

Stage 3 Briefing

Circular Economy (Scotland) Bill

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Circular Economy (Scotland) Bill¹ (the **Bill**) was introduced by the then Cabinet Secretary for Transport, Net Zero and Just Transition, Màiri McAllan MSP, on 13 June 2023. We submitted written evidence² to the call for views on the Bill held by the Net Zero, Energy, and Transport Committee of Scottish Parliament as part of its Stage 1 consideration of the Bill.

The Net Zero, Energy, and Transport Committee's Stage 1 Report on the Bill (the **Stage 1 Report**)³ was published on 28 February 2024.

The Stage 1 debate on the Bill took place on 20 March 2024, and Parliament agreed to the general principles of the Bill on the same date. We issued a briefing to MSPs ahead of the Stage 1 debate.

The Bill completed Stage 2 on 28 May 2024, following consideration by the Net Zero, Energy, and Transport Committee during its meetings on 7, 14, 21, and 28 May 2024. The Bill as amended at Stage 2 was published on 28 May 2024.⁴

We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 3 proceedings, scheduled for 25 and 26 June 2024.

General Remarks

The Bill looks to develop Scotland's circular economy and help facilitate the development of an economy which reduces the demand for raw materials, designs products to last, while encouraging the principle of "reuse, repair and recycle".

We note the discussion in the Stage 1 Report of the Bill being, in large part, a framework Bill.⁵ We are cognisant of the potential benefits of this approach, for

¹ [Circular Economy \(Scotland\) Bill](#)

² Further information on our engagement on the Bill to date, including the links to the relevant documents, can found on our website, accessible [here](#)

³ [Stage 1 Report](#)

⁴ [Bill as amended at Stage 2](#)

⁵ Including, for example, at paragraphs 11-20 and 116-157.



example, allowing greater flexibility in designing and implementing the underlying policy proposals, particularly should these evolve over time. We nonetheless highlight the need for flexibility to be appropriately balanced against ensuring there is clarity in the law, appropriate levels of parliamentary scrutiny underpinning legislative and policy developments, and meaningful stakeholder consultation.

Greater levels of detail on the proposals, and how they are intended to operate in practice, would be welcomed to better understand their likely impacts and legal implications.

It is crucial to upholding the rule of law that the law is clear, comprehensible and transparent so that requirements can be understood by those affected. Individuals and organisations must be able to guide their conduct based on clear and understandable legal standards. We highlight that a framework made up of primary and significant volumes of secondary legislation can be challenging for those directly affected by the law to access and fully understand.

We particularly stress the importance of robust consultation on such secondary legislation where appropriate, to provide an opportunity for scrutiny and comment from stakeholders on the details of the proposals.

We consider that changes to the policy and legislative framework in this area would merit an appropriate awareness-raising campaign so as to make individuals and businesses aware of the revised requirements and help support industry compliance.

We would also welcome greater consideration and clarity on the operation of the UK Internal Market Act 2020 in the context of the Bill's proposals – and highlight that the absence of this discussion was a notable omission from the supporting documents published alongside the Bill. We note the relevant discussion in the Stage 1 Report and reiterate our previous comments on this point.

We would generally note the importance of ensuring consistency across different areas of law to ensure that the objectives in one area are not disrupted by technical obstacles in others – and highlight this particularly in the context of the ongoing and prospective legislative and policy reform within the wider agricultural and environmental legal landscape, for example following the recent passage of the Agriculture and Rural Communities (Scotland) Bill.

Comments on Sections of the Bill

Section 1

Section 1 requires the Scottish Ministers to prepare a circular economy strategy for Scotland. We consider that having a statutory requirement for a circular economy strategy can strengthen the strategic approach to a circular economy, providing an opportunity to review and refresh national objectives.

Several amendments were made at Stage 2, including replacing the word “things” at sections 1(3)(a), (c), (d), and (e) - and at section 6 - to “goods, products and materials”. Inserted sections 1(3A), (3B), (3C), and (3D) set out further points which the Scottish Ministers must have regard to when preparing the circular economy strategy. These include: the “waste hierarchy”; the just transition principles set out in section 35C of the Climate Change (Scotland) Act 2009; the desirability of encouraging the kinds of behavioural changes which would be required to meet the objectives set out in the circular economy strategy; and the circular economy targets imposed by regulations made under section 6.

Section 2

We welcome the requirement for the Scottish Ministers to publish the draft circular economy strategy and consult on this, and highlight the importance of undertaking a robust consultation process to capture the views of affected stakeholders.

Sections 3-4

We have no specific comments on these sections for the purpose of this briefing.

Section 5

Section 5 was amended at Stage 2 to insert section 5(1)(aa). This requires that - in relation to the report on the circular economy strategy to be prepared under section 5 - where any objectives have not been met, the report must set out the measures which the Scottish Ministers propose for those objectives to be met.

Sections 6-7A

These sections relate to the setting of circular economy targets. We consider that statutory targets can help focus attention and efforts, and therefore could be a useful tool. However, it is important that any such targets would be both realistic and reflective of the Scottish Government’s policy intentions – and that any aspirations, whether statutory targets or not, are supported by suitable resources. It is not clear in the Bill what form such targets would take, and we would welcome greater detail on this.

We welcome the requirement for the Scottish Ministers to consult affected persons and the general public before introducing targets under section 6(1) (section 6(5), see also the discussion below regarding section 7A).

At Stage 2, Section 6 was amended to provide that the Scottish Ministers *must* by regulations make provision imposing targets on the Scottish Ministers relating to developing a circular economy, rather than *may*. As noted above, the word “things” has been amended to refer to “goods, products and materials” (sections 6(2)(a), (c), (d), and (e)). Further changes include revising the list of points which targets can relate to, now listing “increasing refurbishment” and “increasing repair” (sections 6(3)(a)(iia), (iib)). Inserted section 6(3)(aa) also provides that the regulations made under section 6(1) may prioritise the “sectors and systems” referred to at section 1(4).

Regulations under section 6(1) remain subject to the affirmative procedure. However, following Stage 2, the Bill includes the wording “see section 7A in relation to the first regulations” (section 6(4)). Section 7A details the pre-laying procedure that the first set of regulations under section 6(1) setting circular economy targets are to be subject to. We welcome the greater level of stakeholder engagement which this process will provide in these circumstances.

Section 8

Section 8 concerns the power for the Scottish Ministers to make regulations imposing prohibitions or restrictions on the disposal of unsold consumer goods. There are many practical considerations which would merit consideration in the context of formulating and drafting the subsequent legislative regime.

For example, in respect of the categories of products which may be excluded or prioritised when formulating any regulations pursuant to powers inserted at section 8(2), we consider it may be appropriate to prioritise categories of product with a high raw material or energy input – such as where rare minerals/similar materials have been used in production or where there is likely to be high product turnover due to trends rather than functionality of the product itself.

We suggest that any items which are inherently unsafe or unstable which cannot readily be made safe for storage, repurposing, or recycling should be excluded. It may be appropriate for a phased product or sectoral approach to be initially adopted in relation to these proposals. We also note that consideration will be required as to capacity constraints of charities to receive the relevant products (if this is ultimately intended under the proposals).

We note more widely here the omission of discussion of the UK Internal Market Act 2020 in the supporting documents published alongside the Bill, which we consider to be particularly significant in relation to these provisions.

Section 9

We note that the detail of any regime relating to charges for single-use items made under such regulations is not yet known, and would welcome further information on the relevant definitions and how the charge will be levied. We similarly note the omission of discussion of the UK Internal Market Act 2020 in the supporting documents published alongside the Bill in this context.



Sections 9A and 9B

We note the addition of sections 9A and 9B at Stage 2 relating to fly tipping offences. We have no specific comments on these sections for the purpose of this briefing.

Sections 10-11

We suggest that these proposals - relating to the disposal of household waste - require careful consideration to ensure that a proportionate approach is decided upon, taking into account both practical and legislative factors.

We note relevant practical considerations when formulating the subsequent legislative provisions, including ensuring appropriate public-awareness, the impacts of inconsistencies between local authorities as to recycling arrangements, and the availability of suitable infrastructure and resources. Particular challenges may arise where communal facilities are in use, as householders who are complying with the relevant requirements may be adversely impacted by those who are not.

Consideration could be given as to how enforcement may be actively encouraged other than by way of penalties, for example, by awareness raising public campaigns and opportunities for engagement with communities and businesses.

Section 11 was amended at Stage 2. We note that under section 46ZE of the Environmental Protection Act 1990 (the **1990 Act**) as inserted by section 11, the Scottish Ministers *must* (rather than *may*) issue guidance on the operation of sections 46ZA to 46ZD. We welcome that the Scottish Ministers must also consult waste collection authorities (section 46ZE(1A)).

As referred to in our general remarks above, we consider that changes to the policy and legislative framework on this matter would particularly require an appropriate awareness-raising campaign so as to make individuals aware of the revised requirements, including in relation to who is an “authorised person” under the proposals.

Section 12

Section 12 relates to the introduction of a code of practice about household waste collection and recycling functions. We consider that any proposed change should be underpinned by a robust evidence base.

We note the addition of section 44ZZA(1A) at Stage 2, which allows for the code of practice to make different provision for different purposes or different local authority areas.

Section 13

Section 13 makes changes to the 1990 Act to give powers to the Scottish Ministers to make regulations imposing targets on local authorities relating to the recycling of household waste. We similarly consider that any change here should be supported by a robust evidence base.



We consider that if the Scottish Ministers are to have the power to introduce statutory recycling targets, it would be appropriate for there to be incentives (as well as any proposed penalties) to aid the effectiveness of the targets. We suggest careful consideration is required as to how such penalties or incentives might be set, to ensure that there are no unintended consequences, e.g. with some local authorities being disproportionately affected.

We note that inserted section 47B of the 1990 Act was amended at Stage 2 to remove sections 47B(3)(d) and (h). These provisions provided that the regulations under subsection (1) may impose liability on a local authority to pay a penalty to the Scottish Ministers if a target imposed under the regulations is not achieved; and could make provision for appeals against the imposition of a penalty under the regulations.

Section 14

Section 14 inserts sections 88C and 88D into the 1990 Act, to add a new enforcement power in relation to an offence of littering under section 87, where this is carried out from a vehicle. We welcome measures intended to improve the enforcement of section 87.

The issuing of civil penalty charges is one method to support compliance with the legislation. However, we consider this approach also needs to be linked to raising awareness of the importance of not littering from vehicles as well as the costs of removal – which could be carried out in tandem with any strengthening of the penalty regime as proposed.

We note that the Bill provides powers for the Scottish Ministers to make provision for a number of aspects by regulations. One of these relates to exemptions from liability (section 88C(5)(j) of the 1990 Act, as inserted by the Bill). We consider there to be a number of relevant scenarios which merit specific consideration, for example hired-vehicles, taxis and private hire vehicles.

We also note that there may be merit in considering the position in relation to automated vehicles in order to help futureproof the provisions.

Sections 15-16

These sections relate to enforcement powers in respect of certain environmental offences. We have no specific comments on these sections for the purpose of this briefing.

Section 16A

We note the addition of section 16A at Stage 2. Section 16A inserts into section 140 of the 1990 Act regulation-making powers to prohibit or restrict the use, storage or supply of environmentally harmful items. We have no specific comments on this section for the purpose of this briefing.



Section 17

Section 17 broadens the Scottish Ministers' powers in the Regulatory Reform (Scotland) Act 2014 to allow regulations to be made to require persons to make publicly available information on anything stored or disposed of by them, or by someone else on their behalf, except in relation to their domestic activities.

We suggest that consideration is given to the purpose and benefits of such reporting as against the administrative burdens of doing so – particularly so that reporting is focussed on driving greater action to create a circular economy, in line with the policy basis of the Bill.

Section 17A and Schedule

We note the addition of section 17A at Stage 2, which introduces the schedule to the Bill: *Schedule - Zero Waste Scotland: Application of public bodies legislation*. Section 17A and the Schedule modify various areas of legislation relating to public bodies in order for their provisions to apply to Zero Waste Scotland. We have no specific comments on this section, or the Schedule, for the purpose of this briefing.

Sections 18-20

These are the final and auxiliary provisions of the Bill, on which we have no specific comments.



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