

For the future of our environment

Sir Edward Mountain MSP
Convener,
Net Zero, Energy and Transport Committee
Scottish Parliament
Edinburgh
EH99 1SP

Our Ref: OME ID:3985
Your Ref: Mtg 3 October

25 October 2023

By email: netzero.committee@Parliament.Scot

Dear Sir Edward,

Supplementary Evidence for Environmental Regulators and Circular Economy Sessions held on 3 October 2023.

During both evidence sessions on 3 October, I offered to provide additional information. Subsequent to the meeting you have also asked that SEPA provide information on a number of questions that time did not permit Committee members to ask during the evidence session. Please find this supplementary evidence set out below.

As advised, SEPA's Annual Report will be published in the last quarter of the year and this timing will be similar in subsequent years. We appreciate that the timing of the Committee's pre-Budget scrutiny does not align with the Annual Report publication. I should like therefore to take this opportunity to iterate our CEO's offer to present evidence to the Committee on our 2022/23 Annual Report in the new year.

Environmental Regulators Session

1. The Committee asked for information on SEPA's Enforcement Policy.

As a regulator, enforcement is an essential part of SEPA's toolkit, and we take the responsibility that comes with having enforcement powers and the use of new enforcement tools very seriously. We recognise the need to be proportionate, consistent, accountable and transparent in all our enforcement activities.

SEPA's [Enforcement Policy](#) and Guidance on the use of [Enforcement Action](#) along with Enforcement measures detailed below, and Enforcement Actions are set out on the Enforcement pages SEPA's web site.

The [Environmental Regulation \(Enforcement Measures\) \(Scotland\) Order 2015](#) provides SEPA with the power to issue penalties and accept undertakings for relevant environmental offences. The enforcement measures available to us include:

Fixed Monetary Penalties, Enforcement Undertakings, Variable Monetary Penalties and Variable Monetary Penalty Undertakings.

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2. Capital Programme

You asked for details of the capital programme in order better to understand the funding that supports SEPA's cyber-attack recovery.

The capital programme is for spend on maintenance and improvement of SEPA's asset base such as gauging stations; property estate; scientific equipment and vehicle fleet etc.

The table below compares SEPA's capital allocation following the cyber-attack. This shows a total increase of £7.9m (£3.4m for 2023/24 and £4.5m for 2024/25).

The increase is supporting SEPA to progress with modernising systems and our digital transformation work rather than 'like for like' systems replacement.

Following completion of the increased programme to 2024/25, the capital allocation returns to a lower level in 2025/26.

Scottish Environment Protection Agency						
Capital Spending Review Allocation						
Description	21/22	22/23	23/24	24/25	25/26	Total
	£m	£m	£m	£m	£m	£m
Previous Capital	6.2	4.1	2.7	1.9	2.9	17.8
Revised Capital	6.2	4.1	6.1	6.4	2.9	25.7
Increase	0	0	3.4	4.5	0	7.9

Circular Economy Bill Evidence Session

The Circular Economy Bill evidence session was time-constrained and you indicated that the Committee would follow up with a request detailing those questions that the Committee had hoped to cover, had time permitted. Please find set out below information relating to each of the follow-up questions.

1. Unsold Consumer Goods

Further details on SEPA's discussions with the Scottish Government in relation to the agency's possible role in enforcement and monitoring of compliance on proposed provisions in the Bill regarding unsold consumer goods, as well as any other details it could share about the agency envisages this function operating in practice.

SEPA worked with Scottish Government to develop the [Recycling Route Map](#) where this proposal was first explored.

SEPA considers that this measure should form part of an overarching approach to product stewardship which influences product design, retail and consumption models, while increasing transparency and the diversion of materials from recycling and disposal back into reuse, repair, or remanufacturing.

Whilst the Bill makes provision for an enforcement authority, we are not aware of any final decisions on which organisation would take up the role.

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Were SEPA to become the enforcement authority for this measure, 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.

In light of this and the large number of manufacturers, wholesalers and retailers in Scotland, it is likely that we would use intelligence from the public, whistleblowers and the media to target investigations as required.

For example, in 2021 SEPA undertook a series of announced and unannounced inspections at Amazon's distribution depot in Fife. The purpose was to understand whether they were complying with their duty to apply the waste hierarchy to the management of their waste.

SEPA would work to establish whether a retailer has taken all reasonable steps to avoid disposing of unsold goods and take enforcement action in line with the powers available to us via the regulations and our enforcement policy.

In taking forward this measure SEPA would recommend it is targeted on those goods where there is evidence of a high level of unnecessary disposal and is backed up by clear guidance from Ministers as described in Section 8(8).

It will also be important to have clarity on key terms. For example, the Bill does not specify what is meant by "disposal". SEPA assumes that will mean incineration or landfill – but that recycling would be permitted where reuse is not practicable.

Future regulations or guidance should also aim to take into account the range of legitimate reasons why an unsold or returned good may be sent for recycling and, in some cases, disposal, for example:

- Electrical items withdrawn from the market for safety reasons,
- Items where chain of custody has been lost – returns of food which may have been tampered with / stored incorrectly,
- Returned goods with missing labels,
- Items which don't comply with product legislation e.g. Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and Restriction of Hazardous Substances (RoHS),
- Items with no prospect of resale – e.g. diaries that are out of date.

2. Circular Economy Strategy & Targets

What role could a statutory circular economy strategy play in transitioning to a circular economy and what should it include?

SEPA welcomes proposals to strengthen the existing strategic approach by placing a duty on Scottish Ministers to publish or refresh a circular economy strategy.

Scotland has a material-intensive economy. Put simply, we use far too much 'stuff' and that is contributing to the climate crisis. In 2018, [Scotland's raw material consumption per capita](#), also known as a material footprint, was 19.3 tonnes¹, double the world average. This is unsustainable.

In our [Waste to Resources Framework](#), SEPA describes the Circular Economy (CE) as a game-changing opportunity to –

- Manage resources within planetary limits,
- Meet Scotland's climate change targets and ambitions,
- Create new industries and economic opportunities,
- Reduce the harms associated with waste management.

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We must reconfigure our economy to bring our material footprint within planetary limits, dramatically cut waste production, recover more and dispose of only the very minimum. To achieve this, action is required across the whole economy.

SEPA therefore welcomes the strong focus in Section 1(3) of the Bill on sustainable production and consumption. This will clearly position the strategy as one which stretches beyond 'waste management' and provides a platform from which to embed circular economy principles throughout the whole economy. The strategy should provide:

- A vision for Scotland's Circular Economy and its role in achieving Net Zero and delivering well-being for citizens,
- Clear outcomes and a suite of economic, environmental, social and governance targets and indicators to measure the transition,
- Defined actions and delivery timeframes for priority measures,
- A platform for action across government policy areas to ensure maximum environmental, economic and social benefit for Scotland,
- Mechanisms to incentivise new products and business models aligned to circular economy principles,
- Alignment with EU policy such as the Sustainable Products Initiative, which aims to make products more durable, repairable, recyclable and energy-efficient,
- Opportunities to work collaboratively across the UK administrations where there is a common vision and ambition.

SEPA welcomes the provisions in Section 2 regarding consultation. Such consultation must go beyond waste management audiences if the strategy is going to be meaningful to the energy, food and drink, construction, and services industries.

SEPA welcomes the provisions in Section 4 requiring regular review. We are mindful there is a balance to strike between keeping the strategy up-to-date and providing sufficient long-term certainty for investors.

SEPA welcomes the provisions in Section 5 regarding reporting on the strategy. Regular reporting on progress will support transparency and enable Parliament and Environmental Services Scotland to hold Ministers to account for delivery.

A Scottish circular economy strategy is part of a broader context. Circular economy and waste policy is now a complex landscape, with Scottish, UK, European and global dimensions to consider. Many areas are reserved and would require action from UK Government. A Circular Economy Strategy will naturally focus on what we can do in Scotland, but it must also provide a basis to influence action at all levels of policy making.

Should statutory targets be included on the face of the Bill rather than being set in regulations?

SEPA supports the proposal to enable Ministers to set statutory circular economy targets in secondary regulations. A new statutory Circular Economy Strategy would benefit from a broad and well-considered set of economic, environmental, social and governance indicators that measure the decoupling of economic growth from resource use and environmental impact.

SEPA produces a range of Official Statistics publications and visualisation tools to support existing waste management targets. Scotland was the first country in the UK to develop a carbon metric for waste management to complement the tonnage-based targets and indicators. More recently, Zero Waste Scotland published a [Material Flow Account for Scotland](#) going beyond waste management to quantify the material footprint of Scotland's economy.

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It is unlikely that any single metric could be used to measure Scotland's progress on adopting a circular economy.

CE indicators and targets are an emerging area of policy. Research commissioned by Zero Waste Scotland highlighted that there is currently no consistent approach to measuring consumption in other countries and consumption-based targets are rare. We therefore support the approach proposed in Section 6(3) to define this power broadly.

While we recognise the need for urgency, SEPA recommends developing and testing new indicators via a Circular Economy Monitoring Framework before creating statutory targets. This can draw together the current range of publications and act as a testbed for new and innovative indicators, allowing for robust data collection and handling processes to be developed. We also need to improve the underlying data quality, frequency, and granularity around material consumption and carbon impacts. As that underlying data improves, it will become easier to calculate a range of indicators of circularity and set statutory targets.

How should targets be developed to drive the adoption of key principles of a circular economy, and how do you expect circular economy targets will work alongside other key environmental targets such as net zero and forthcoming targets in the proposed Natural Environment Bill?

Only by significantly reducing our material footprint and its associated carbon emissions can Scotland truly get to Net Zero – if done right, these ambitions are well aligned as a Circular Economy is a pre-requisite for Net Zero.

As above, SEPA would support a broad and well-considered set of economic, environmental, social and governance indicators. These must build on our existing end-of-life waste management targets (recycling, landfill avoidance etc.) and work to incentivise and monitor those actions which support sustainable production and consumption.

Targets and indicators should focus high up the waste hierarchy and at the earlier stages of product design and supply and on consumption. They should also focus on those materials and products with the highest resource and carbon impacts – e.g. food, textiles and electronics.

Further, targets and indicators should track the progress of the Circular Economy in more ways than simply measuring material flows. The Circular Economy is good for the environment and it's also an opportunity for businesses to get maximum value out of their resources. A Circular Economy keeps down costs through reducing material inputs and is beneficial to people by providing opportunities for communities, skills and jobs. Indicators which track economic and social changes, as well as environmental changes are important.

Zero Waste Scotland has produced several reports on Circular Economy indicators. Examples could include material consumption, repair and reuse of products, percentage of circular jobs, or percentage of public procurement with circular economy criteria and the carbon footprint of a basket of consumer goods.

These are new types of indicators, and the baselines and data may not yet be available. Work is required to develop and test these before turning them into targets.

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3. Household Waste

What is happening outwith the Bill to improve enforcement and prevention of flytipping?

This year, the Scottish Government published a new [Litter and Flytipping Strategy](#). This includes a range of actions to improve flytipping enforcement:-

- Raising fixed penalty notices for flytipping in Scotland to the current maximum of £500 and consider amending legislation so that these could be increased to £1000 if required in future,
- Exploring the possibility and benefits of enabling local authorities and national parks to use civil penalties to enforce flytipping offences,
- Supporting key stakeholders to review guidance on roles and responsibility of SEPA, local authorities, national parks and Police Scotland to improve the investigation and enforcement of flytipping offences,
- Increasing use of digital technologies to detect and disrupt flytippers, especially unregistered waste carriers advertising on-line (as well as rogue operators operating behind a Waste Carrier Registration),
- Consulting on proposed improvements to the waste carrier licensing regime, which will aim to give SEPA improved scrutiny and control over who is able to obtain and hold authorisation to handle waste. This will make it easier to keep criminals out of the waste collection business,
- The Environmental Authorisations (Scotland) Regulations 2018 will introduce regulatory notices which will allow SEPA to target the person responsible for the illegal deposit of waste. This is a significant improvement to SEPA's powers in this area as current removal of waste notices (Section 59) can only be served on the occupier of the land,
- SEPA and Scottish Government is working with the four UK nations to develop a Digital Waste Tracking service which will result in a step-change in transparency and accountability around the movement of Scottish waste from start to finish. The improved information this provides will allow us to prioritise and target our interventions much more effectively.

These are in addition to the Circular Economy Bill proposals to introduce new powers to allow local authorities, SEPA and Police Scotland to seize vehicles involved in flytipping offences; and a new fixed penalty regime to allow the issuing of fixed penalty notices for breaches to householder duty of care obligations in relation to household waste.

As we set out in our written evidence to the committee, SEPA considers there is merit in exploring whether the proposed new Fixed Penalty for householders who pass their waste on to flytippers should be extended to business waste producers. SEPA believes local authorities should have the ability to serve a notice on any waste producer implicated in flytipping offences, whether a householder or a business.

Further, the bill also provides an opportunity to improve powers under Section 59 of the Environmental Protection Act 1990. This provision allows SEPA and local authorities to serve a notice requiring the removal of unlawfully deposited waste (e.g. flytipped waste). However, this notice can only be served on the occupier of the land who in most cases is not the flytipper.

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While SEPA will take advantage of a more flexible notice in future via the Environmental Authorisations (Scotland) Regulations 2018, local authorities will still rely on Section 59. We recommend that Section 59 is amended such that local authorities can require those responsible for flytipping 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.

Is there anything else you would like to see on the face of the Bill on household waste? For example, is there no need for legislative change in relation to the management of business waste?

SEPA considers the measures in the Bill on household waste to complement existing powers and actions underway elsewhere for example on Deposit Return, Extended Producer Responsibility, the ban on landfilling Biodegradable Municipal Waste and actions within the Recycling Routemap.

The most recent compositional analysis of household waste shows that up to 60% of what households put into their residual waste bins could have been recycled using existing recycling services. This shows that there is a significant behavioural aspect to household recycling rates.

With respect to business waste, there is already an obligation under the Waste (Scotland) Regulations 2012 for businesses to segregate key materials for recycling.

What is your view on whether there is a need for additional use of waste charging as suggested in some responses to the Call for Views?

SEPA publishes [Official Statistics](#) for household waste management in Scotland. It is clear household recycling rates had begun to plateau at around 45% in the three years leading up to the COVID-19 pandemic. Household waste makes up approximately 21% of Scotland's waste by weight, but 55% of the total waste carbon emissions.

Analysis of high-performing recycling systems around the world suggests that no single policy or practice is sufficient on its own to produce high household recycling rates. The highest performing systems combine targets, comprehensive collections, steps to disincentivise residual waste production (pay-as-you-throw), deposit return and extended producer responsibility schemes.

Evidence suggests householders should be incentivised to minimise residual waste to support recycling rate improvements. In other countries this has been achieved in multiple ways, for example through restricting effective weekly residual waste capacity (via smaller bins and/or less frequent collections), enforced volume limits (as in Wales), or other measures.

In light of that, we support the action in the Scottish Government's Recycling Route map to undertake a review of waste and recycling service charges to understand whether they incentivise the behaviours in line with the waste hierarchy, or deliver the most value for local authorities, including the highest quality recycle. Care must be taken to ensure that any such policy is aligned with other policies such as Deposit Return Scheme (DRS) and Extended Producer Responsibility (EPR), is fair and not imposed as a 'one-size-fits-all' approach.

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I trust that the information provided is sufficiently comprehensive but please contact us again should you require any further information or clarification.

Yours sincerely,

David

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