



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

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Dear Minister

Circular Economy (Scotland) Bill at Stage 1 – Delegated Powers

At its meeting on 3 October 2023, the Delegated Powers and Law Reform Committee considered the 16 delegated powers contained in the above Bill. It agreed to query four of these powers with you.

Section 6(1) - Circular economy targets

The [Delegated Powers Memorandum](#) (“the DPM”) states that section 6(1) – which enables the Scottish Ministers, by regulations, to impose targets on themselves – is necessary in order to monitor Scotland's progress towards developing a circular economy. It notes there are many methods of being able to track and monitor progress, with the Circularity Gap Report and the Zero Waste Scotland Material Flow Accounts using differing methodologies, although presently there isn't an agreed position on the robustness and comparability of the differing methods and further work is required to be done.

The Scottish Government also states in the DPM that to have this as a power to make subordinate legislation to set targets rather than appear on the face of the Bill provides flexibility with regards to the methodologies, and should changes be required then this is best done by way of secondary legislation.

Given this power is likely to be significant for both businesses and households across the country, the Committee queried why there is no information in the Bill, or the supporting



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documentation on what further work requires to be done and what timescales would be involved for that being completed in order to finalise the target setting methodology, despite this being the second iteration of the Bill.

The Committee also noted that the power is discretionary; Scottish Ministers “may by regulations” set targets. However, the supporting documentation to the Bill suggests targets will be set.

The Committee therefore asks:

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

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

In relation to the section 10(3) stated above, the DPM states that local authorities are given additional enforcement powers where there has been a breach of a householder's duty of care to reduce fly tipping. Furthermore, it states the power is necessary to allow flexibility to modify the definition of an “authorised officer” and add another category of persons who can carry out enforcement of the Bill’s provisions on a householder’s duty of care.

In the DPM, the Scottish Government states that it considers the negative procedure is the appropriate level of scrutiny for what it describes as a minor modification of a definition of “authorised officer” and describes similar analogous powers.

The Committee considers that the power is in effect giving Scottish Ministers the power to permit other descriptions of persons the ability to carry out enforcement for a breach of householder’s duty (a criminal offence), which includes issuing fixed penalty notices. Such regulations would modify primary legislation by modifying the definition and can also modify other parts of inserted section 34ZC in connection with modification of the definition of “authorised officer”.



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Given this power is a modification to who can carry out enforcement action and permits the modification of primary legislation, the Committee agreed to ask why the Scottish Government does not consider the affirmative procedure and higher level of Parliamentary scrutiny to be more appropriate in this instance.

The Committee therefore asks:

- 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?**

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

The DPM states the power in section 11(2) above is necessary to assist waste collection authorities with the exercise of the comprehensive enforcement powers of local authorities that are inserted by section 11 of the Bill. These enforcement powers and any guidance issued under this section are aimed at improving rates of recycling and reducing contamination of recyclables driving behaviour change. The guidance is not subject to any parliamentary procedure.

Any guidance issued under this section will have significant standing as waste collection authorities must have regard to it when exercising their enforcement powers under 46ZA to 46ZD. While to provide assistance in enforcing these new provisions appears appropriate in itself, there will be no opportunity for Parliamentary scrutiny, despite waste collection authorities having to have regard to it when enforcing the Bill's provisions.

Whilst there is a consultation requirement with the Scottish Ministers in preparing and issuing a code of practice under section 12(2), and a requirement for that to be laid before the Parliament, the Committee noted there is no such consultation requirement in respect of guidance issued under this section. Instead, it noted that the delegated power to issue guidance on enforcement is exercised administratively without further legislative scrutiny.

The Committee therefore queried whether there should be some form of consultation prior to any guidance being finalised and whether any guidance issued to be subject to some form of scrutiny, such as being laid before the Parliament.

The Committee therefore asks:



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- 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?**

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

Section 13(2) of the Bill amends the Environmental Protection Act 1990 by inserting section 47B which confers power on Scottish Ministers, by regulations, to impose targets on local authorities in their waste management functions of recycling household waste.

The DPM states that this power is intended to be used to address the slower than expected pace of progress towards recycling targets. This will provide a legislative, rather than voluntary, framework to address this along with the power to issue a code of practice in section 12(2) which local authorities must have regard to.

The Committee noted that although the power outlines a number of matters that may be covered in regulations, there is little information in the supporting documentation on how it is anticipated it is to be exercised. The Committee therefore asks how such a delegated power is to be exercised, to assist in assessing whether the power should be delegated, as it is one which is likely to be significant for local authorities in carrying out their functions.

The Committee therefore asks:

- 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?**

I would be grateful if you could please email your response to dplr.committee@parliament.scot by **Monday, 23 October 2023**.

The Committee will then consider your response at a future meeting and report on the delegated powers in the Bill to the lead committee.



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Yours sincerely
Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee