

Minister for Green Skills, Circular Economy and Biodiversity
Lorna Slater MSP

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Delegated Powers and Law Reform
Committee
Scottish Parliament
Edinburgh
EH99 1SP

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Dear Stuart

Thank you for your letter of 5 October 2023 about the Circular Economy Bill.

The Bill provides a combination of detail on the face of the Bill with a framework for future action in certain areas supported by a number of delegated powers, the use of which will be underpinned by a co-design process with stakeholders including local authorities, businesses and householders. The delegated powers will allow for flexibility in the implementation of the Bill provisions and complement the principal policies and structures set out on the face of the Bill. In the attached Annex I have set out replies to the specific queries you raise in relation to four of those powers.

I hope this is helpful.

Lorna Slater

Section 6(1) - Circular economy targets

- i. for further information in relation to how it is anticipated that this power will be exercised;**

This section provides enabling powers for Scottish Ministers to set targets on themselves that relate to the Circular Economy through secondary regulations. The Bill sets out a non-exhaustive list of potential areas that targets could cover. These are:

- Reducing the consumption of materials
- Increasing reuse
- Increasing recycling
- Reducing waste

Before any regulations are brought forward we intend to develop, and consult upon, an appropriate monitoring and indicator framework. This will ensure there is an agreed understanding of the relevant methodologies and datasets that would be a basis for setting targets and/or measures. Stakeholders, including businesses and households, will be able to meaningfully participate in the process of determining this framework. Relevant Committees would be invited to scrutinise any such proposed monitoring and indicator framework should they choose to do so during the consultation.

The provisions also require that in considering targets, Scottish Ministers must have regard to the desirability of the economy being one in which there is sustainable consumption and increased reuse and recycling (on the same basis as that used for the Circular Economy strategy).

- ii. whether the intention of section 6(1) is that, by reference to the wording “may by regulations”, the Scottish Ministers will not be under a duty to set targets; and**
- iii. why section 6(1) does not create a duty on the Scottish Ministers to set targets?**

As set out above, any targets would require further work to be undertaken to develop the appropriate monitoring and indicator framework on which they would be based. As the committee notes, this power is likely to be significant for both businesses and households across the country and, given the setting of targets could require significant behaviour and systems change, there is a need to evaluate the impact of any such targets on different areas of society. 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.

Section 10(3) (inserting new section 34ZC(16) into the Environmental Protection Act 1990): Householder’s duty of care

- i. what further detail can be given on why the negative procedure has been chosen; and**
- ii. why the Scottish Government does not consider the affirmative procedure to be more appropriate for the exercise of this power, given it appears to permit the modification of primary legislation?**

New section 34ZC(16) defines authorised officers as authorised local authority officers and those of the Loch Lomond and The Trossachs National Park authority. In future this could be extended to include, for example, enforcement officers from another national park. This is analogous to similar powers in the Environmental Protection Act 1990 in relation to fixed penalty notices for flytipping offences (section 33A(13A)) and littering (section 88(10)(c)) to allow the flexibility to make changes to definitions relatively quickly in order to ensure proper enforcement. The existing powers in the 1990 Act are also subject to the negative procedure. Applying the negative procedure to these powers is consistent with that approach and would mean that a change to all three fixed penalty notice procedures could be accomplished by the same instrument in the same time scales. While it does permit the modification of primary legislation this is a relatively minor modification relating to a technical detail.

Section 11(2) (inserting new section 46ZE into the Environmental Protection Act 1990): Household waste requirements

- i. if it considers any guidance issued under section 11(2) should be subject to a consultation requirement like the power to issue a code of practice in section 12(2) of the Bill, and if not, why not?**
- ii. if it considers that any guidance issued under section 11(2) should subject to some form of Parliamentary scrutiny again like the power to issue a code of practice in section 12(2) of the Bill, and if not, why not?**

Guidance under section 46ZE refers to guidance about the enforcement of offences in relation to recycling of household waste and use of receptacles. As the Committee notes, the guidance will have significance to waste authorities from an operational perspective and accordingly such guidance would be developed through co-design with local authorities and stakeholders. As largely operational guidance focussed on technical detail, there may also be a need to make revisions and update the guidance with some frequency. It would potentially be disproportionate to lay this type of guidance before parliament and it is unclear what this process would contribute in terms of the content of the guidance. The code of practice outlined at section 12(2), while technical in nature, is of much greater significance in terms of how waste management activities will be undertaken at a national and local level with implications for local authorities and householders and so a higher level of parliamentary scrutiny is entirely appropriate.

Section 13(2) (inserting new section 47B into the Environmental Protection Act 1990): Targets for waste collection authorities relating to household waste recycling

- i. how much notice it is anticipated will be given to local authorities to prepare for the imposition of the targets, which may include enforcement of penalties for failure to meet them; and**
- ii. for further information on how this power is anticipated to be exercised?**

Any targets set under this power would need to be both achievable and fair and take into account the different starting points, varied geographies and demographics of local authorities. It is also important to recognise that improvements to recycling rates will require infrastructure and service changes. As such, any targets will be the product of co-design

with local authorities and stakeholders and would not apply before 2030 to ensure the principles of achievability and fairness are delivered.

The intention is to use this lead in time to 2030 to provide local authorities with a significant period of notice of the targets against which their performance will be measured. Local authorities already receive data on a yearly basis, collected by SEPA, on the waste and recycling rates in their authority. The primary benefit of setting targets is to encourage improvement in recycling and reuse rates, and local authorities will be best equipped to achieve this with as much notice of targets as is practical.

The Welsh Government, which has implemented a similar policy, provided local authorities with two years' notice of targets when these were first introduced in 2012/13. 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. Through the development of targets with local authorities, officials will explore how the implementation timeline can best provide local authorities with the opportunity to experience the process and the knowledge they need to plan for any changes to their services required to meet targets in 2030.