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Edward Mountain MSP
Convener Net Zero, Energy and Transport
Committee
Scottish Parliament
EDINBURGH
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18 June 2024

Dear Edward,

I want to make the Committee aware that we have lodged an amendment at Stage 3 of the Circular Economy Bill, which seeks to amend the provisions in the Climate Change (Scotland) Act 2009 (the 2009 Act) in relation to deposit and return schemes.

Scotland would now have a fully functioning deposit and return scheme for empty drinks containers on the basis of our Deposit and Return Scheme for Scotland Regulations 2020 (the 2020 Regulations) were it not for the UK Government's refusal to agree to a full UK Internal Market Act exclusion in May 2023. It has also long been the Scottish Government's intent that schemes should be aligned as much as possible across the UK. Nevertheless, the Scottish Government has continued to engage in good faith with the UK Government and other Devolved Administrations to maximise interoperability of schemes for businesses and consumers.

Under the 2020 Regulations, Circularity Scotland Limited was approved by the Scottish Ministers as a scheme administrator in Scotland. This would have allowed the DRS to be fully operational in Scotland. Following the discussions with other UK nations since the scheme was delayed and recognising that Circularity Scotland no longer exists as a scheme administrator in Scotland, Scottish Ministers may, as part of our working with other nations to develop DRS across the UK, use section 85 of the 2009 Act to designate a body as a scheme administrator for Scotland. However, this requires us to make a slight adjustment to section 85 to mitigate the risk of such a designation of a scheme administrator leading to a public sector classification.

I have therefore lodged this minor amendment (Annex A) to the direction-making powers given to the Scottish Ministers in section 85 of the 2009 Act. The amendment seeks to remove the direction-making powers given to the Scottish Ministers in section 85(4) of the 2009 Act and replace them with a new provision which provides a power for Scottish Ministers to include direction-making powers in an order which designates a new body or an existing body as the scheme administrator for any deposit and return scheme. This

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amendment would enable Scottish Ministers to use the power in section 85 to designate a scheme administrator of any deposit and return scheme established under section 84 of the 2009 Act without such body being subject to the ministerial direction-making powers in the existing section 85(4) of the 2009 Act. The issue with section 85(4) is that it leads to a substantial risk of such a designated body being classified by the Office of National Statistics as a public body because a direction-making power on the face of the 2009 Act represents potential ministerial control over such a scheme administrator. This amendment ensures, however, that a direction-making power could still be given to Ministers under an order made to designate a body under section 85 and is therefore still aligned with the original intention of the provisions. This amendment means that Ministers can in future decide whether it is appropriate, in relation to any body being designated under section 85, whether it should be subject to ministerial direction-making powers; that decision would be informed by whether the policy intention was for the body to be classified as public or private sector.

I could not have brought this amendment forward at Stage 2 since we wanted first to conclude our discussions with the UK Government and other devolved governments on the interoperability of schemes across the UK. As you know from my letter of 2 May 2024, a joint four nations policy statement was only published on 25 April 2024 and there was a further need to clarify some details with UK Government plans which meant we could not lay an amendment in time for stage 2 of the bill. This amendment will now allow Ministers to consider the use of the section 85 power to designate a scheme administrator for the deposit and return scheme for drinks containers, while still enabling such a body to be classified as a private sector body. This therefore gives Ministers more flexibility to designate a scheme administrator in Scotland to support the interoperability across different schemes in the UK and aligns with the policy intent that the scheme administrator for the deposit and return scheme for drinks containers should be a private body.

I hope the information provided here is helpful to the Committee and I would be happy to meet with members in advance of Stage 3 to provide further information. Ministers will continue to update the Committee on our progress towards the launch of Scotland's Deposit Return Scheme.

I have also copied this letter to Sarah Boyack, Liam McArthur and fellow NZET Committee members Mark Ruskell and Douglas Lumsden (official spokespeople for Circular Economy).

Yours sincerely,



Gillian Martin

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Circular Economy (Scotland) Bill — Stage 3

[PCO52] Gillian Martin

After section 17A, insert—

*<Deposit and return schemes***Deposit and return schemes: power to direct scheme administrator**

(1) The Climate Change (Scotland) Act 2009 is modified as follows.

(3) For section 85(4) substitute—

“(4) An order under subsection (1)(a) or (b) may include provision about the giving of directions by the Scottish Ministers to the scheme administrator about the exercise of the administrator’s functions in relation to the scheme.”.>