented specifically on the provision of a consultation process set out in Section 6 of the Bill were content with this requirement. ²⁵¹
248. When setting climate change targets under the Climate Change (Scotland) Act 2009, Ministers must seek and act upon advice from the Climate Change Committee. The Act also mandates a role for Parliament in approving a draft of the strategy on policies and proposals to meet the targets. The Circular Economy (Scotland) Bill does not include such detail on consultation and scrutiny processes for the targets or the strategy.

Section 7 - Monitoring of targets

249. Section 7 provides the Scottish Ministers with a regulation-making power to establish a process for how targets will be monitored and progress will be reported. Section 7(1) states that regulations introduced relating to statutory targets must also set out arrangements for—
- monitoring progress towards achieving targets; and
 - reporting on progress towards achieving targets. ²⁵²
250. The Policy Memorandum says that the Scottish Government will, prior to the introduction of targets, consult on and develop a monitoring and indicators framework to supplement a regime of statutory targets. ²⁵³ The Scottish Government says the framework will allow for a more effective tracking of the economic and environmental impacts of targets. ²⁵⁴
251. Stakeholders broadly welcomed the general principles of monitoring requirements for statutory targets ²⁵⁵ and the principle of creating a robust monitoring framework to underpin it. ²⁵⁶ However, a number of witnesses stressed that it was important the framework included economic, social and environmental indicators to allow stakeholders and the public to transparently understand if the targets were being achieved. ²⁵⁷

Enforcement

252. Some respondents to the call for views noted the importance of effective enforcement in relation to targets. ²⁵⁸ However, the UK Environmental Law Association noted that there remained practical questions about what would be the

consequences of failing to meet the targets.²⁵⁹

Conclusions and Recommendations - Circular economy targets

Section 6(1)

253. We are supportive in principle of statutory circular economy targets. We recognise the Scottish Government's intention to devise targets and to provide for these in secondary legislation. However, setting targets should be an obligation, not an option. Given the importance of statutory targets as a mechanism for enacting transformative change, we recommend amendments are made at Stage 2 to Section 6(1) to specify the Scottish Ministers "must", rather than "may" create targets. The Committee further recommends timescales for the introduction of targets, proportionate with the urgency of the issue, are specified.
254. The Committee understands the need for a robust approach to setting targets and supports rigour. We also recognise the imperative for action and results on reducing carbon emissions and living more sustainably. We have been presented with suggestions for targets which already align with existing reporting requirements. The Committee recommends the Scottish Government consider the proposals which have been made to the Committee for specific targets. We also request clarification of which public environmental bodies will be involved in the target-setting process.

Section 6(4)

255. The Committee believes regulations to introduce statutory targets should be subject to an enhanced form of parliamentary scrutiny and recommends provision is made at Stage 2 for use of a super-affirmative procedure for regulations setting the initial targets under this Section of the Bill.

Section 7

256. The Committee welcomes the intention to monitor and report on progress towards meeting targets, as well as the proposal for a monitoring framework aligned with the Environment Strategy framework highlighted in the Policy Memorandum.
257. However, these details are not on the face of the Bill and this Section lacks specificity. Section 7(2) does not specify the reporting period. Section 7(3) says the report should include "any action" Ministers will take to achieve targets which have not been achieved. This does not mandate action, but rather requires reporting *if* action is taken. The Committee recommends this Section is revised to include more certainly and mandate action to meet targets that have not been achieved.

Section 8 - Restrictions on the disposal of unsold consumer goods

258. Section 8 modifies the Climate Change (Scotland) Act 2009 by inserting Section 78A which sets out regulation-making powers to restrict the disposal of unsold consumer goods.²⁶⁰ Regulations made under Section 8(2) would be subject to the affirmative procedure.²⁶¹ The Delegated Powers and Law Reform Committee accepted this in principle as it was clear from the provisions what the power could be used to do.²⁶²
259. The Policy Memorandum says that future regulations will be brought forward after additional research is undertaken to understand the flow of unsold consumer goods. It also says that targeted products will be subject to stakeholder engagement and detailed impact assessments. Through this process, the Scottish Government says it will establish definitions to be used within regulations, including any details around exemptions and enforcement.²⁶³
260. There was support for this measure. We heard it could increase reuse, disincentivise over-production, and produce societal benefits of redistribution (for example food and hygiene products).²⁶⁴
261. Those who disagreed with the proposals highlighted potential business impacts or the potential for unintended consequences (such as exporting goods abroad).²⁶⁵ Respondents stressed the importance of requirements feeding back into business practices to influence stock management and product design, and avoid overproduction of good or disposal routes such as as charities being flooded with unwanted goods creating a financial burden.²⁶⁶ Some respondents raised issues such as product safety and the re-circulation and use of returned goods.²⁶⁷

Section 8(2) - Proposed Section 78A(1) Imposition of restrictions

262. Section 78A(1) provides regulation-making powers for the Scottish Ministers to introduce restrictions on unsold consumer goods.²⁶⁸ These would be subject to the affirmative procedure.

Benefits

263. The following benefits of potential restrictions on the disposal of unsold goods were suggested to us—
- They could encourage sustainable business practices and address problems of overproduction;²⁶⁹
 - I They were cost effective for businesses, as they could capture more value in materials and products by extending their lifecycles and avoid unnecessary cost of overproduction through better stock management.²⁷⁰
 - New restrictions on unsold goods could place a greater emphasis on

regenerating products, helping to kick start the market conditions for a thriving redistribution sector to emerge in Scotland.²⁷¹

264. Some stakeholders highlighted examples of reluctance to adopt more circular business practices and there was support for tighter requirements.²⁷² Anti-waste legislation in France was presented as an example of good practice and proof that these measures can be successful.²⁷³ However, representatives of Scottish businesses said that companies were already acting to avoid unnecessary amounts of surplus products or to destroy materials²⁷⁴ and that unsold goods only constitute a small proportion of the overall amount of goods flowing within the economy.²⁷⁵

Social benefits

265. There are also potential social benefits such as the redistribution of certain products or necessities such as food or hygiene products.²⁷⁶ For example, on our visit to the Edinburgh Remakery, we heard how it gifts a proportion of repurposed IT equipment to those facing digital poverty and social isolation.²⁷⁷ The Bill was seen as an opportunity to expand these types of initiatives across Scotland. In evidence to the Committee, the Minister said there would be further support for such organisations in the next draft of the Waste Route Map.²⁷⁸ However, the draft to 2030 does not contain specific provision for such organisations.²⁷⁹

Implications for charities and the third sector

266. There was a clear desire for the Bill to enhance partnerships between the private and charitable sectors.²⁸⁰ Charitable and distribution organisations were positive about their potential role²⁸¹ but noted pressures such as capacity issues, additional costs for transportation and liability for the disposal of unsaleable stock.²⁸² It was also suggested regulations should not have an adverse effect on already positive enterprises and partnerships.²⁸³

View from businesses

267. Business and retail representatives said there was uncertainty within the sector about proposed restrictions and how they might lead to unintended consequences for businesses, including additional costs.²⁸⁴

Section 8(2) - Proposed Section 78A(2) - Definition of "consumer goods"

268. Section 78A(2) defines "consumer goods" as "goods intended to be purchased, used or consumed by a consumer."²⁸⁵ "Consumer" is later defined at proposed Section 78A(4) as—

- An individual who i) “purchases, uses or receives goods or services which are supplied in the course of a business carried on by the person supplying them”, and (ii) is “not purchasing, using or receiving the goods or services wholly or mainly in the course of a business carried on by the individual”; or
- A business “which purchases, uses or receives goods or services which are supplied in the course of a business carried on by the person supplying them.”²⁸⁶

269. There were some concerns about the ambiguity of this wording and the need for the Scottish Government to clarify what might fall within the scope of this provision.²⁸⁷ Business representatives raised concerns about the broad definition and called on the Scottish Government to clarify what was potentially within the scope of future regulations.²⁸⁸ The Scottish Retail Consortium said the current interpretations could “cover any item sold in Scotland” and questioned how the terms would be framed and caveated.²⁸⁹ Conversely, there was support for having a broad definition of consumer goods on the face of the Bill.²⁹⁰
270. The focus on “consumer” goods was also thought to focus too readily on the end of the product life-cycle and we heard calls for restrictions to be extended across all links of the supply chain.²⁹¹
271. The Minister clarified in her evidence to the Committee that the intention would be for regulations to be targeted at durable goods only and it was not the intention to use these powers to restrict the disposal of unsold food.²⁹²
272. The Scottish Government has not specified in the Policy Memorandum how it would use its enabling powers. In correspondence the Minister told us, “...any initial SSIs under this power would focus on those products with greatest environmental impact”.²⁹³ The draft 2030 Routemap says implementation of the power will “be built on further research and co-design with stakeholders and businesses”²⁹⁴. It notes the goods identified as priority in French legislation (where rules have been imposed for clothing, cosmetics, hygiene products and electrical items) and anticipates a similar approach. It continues “We will commission research in 2024 into these and other potential products, to inform consultation on regulations in 2026.”²⁹⁵

What should be covered by the definition of unsold goods

273. Evidence suggested that the goods with the biggest life cycle impact should be prioritised.²⁹⁶ Stakeholders also made specific suggestions for goods to be targeted in future regulations—
- Construction materials;²⁹⁷
 - Textiles;²⁹⁸
 - Electronic and IT equipment;²⁹⁹

- Household furniture; ³⁰⁰ and
- Food. ³⁰¹

Construction materials

274. The construction industry makes a disproportionate contribution to Scotland's waste, accounting for 50% of the total. ³⁰² The UK Research and Innovation Interdisciplinary Circular Economy Centre for Mineral-Based Construction Materials explained—

” "Construction contractors often order a buffer stock for building projects, to ensure they have contingency materials if they are needed. If additional regulation is introduced to prevent to disposal of perfectly useable goods, in this case 'unsold consumer goods' then there should be consideration given to 'unused materials' also". ³⁰³

Textiles

275. Zero Waste Scotland said circular economy measures based on lifecycle impacts should be prioritised. They said "Textiles make up only 4 per cent of the household waste stream by weight, but 34 per cent by carbon. That is what we need to be addressing." ³⁰⁴

276. The Committee heard about the problem of unsold textiles being exported for disposal. Circular Communities Scotland said "There is a clothing mountain in the Atacama Desert that is visible from space, and we do not want to add to it." ³⁰⁵ SEPA noted that significant volumes of unsold and second-hand clothing is shipped to African countries from the EU. ³⁰⁶

Food

277. We considered whether food could be subject to restrictions on the disposal of unsold goods. We heard of international successes with food redistribution, in particular in France, and the significant carbon savings potential of avoiding food waste. ³⁰⁷

278. In its consultation on the Bill, the Scottish Government sought views on "Proposal 4: Measures to ban the destruction of unsold **durable** goods".^v ³⁰⁸ In 86% of individual responses, and 75% of responses from organisations, respondents agreed that the Scottish Government should have powers to ban the destruction of unsold durable goods. The consultation analysis said "Food, furniture and products containing rare materials each received around 5% of suggestions as product categories requiring prioritisation". ³⁰⁹ On exemptions, the analysis notes "...food products that had gone beyond their "use by" date and was [sic] no longer edible for human consumption was highlighted by 7% of responses for potential exclusion from a ban on the destruction of unsold goods." ³¹⁰

279. In the Bill, the proposed s78A refers to "unsold consumer goods" and defines these as "goods intended to be purchased, used or consumed by a consumer" without reference to durability.
280. In evidence to the Committee, the Minister said, "One of the things that we considered in the consultation was whether to apply those regulations to food, but we decided not to do that because food businesses are already doing quite a lot in that space, so we felt that legislation would not be necessary." ³¹¹
281. She said that "the description of "consumer goods" is intended to be used in relation to durable goods, not perishable goods". ³¹² The Minister also said she had written to stakeholders to clarify that.
282. She later stated "...Section 8, on the disposal of unsold consumer goods, does not apply to food and perishable goods". ³¹³ She said—
- ” “The model that we are examining is the one that applies in France, where rules have been imposed for electronics, textiles, hygiene products and cosmetics. That is the model that we will consider, although we will do a full consultation before we implement it." ³¹⁴
283. However, the Bill, Policy Memorandum and the Explanatory Notes do not make reference to food or any other goods, being exempt. Indeed, the Policy Memorandum says there will be research, engagement and consultation to inform "...details of any exemptions...". ³¹⁵ This also appears to contradict her earlier assertion that "...any initial SSIs under this power would focus on those products with greatest environmental impact". ³¹⁶ Food waste is estimated to represent 6% of Scotland's total carbon footprint. ³¹⁷
284. In oral evidence and written submissions received by the Committee, food was highlighted as a key area both in relation to environmental impact, building on existing initiatives, and potential social benefits. ³¹⁸ Scotland currently has a target to reduce food waste by 33% against a 2013 baseline. The Strategic Environmental Assessment accompanying the draft 2030 Route Map says of this target—
- ” “The latest Scottish food waste data estimate for 2021...suggests that the scale of the problem has increased in Scotland over the past decade. In comparison to the 2013 baseline, in 2021 there was a total 2% per capita increase and an overall 5% increase in the volume of food wasted." ³¹⁹
285. This suggests leaving this matter to voluntary measures is not having the desired effect, regardless of whether, as the Minister said, "...food businesses are already doing quite a lot in that space". ³²⁰
286. There was also opposition to applying the powers under this provision to food. ³²¹ The Scottish Retail Consortium raised concerns about the potential application of restrictions to food waste, noting that charities may not have the capacity to store certain chilled or frozen products. ³²²

Section 8(2) - Proposed Section 78A(3) - Definition of "unsold"

287. Section 78A(3) of the Bill is used to provide a definition of what is considered to be "unsold". The Bill says that "consumer goods are "unsold" if they have not been sold to, or have been returned by, a consumer." ³²³ Section 78A(5)(c) provides the Scottish Ministers with powers to set out further details about what would constitute "unsold" goods within the scope of individual regulations. ³²⁴
288. Some thought the wording used in relation to Section 78A(3) was unclear and called on the Scottish Government to provide further clarification about what would fall within this definition. ³²⁵ The UK Research and Innovation Interdisciplinary Centre for Circular Chemical Economy said—

” “Every item will be “unsold” until a customer wishes to purchase them. At which point in time does the provision establish that a company becomes liable to deal with the unsold good in specific ways? Additionally, there might be a need to differentiate between goods and how different products can be safely reused, recycled, or refurbished and those that must be disposed of responsibly is crucial.”

Section 8(2) - Proposed Section 78A(4) Definition of "Consumer"

289. Section 78A(4) provides a definition of "consumer" for the purposes of the Bill. Under these provisions, a consumer is considered to be—
- An individual who i) “purchases, uses or receives goods or services which are supplied in the course of a business carried on by the person supplying them”, and (ii) is “not purchasing, using or receiving the goods or services wholly or mainly in the course of a business carried on by the individual”; or
 - A business "which purchases, uses or receives goods or services which are supplied in the course of a business carried on by the person supplying them." ³²⁶
290. The Society of Chief Officers of Trading Standards in Scotland noted that the definition of consumer was similar to the wording used in the Consumer Scotland Act 2020. They questioned why the phrase “which is no larger than a small business” set out in the 2020 Act was omitted from the Bill. ³²⁷
291. The focus on "consumer" goods was also thought to focus too readily on the end of the product lifecycle and we heard calls for restrictions to be extended across all links of the supply chain. ³²⁸ The Committee notes however that the Bill does not appear to explicitly require the consumer to be the end-consumer or user of goods.

Section 8(2) - Proposed Section 78A(5) regulation-making provisions

292. Section 78A(5) lists the potential content that regulations "may" have. These are—

- Details of persons required to comply with prohibitions or restrictions;
- Meanings of "disposal" and "unsold" in the context of future regulations;
- Exemptions from the regulations; and
- The designation of an enforcement authority and details of how their role will be undertaken ³²⁹.

Section 8(2) - Proposed Section 78A (5)(b) Definition of 'disposal'

293. A number of stakeholders called for greater clarity on what would fall within the scope of this provision. ³³⁰ We also heard about how restrictions must avoid exporting waste as a form of disposal. ³³¹ The Charity Retail Association called for clarity on what would be expected from charity and third sector organisations in disposing of unsaleable goods they received. ³³²

Section 8(2) - Proposed Section 78A(5)(d) Exemptions

294. Consumer Scotland said there would be “challenges in achieving the correct balance between maximising reuse of products and raw materials while ensuring that safety and acceptable product quality is retained”, and that “Where goods are unsafe, counterfeit, have been subject to recall procedures or are otherwise unfit for consumption it is important that they do not enter the supply chain. However, where possible, value may be extracted from their components”. ³³³ It encouraged close consultation with trading standards bodies and the UK Office for Product Safety and Standards in the development of detailed proposals.

295. We heard there were considerations over the handling of some types of unsold goods such as contamination, hygiene, legal or fire risk, and electrical or chemical safety. ³³⁴ For example, a representative of the Scottish Retail Consortium said mouldy clothing would not be appropriate for resale and should be recycled instead. ³³⁵ Similarly the Resources Management Association Scotland raised safety concerns in relation to chemicals and Persistent Organic Pollutants (POPs). They said there was a need to ensure that when recirculating goods, the skills and systems are in place to segregate materials which contain POPs. ³³⁶

296. Submissions suggested that the negative impacts of restrictions would be most acutely felt by small and medium sized enterprises (SMEs) who would face particular difficulties with the costs of complying fully with restrictions due to a lack of administrative capacity or infrastructure. ³³⁷ The importance of support and guidance for SMEs was emphasised. ³³⁸

297. The Minister said it was "... possible to draft regulations so that they target the

businesses that have the most environmental impact, and that is the intention".³³⁹
She said—

” "The intention is that we cover larger businesses. It is all about the significance of the impact and about proportional implementation. Where such measures have been implemented, they have concerned large companies that produce significant amounts of goods. The bill is not at all intended to target small or medium-sized enterprises." ³⁴⁰

Section 8(2) - Proposed Section 78A(6) Enforcement

298. Section 78A(6) sets out that provisions about enforcement under subsection 5(f) may include provision—

- "enabling functions of the enforcement authority to be carried out on its behalf by persons authorised in accordance with the regulations;
- about the keeping of records and their production to the enforcement authority;
- about offences in relation to failures to comply with requirements in the regulations; and
- for the giving of notices by or on behalf of the enforcement authority offering a person the opportunity of discharging any liability to conviction for an offence under the regulations by payment of a fixed penalty." ³⁴¹

299. The Financial Memorandum estimates the cost of monitoring, based on three investigations per year, to be around £30,000. It states, "A more proactive regulatory regime, including inspecting and auditing practice, would cost around £200,000 per year." ³⁴² Some stakeholders told us that if regulations were to be successful they must be robustly enforced. This included providing the relevant authorities with the necessary tools and resources to effectively monitor compliance and take enforcement action where appropriate. ³⁴³ However, the Federation of Small Businesses said a light touch to enforcement, focusing on compliance, not penalty, should be adopted. ³⁴⁴

300. SEPA told us that they had not held discussions with the Scottish Government about becoming the enforcement authority for these provisions. ³⁴⁵ They said "the level of proactive and reactive work would depend on the resources available for this new duty. There is no obvious mechanism for cost recovery so this work would most likely be funded from SEPA's Grant in Aid settlement." ³⁴⁶ SEPA said this meant that in practice they would need intelligence from the public, whistleblowers and the media to support their investigatory work. ³⁴⁷

Section 8(2) - Proposed Section 78A(7) Consultation

301. Section 78A(7) sets out that the Scottish Ministers must consult on any future

regulations with "such persons as they consider appropriate." ³⁴⁸

302. Evidence emphasised the importance of early engagement with business to help shape future regulations and make sure they were not overly burdensome. ³⁴⁹ Regulations also needed to be underpinned by robust data and guidance that assessed the impacts of proposed measures.
303. It was noted that the Scottish Government must consult with the charitable and third sectors on future regulations to ensure they were not creating unintended consequences. Representatives of charitable organisations told us that consultation with the charitable sector was important to ensure the Scottish Government can "understand their needs and their capacity to accept surplus product." ³⁵⁰

Disposal of unsold goods and the UK Internal Market Act 2020

304. The Scottish Government told us they believed regulations on disposal of unsold goods could be drafted so as not to require an exemption from the Internal Market Act , but stressed this was subject to the types of good and restrictions subject to regulations. ³⁵¹ While the Committee acknowledges there have been discussions at official and Ministerial level about the provisions of the Bill through the Resource and Waste Common Framework, we are concerned there had been no engagement with or advice sought from the Office for the Internal Market on the Bill. ³⁵²

Conclusions and Recommendations - Restrictions on the disposal of unsold consumer goods

305. **We are supportive of Section 8 of the Bill in principle. Clearly, it is in nobody's best interests for perfectly reusable materials and products to be disposed of rather than redistributed or repurposed. Restrictions could be an effective way of reinforcing measures that many businesses are already putting in place to prevent wastage while also delivering economic and social benefits.**
306. **The Committee recommends any regulations or actions taken under this provision should be accompanied by detailed guidance for all organisations potentially involved. These should be developed in consultation with them.**
307. **The transition to a circular economy must put communities at its heart. To that end, we were enthused by the social enterprises and charities from the reuse and repair sectors leading the way in tackling consumption, and encouraging more sustainable ways of living. It was encouraging to hear of the impact of these organisations in their local areas, and their ambitions to increase their reach in the future. This work should be supported and we call on the Scottish Government to use the circular economy strategy to**

create the conditions and funding mechanisms to allow these organisations to thrive and encourage others to follow their lead.

Section 8(2) - Proposed Section 78A(1)

308. **The Scottish Government has said it will undertake research, engagement and consultation in creating regulations under this provision. It has also said that it anticipates reflecting international practice in prioritising the types of goods to be subject to regulations. The Committee recommends the Scottish Government include in the Bill a commitment to prioritising use of the regulation-making powers based on criteria such as the potential lifecycle carbon intensity of goods and social and environmental impacts at home and abroad.**
309. **The Committee is content with the use of affirmative procedure for future regulations under Section 8(2). However, the Committee requests the Scottish Government commits to sharing an early draft of regulations and any supporting analysis before formally laying the instrument in Parliament.**

Section 8(2) - Proposed Section 78A(2-4)

310. **It is not clear to the Committee why the Scottish Government has already decided food will not be subject to a form of ban on the destruction of unsold goods. The Committee recommends the Scottish Government clarify the basis for its intention not to use regulations to restrict the destruction of unsold food.**

Section 8(2) - Proposed Section 78A(5)

311. **We are conscious that proposed restrictions may impose additional burdens on businesses and in particular SMEs. The Minister said measures are only intended to apply to larger businesses with the capabilities and resources to absorb these additional responsibilities. We therefore call on the Scottish Government to ensure this issue is explored in its research, engagement and consultation in developing regulations. We also call on the Scottish Government to clarify how it would define a 'larger business' under this provision.**
312. **It is not clear why "consumer" is defined differently than in the Consumer Scotland Act 2020 and the Committee asks the Scottish Government to clarify the reason for this difference.**
313. **The Committee also recommends the Scottish Government must produce detailed guidance for businesses expected to comply with restrictions on the disposal of unsold goods. This guidance should also be developed in consultation with affected stakeholders and be incorporated into the consultation requirements in the proposed Section 78A(7).**

Section 8(2) - Proposed Section 78A(5)(b)

314. **Regulations introduced under these powers should not incentivise the exporting of waste in order to avoid domestic restrictions on disposal. The Committee recommends that criteria for making regulations should be expanded to include a requirement that regulations should not cause the exporting of goods for disposal.**

Section 8(2) - Proposed Section 78A(6)

315. **The Committee recommends SEPA must be provided with suitable resources to undertake new enforcement duties and seeks assurances from the Scottish Government that additional capital and revenue funding will be made available for SEPA to undertake these and other new enforcement duties in the Bill.**

Section 8(2) - Proposed Section 78A(7)

316. **Without proper engagement, the Scottish Government risks undermining its ambitions around unsold goods by not securing the confidence of businesses. It is therefore crucial that the Scottish Government listen to their concerns and work with them to ascertain how best to ensure regulations operated effectively in practice. To that end, we are supportive of proposals for amendments to Section 78A(7) to apply a specific duty on Scottish Ministers to consult with businesses, retailers and charities, in addition to any other persons it deems appropriate when drafting future regulations. This consultation should be required to include assessment of the following—**
- **Product safety (for example with Office for Product Safety and Standards and Consumer Scotland);**
 - **Chemical regulation requirements; and**
 - **Financial or other support requirements for organisations engaged in reuse and redistribution such as third sector or community groups.**

Section 9 - Charges for single-use items

317. **Section 9 of the Bill inserts Section 87A into the Climate Change (Scotland) Act 2009. This gives the Scottish Ministers powers to set additional charges for single-use items. Section 87A(2) states that regulations made under this Section may in particular include provision for aspects such as—**
- **The circumstances and suppliers required to apply new charges;**
 - **The minimum fee to be levied on single-use items;**
 - **Net proceeds and how they will be generated and applied;**
 - **Details about enforcement including the authorities tasked with overseeing the**

scheme.³⁵³

318. The Policy Memorandum says the policy objective behind the imposition of additional charges is to discourage consumption of single-use products and, in doing so, reduce their harmful environmental impacts.³⁵⁴ The Policy Memorandum also indicates that the Scottish Government intends to utilise this power to place an additional charge on single-use cups.³⁵⁵ The draft 2030 Waste and Circular Economy Routemap states it will do this “by 2025”.³⁵⁶ It also commits to publishing a Product Stewardship plan by 2025/26 which will identify priority problematic products for action and the appropriate approaches to tackle them, which could include charges.³⁵⁷

319. Stakeholders noted the following themes—

- The significant negative environmental and economic impact of single-use items, and how additional charges could be an effective intervention for reducing their consumption;³⁵⁸
- Administrative and operational burdens placed on businesses as a result of implementing charges;³⁵⁹
- Regulations to impose charges should—
 - Complement other measures looking to encourage the use of reusable alternatives. This included public communications activities;³⁶⁰
 - Be used most effectively in combination with other measures aiming to tackle consumption and waste such as mandatory take back schemes;³⁶¹
- UK-wide considerations relating to single-use items;³⁶² and
- The definition of “advancement of environmental protection” for the purposes of allocating proceeds (Section 9(4) - proposed Section 87A(1)(b) of the Climate Change (Scotland) Act 2009).³⁶³

Section 9(4) - Proposed Section 87A(1)(a) - Charging for single-use items

320. Some stakeholders welcomed ambitions around additional charging.³⁶⁴ Significant climate and environmental impacts associated with single-use items were noted, including how charges would deter the consumption of single-use products and encourage sustainable behaviours in consumers.³⁶⁵ The introduction of additional charging for single-use carrier bags in 2014 was viewed as illustrative of how behaviour change can be managed through financial incentives.³⁶⁶ It was also suggested that additional charges could have a positive impact on the wider supply chain as manufacturers and suppliers responded to changed consumer demand for sustainable alternatives to single-use items.³⁶⁷

321. Supporters also said robust enforcement was needed to ensure compliance. This

started with the Scottish Government identifying an appropriate enforcement authority to monitor the implementation of potential future measures and setting out in detail how the authority would be expected to undertake this role. However, there was concern amongst some stakeholders about the capacity and resources for local authorities and SEPA to effectively monitor and enforce any future regulations if nominated to do so. ³⁶⁸

322. The initial focus on cups was discussed. The Financial Memorandum estimates that approximately 1 ton (or 77,740 cups) are littered annually. ³⁶⁹ Friends of the Earth Scotland said "we do not have time to change our economy one product at a time". ³⁷⁰ The Scottish Environmental Services Association said "there are other, more pressing parts of the waste management system in greater need of the Scottish Government's resources, involving much larger volumes of material with greater potential for carbon impact savings". ³⁷¹ A strategic approach to selecting the subjects of charges using the assessment of environmental harm or carbon footprint was called for. ³⁷² Stakeholders proposed a number single-use items the Scottish Government may wish to apply additional charges to—

- Nappies; ³⁷³
- Cutlery; ³⁷⁴
- Cigarette filters; ³⁷⁵ and
- Chewing gum. ³⁷⁶

323. A number of stakeholders called for the Scottish Government to go further by banning the use of certain single-use items ³⁷⁷ , particularly when alternative sustainable products were already available ³⁷⁸ , for example disposable vapes. ³⁷⁹ The Minister wrote to the Committee on 19 January setting out the Scottish Government's intention to legislate to enact a ban on single-use vapes in Scotland and confirmed that an exclusion from the Internal Market Act would be sought. ³⁸⁰

324. The Minister said the Scottish Government had three "basic approaches" to regulating single-use items; to ban them, to impose additional charges, or to implement producer responsibility measures. She said "using the right tool for the right job" was the principal aim for the Government. ³⁸¹

Section 9(4) - Proposed Section 87A(1)(b) - Environmental good causes

325. Section 87A(1)(b) states that revenues generated as a result of charges should be used by businesses and retailers "to the advancement of environmental protection or improvement or to any other purposes that may be reasonably regarded as analogous". ³⁸² The Financial Memorandum for the Bill does not provide an estimated amount that could be generated if charges are introduced. It was emphasised that if the policy is successful, no funds will be raised. ³⁸³

326. Stakeholders broadly welcomed the approach of allowing charges to be reclaimed by the suppliers of goods rather than the Scottish Government, noting that this was consistent with the system adopted for the single-use carrier bag charge.³⁸⁴ However, some were unclear as to what would constitute "the advancement of environmental protection or improvement or to any other purposes that may be reasonably regarded as analogous."³⁸⁵
327. The Scottish Retail Consortium suggested the Scottish Government follow the same broad definition of 'good causes' businesses could support through the additional funds generated for the single-use plastic bag charge. They told us this allows businesses the flexibility to use proceeds on a wide range of initiatives ranging from public health to education.³⁸⁶ Some stakeholders suggested a clearer specification on the face of the Bill for any income from the charges to support wider circular economy measures and initiatives in Scotland.³⁸⁷ They noted that this could help to encourage innovation or support a move towards reusable items.

Reusable alternatives

328. We heard charges must be accompanied by a suite of interventions that work together to increase uptake of reusable alternatives.³⁸⁸ This means making reusable products more attractive to consumers. One of the key barriers we heard to consumers taking up reusable alternatives was affordability and convenience. Support for those on lower incomes to access reusable alternatives was suggested to prevent vulnerable groups being adversely impacted from the introduction of additional charges.³⁸⁹
329. Equality considerations were also raised with us and the need for detailed impact assessments was emphasised to ensure there were not unintended consequences for those reliant on single-use products.³⁹⁰
330. Stakeholders mentioned that public acceptance of the regulations and greater consumer awareness around single-use items formed a central part of achieving the desired behaviour change.³⁹¹ Simple and effective marketing was called for which clearly sets out the rationale for introducing charges for single-use items and how individuals can play their part by adopting reusable alternatives.³⁹²

Opposition to charges for single-use items

331. We also heard concerns about the introduction of charges for single-use items.³⁹³ Businesses in particular were worried about unintended consequences and the potential impact on local retailers and hospitality venues as a result of the additional administrative and logistical burdens.³⁹⁴ UK Hospitality Scotland said—

” "Adding a cost to the price of purchasing single-use items will penalise Scottish businesses and consumers. For example, it is envisaged that a charge of 20p could be applied to single-use cups. This may well result in lost business for high street premises as customers choose not to make a purchase and pay the extra. Given we are in a cost of living crisis anything that could dent consumer confidence and spend is unwelcome, further jeopardising business and jobs." 395

332. Businesses also pointed to a multiplicity of practical uses for single-use items where a reusable alternative would not be appropriate for product and consumer safety reasons, ³⁹⁶ for instance in relation to healthcare equipment and certain food packaging. ³⁹⁷
333. There were calls to establish mitigations to protect smaller businesses from the potential burdens placed on them from additional charging. ³⁹⁸ This included exploring the use of a phased approach to implementation for SMEs, or exemptions depending on the circumstances.
334. In addition, businesses wanted full and transparent consultation by the Scottish Government to ensure that any regulations are well-designed, not overly burdensome, proportionate and achieve the benefits expected. ³⁹⁹ Robust impact assessments were also called for to ensure regulations were informed by extensive engagement with businesses, consumers and others. ⁴⁰⁰ Stakeholders cited the need for the following documentation to supplement regulations—
- Business and Regulatory Impact Assessment; ⁴⁰¹
 - Equalities Impact Assessment; ⁴⁰²
 - Rural impact assessment; and ⁴⁰³
 - Life Cycle Assessment. ⁴⁰⁴

Section 9(8) - Legislative procedure

335. Regulations made under Section 9 of the Bill are subject to the affirmative procedure, except regulations which “specify (or modify the description of) items that suppliers of goods are required to charge for”. These are subject to a super-affirmative procedure as set out in pre-laying procedures set out in Section 97 of the Climate Change (Scotland) Act 2009. ⁴⁰⁵ The scrutiny process for these instruments entails—
- The Scottish Ministers must lay a draft set of regulations before the Scottish Parliament. This begins a 90-day representation period to allow stakeholders and the Scottish Parliament the opportunity to share their views;
 - The Scottish Ministers will thereafter lay a final draft of the regulations alongside a statement of reasons setting out details of representations it has

received and whether any changes have been made to the initial instrument;
and

- The Scottish Parliament will consider the final regulations under the affirmative procedure.

336. This was the same procedure used for development and scrutiny of initial regulations to implement a deposit return scheme in Scotland.
337. The Delegated Powers and Law Reform Committee states the use of the super-affirmative procedure where the items are specified (or descriptions modified) "...offers a high level of scrutiny, but also allows for engagement from the public and stakeholders and ensures that any representations are taken into account in the regulations and their consideration." ⁴⁰⁶ That Committee was therefore content with the use of this power and its designated parliamentary procedures. ⁴⁰⁷
338. Representatives of Scottish business made clear that given the potentially significant implications resulting from additional charges on the sector, a high level of scrutiny of the secondary legislation by the Scottish Parliament was important to ensure it was fit for purpose. ⁴⁰⁸ The Scottish Wholesale Association told us—
- ” “We are concerned that elements of the Circular Economy Bill enabling legislation such as the enabling power to charge for single -use items may be about to follow the same route as the development of the DRS policy. It's critical that problems inherent in a cup charge are not dismissed in the quest for a "simple" solution to a complex problem." ⁴⁰⁹
339. Professor McHarg told us the use of the super affirmative was "definitely an improvement on the normal situation, and it is appropriate in the circumstances". ⁴¹⁰ She said the Expert Panel on Environmental Charging and Other Measures (EPECOM) supported a "case-by-case approach" to the introduction of additional charging for specific single-use items. ⁴¹¹

UK Internal Market Act consideration and alignment with UK policy developments

340. A recurring theme in evidence suggested was that provisions around charging for single-use items may have Internal Market Act considerations. ⁴¹²
341. The Minister said "[I] believe that we can draft the legislation for single-use cup charges in a way that does not affect or come into contact with the Internal Market Act and would therefore not require an exemption." ⁴¹³ She compared this to the situations which arose with the deposit return scheme, noting it could involve cross border issues, whereas charging for single use items would take place in Scotland. ⁴¹⁴
342. However, we heard evidence that the Internal Market Act was not the only issue on which there was a lack of clarity over the deposit return scheme. Examples included

VAT and advertising, and the Committee heard that while these would also potentially apply to regulations on single-use charging, there was no detail on that in the Bill or accompanying documents.⁴¹⁵

Conclusions and Recommendations - Charges for Single-Use Items

343. We support in principle the introduction of additional charges for some single-use items. It is clear that overconsumption of single-use items represent a significant barrier to progress towards a circular economy and net zero aspirations. However, the introduction of additional charges for single-use items must go hand-in-hand with other measures to promote reusable alternatives as a social norm and a positive choice.
344. The Committee agrees with the need for a strategic approach to use of the powers in Section 9. We note the the Scottish Government has committed to developing a 'Product Stewardship Plan' by 2025/26 in the 2030 Routemap which will set out a strategic approach to tackling problematic products. The Committee supports a pragmatic and evidence-based approach to the use of the power, with an initial focus on non-essential items and asks the Scottish Government to clarify what other items are under consideration.
345. It is essential that the Scottish Government consults extensively with industry prior to the Scottish Government laying future regulations. It must put in place safeguards to protect vulnerable groups from any unintended consequences resulting from charges.
346. The Committee welcomes recent announcements regarding a proposed ban on disposable vapes.
347. We are unclear about the potential for how these provisions may interact with the market access principles of the UK Internal Market Act. It is critical therefore that implications are identified as early as possible in the policy development process. Both the Scottish and UK Governments must thereafter work together through agreed Common Frameworks processes to avoid market access issues. The Committee believes the Scottish Government should also be seeking the view of the Office for the Internal Market at the appropriate point in policy development.

Section 9(4) - Section 87A(1)(b) - use of net proceeds

348. We agree with the principle that proceeds raised through single-use charging should be retained by the suppliers of goods. Whilst we are content that proceeds are used for environmental purposes, we also recognise that other good causes could be supported through this provision. We call on the Scottish Government to reflect on this ahead of Stage 2.

349. **We welcome the inclusion of a super-affirmative procedure in this Section to allow stakeholders and Parliament to closely examine the implementation of proposed measures.**
350. **We call on the Scottish Government to explore what support it can provide through the Bill and other non-legislative measures to address current barriers around the uptake of reusable alternatives, including what more it can do.**

Sections 10-11 - Household Waste

Householder's duty of care (Section 10)

351. Section 10 of the Bill modifies Section 34 of the Environmental Protection Act 1990 (the 1990 Act) to introduce a new criminal offence for householders who breach their duty of care with regards to waste management.⁴¹⁶ Regulations made under this Section of the Bill allow the Scottish Ministers to amend the level of the fixed penalties and definitions of enforcement authorities. Regulations are subject to the negative procedure.
352. The Bill provides that the fixed penalty will be £200.⁴¹⁷ The Delegated Powers and Law Reform Committee notes that limitations are applied to the amount the Scottish Ministers can set for the fixed penalty by regulation.⁴¹⁸ The Committee also notes that the use of the negative procedure to amend enforcement arrangements is consistent with other provisions set out in the 1990 Act.⁴¹⁹ That Committee was therefore content in principle with the delegated powers established in this Section of the Bill.
353. The Policy Memorandum explains that currently householders must comply with a limited duty to appropriately transfer waste to an authorised waste handler. It explains that the objective of creating new enforcement powers, including to issue fixed penalty notices "is to aid in the prevention of fly-tipping where an offence is traced back to a particular household, and raise awareness of householder responsibilities when disposing of waste".⁴²⁰
354. The following themes were raised with us—
- The sustained problems of flytipping and illegal waste carriers resulting from legislative and enforcement gaps;⁴²¹
 - A lack of public understanding around the householder duty of care and the need for the Scottish Government to ensure education was at the heart of its enforcement approach, with fines ideally a last resort;⁴²²
 - How easily in practice householders can check that they are transferring waste to an authorised waste carrier (and relatedly if the system of registering as a waste carrier is itself robust and meaningful);⁴²³ and

- Wider issues with local government funding and the impact of budgetary constraints on delivery of recycling services and enforcement of waste crime.
424

355. There was broad support for the proposed measures on the basis that it would help to address the ongoing problems presented by flytipping and small-scale illegal waste carriers.⁴²⁵ We heard illegal handlers were common perpetrators of environmental crime and had become increasingly prevalent.⁴²⁶ Many stakeholders supported the principle of enforcing household responsibility for how they engaged with waste carriers offering disposal services.⁴²⁷

356. However, it was made clear that this intervention would not be a silver bullet in addressing the problem. Stakeholders said the Scottish Government should also consider taking forward a range of other measures to address illegal actors within the waste handlers' industry. These included—

- Reforms to the waste licensing arrangements (this is discussed later in the report);
- Higher fine amounts for flytipping offences than are currently permitted;⁴²⁸
- Ensuring all waste management vehicles are liveried;⁴²⁹ and
- Improving flytipping data collection and sharing between relevant authorities.
430

Section 10(3) - Proposed Section 34ZC - Fixed Penalty Notices

357. Section 34ZC sets out the procedures for enforcement authorities to follow when issuing fixed penalty notices. It sets the amount payable by the householder for receiving a fixed penalty notice at £200.⁴³¹

Enforcement

358. We heard householders were largely unaware of the existing duty of care.⁴³² We also heard concerns that fixed penalty notices could disproportionately impact on householders in areas of higher deprivation.⁴³³ In recognition of this, many stakeholders supported fines for non-compliant householders being used only as a last resort.⁴³⁴

359. An educational approach to enforcement was endorsed to allow local authorities to engage with householders in collaborative manner.⁴³⁵ It was noted that targeted communications could raise householder awareness of their duty of care, the risks of engaging with illegal waste operators and practical information about the documentation to request from carriers to demonstrate they were legitimate.⁴³⁶

Local authority collection services

360. A key cause highlighted by stakeholders for non-compliance was barriers to high-

quality local authority services.⁴³⁷ We heard from some stakeholders that local authorities' services have reduced in response to resource constraints.⁴³⁸

361. We heard strong support for the roll out of a comprehensive producer responsibility scheme covering bulky items (such as mattresses and white goods) as a solution upstream in the supply chain and to replenish local authority funding for reinvesting in their recycling facilities.⁴³⁹ Environmental organisations also made a number of suggestions about how takeback or deposit schemes could operate which financially incentivised householders to dispose of their waste correctly. Action to Protect Rural Scotland said—

” If people got paid £5 or £10 to hand a mattress back, rather than having to pay to get it taken away, they would probably not go to the trouble of taking it in a van in the middle of the night.”⁴⁴⁰

362. The Minister noted that the Scottish Government hold powers relating to producer responsibility that they were considering as part of the solution to charging for bulky waste.⁴⁴¹

Conclusions and recommendations - householders duty of care

Section 10

363. **The Committee is supportive of introducing a new criminal offence for householders who breach their duty of care. Enforcement powers in this Section offer a welcome tool for local authorities in addressing ongoing problems with illegal waste carriers. However, the Committee notes many householders do not appear to be aware of their current duty of care. Communications and awareness-raising activities must clearly be at the centre of achieving any required behaviour change in this area. The Committee seeks confirmation the Scottish Government agrees with this assessment.**
364. **A lack of affordable and convenient waste uplift services and accessible recycling centres was highlighted as a leading reason for many householders failing to comply with their duty of care. The Committee notes the role envisaged for extended producer responsibility in addressing current pressures faced by local authorities and calls on the Scottish Government to clarify whether it will consider taking forward new producer responsibility schemes in Scotland using its existing powers.**

Household Waste Requirements (Section 11)

365. Section 46 of the Environmental Protection Act 1990 provides for waste collection authorities to specify the receptacles in which household waste for collection should be deposited.⁴⁴² Section 11 of the Bill modifies the 1990 Act to insert proposed

Sections 46ZA, 46ZB and 46ZC which introduce further enforcement measures for ensuring the right type of material is put in the right bin to avoid contamination. ⁴⁴³

366. Local authorities can currently issue notices to householders under the 1990 Act, requiring that household waste be placed in the appropriate bin, and failure to comply with a notice is a criminal offence. ⁴⁴⁴ However, there is no statutory basis for issuing fixed penalty notices to householders contaminating waste recycle or otherwise misusing household waste services. The Policy Memorandum explains that the aim of Section 11 is to close a perceived gap in the enforcement powers of local authorities. Civil penalties would be expected to be the primary means of enforcement, but with Fixed Penalty notices available "for householders who persistently and deliberately do not comply with existing obligations in relation to household recycling, with the further option of criminal enforcement for more serious and persistent offending". ⁴⁴⁵

367. The purpose of the provisions is as follows—

- 46ZA - allows an officer to issue a written warning for persons failing to comply with their responsibilities and the details that must be provided relating to issuing a written warning. This provision also allows for escalation to civil penalty;
- 46ZB - sets out a procedure for issuing a notice of a civil penalty, which includes notification of intent to do so, the level of penalty and the grounds on which it is issued;
- 46ZC - confers regulation-making powers to the Scottish Ministers to set out further procedures for a civil charging regime including the amount of a civil charge issued;
- 46ZD - creates a new fixed penalty regime for the offence; and
- 46ZE - confers powers for the Scottish Ministers to issue guidance to local authorities relating to use of enforcement powers for the above provisions. ⁴⁴⁶

368. The Delegated Powers and Law Reform Committee noted that it was content with the delegated powers referenced in Section 46ZC (affirmative procedure) and 46ZD (negative procedure). The Committee was also content with Section 46ZE(1), but recommended amendment of this provision to ensure the Scottish Government develops guidance in consultation with local authorities. ⁴⁴⁷

Contamination of recyclables

369. Stakeholders were broadly supportive of the proposed measures in Section 11 of the Bill. ⁴⁴⁸ They told us that effective enforcement would help prevent the contamination of waste streams, meaning more material could be recycled or reprocessed. ⁴⁴⁹ SEPA told us that 60 per cent of material in residual waste bins could be recycled. ^{vi 450}

^{vi} Residual waste is what is left after all reusable and recyclable materials have been separated and removed.

370. We heard from local authorities and private waste companies how contaminated household waste was significantly impacting their ability to reprocess recyclable materials.⁴⁵¹ Examples heard in evidence and on visits showed that in some cases up to 30% of recyclable materials collected could be affected by contamination.⁴⁵² and this could significantly hamper the extraction of value from those materials.⁴⁵³ As a result, local authorities and private waste companies were supportive of expanding enforcement tools to ensure householders correctly dispose of their waste into the appropriate receptacles.⁴⁵⁴

371. Single-use nappies were particularly identified as a difficult issue in terms of contamination of waste streams.⁴⁵⁵ The Scottish Environmental Services Association told us—

”Nappies are a huge issue in respect of contaminating the recycling. People put them in the recycling. The trouble is that the message that we send out to people is, “Recycle as much as you can.” Quite often, people simply do not understand what can and cannot go in the blue bin, so they contaminate recycling coming through the system. Unfortunately, a whole batch could be contaminated by nappies.”⁴⁵⁶

Enforcement approach

372. Some stakeholders saw the introduction of a fixed and civil penalty regime as part of a range of additional actions to influence household waste behaviours.⁴⁵⁷ They supported the introduction of civil and fixed penalties but made clear they should only be used as a last resort, or in particularly severe incidents.⁴⁵⁸ Welsh circular economy experts WRAP Cymru told us that local authorities with similar penalties in Wales only used them at the end of a prolonged period of engagement with the householder.⁴⁵⁹ A Scottish Government official confirmed this approach would also be followed in Scotland, involving a “ladder of measures” for local authorities to communicate with householders.⁴⁶⁰

373. Local authorities were clear that adequate funding and staffing were needed if local authorities were to make meaningful use of these new enforcement tools.⁴⁶¹

Communal properties

374. Practical enforcement challenges were noted in areas where communal bins were used, due to difficulties in identifying the perpetrator of the waste offence.⁴⁶² A respondent said that householders could be unfairly penalised for an incident outwith their control, noting “someone walking past could deposit rubbish in a recycling bin and (the council) would be handing out a fix penalty notice.”⁴⁶³ The Wellbeing Economy Alliance Scotland raised concerns about a culture of blame emerging between neighbours that could aggravate relations within local communities.⁴⁶⁴

375. COSLA told us they anticipated local authorities would take a “lighter touch” approach in these scenarios unless there was clear evidence of the perpetrator.⁴⁶⁵

WRAP Cymru said Welsh local authorities had adopted a similarly flexible approach to enforcement in these circumstances.⁴⁶⁶

Communications

376. Many stakeholders said local authorities should provide t educational activities which give useful information to the householders on how waste collection services operated within the local area.⁴⁶⁷ This would allow individuals to make more informed decisions when it came to disposing of their household waste.
377. Some local authorities told us communications work in relation to household waste was already being carried out, but that additional public awareness activities would be needed for new requirements established through the Bill.⁴⁶⁸ COSLA made clear that "if the resource provided (both comms and staff) is inadequate, and action is not followed through, there is the risk that the regulation is ineffective."⁴⁶⁹ Glasgow City Council and Aberdeenshire Council also noted that this targeted engagement needed to be supplemented by awareness-raising activities at a national level.⁴⁷⁰
378. Consumer Scotland questioned the effectiveness of local campaigns—
- ” “We often hear from local authorities that they provide information on how to take part in recycling or reuse schemes, but when we speak to our consumers, that is not always the message that comes back from them, so there is probably a need to simplify things and ensure that the core message is getting across. We would see the bill as an opportunity to get some of that stuff done.”⁴⁷¹

Conclusions and Recommendations - Household waste

379. **The Committee cautiously welcomes provisions in the Bill to create a new fixed penalty and civil penalty regime for enforcement of disposal of household waste requirements. The Committee is aware of the significant environmental and economic impact of contaminated waste and the need to design interventions to encourage householders to improve recycling behaviours. However, the use of civil and fixed penalties should be considered only once all other options to engage with householders have failed. The Committee seeks clarity on intended enforcement approaches for communal bins.**
380. **The Committee notes that often a lack of information is the main barrier to householders recycling correctly. A lack of consistency in local recycling services also creates confusion. The Committee recommends the Scottish Government launch a national awareness campaign that aims to inform the public about these new provisions and good recycling behaviours. The Committee requests the Scottish Government consider how this programme could also dovetail into future work to standardise local**

authority recycling provision through the statutory Code of Practice.

381. **The Committee agrees with recommendations from the Delegated Powers and Law Reform Committee that amendments are made at Stage 2 to stipulate that guidance introduced under Section 46ZE is subject to prior consultation with local authorities.**

Sections 12-13 - Local authority recycling

382. Section 12 of the Bill requires the preparation of a statutory Code of Practice for local authorities in executing their recycling responsibilities.⁴⁷² Section 13 allows the Scottish Government to create targets for local authority recycling.⁴⁷³
383. The Committee observes the focus on recycling and the potential missed opportunity to focus action higher up the waste hierarchy. Circular Communities Scotland said "Our whole system is geared towards recycling. We are not getting spectacular levels of recycling; 43 per cent does not compare well with what Wales is getting, for example. The best way to turbocharge that change is to take a top-down approach."⁴⁷⁴
384. The accompanying documents to the Bill do not set out what consideration has been given by the Scottish Government to how a statutory Code for recycling or targets for local authorities could be used to promote reuse and repair.

Section 12 - Code of Practice on household waste recycling (Section 12)

385. Section 12 of the Bill amends the Environmental Protection Act 1990 to insert Section 44ZZA placing a duty on the Scottish Ministers to prepare a Code of Practice for household waste recycling. Section 44ZZA(1) outlines that the Code must describe the standards expected of and steps required by local authorities in delivering their waste management duties relating to recycling.⁴⁷⁵
386. Section 44ZZA(2) says the Code may make provisions on—
- "the receptacles to be used for household waste collection
 - the frequency of household waste collection;
 - the items of household waste that are to be recycled or composted;
 - managing the contamination of household waste that is capable of being recycled or composted
 - communicating with the public about the collection and recycling of household waste."⁴⁷⁶
387. The Policy Memorandum explains that the statutory Code of Practice will help to

create more consistency in household waste collection across local authority areas and provide a "strategic direction" on recycling in Scotland to help deliver service improvements.⁴⁷⁷

388. The Delegated Powers and Law Reform Committee noted that the Code of Practice is subject to a laid-only procedure. Given the Code will be subject to extensive consultation with stakeholders as part of the co-design process, that Committee was content that the Code is not subject to parliamentary procedure.⁴⁷⁸
389. The following points were raised in relation to the Scottish Government's proposals for a mandatory code of practice—
- A statutory footing for the Code of Practice and the implications of this;
 - The significant benefits from harmonising recycling provision;
 - How local and regional differences would be reflected in the Code ensuring local authorities would be able to respond to local needs;
 - Co-design process; and
 - The costs of implementation and how local authorities will be resourced to delivery the Code.

A statutory approach

390. Collaboration between the Scottish Government and COSLA established a voluntary Scottish Household Recycling Charter and associated voluntary Code of Practice. However, as noted in the Policy Memorandum, whilst almost all local authorities signed up to the voluntary Code, only one third have fully implemented the agreed standards.⁴⁷⁹ Budgetary pressures were noted as a factor in the non-compliance of many local authorities with their voluntary obligation, mainly because local authorities did not have the capital and revenue funding available to deliver service improvements.⁴⁸⁰
391. The Financial Memorandum provides estimates of costs for compliance of all local authorities with the existing voluntary code.⁴⁸¹ As the detail and practicalities of the Code of Practice will be ironed out through a co-design process, the Scottish Government has not provided a total cost estimated for local authorities to fully achieve any new mandatory requirements. The Finance and Public Administration Committee raised concerns about the lack of clarity shown by the Scottish Government in relation to costing for securing complete compliance amongst local authorities with a statutory Code of Practice. It branded this approach as being potentially "unaffordable and unsustainable".⁴⁸²
392. The draft Waste Route Map to 2030⁴⁸³ says the Scottish Government intends to "Develop a statutory code of practice for household waste services (by 2025/26)". However, it does not specify when this must be achieved by.

Benefits of greater consistency

393. Stakeholders were generally supportive of a statutory Code of Practice.⁴⁸⁴ They agreed that pursuing more national consistency in recycling services and approaches could help to increase recycling rates, public understanding of recycling and planning of associated collections and recycling infrastructure.⁴⁸⁵
394. Consistency was also seen as an opportunity to unlock further investment in recycling infrastructure and to expand and standardise the materials collected from households, for example soft plastics.⁴⁸⁶ Zero Waste Scotland provided a non-exhaustive list of reprocessing infrastructure opportunities in Scotland across a range of recyclates and product streams.⁴⁸⁷ They felt the Code of Practice could deliver a level of certainty, for example of supply of materials, that could bring economic opportunities.⁴⁸⁸
395. Some local authorities were supportive of consistency.⁴⁸⁹ Glasgow City Council told us it would give them clarity to plan around what was expected of them and how services should operate.⁴⁹⁰ Stirling Council said the proposed statutory Code of Practice would address a reluctance amongst many local authorities to challenge the status quo in their approach to waste management and encourage them to initiate a move towards an alternative delivery model.⁴⁹¹
396. However, we also heard about the need for inherent flexibility to reflect different geographical priorities.⁴⁹² Some local authorities also made clear that current financial constraints were also a key barrier to making any necessary service improvements devised through the proposed statutory Code of Practice.⁴⁹³
397. We also heard that consistency of approach to collection and the materials collected would only operate effectively with consistent and uniform access to infrastructure to receive and process the materials.⁴⁹⁴ The Scottish Environmental Services Association and the Resources Management Association Scotland also noted there was no point collecting mingled recycling if the only facilities to sort it were at the other end of the country.⁴⁹⁵

Practical examples for alignment through the Code

398. The Committee considered where harmonisation in recycling provision across local authorities would be most helpful and productive. Examples included—
- Labelling⁴⁹⁶ - such as a standardised colour scheme that corresponds with each waste materials;⁴⁹⁷
 - Number of bins used for collections;⁴⁹⁸
 - A standardised kerbside model across Scotland for materials collected and whether they were co-mingled or segregated;⁴⁹⁹
 - A more strategic and consistent approach to charging e.g. for bulky uplift which incentivises legal disposal;⁵⁰⁰ and

- Educational materials used by local authorities.⁵⁰¹

399. Private waste companies mentioned that standardisation of services must look to consider the wider recycling supply chain. They supported a place-based approach to recycling facilities to enable local authorities to reprocess materials closer to where they are collected.⁵⁰² Indeed, we were told of how materials from local authorities in the North of Scotland are often transported significant distances to the nearest recycling facility for reprocessing.⁵⁰³

Charging for bulky waste uplifts

400. We note the cost of uplifting large household items varies considerably across each local authority. Local authorities said they needed to introduce charges due to funding constraints.⁵⁰⁴ However, charges and a complex regulatory environment for the uplift and handling of bulky and special waste were linked to flytipping offences.⁵⁰⁵

It was noted that hazardous waste, such as waste containing POPs is contained within bulky items, meaning they could cause a severe harm to the environment if not disposed of properly.⁵⁰⁶ COSLA told us that due to soft furnishing containing POPs it was extremely costly and resource intensive process for local authorities to separate and reprocess soft furnishings from other waste streams.

401. The Minister noted that standardisation of existing charges (i.e. which can only be applied to bulky uplift and garden waste) would be taken forward as part of discussion around the Code of Practice.⁵⁰⁷

Local considerations

402. Differences in local needs were noted as a reason for local authorities being unable to fully align with the voluntary Code of Practice.⁵⁰⁸ South Lanarkshire Council explained that limited access to reprocessors and housing stock were the main challenges for their waste management services.⁵⁰⁹ For Shetland Islands Council, service delivery for an island community meant weighing up the costs and environmental considerations of exporting recyclables to the Scottish mainland.⁵¹⁰

403. Therefore, some stakeholders said local considerations needed to be reflected in the statutory Code of Practice.⁵¹¹ Indeed, as part of our evidence taking on the Bill and in our inquiry into the role of local government and its cross-sectoral partners in financing and delivering a net-zero Scotland, we noted that urban, rural and island local authorities faced vastly different challenges and priorities which made pursuit of uniformity challenging.⁵¹²

Co-production of the Code

404. The Scottish Government intends the Code of Practice will be co-designed with

stakeholders including COSLA.⁵¹³ The Scottish Government says this approach is in accordance with the new partnership signed with COSLA, the Verity House Agreement.⁵¹⁴

405. We note concerns the Finance and Public Administration Committee heard from local authorities about how the co-design process would work in practice. That Committee noted there was a "lack of clarity" on the amount of funding required to improve local infrastructure and service models to meet new standards in the Code of Practice. That Committee was also "unconvinced" by the Scottish Government's viewpoint that co-design should begin after the legislative process has been completed rather than bringing forward detailed proposals before the introduction of legislation.⁵¹⁵

Local authority recycling facilities and the Recycling Improvement Fund

406. In our inquiry into the role of local government and its cross-sectoral partners in financing and delivering a net-zero Scotland⁵¹⁶, we outlined our support for more consistently high recycling rates across Scotland's local authorities. However, we made clear that in meeting more stringent standards, local authorities would require funding to install the correct recycling infrastructure.⁵¹⁷
407. The Scottish Government has pointed to the Recycling Improvement Fund as one example of how it is currently supporting local authorities in developing their infrastructure ahead of statutory targets. SOLACE told us they welcomed the funding and noted it had been useful for supporting local authorities with lower recycling rates.⁵¹⁸ For example, Glasgow City Council were using an additional £21 million received through this scheme to improve kerbside recycling services and to develop a new materials recovery facility.⁵¹⁹
408. However, as noted by the Finance and Public Administration Committee, the vast majority of the £71 million Fund has now been committed and 11 local authorities are yet to see any benefit from it. The Finance and Public Administration Committee noted there was a "high disparity between the amounts allocated to local authorities". They concluded that the funding settlement is not sufficient to ensure all local authorities are able to deliver the improvements in infrastructure they require.⁵²⁰

End destination reporting

409. We heard evidence on knowledge of the end-destination for materials being an important factor in improving recycling rates. WRAP Cymru told us of a local authority duty to report this information in Wales and how this was transparently published to allow citizens to question the decisions of local authorities.⁵²¹ Zero Waste Scotland said consistency and enforcement were important, but of equal importance was public awareness of recycling practices to avoid contamination.⁵²²
410. The draft 2030 Routemap states the Scottish Government intends to "Develop options and consult on the introduction of end destination public reporting of

household recycling collected (by 2027/28)".⁵²³

Conclusions and Recommendations - Code of Practice on household waste recycling

411. **The Committee welcomes the provision to create a statutory Code of Practice as a vehicle for greater standardisation of household waste recycling provision in Scotland, to improve local authority performance and help public understanding of services available. The Circular Economy and Waste Route Map 2030 suggests the code will be delivered by 2025/26 and the Committee recommends this time scale is included on the face of the Bill to prevent delay and prioritise action.**
412. **Resource constraints pose a significant barrier for local authorities. The Committee agrees with the Finance and Public Administration Committee that the Recycling Improvement Fund will not on its own deliver the finances local authorities require to deliver the policy intentions behind the Code of Practice. The Scottish Government must ensure the actions to be taken by local authorities under the Code of Practice are fully funded and of equal benefit to all local authorities.**
413. **The Committee recommends that a uniform kerbside bin collection approach is established across all Scottish local authorities. The overall aim of Scotland's future recycling system must be to achieve maximum consistency wherever possible, unless there are specific local needs that require a different approach. The Committee calls on the Scottish Government to explore these aspects of service provision with COSLA as part of its co-design process of the Code of Practice. The Committee agrees with the Finance and Public Administration Committee this co-design could have been undertaken prior to the introduction of the Bill to provide Parliament and stakeholders with clarity around costs.**
414. **While offering support for the concept of a Code of Practice to standardise recycling services, the Committee is disappointed in the focus of the ambition and action so far down the waste hierarchy. The Committee recommends the Scottish Government reconsider the focus of the Code of Practice to incorporate mandatory actions and consistency on reuse and repair facilities and services.**

Section 13 - Targets for local authorities relating to household waste recycling

415. **Section 13 modifies the 1990 Act to confer regulation-making powers on Scottish Ministers to set statutory recycling targets for local authorities. The Policy Memorandum indicates that the principal policy ambition underpinning these provisions is to increase local authority recycling performance. It notes that statutory recycling targets were a common feature of countries that were performing**

comparatively well in terms of recycling rates.⁵²⁴

416. In general, evidence provided in relation to statutory recycling targets focused around the following themes—

- Support for proposals as a means to address Scotland's stagnating recycling rate;
- Support for statutory reuse targets to encourage local authorities to improve provision further upstream in the waste hierarchy;
- Consideration of how the Scottish Government should work with local government and others in agreeing recycling targets; and
- The imposition of financial penalties and how the Scottish Government should approach enforcement of targets in the context of significant financial pressures on local authorities.

Section 13(2) - Section 47B(1) - Targets

417. Some stakeholders said the use of statutory local targets was a positive tool for increasing recycling capacity and promoting consistency in recycling rates across Scotland's local authorities.⁵²⁵ It was noted recycling rates vary considerably across local authorities in Scotland. The Scottish Government also had a national target to achieve a 60% household recycling rate by 2020, however recycling rates have remained relatively stagnant over recent years at around 43%.⁵²⁶

418. Local statutory recycling targets are already in place in other countries including Wales. WRAP Cymru said that the introduction of statutory targets had been key to driving up recycling rates in Wales. The organisation also suggested the fines for failing to meet targets were persuasively significant.⁵²⁷

419. Equally important would be ensuring a well-defined framework of monitoring and evaluation was put in place to operate in conjunction with the imposition of targets.⁵²⁸ This would include regular reporting and performance evaluation to openly allow scrutiny of how progress is being made.⁵²⁹ It would also allow the Scottish Government to intervene in cases where it appeared local authorities were not on track to meet their agreed targets.⁵³⁰ Local recycling targets were also seen as useful for allowing the Scottish Government to better target national resources.⁵³¹

Reuse Targets

420. The Committee notes that recycling is defined in Section 13 of the Bill as including "composting and preparing for re-use", although it is not clear if this means specific local reuse targets could be set alongside recycling targets.⁵³² There was concern amongst some stakeholders that the creation of statutory recycling targets could create the conditions for local authorities to incentivise recycling over other waste activities higher up the waste hierarchy.⁵³³ Some stakeholders said that, whilst they saw the intentions behind the introduction of local recycling targets as positive, the focus should be improving services in reuse and repair. Circular Communities Scotland said reuse was currently a "second-class citizen" to recycling,⁵³⁴ noting in

written evidence the introduction of reuse targets would help address this imbalance.⁵³⁵

421. COSLA were supportive of reuse targets in principle, noting the existing examples of such activity and the opportunity to share best practice.⁵³⁶ Individual local authorities also said they could benefit from greater emphasis on reuse capabilities. Glasgow City Council and Shetland Islands Council both indicated that there remained a significant amount of materials being recycled by local authorities that could have been repaired and reused. A lack of infrastructure was seen as the primary reason for this.⁵³⁷

Section 13(2) - Section 47B(2) - application of targets from 2030

422. According to the Policy Memorandum, Section 47B(2) states "regulations under subsection (1) may not make provision imposing targets in relation to any time before 1 April 2030".⁵³⁸ Regulations made in relation to the creation of statutory targets would be subject to the affirmative procedure.
423. The Delegated Powers and Law Reform Committee noted that in Wales a two-year lead in time was provided to allow local authorities to prepare for implementation before regulations setting out statutory targets came into force.⁵³⁹ The Scottish Government said that a similar timeframe for notice would be considered reasonable in the Scottish context. The Committee was content with the use of the affirmative procedure as appropriate scrutiny for the statutory targets.⁵⁴⁰
424. However, the draft Circular Economy and Waste Route Map to 2030 says of the two-year notice period "The Scottish Government considers this to be the minimum reasonable notice period for targets and recognises that more notice is both desirable and likely to help with achieving targets."⁵⁴¹

Section 13(2) - Section 47B(4) - Target setting

425. Section 13(2) (in the proposed Section 47B(4)) provides for mandatory consultation with the public, as well as local authorities and SEPA when developing targets.⁵⁴²
426. The Policy Memorandum says targets will be realistic, noting that local authorities are at different levels of recycling provision and have distinct local challenges and opportunities in relation to waste management. It therefore says that the Scottish Government will "work with local government to set achievable, appropriate targets as part of the development of secondary regulations and consultation for new targets".⁵⁴³
427. This collaboration was seen as vital to the successful introduction of targets.⁵⁴⁴ There was also a clear desire for the Scottish Government to use discussions with local authorities to identify what resources are required to achieve targets.⁵⁴⁵ The Minister confirmed the Scottish Government would be taking a "common sense" approach to target setting which took into account specific considerations in relation

to each local authority.⁵⁴⁶

428. Local authorities highlighted that many wider market and supply chain issues were also to blame for current issues with recycling levels and needed to be considered when setting local targets.⁵⁴⁷ Some stakeholders also said that issues relating to overproduction, consumer behaviours and product design were outwith the control of local authorities and needed to be addressed through interventions upstream in the supply chain.⁵⁴⁸ We also heard from COSLA and others⁵⁴⁹ about their support for action further up the waste hierarchy and a shift from a focus on the actions of consumers. They highlighted their engagement in the development of an extended producer responsibility scheme.⁵⁵⁰

Section 13(2) - Section 47B(3)(d-h) Enforcement of targets

429. Proposed Section 47B(3)(d) provides regulation-making powers for the Scottish Ministers to impose a penalty for local authorities failing to achieve their agreed target. Proposed Section 47B(3)(e) allows the Scottish Ministers to make further provision in relation to enforcement of targets.⁵⁵¹
430. Some stakeholders raised concerns about how penalties could exacerbate current financial pressures faced by local authorities.⁵⁵² Appropriate resource was important if local authorities were to improve their facilities in order to achieve targets.⁵⁵³ It was suggested that offering financial incentives could be more effective in delivering desired outcomes and performance.⁵⁵⁴ COSLA called for financial penalties to be removed from the Bill on the grounds that this was incompatible with the spirit and obligations of the Verity House Agreement.⁵⁵⁵
431. The Minister acknowledged COSLA's concerns but stressed that penalties would be considered as a last resort.⁵⁵⁶ She explained that a key part of the Verity House Agreement was for decision-making to be evidence-based, noting that similar measures had proved effective in other countries such as Wales.⁵⁵⁷ She added that—
- ” “The intention is to support councils to deliver good services, not to penalise them, but there must be consequences for not meeting a mandatory obligation.”⁵⁵⁸
432. The Bill allows for monitoring duties to be conferred on SEPA⁵⁵⁹ and the Financial Memorandum estimates this could cost between £35,000 and £100,000.

Conclusions and Recommendations - Targets for local authorities relating to household waste recycling

Section 13(2) - Section 47B(1) - Targets

433. **We are supportive in principle of the Scottish Government's proposals for the implementation of statutory local targets. It is clear to us that interventions are needed to break through the current plateau of local authority recycling rates. The Committee also agrees with COSLA that action further up the waste hierarchy which prevents the need for recycling is also important and would reduce the burden on local authorities and consumers.**

Section 13(2) - Section 47B(4) - Target setting

434. **Whilst targets should be ambitious, they must also be realistic if they are to achieve the desired performance improvements from local authorities. The Scottish Government must collaborate with local authorities to design targets reflective of local needs. This engagement must explore the level of additional resource needed to meet the agreed targets.**

Section 13(2) - Section 47B(3)(d-h) Enforcement of targets

435. **We are aware of the pressures local authorities are facing which makes increasing recycling performance challenging. The prospect of penalising councils for failing to meet targets seems counterproductive and only serves to exacerbate existing constraints on local authority budgets. And yet, we have seen the success of this approach in Wales. The Committee calls on the Scottish Government to adopt an approach which captures the benefits of both penalties and incentives.**

Section 13(2) - Section 47B(6) - definitions

436. **The Committee believes that reuse and recycling are different approaches, yet appear to have been conflated in the Bill's definition of recycling. This may lead to weakening of or failure to set specific targets on reuse. The Committee recommends the Scottish Government separate out the two definitions but include statutory requirements for local targets for both concepts. These must be agreed collaboratively with local authorities and reinforced with financial support from the Scottish Government to increase local authority capacity to roll out these services.**

Section 14 - Littering from a vehicle: civil penalties

437. We heard of the effect littering was having on Scotland's natural environment and within local communities.⁵⁶⁰ Section 14 of the Bill modifies the Environmental Protection Act 1990 to insert Section 88C which grants powers to an "authorised person" representing a litter authority (usually a local council) to issue a civil penalty to a registered owner of a vehicle if a littering offence is found to have been committed from that vehicle. Proposed Section 88C(5) confers regulation-making powers on Scottish Ministers to establish a charging regime for these provisions and set out further details relating to procedures for enforcement authorities to carry out their new statutory functions.⁵⁶¹ Regulations relating to the establishment of

the civil penalty regime are subject to the affirmative procedure.⁵⁶²

438. The Policy Memorandum says these provisions have been brought forward to address current enforcement gaps.⁵⁶³ The Scottish Government says measures to tackle roadside litter set out in the Bill complement non-legislative actions set out in the National Litter and Flytipping Strategy.⁵⁶⁴
439. The Delegated Powers and Law Reform Committee said that it was content with the regulation-making powers in this Section and use of the affirmative procedure. That Committee noted there was precedent for ensuring flexibility to adapt charging regimes over time through secondary legislation, rather than setting this detail out in primary legislation.⁵⁶⁵
440. Comments under these provisions tended to focus on—
- Support for provisions as a means of tackling roadside litter and addressing current enforcement gaps; and
 - Financing of enforcement.

Addressing roadside litter

441. Stakeholders welcomed the enforcement powers in the Bill.⁵⁶⁶ Many welcomed the perceived rectification of a long standing enforcement gap.⁵⁶⁷ New civil penalties were thought to deter motorists from committing litter offences and to help encourage behaviour change.⁵⁶⁸ It was also noted that the proposals would bring Scotland into line with other parts of the UK where such measures are already in place.⁵⁶⁹
442. How littering authorities may choose to enforce these powers was identified as an important area of consideration in implementing these provisions. There were questions around the role of enforcement authorities.⁵⁷⁰ Local authorities called for the Scottish Government to provide further detail and guidance on how it intended provisions to work in practice.⁵⁷¹
443. Stakeholders also proposed a number of non-legislative actions the Scottish Government could take to tackle roadside litter. These included—
- Communications and public awareness campaigns aimed to educate the public on the problems and encourage reporting of littering;⁵⁷²
 - Investment in roadside technology such as CCTV;⁵⁷³ and
 - Rolling out more recycling infrastructure near motorways, main roads and service stations to make it easier for motorists to make better decisions.⁵⁷⁴

Financing of enforcement powers

444. Stakeholders said financial constraints affected use of existing enforcement powers

to deter littering, including a lack of officers to monitor the problem. ⁵⁷⁵

445. Whilst local authorities welcomed the additional powers to tackle littering they made clear they must be fully funded. ⁵⁷⁶ COSLA and individual local authorities were concerned about assumptions and estimates used in the Financial Memorandum relating to cost recovery and potential savings to local authorities resulting from these provisions. ⁵⁷⁷
446. The Finance and Public Administration Committee heard that councils currently face significant difficulties trying to pursue other littering fines “to the extent that it becomes a cost to us to get to a point at which we can recover the money”. ⁵⁷⁸
447. Referring to criticism from the Finance and Public Administration Committee about the assumption of 100% payments of fixed penalty notices in the Financial Memorandum ⁵⁷⁹ , the Minister told us that “the assumption in the financial memorandum of a payment rate of 100 per cent relates only to the provisions that introduce a new civil penalty regime on littering from vehicles”. ⁵⁸⁰

Conclusions and Recommendations - Littering from a vehicle: civil penalties

448. **The Committee welcomes the Scottish Government's inclusion of new enforcement powers in the Bill to tackle littering from a vehicle. However, the Committee is concerned that enforcement authorities have already identified practical issues in implementing these new powers. A lack of resources and guidance will not ensure the consistent and robust approach to enforcement the Scottish Government hopes to achieve through these provisions.**
449. **The Committee is concerned, as the Finance and Public Administration Committee highlighted, that estimates of revenues raised are based on optimistic assumptions civil penalties will be paid in full.**

Section 15 and Section 16 - Enforcement powers in respect of certain environmental offences

450. Section 15 of the Bill modifies the Environment Act 1995 to insert Section 110A conferring additional enforcement powers relating to waste crime. ⁵⁸¹ Section 110A(2) sets out that enforcement authorities can—

- stop a vehicle (Section 110A(2)(a));
- require a vehicle owner to provide personal details (Section 110A(2)(b));
- enter commercial premises at a reasonable time for the purpose of searching

- or seizing the vehicle (Section 110A(2)(c));
 - search a vehicle (Section 110A(2)(d)); and
 - seize a vehicle and any of its contents (Section 110A(2)(e)).
451. The Policy Memorandum says that existing enforcement powers in relation to the seizure of vehicles are laid out in the Control of Pollution (Amendment) Act 1989 (the 1989 Act).⁵⁸² This legislation provides SEPA with powers to seize vehicles linked to waste crime, but only if they have obtained a warrant first.⁵⁸³ Local authorities do not have powers to seize vehicles under the 1989 Act. The proposals in the Bill would allow both SEPA and local authorities to seize vehicles without the need for a warrant provided certain conditions are met. The Scottish Government have said they anticipate enforcement powers to be used primarily to target persistent and serious offenders, with the possibility of having a vehicle seized acting as a deterrent to small scale operators.⁵⁸⁴
452. Section 16 sets out how powers can be used.⁵⁸⁵ The Policy Memorandum provides a list of the circumstances in which local authorities and SEPA would be able to exercise powers to seize vehicles. These are—
- "transporting controlled waste without registering under Section 1 of the 1989 Act"
 - unauthorised or harmful depositing, treatment or disposal, etc. of waste under section 33 of the Environmental Protection Act 1990;
 - breaches in duty of care, as respects waste under Section 34(1)(a), (aa), (b) and (c) and (2l) of the Environmental Protection Act 1990; and
 - operating without a permit or breaching permit conditions under regulation 67(1)(a) or (b) of the Pollution Prevention and Control (Scotland) Regulations 2012."⁵⁸⁶
453. The Delegated Powers and Law Reform Committee was content with the use of the affirmative procedure for this provision.⁵⁸⁷

Tackling waste crime

454. Stakeholders said they were broadly supportive of new powers as a way of meaningfully addressing waste crime in Scotland.⁵⁸⁸ It was noted that proposed measures in Scotland had already been successfully adopted in England and Wales.⁵⁸⁹ Extending powers to local authorities was also suggested to help reduce the burden on SEPA officers in tackling waste crime incidents and enhance agency responses to incident.⁵⁹⁰ We also heard support for the proposed measures on the basis that they would help to address the ongoing problems of flytipping associated with smaller-scale waste carriers operating within the household waste market.⁵⁹¹
455. SEPA and local authorities also welcomed the additional powers the Bill would bring.⁵⁹² However, they reiterated strong calls for the Scottish Government to fully

resource these enforcement powers to ensure they fulfilled their potential. ⁵⁹³

456. Some stakeholders suggested more could be done to improve joint working between Police Scotland, SEPA and local authorities to clarify roles and responsibilities and better coordinate responses to waste crime incidents. ⁵⁹⁴ COSLA suggested Police Scotland did not often respond to flytipping incidents and that councils were tasked with the costly clean up. ⁵⁹⁵ Police Scotland told us they would not usually respond to incidents of flytipping unless they were ongoing or if the waste was considered hazardous. ⁵⁹⁶

457. We heard worrying evidence suggesting a strong link between waste crime and organised crime. ⁵⁹⁷ Some stakeholders called for strong enforcement measures to tackle organised waste crime. ⁵⁹⁸ SEPA noted the relationship between environmental and serious organised crime in their evidence to us. ⁵⁹⁹ They said—

” “In Scotland, there is a persistent presence of organised crime in the environmental sector, with the number of crime groups in the high teens at any one time. Those involved in waste crime are also linked to additional criminality including money laundering, human trafficking, fraud, and firearms/drug supply.” ⁶⁰⁰

Liability of Landowners

458. We heard evidence highlighting the challenges flytipping posed to landowners. ⁶⁰¹ Under Section 59 of the Environmental Protection Act 1990 , SEPA and local authorities can serve a notice to landowners to clean-up flytipped waste or face a criminal prosecution. ⁶⁰² However, we heard landowners often had no control over whether waste was deposited on their land. ⁶⁰³ We heard of frustrations when trying to report incidents ⁶⁰⁴ and the deterrent measures landowners were putting in place. ⁶⁰⁵ There was support for landowners to tackle flytipping on their properties and the Bill was seen as an opportunity to achieve this. ⁶⁰⁶ SEPA recommended that Section 59 was amended “such that Local Authorities can require those responsible for fly-tipping to take steps to remove the waste and for failure to comply with such a notice to be a criminal offence backed by an appropriate Fixed Penalty Notice.” ⁶⁰⁷

459. The Minister was sympathetic to these issues but equally did not want to allow culpable occupiers of land to evade responsibility and burden the public purse. ⁶⁰⁸

460. Additionally, the Scottish Government said it was implementing new ways to protect landowners as set out in its National Littering and Flytipping Strategy. ⁶⁰⁹ This included the development by SEPA of new guidance and pilots to support landowners to tackle flytipping. ⁶¹⁰

Authorisations for waste handlers

461. One of the common measures stakeholders thought would usefully tackle flytipping from waste carriers was through reform of waste handling processes to tighten up the current waste carrier licencing system.⁶¹¹ We were deeply concerned by evidence from private waste companies and other stakeholders which narrated the relative ease in which operators can register for, and obtain, a waste carriers licence in Scotland. A representative of the Resource Management Association Scotland told us—
- ” "I believe that a waste carriers licence involves an online application and that there are not really any background checks or anything like that. You just click the button, pay the money and get your licence."⁶¹²
462. The Minister said improvement to the current systems would be taken forward through reforms to the 'integrated authorisation framework' and did not require primary legislation.⁶¹³
463. SEPA said they were working with the Scottish Government to help design the new licensing arrangements with a view to "making it easier to keep criminals out of the waste business and enable SEPA to revoke authorisations". However, they also called for amendments to be made to Section 16 of the Bill to add operating a waste management activity without an authorisation under the Environmental Authorisations (Scotland) Regulations 2018 to the list of laws to which enforcement powers could be applied.⁶¹⁴

Conclusions and Recommendations - Enforcement powers in respect of certain environmental offences

464. **The Committee welcomes additional powers conferred on enforcement authorities through this Section of the Bill. It is our hope that these measures will be an effective and useful addition to SEPA and local authorities in tackling perpetrators of waste crime. However, the Scottish Government must ensure it's playing its part by fully funding enforcement authorities to undertake their roles to full effect.**
465. **Processes for waste carrier permits must be strengthened. The Committee is supportive of the Scottish Government's intentions to reform current licensing arrangements to ensure they are sufficiently robust. The Committee notes evidence from SEPA requesting that the Environmental Authorisations (Scotland) Regulations 2018 are added to the applicable laws for which enforcement powers can be used, and calls on the Scottish Government to explore this proposal ahead of Stage 2.**
466. **The Committee recommends the Scottish Government consider the suggestion by SEPA that amendments could be made to the Environment**

Act 1990 to ensure those responsible for the flytipping were also responsible for removal of waste.

Section 17 - Duty to make information publicly available

467. Section 17 of the Bill modifies the Regulatory Reform (Scotland) Act 2014 (the 2014 Act) to insert a Section 14A providing regulation-making powers to the Scottish Ministers to impose duties on persons to publicly report on information relating to waste and surplus.⁶¹⁵ Failure to comply with reporting requirements could result in enforcement action set out in the 2014 Act.⁶¹⁶
468. The Policy Memorandum says the purpose of these measures is to "encourage innovation to tackle wasteful practices and increase efficiencies".⁶¹⁷ The Scottish Government has said it intends to initially introduce obligations on food waste reporting.⁶¹⁸ The draft Circular Economy and Waste Route Map 2030 also outlines that, further to the implementation of mandatory food waste reporting, the Scottish Government will also explore other reporting requirements for clothing and construction waste.⁶¹⁹
469. The Policy Memorandum says that future regulations will be drafted following stakeholder engagement and the production of detailed impact assessments. It also indicates that future regulations in this Section would "need to take into account the potential need for exemptions, for example for smaller businesses."⁶²⁰
470. The Delegated Powers and Law Reform Committee noted that regulations made with regards to mandatory reporting are subject to the affirmative procedure if it modified primary legislation, with any other regulations subject to the negative procedure. It explained that the scope of regulation-making power "is a limited one to specify persons to make information publicly available in the manner specified". That Committee was therefore content with the approach to regulations associated with this Section of the Bill.⁶²¹
471. Evidence collected regarding provision of mandatory waste reporting requirements focused on the following issues—
- The benefits of greater transparency and accountability in incentivising behaviour change;⁶²²
 - Practical questions on how information would be gathered and articulated;⁶²³
 - Impacts of additional reporting requirements on businesses;⁶²⁴ and
 - Definitions used in this Section of the Bill.⁶²⁵

Advantages of mandatory reporting

472. Stakeholders supportive of these powers thought they could help to deliver greater transparency and accountability for waste generation, and incentivise circularity in the wider supply chain.⁶²⁶ It was noted that many businesses were already showing leadership in relation to waste reporting by taking voluntary actions such as signing the UK Plastics Pact and the Courtauld Commitment.⁶²⁷ Despite this, some stakeholders said there was reluctance to share data voluntarily.⁶²⁸
473. Stakeholders also said that mandatory reporting would help to provide data to inform planning and policy development around constructing a circular economy.⁶²⁹ It was suggested that information collected through reporting mechanisms could inform the circular economy strategy and statutory targets and support businesses in making progress towards more circular practices.⁶³⁰ The Minister said food waste and surplus data would be a tool in making progress towards food waste targets.⁶³¹ A Scottish Government official said that this data would also help to inform the development of digital waste tracking across the UK.⁶³²
474. Greater accessibility of information was identified as an important way of driving behaviour change amongst consumers. Consumer Scotland told us that it was often challenging for consumers to make sustainable decisions as it was difficult to assess the environmental credentials of products and businesses.⁶³³ Transparent reporting was seen as a way to rectify this and provide a powerful incentive for businesses to adopt responsible and sustainable practices in pursuit of enhancing brand reputation amongst consumers.⁶³⁴
475. Stakeholders also highlighted the economic benefits offered by mandatory reporting requirements. Zero Waste Scotland said many businesses they have worked with saw noticeable benefits from embracing new ways of measuring waste and resource as this information can drive efficiencies.⁶³⁵ A number of stakeholders also noted that, if implemented successfully, reporting requirements could open up social opportunities by incentivising businesses to work in partnership with third sector groups such as charities and food banks to redistribute and reuse surplus products.⁶³⁶
476. It was suggested future regulations should focus on products that maximised environmental and social benefits.⁶³⁷ Another consideration was the economic value of products and whether they contained any rare minerals, metals or other high value materials that could be recovered for further use. Individual products suggested by stakeholders also included—
- **Food waste** - the environmental impact, coupled with the wider social opportunities, including tackling poverty and inequality, were mentioned consistently by stakeholders as a reasons for mandatory reporting of food waste.⁶³⁸
 - **Textiles** - clothing was identified as a particularly problematic waste stream with a high carbon impact. Stakeholders noted that measures in this Section of the Bill could be a useful tool to encourage behaviour change around fast

fashion.⁶³⁹

- **Construction waste** - Despite the large contribution to Scotland's overall waste, stakeholders said the sector lacks sufficient data. Reporting requirements could be useful in generating evidence to support greater circularity in the sector, which in turn could translate to a noticeable improvement in Scotland's progress at a national level.⁶⁴⁰
- **Electronics** - stakeholders said the creation of appliances and batteries required processing of rare minerals such as lithium as well as metals that were high in carbon production and resource intensive. Reporting requirements provided an opportunity to address current items such as single-use vapes which were deemed to be particularly bad for the environment.⁶⁴¹

Best practice on reporting of data

477. Stakeholders said they were unclear on how businesses would collect, present and publish their data. They called for the production of robust guidance to support businesses with this process and training their staff with understanding new responsibilities.⁶⁴² Businesses sought clarity on expectations of them in fulfilling reporting duties, and how this information would be used.⁶⁴³
478. Some stakeholders said reporting metrics must be standardised for comparisons to be drawn between businesses, and to enable effective monitoring to take place.⁶⁴⁴ Some stakeholders called for data reported under future regulations to be made publicly available, in an accessible format for the wider public. Feedback Global said information could be published on business websites and statistics evaluated and publicly retained by SEPA.⁶⁴⁵
479. The Minister said she would engage with businesses to ascertain best practice within industry about public reporting to establish a benchmarked approach to the roll out of new requirements. She noted that because around 60 businesses already voluntarily report publicly on waste, there was "no need to reinvent standards when there is already really good industry practice".⁶⁴⁶

Implications for businesses

480. Concerns were raised about the additional burdens placed on businesses as a result of proposed mandatory requirements⁶⁴⁷ and about how provisions might operate in practice, noting that many businesses already report waste at a UK-level and additional requirements would increase administration and costs.⁶⁴⁸ However, a number of businesses were also supportive of new requirements and noted the potential benefits offered by waste reporting.⁶⁴⁹
481. Whilst there was recognition that larger multinational organisations would be capable of absorbing costs of implementing new data collection and reporting

processes to comply with new requirements, it was noted that SMEs would be disproportionately affected.⁶⁵⁰ This was because they may struggle to afford the time and resources needed to fully comply with new administrative regulations. Therefore, we heard calls for specific consideration to be given to how the Scottish Government can best support smaller businesses in recognition of the specific challenges they faced.⁶⁵¹ This included exploring phased implementation or exemptions from reporting requirements.

482. The Minister said she was cognisant to concerns from businesses and that the Scottish Government was already working on a detailed set of proposals for mandatory requirements to give industry the clarity it needs for the introduction of these laws as soon as possible.⁶⁵²

Definitions used in Section 14A

483. Section 14A states that reporting requirements may be applied to "persons of any specified description", before going on to say that Scottish Ministers may require persons to make public data on "anything stored or disposed of by them".⁶⁵³ We were told further clarification was needed on how this power would be used and what it would cover.⁶⁵⁴
484. Some stakeholders highlighted the positive reasons for extending mandatory reporting to encompass all aspects of supply chains, and to include the agriculture and manufacturing sectors.⁶⁵⁵ It was also noted that local authorities and waste management organisations were already tasked with reporting waste to SEPA through other means. There was also a suggestion from stakeholders that there was a lack of available data on the extent to which businesses in Scotland are engaged in reuse and remanufacturing, and recommended considering whether reporting requirements in the Bill could be used to increase understanding in this area.⁶⁵⁶
485. Business stakeholders and producers told us a lack of detail on the face of the Bill about new requirements had created unwelcome uncertainty. Stakeholders from the food and drink sector were particularly concerned as they store large numbers of ingredients and different equipment. This meant waste statistics could be portrayed publicly in a way that did not take into account any contextual factors or considerations behind these numbers.⁶⁵⁷ The Food and Drink Federation Scotland told us—

” Say a manufacturing process creates a lot of by-products that are not fit for human consumption. That would come across as the producer having a huge amount of waste and people would say, “That is food waste. Those are things that could be going to feed people.” However, that will not be the case if the byproducts are bones, shells and peelings.”⁶⁵⁸

Conclusions and Recommendations - Duty to make

information publicly available

486. The Committee agrees in principle with provisions giving powers to regulate for new mandatory reporting requirements relating to waste and surplus. The Committee considers that new reporting measures could hold a number of positive benefits if designed and implemented well. However the Scottish Government must listen to suggestions from the business sector on how future requirements should be implemented in practice and work collaboratively with the sector in drafting regulations.
487. The Committee considers there is a risk that new administrative processes as a result of reporting requirements could disproportionately affect small and medium enterprises. The Committee is concerned that additional costs and complexities resulting from mandatory requirements could cause undue harm to many smaller Scottish businesses. We are sympathetic to the proposed introduction of exemptions or other mechanisms such as phased introduction, reporting thresholds or means of simplifying any requirements on small and medium enterprises.

Overall conclusions on the general principles of the Bill

488. The Committee supports the general principles of the Bill although scrutiny of this partly framework Bill has been challenging. This is on the understanding that the Scottish Government will consider and respond positively to our recommendations on enhancing Parliament's ability to scrutinise and consult on key regulations brought forward under the Bill if it becomes an Act. We also want the Scottish Government to commit to ensuring the Parliament receives robust costings as early as possible for any such regulations.

Annexe A - Oral Evidence

You can read Minutes of the Committee's meetings at the Scottish Parliament website: [Net Zero, Energy and Transport Committee - Meetings](#)

Meetings at which evidence was taken:

- [26 September 2023](#)- Business representatives
- [3 October 2023](#) – Environmental public bodies
- [31 October 2023](#) – Scottish National Investment Bank
- [7 November 2023](#) – Consumer Scotland
- [14 November 2023](#) – Environmental non-governmental organisations
- [21 November 2023](#) – COSLA, Solace and private waste management representatives and Local authorities
- [28 November 2023](#) – International organisations and circular economy academics and experts
- [5 December 2023](#) – Scottish Government

Annexe B - Written Evidence

The Committee ran a call for views which closed on 1 September. You can read 117 published responses at the Scottish Parliament website: [Published responses for Circular Economy \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)

All other correspondence received relating to the Committee's scrutiny is [published and available to read at the Bill's Stage 1 homepage](#).

The Committee also ran an online discussion on the general principles of the Bill. You can read comments from the 98 individuals who took part in this forum at the following webpage: [Circular Economy \(Scotland\) Bill](#).

Annexe C - Themes discussed on visits

As part of its consideration of the Bill, the Committee visited—

- the Binn Group, a waste and resource management company, at its site in Glenfarg, Perthshire on 8 November;
- the Edinburgh Remakery, the Edinburgh Tool Library and a refill shop called WeighToGo in Leith, Edinburgh on 20 November; and
- Change Waste Recycling, a recycling and waste management company at its Office in Edinburgh on 30 November.

The below is a list of themes discussed during these events.

Reuse/repair

- There are economic opportunities for businesses looking to make products last;
- Taking, repairing and reselling business model can be highly profitable;
- There are networks between businesses, third sector and charities, delivering social and environmental benefits for communities;
- Some products are built with the sole purpose of breaking down to ensure a new one is purchased by the consumer;
- When goods and products are in a state of disrepair, they may have materials that can be reused and repurposed;
- Reuse and repair hubs can act as a space for community to come together and as a means of addressing social isolation; and
- Accessibility of reuse and repair facilities is important to the growth of the sector.

Consumer behaviours

- Advantages of sustainable characteristics in products were driving down costs for consumers;
- Consumers are now more environmentally conscious in their purchases;
- Provision of single-use products can at the same time offer an opportunity to educate customers about reusable alternatives;
- There is a perception amongst the public that when an item or product breaks it is unfixable or is too costly to do so;
- Two key drivers in changing consumer behaviour are convenience and cost.

Future-proofing waste infrastructure

- There are personal data considerations for how information within waste streams is managed;

- There are challenges and opportunities for source segregation model for waste collection services vs dry mixed recycling;
- Public awareness and education should be a core principle of service provision;
- The growth in anaerobic digestion facilities;
- Assigned labelling scheme that is standardised across Scotland as a tool to maximise good behaviours;
- Suggestions about more uniform approaches to service provision across public and private sectors;
- Consideration of local geographic and demographic needs around waste management;
- The need for investment in the correct infrastructure to process materials closer to source; and
- Spatial planning of facilities for processing and reprocessing.

Issues with waste management processes

- Loss of resources and energy from contamination for other regenerative processes;
- Significant problems with recycling of food waste;
- Confusion amongst consumers about what to recycle and how, with dry mixed recycling collection services and other waste streams easily contaminable;
- Most reprocessing facilities only have the capacity to recycle certain PET materials and not other plastics;
- Outdated regulatory framework for waste management and handling;
- Lack of incentives for recycling operations to grow and accept new materials; and
- Contamination of food waste caused by plastic bag use for disposal.

Education

- Labelling and instructions on recyclable products should be clearer for consumers;
- There is confusion amongst consumers about what can and can't be recycled, leading to contamination of recycling or recyclable goods end up in landfill;
- Better understanding of impacts of single-use items;
- Educational activities must be for purpose of informing and helping, not condescending;
- Link between sustainability and mental health awareness;
- The aim of making it as easy as possible for people to make the right decision; and
- "Wishcycling" a common problem in Scotland (putting items in the recycling bin in the

hope they will be recycled).

Funding and investment

- The funding landscape can be tricky to navigate;
- Access to advice and support for applying for funding can vary;
- Short term grants can be welcome but do not allow longer term resource planning;
- Funding constraints can often mean a difficult trade-off for organisations between social goods and maintaining financial stability;
- Investment can come from national and local resources, but also individual investors and philanthropists; and
- Investment to grow circular activities and initiatives could lead to transformational impacts for economy and society.

International best practice

- Supermarkets and retailers in Switzerland use very little single-use plastic while still keeping food and perishables fresh; and
- The Welsh uniform system of recycling services was viewed as highly effective.

Annexe D - Business Engagement Event - Circular Economy (Scotland) Bill – Wednesday 15 November – themes arising from discussion

Challenges

- Persuading consumers to choose sustainable alternatives;
- Cost of living crisis and how it is influencing consumers behaviours;
- Awareness of the circular economy and why it is important;
- Access to capital investment to grow capacity and output;
- Reliance on grant funding as part of overall budget;
- Start-up investment and overhead costs required to implement and operate bespoke sustainable infrastructure and facilities;
- Advice and support available to help encourage small and medium sized enterprises to navigate funding and policy landscapes;
- Access to skilled labour with specific expertise relating to the circular economy;
- The cost of educational and apprenticeship programmes to develop skills staff;
- Advantages available to businesses with linear models and practices;
- Tough market conditions for circular SMEs.

Opportunities

- There is now a strong desire for consumers to buy more sustainably;
- Increasing interest amongst consumers for circular business models;
- Circular economy is at the forefront of technological advances;
- Linear companies looking to implement new sustainable practices are working with circular businesses to share resources and networks;
- Harnessing innovation a competitive advantage for circular businesses;
- The existence of a community of circular economy businesses and organisations which are able to support each other;
- Chance to rethink supply chains to make them more sustainable.

Impacts

- Significant environmental impacts from helping consumers to reduce carbon and material footprint;
- Circular economy organisations can develop strong workforce of volunteers because of their sustainable mission to help drive forward their work;
- Supporting environmental change in global supply chains;
- Creation of job opportunities;
- Helping to upskill the labour force;
- Social impact within communities by working in partnership with local charities and third sector groups;
- There is also an opportunity to develop skills, empowering individuals with the knowledge and expertise to help themselves;
- Supporting the public to develop new skills and behaviours to empower them with the ability to live more sustainably.

Circular Economy Bill and non-legislative support

- Measures to encourage non-circular businesses to adopt more sustainable models;
- Strategic financial interventions that encourage investment in circular businesses;
- Longer term funding mechanisms for circular businesses to allow them to plan ahead;
- Measures to place additional onus and responsibility for waste on producers;
- Reforms to local taxation and public procurement;
- Support for educational and apprenticeship programmes to train workforce with skills required for circular businesses;
- Funding for public awareness and marketing campaigns that help to drive behaviour change amongst consumers;
- Capital investment to help support sustainable infrastructure and facilities;
- Encourage networks of circular businesses to share best practice and work in partnership.
- Measures to encourage businesses to rethink their supply chains and design products in a more sustainable and reusable way.

Annexe E - list of delegated powers created by the Bill

- Section 6(1) Circular economy targets;
- Section 8(2) inserting new Section 78A into the Climate Change (Scotland) Act 2009: Restrictions on the disposal of unsold consumer goods;
- Section 9(4) inserting new Section 87A into the Climate Change (Scotland) Act 2009: Power to require imposition of charges for single-use items;
- Section 10(3) inserting new Section 34ZC(9) into the Environmental Protection Act 1990: Householder's duty of care;
- Section 10(3) inserting new Section 34ZC(16) into the Environmental Protection Act 1990: Householder's duty of care;
- Section 11(2) inserting new Section 46ZC into the Environmental Protection Act 1990: Household waste requirements;
- Section 11(2) inserting new Section 46ZD into the Environmental Protection Act 1990: Household waste requirements;
- Section 11(2) inserting new Section 46ZE into the Environmental Protection Act 1990: Household waste requirements;
- Section 12(2) inserting new Section 44ZZA into the Environmental Protection Act 1990): Code of practice on household waste recycling;
- Section 13(2) inserting new Section 47B into the Environmental Protection Act 1990: Targets for waste collection authorities relating to household waste recycling;
- Section 14(2) inserting new Section 88C into the Environmental Protection Act 1990): Littering from a vehicle;
- Section 15(2) inserting new Section 110C into the Environment Act 1995: Powers to search and seize vehicles, etc;
- Section 15(2) inserting new Section 110D into the Environment Act 1995: Powers to search and seize vehicles, etc;
- Section 17(2) inserting new paragraph 14A into schedule 2 of the Regulatory Reform (Scotland) Act 2014) : Duty to make information publicly available; and
- Section 18(1) Ancillary provision; and
- Section 19(2) Commencement.

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- 4 [Policy Memorandum](#), paragraph 4.
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- 16 Scottish Parliament Information Centre (SPICe). [*SPICe Briefing - Circular Economy \(Scotland\) Bill*](#).
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- 21 UK Government (2023). [*Draft producer responsibility obligations \(packaging and packaging waste\) regulations 2024*](#).
- 22 Written submission from the [UK Environmental Law Association](#).

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- 27 Scottish Government (2024). [Scotland's Circular Economy and Waste Route Map to 2030 Consultation](#).
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- 31 Scottish Government (2022). [Delivering Scotland's circular economy: Proposed Circular Economy Bill - Consultation analysis](#).
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- 34 Scottish Government (2024). [Scotland's Circular Economy and Waste Route Map to 2030 Consultation](#).
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- 47 Net Zero, Energy and Transport Committee, [Official Report, 26 September 2023](#), col 2.
- 48 Finance and Public Administration Committee, [Official Report, 7 November 2023](#), col 6.
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- 59 Net Zero, Energy and Transport Committee, [Official Report, 5 December 2023](#), col 40.
- 60 [Letter](#) from the Minister for Green Skills, Circular Economy and Biodiversity on the Circular Economy Bill - 13 October 2023.

- 61 Net Zero, Energy and Transport Committee, [Official Report, 7 November 2023](#), col 52.
- 62 UK Government (2017). [JOINT MINISTERIAL COMMITTEE \(EU NEGOTIATIONS\) COMMUNIQUE](#)
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- 69 Net Zero, Energy and Transport Committee, [Official Report, 7 November 2023](#), cols 52 and 53 and written submission from [Keep Scotland Beautiful](#).
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- 73 [Letter](#) from the Minister for Green Skills, Circular Economy and Biodiversity on the Circular Economy Bill - 13 October 2023
- 74 Net Zero, Energy and Transport Committee, [Official Report, 5 December 2023](#), Col 41
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- 93 [Climate Change \(Scotland\) Act 2009](#), Section 97 (4)
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- 102 Net Zero, Energy and Transport Committee. [Official Report, 14 November 2023](#) , col 17 and written submissions including [Friends of the Earth Scotland](#), [Scotland's International Development Alliance](#) and [Nourish Scotland](#).
- 103 Net Zero, Energy and Transport Committee. [Official Report, 14 November 2023](#) , col 21 and written submissions including [Scottish Enterprise](#), [South of Scotland Enterprise](#) and [UKRI Interdisciplinary Circular Economy Centre for Mineral-Based Construction Materials](#).
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- 132 Net Zero, Energy and Transport Committee, [Official Report, 26 September 2023](#) , cols 5 and 6.

- 133 Information from the Committee's online engagement event can be found in Annexe D of the report.
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- 137 [Circular Economy \(Scotland\) Bill](#), Section 1(3)
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- 157 Written submission, [Scottish Wholesale Association](#), [Consumer Scotland](#) and [Nourish Scotland](#).
- 158 Written submission from [West Lothian Council](#).
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- 657 Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#) , cols 27, 28 and 29 and written submissions from [British Soft Drink Association](#), [The Food and Drink Federation](#) and [Scottish Chambers of Commerce](#).
- 658 Net Zero, Energy and Transport Committee. [Official Report, 26 September 2023](#) , col 29.

