



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Net Zero, Energy and Transport Committee

**Tuesday 5 December 2023**

**Session 6**



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Pàrlamaid na h-Alba

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**NET ZERO, ENERGY AND TRANSPORT COMMITTEE**  
**35<sup>th</sup> Meeting 2023, Session 6**

**CONVENER**

\*Edward Mountain (Highlands and Islands) (Con)

**DEPUTY CONVENER**

\*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

**COMMITTEE MEMBERS**

\*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

\*Jackie Dunbar (Aberdeen Donside) (SNP)

\*Monica Lennon (Central Scotland) (Lab)

\*Douglas Lumsden (North East Scotland) (Con)

\*Mark Ruskell (Mid Scotland and Fife) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Sarah Boyack (Lothian) (Lab)

Murdo Fraser (Mid Scotland and Fife) (Con)

Ginny Gardner (Scottish Government)

Gareth Heavisides (Scottish Government)

Ailsa Heine (Scottish Government)

Janet McVea (Scottish Government)

Lorna Slater (Minister for Green Skills, Circular Economy and Biodiversity)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Net Zero, Energy and Transport Committee

*Tuesday 5 December 2023*

*[The Convener opened the meeting at 09:36]*

### Decisions on Taking Business in Private

**The Convener (Edward Mountain):** Good morning, and welcome to the 35th meeting in 2023 of the Net Zero, Energy and Transport Committee.

The first item on the agenda is decisions on taking business in private. Do members agree to take in private item 6, under which we will consider the evidence that we will hear on the Circular Economy (Scotland) Bill under item 2?

**Members indicated agreement.**

**The Convener:** We also have to decide whether to consider our draft stage 1 report on the Circular Economy (Scotland) Bill in private at future meetings. Do members agree to do so?

**Members indicated agreement.**

## Circular Economy (Scotland) Bill: Stage 1

09:37

**The Convener:** Our next item of business is our final evidence session as part of our stage 1 scrutiny of the Circular Economy (Scotland) Bill. I am pleased to welcome the Minister for Green Skills, Circular Economy and Biodiversity, Lorna Slater, who is joined by Scottish Government officials. Ginny Gardner is head of the circular strategy unit; Gareth Heavisides is the Circular Economy (Scotland) Bill team leader. I hope that I got the pronunciation of his name right—is it pronounced Heevisides?

**Gareth Heavisides (Scottish Government):** It is pronounced Heavisides.

**The Convener:** I did not get that right; I will get it right in future.

Also with the minister, we have Ailsa Heine, who is a solicitor in the Scottish Government; and Janet McVea, who is head of the zero waste unit. Thank you all for joining us today.

We have around 90 minutes for this item. I invite the minister to make a brief opening statement before we move to questions.

**The Minister for Green Skills, Circular Economy and Biodiversity (Lorna Slater):** Thank you for the opportunity to come to speak with the committee.

The Circular Economy (Scotland) Bill will establish the legislative framework to support Scotland's transition to a zero waste and circular economy, significantly increase reuse and recycling rates, and modernise and improve waste and recycling services.

The powers in the bill will give ministers and local authorities the tools that they need in order to achieve our ambitions for a circular economy. Those represent a package of new powers and responsibilities that will be underpinned by support and investment, such as the £70 million recycling improvement fund. That builds on more than £1 billion of funding provided through the former strategic waste fund between 2008 and 2022 to assist local authorities with the implementation of a zero waste plan.

The bill is necessarily narrow in the topics that it covers. It sits in the space where the Scottish Government needs new powers to take action between powers that are reserved and matters that are devolved but for which we have already taken powers.

At the heart of many of the bill's provisions is the recognition that co-design, based on the principles of the Verity house agreement and the new deal for business, will be central to delivering the transformation that is needed.

Regulations that are made under the enabling powers in the bill will be subject to further consultation, parliamentary scrutiny and impact assessments, including business and regulatory impact assessments.

I note that the Delegated Powers and Law Reform Committee has reported to this committee that it is content, in principle, with the powers and the proposed procedures, although I also note that it has suggested some improvements to a couple of the powers.

Legislation is, of course, only part of the solution and a wide range of other measures is in train. Alongside the bill, we are developing our circular economy and waste route map, which will provide strategic direction to deliver our system-wide, comprehensive vision for sustainable resource use and for Scotland's circular economy to 2030. An updated draft route map will be published shortly for further consultation and will be finalised in 2024.

Extended producer responsibility for packaging, which we are introducing alongside other United Kingdom Governments, will require producers to pay local authorities the full net cost of operating an efficient and effective household packaging collection service. That will provide substantial funding of an estimated £1.2 billion per annum to local authorities across the UK.

I finish by underlining the fact that building a more circular economy is an environmental imperative, but that it is also an economic opportunity for Scotland. It will open up new markets, improve productivity, increase self-sufficiency and provide local employment.

I look forward to answering members' questions.

**The Convener:** Thank you, minister.

When I was welcoming people to the meeting, I should have welcomed Murdo Fraser and Sarah Boyack. They will get a chance to ask some questions at the end, depending on time and on how many questions they have.

The first question will come from our deputy convener, Ben Macpherson.

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** Good morning to you minister and to all your officials. Thank you for being with us.

I begin by saying that I warmly welcome the bill and the ambition to transition to a more circular economy and to improve recycling. The bill is part

of the transformation to a circular economy and to improving our country's waste management.

The bill as introduced includes a number of measures regarding recycling and the placing of responsibility on individuals and households. Although, like me, the stakeholders we have spoken to have welcomed the bill in principle, we have heard many comments that the bill focuses on the lower end of the waste hierarchy, particularly on recycling and household waste. We have also heard some powerful discourse about the omission of the construction sector from the bill, although that accounts for approximately 50 per cent of Scotland's waste.

How do you respond to those concerns? Does the bill provide an ambitious enough framework to move us up the waste hierarchy by empowering more reuse and repair and creating facilities for that? If we are asking individuals to step up and do more, we must also think about the construction sector. I would be grateful to hear your reflections on that.

**Lorna Slater:** I am really pleased by that question because that has been on my mind, too. There are six provisions in the bill that look directly at moving up the hierarchy of reuse, and the bill is just one part of the larger strategic framework that will be described in the route map that I know you are all very keen to see, and which will shortly be published in draft form as part of the extended producer responsibility scheme.

There are six provisions that are directly related to reuse and they start at the beginning with strategy and targets. I have the bill in front of me and note that it specifically says that a circular economy is one in which

“the production and distribution of things are designed so as to reduce the consumption of materials”.

Reducing consumption of materials is the fundamental driver for the strategy and for the national targets. Setting out that strategy and looking at the high-level consumption of materials means implementing the waste hierarchy, which puts reuse near the top—less consumption, then reuse, then recycling and so on. That hierarchy would be embedded in the strategy. That is the overall principle.

The next provision that relates to reuse is the placing of restrictions on the disposal of unsold consumer goods. We have seen other countries put that in place. For example, in France, there is a ban on companies destroying clothes, cosmetics, hygiene products and electrical items. That would apply to both sold and unsold items. Some items are not even getting used at the moment and, in many cases, are going directly to landfill or incineration, so that provision would

ensure that those items would be used in the first place, rather than being wasted.

09:45

The next provision that relates to reuse is on charges on single-use items. We have all seen how effective the charge on single-use plastic bags or bags in shops has been in driving the reuse of bags. We probably all have cupboards full of reusable bags that we take to the shops, or we keep them in the boots of our cars. That charge has driven reuse, which is the purpose of single-use charges. We intend to implement the first single-use charge on reusable coffee cups specifically to drive reuse by encouraging people to use reusable cups rather than disposable ones.

The next provision of the bill that we can use to drive things up the waste hierarchy is the code of practice. As I have said, that will be developed with councils under the Verity house agreement. I know from the committee's earlier evidence session that councils are interested in looking at how they can improve reuse, and there are already some excellent examples of that within our councils.

The next provision that relates to that is the one on reporting waste and surplus. That provision was initially intended to cover food, but the reporting of waste and surplus in construction is a high priority for me. The public reporting of waste and surplus does two things. First, it makes the businesses that use those materials aware of what they are wasting and that it is not good for their bottom line, and it also makes them aware of the surpluses that they might have that might be of use to other people. Making records of those materials publicly available also means that other organisations and businesses can look at them, see that they are identified and then reuse them. As the member rightly highlighted, the construction industry is a key one in this case. When people dismantle or repair buildings, they can generate a lot of potentially reusable material, and it needs to be reported on so that people know that it is there and they can use it.

**Ben Macpherson:** I am sorry to interrupt, minister—I got the feeling that you were coming to the end of your articulation of those important points. If there is no obligation on the construction industry in the primary legislation in the same way that there is on individuals, I would be concerned about an imbalance. As the bill progresses, I would be grateful if you and your officials would commit to considering the evidence that we have heard on the construction industry and what potential there might be for putting more significant obligations on to that industry, given that it produces so much waste in Scotland.

**Lorna Slater:** I am happy to consider that. I have spoken to the construction industry. Last year, I spoke with the Royal Incorporation of Architects in Scotland, and it was particularly keen on material passports, passports for buildings and reporting, so that it can be aware of what materials are available for reuse and get systems in place. We want to do more work on that.

I am sorry, but there is one more provision in the bill that I want to be clear about. Some concerns have been voiced that the bill looks at only recycling and waste, so I want to be clear that there are many provisions of the bill that look higher up. Zero Waste Scotland has been very supportive of us, and it will now be a public body. I have asked it to undertake the sharing of good practice, particularly between our councils. For example, Moray Waste Busters, which many of you might be familiar with, is an exemplar of how reuse can be attached to a local authority for the benefit of the community and, of course, the local authority.

**Ben Macpherson:** Finally, on the considerations around repair and reuse, I know that the minister is familiar with the Edinburgh Remakery in Leith, in my constituency, which the committee also visited recently. If we are to grow such facilities and opportunities, is there an understanding in Government, the route map and the strategy that there will need to be either co-ordination with Government and investment in the third sector or provision from Government to expand those facilities if the bill and the following actions are to have the meaningful effect to which the bill aspires?

**Lorna Slater:** Of course. I am familiar with the work of the Remakery, as I was a board member for a brief time but resigned that post when I took up my ministerial post. Organisations such as that do much good work, not only in getting goods into the hands of people who could really use them during the cost of living crisis, but in ensuring that nothing is wasted and that materials are put to good use. Part of the route map looks at how we can support such businesses. I am keen for you all to see that draft route map, which will be with you as soon as we can get it to you.

**The Convener:** Minister, I have a broad question. In the build-up to the bill's publication, did you have meetings with large organisations in Scotland to discuss the contents of the bill? More specifically—this is a simple question—did you have a meeting with Amazon to discuss the bill?

**Lorna Slater:** I have not had a meeting with Amazon.

**The Convener:** According to an entry in the lobbying register on 12 October 2022, Amazon said that it met you. I ask the question because

the committee was keen to meet Amazon to discuss the bill, and although the company was happy to submit written evidence, it did not want to appear before us, which was difficult for us to understand. I am surprised that you say that you did not have a meeting with Amazon.

**Lorna Slater:** I correct myself. I am trying to remember what I did. If the record says that I met Amazon, then I did. I would have to go back and see the minutes of the meeting. That was last year. The convener will know that I have many meetings. If that is on the record, we can find out what the minutes of that meeting say.

**The Convener:** My point is that it would have been helpful if Amazon had come to see us as well, and not just you.

Now that I have got that on the record, I will move on. Last week, the Finance and Public Administration Committee published an interesting report on the financial memorandum for the Circular Economy (Scotland) Bill. Will you summarise the key findings of that bill for the committee?

**Lorna Slater:** Do you mean the key findings of the report?

**The Convener:** Yes.

**Lorna Slater:** Certainly. From my point of view, the report made two substantive points, which we can go into in further detail if you would like. The first was that there was dissatisfaction with some of the assumptions that were made for specific numbers in the financial memorandum. I am content to take away that feedback, review those numbers and, as previously discussed, publish updates if I feel that that is necessary.

The second point was to do with frustration—which I know that you share, convener—about the nature of a framework bill and what that necessarily means for how the secondary legislation that follows on from such a bill can be scrutinised, in particular by the Finance and Public Administration Committee. The FPAC's comment was that, although it sees the primary legislation, the secondary legislation does not come to it. Although that secondary legislation would come to committees such as this one and would be accompanied by impact assessments and similar information, it does not go to the FPAC. That is a matter of parliamentary process—maybe the issue is one that we should address, so that that committee can provide such oversight. That process is for the Parliament to decide.

**The Convener:** I think that the Finance and Public Administration Committee went slightly further than that, if I have read the report correctly. It said that, in the financial memorandum, you had underestimated the cost of doing things. In broad

figures, the costs of employing people varied considerably from less than £500,000 to nearly £1 million. There was an assumption of 100 per cent payment of fixed-penalty notices—good luck with that, because I am not sure that anyone else achieves it. Insufficient money was put aside for education, which we have heard is really important.

I could go on and on, but the most difficult comment for me to go past is the one in paragraph 55 that says:

“affordability does not appear to be a key factor in Scottish Government decision-making”.

The report makes that comment in relation to the bill. Do you think that the Finance and Public Administration Committee is wrong?

**Lorna Slater:** I welcome the committee's report, which had some useful information in it.

The information in the financial memorandum is the best information that we have. We can go through in detail how each of the estimates in there was produced. They were produced in consultation with local authorities and businesses, where we have the relevant information, and by examining the costs of parallel or roughly equivalent projects that we have undertaken in the Scottish Government, for example, using data from Zero Waste Scotland.

In relation to assumptions around things such as fixed-penalty notices, the assumption in the financial memorandum of a payment rate of 100 per cent relates only to the provisions that introduce a new civil penalty regime on littering from vehicles. A range of costs associated with enforcement were included. Robust data on payment rates is not held centrally. I recognise that we could probably benefit from a comparative figure, but it is fairly marginal in the overall costings of the financial memorandum.

When it comes to anticipating the costs, the convener is right to say that there is a range. That is because there is a substantial range in relation to the variability of the current readiness of our councils and their existing recycling rates, which vary from about 20 per cent all the way up to around the 50 or 55 per cent mark. We are aiming for 60 per cent as a country, so some of our councils are very nearly there and some are a very long way away.

The convener can imagine that the cost of bringing councils over that line will vary enormously. It depends entirely on what we agree to be the code of practice and the target. The comparative number that we have set out is £88.4 million, which is Zero Waste Scotland's estimate for bringing all councils up to the current code of



practice, which is a voluntary code of practice to which most councils do not adhere.

Those are the best numbers that we have available to us.

**The Convener:** I would never question another committee's report. It is an excellent report, which indicates that you really need to go back to the drawing board on many aspects of the financial memorandum. Can we expect to see that in greater detail when the bill, if it gets to the next stage, comes back to this committee?

**Lorna Slater:** As I have said, I am happy to reflect on the numbers that have been flagged up by that committee. I will make a determination as to whether I feel that an update is required.

**The Convener:** Okay. I think that I have given you my steer on that.

The next questions come from Mark Ruskell.

**Mark Ruskell (Mid Scotland and Fife) (Green):** Good morning. The Circular Economy (Scotland) Bill is a framework bill, on the back of which will come regulations. The minister has already mentioned potential regulations on disposable coffee cups. I will ask about the parliamentary process for that.

In the previous session of Parliament, the super-affirmative procedure was used in relation to the original deposit return scheme regulations that went through Parliament. The use of an enhanced procedure such as that gives stakeholders an additional opportunity to come in and give evidence to committees. With regard to decision making around the regulatory procedure in the bill, was the use of the super-affirmative procedure considered as an option?

**Lorna Slater:** Absolutely. Mark Ruskell is absolutely right that the Circular Economy (Scotland) Bill establishes a legislative framework to support the transition. Each provision of the bill has an associated parliamentary procedure under which secondary legislation could be brought.

Mark Ruskell specifically mentioned charging for single-use items. There is intended to be a super-affirmative procedure attached to that when it is a new charge. For example, the introduction of a charge for single-use coffee cups would be done under the super-affirmative procedure. However, if we were to subsequently modify that charge, how it worked or any aspect of those regulations, that would be done under the affirmative procedure.

Ailsa Heine might be able to provide some more detail on the super-affirmative procedure.

**Ailsa Heine (Scottish Government):** Yes, I am happy to elaborate.

The power that we are inserting, via the bill, into the Climate Change (Scotland) Act 2009 is quite similar to the carrier bag charge, which was also subject to the use of the super-affirmative procedure. As the minister said, the introduction of a charge for any new item would be subject to the use of the super-affirmative procedure.

The actual super-affirmative procedure is set out in the Climate Change (Scotland) Act 2009, which requires ministers to lay a draft of the regulations before the Parliament, to allow a minimum of 90 days for representations to be made on the regulations and, after that period, to take into account any parliamentary report or representations that have been made. When ministers come to lay the final draft Scottish statutory instrument for its actual affirmative procedure, they also have to lay a statement setting out whether there have been any changes to the draft that was laid for the pre-laying procedure, compared with the draft SSI that has been laid for approval. That allows for quite a bit of scrutiny by a committee of the Parliament or by individuals who want to contribute and make representations.

10:00

**Mark Ruskell:** My recollection of the original DRS super-affirmative instrument was that it took the committee quite a long time to get in all the stakeholders, consider the evidence and produce a report. Is that fast enough for the regulatory measures in this instance? Is there another way of doing it? Can you front load stakeholder engagement in a different way?

**Lorna Slater:** As far as I understand it—I will get Ailsa Heine to clarify this, if I do not have all the detail—under the super-affirmative procedure, it is not set in stone exactly what must be undertaken. We can use our judgment as to what would be appropriate for different provisions, if there is a concern, for example, about speed.

**Ailsa Heine:** We would certainly have to go through the pre-laying procedure, but that does not stop engagement in advance. It is a balance between giving the Parliament sufficient or enhanced scrutiny of such new charges, because every time we choose to impose a new or different charge, the super-affirmative procedure has to apply to that. It is called the "pre-laying" requirement in the 2009 act. However, it could still mean that there would be a lot of pre-engagement with stakeholders before that.

**Mark Ruskell:** I suppose that it depends on how strong the consensus is in the industry on certain measures.

**Ailsa Heine:** There has to be a minimum pre-laying period of 90 days, within which—

**The Convener:** Janet McVea is waiting patiently to come in.

**Janet McVea (Scottish Government):** That is absolutely fine. Those are all really important points.

On Mr Ruskell's question about opportunities to front-load engagement, environmental charging for single-use cups is a really good example of that. We are engaging actively with a wide range of stakeholders through our single-use cups charge advisory group, which has already met on a number of occasions, having been established quite some time ago. We have stakeholders in the group from a cross-section of society—retailers, hospitality, equalities groups and so on—and it is already giving us an opportunity to inform consideration of how regulations could be crafted, as well as to inform implementation considerations. That engagement is continuing, and it will help to inform impact assessments. It is a twin-track process, in a sense, with advance engagement to inform policy development, as well as complementary opportunities for scrutiny once regulations are drafted.

**The Convener:** Just so that I understand—I am not quite sure that I got all of the answer—I think that you said that you were considering using the super-affirmative procedure for single-use items. Could it also be used to set the national targets?

**Lorna Slater:** For the national targets, we are looking at using the affirmative procedure, not the pre-laying procedure, as Ailsa Heine has pointed out.

**The Convener:** So, you will not use the super-affirmative procedure for the national targets.

**Lorna Slater:** No. We are looking at using the super-affirmative procedure for charging for single-use items.

**The Convener:** Thank you for clarifying that. The next question comes from Monica Lennon.

**Monica Lennon (Central Scotland) (Lab):** Good morning. We have heard from stakeholders who are calling for the framework for the circular economy strategy to more closely mirror climate legislation for the climate change plan, with sector-level plans, embedding just transition principles, mainstreaming across Government departments and linking legal targets explicitly to the strategy. What is your view on that? Did you give consideration to more closely mirroring climate legislation in designing the bill?

**Lorna Slater:** That is a really interesting point, on which, if Monica Lennon will indulge me, I will go into in some detail. Under the first provision of the bill, which is on the circular economy strategy, she will note that, under section 1(5),

“The circular economy strategy must be prepared with a view to achieving consistency, so far as practicable,”

with the “climate change plan” and the “environmental policy strategy”. That is the link that brings in the just transition elements. When we develop the circular economy strategy, we must include all those elements. It is right there in the bill that we must tie those things in.

With respect to the bill's shape, there was a target in the Climate Change (Scotland) Bill. The context is quite different here, in two ways. One is that, in the context of the Climate Change (Scotland) Bill, we were looking at Scotland's contribution to a UK bill that already existed. There was already a target in that space, and we were looking at our piece of it. The second difference is that, with climate, there is one target, which is on carbon emissions—that is the one thing that we are looking at. In the circular economy space, there are many different metrics that could be looked at. There are consumption targets and sectoral targets—there are a lot of different things that one could look at.

When choosing to set targets, there are risks around, for example, setting targets that cover reserved matters. If the Scottish Government set targets that did not cover solely devolved matters, we would be risking setting targets that we had no control over achieving. We are in a different space with the circular economy targets, in that we are still at the cutting edge of establishing the metrics and targets, and how to measure and make progress on them. In this case, that work needs to be done in parallel with the setting of the strategy and the targets, because the science has not moved along and is not as mature as it was in the climate space. Also, there is no UK-wide legislation and targets that we are slotting into as we were with the Climate Change (Scotland) Bill.

Would any of the officials like to come in on that?

**Gareth Heavisides:** I will pick up on a couple of things that the minister said and a couple of things that you asked about, Ms Lennon.

On mainstreaming, the bill refers to the Scottish ministers having

“regard to the circular economy strategy in making policies”.

That is very important for us with regard to making sure that the circular economy is embedded across the range of Scottish Government policies, which is obviously important in making wider circular economy policy.

**Monica Lennon:** Sorry to interrupt, but did you say that the bill says that the Government must “have regard to” that?

**Gareth Heavisides:** Yes.

You also mentioned sectors. We thought about that issue carefully in designing the bill. We have a reference in the bill to having

“particular regard to sectors and systems most likely to contribute to developing a circular economy”.

We talked about construction earlier, and people would understand construction as a sector, but there is also a wider point about systems as a whole, which is the reason why we have phrased the bill in that way. We might think about the built environment as a whole and look across the whole supply chain. That goes back to the earlier discussion about focusing higher up the waste hierarchy. Focusing on things such as the built environment rather than individual sectors would provide an opportunity to do that.

**Monica Lennon:** That is helpful.

From your explanation, minister, I understand why you are being cautious. However, given what we have heard in the evidence that we have taken, are you considering any amendments to address any of the points that have been made?

**Lorna Slater:** No amendments have been proposed to me, but I am all ears if there are specific ones that the member or others have in mind. I have certainly had many discussions with environmental non-governmental organisations on the matter of targets, but they have not presented me with what they think the targets should be; they have simply said that they think that we should have some, and we agree. That is why the provision to create targets is in the bill.

**Monica Lennon:** The 2020 Scottish environment strategy vision included a commitment to

“gather evidence on the nature of Scotland’s international environmental impact.”

We had an evidence session last week that covered some of that. We have heard from stakeholders who have highlighted the global impact of Scottish consumption on the environment and human rights. There have been suggestions that the bill could be used to increase our understanding of our impacts beyond consumption emissions.

What is your response to that, minister?

**Lorna Slater:** I absolutely agree that the bill can be used in that way. The member will note that, in section 1, which is on the circular economy strategy, many of the provisions specifically refer to “consumption of materials”. That is not limited to the impact of the consumption of materials on Scotland, so one could absolutely use those provisions to look at global footprint. Earlier this week, I had a meeting about a report that is to be published on Scotland’s global footprint and how

we will look at that. Work is being done on that in parallel with the work on the bill.

I do not know whether any of the officials would like to come in on that.

**Janet McVea:** I will complement that by referring to a specific high-level example that came up in one of the committee’s previous evidence sessions in relation to the impact of exported waste, including low-grade plastic waste.

At the end of the waste system, it is clearly important, as we have noted, that we are concerned with maximising economic opportunities and maximising opportunities to reprocess in Scotland. We know that 15 per cent of waste is processed elsewhere, which is a lost economic opportunity. It is also important to assure ourselves that waste that is collected for recycling and reprocessing but that must be exported—for whatever reasons to do with the markets—is dealt with in a responsible way.

You have noted that the issue of waste exports is generally a reserved matter. However, we are working with the UK Government to support its efforts to deliver its existing commitment to ban the export of plastic waste to non-Organisation for Economic Co-operation and Development member countries.

We are also looking at what is possible within our devolved competence. One example of that, which I understand the representative from Waste and Resources Action Programme Cymru commented on, is the approach in Wales, where there is a duty on local authorities to report the end destination of waste that is collected. It has also taken very positive steps to make information available and accessible to the public through online portals, for example.

In the first consultation on our waste and circular economy route map, we noted our interest in that approach. We know that having an understanding of and confidence in the recycling system is very important for encouraging householders’ participation. People must be able to trust the system. Therefore, we had signalled our interest in exploring the potential to adopt similar measures and to create additional requirements to enable our understanding of where waste that is collected from recycling goes.

The reason that we have not included such a provision in the bill is that—Ailsa Heine might want to come in this—we do not think that we would need to take primary powers to do that. If the measure is considered in future—it got strong support in our initial route map consultation—that is something that we could potentially already do with existing powers. As the minister has noted, the further route map draft will be published

shortly, and that might comment further on the matter.

I hope that that gives you a specific example of our commitments, as well as where we do not necessarily need to include provisions in the bill to enable that action in the future.

**Monica Lennon:** Thank you for that—that is helpful.

Our session last week, which included our hearing the perspective from Wales, was interesting. We also heard from the Scottish Catholic International Aid Fund. I want to raise with you some of SCIAF's suggestions for amending the bill: they might not be things that you want to put in the bill, but I am keen to get your views on three recommendations that it makes.

The first suggestion is that we amend the consultation on strategy to include a mandatory requirement to include international stakeholders. The second is that we amend the circular economy strategy to gather evidence of the environmental and human rights implications of our consumption—the data point that Janet McVea touched on. The third is that we amend the strategy to add an objective for ensuring, in the Scottish context, the highest-possible standards for human rights, due diligence, environmental protection, supply chains and public procurement. I might come back to procurement. Would those amendments be helpful? Are you open minded on consideration not just of SCIAF's suggestions, but of other suggestions of that nature?

**Lorna Slater:** I am, indeed, open minded about how we can improve any aspect of the bill—certainly, in terms of ensuring that the strategy has the effect that we want it to have. Of course, our commitment to human rights globally is strong, as you know. I look forward to discussing those potential amendments with you further.

**Monica Lennon:** That is great.

Lastly, we have talked about the environmental imperative driving the bill and the economic opportunities. The issue of public procurement comes up in many bills—not just this one. Some people have been asking what the expectations are on the public sector, including on local government, and what the opportunities are in terms of public procurement. Is that something that you can elaborate on?

**Lorna Slater:** I will give you my thoughts, then invite officials to come in. There are two points to make on that. In relation to the bill, there is an opportunity in respect of national and local authority targets, if local authorities want to address that as part of the co-design process. That could be looked at, but what would

procurement with such targets look like? We would have to work out the exact details to make sure that it was feasible.

10:15

The other element, which I have discussed with Zero Waste Scotland, is entirely separate from the bill, but is part of the larger picture. We are moving into a space where we need to understand and be able to measure the circularity of a company. For example, in the fair work space, we know that companies are accredited as fair work companies and as living wage companies. Under such a procurement procedure, you would be able to say whether a company meets the requirement.

However, we do not have a circularity accreditation. One does not exist here yet and, as far as I am aware, none exists globally. All countries are working on that.

**Monica Lennon:** Would you like to introduce such an accreditation?

**Lorna Slater:** It would be interesting to look at the idea. I have discussed the matter with Zero Waste Scotland. Around the world, various metrics are being developed and, as I said, I have asked Zero Waste Scotland to take that on board. Such a metric would be brilliant. My long-term vision is to have a circularity metric, so that we could say that companies must have a certain amount of circularity, just as we can say that they must be fair work employers, but I do not know what that would look like yet.

**Bob Doris (Glasgow Maryhill and Springburn) (SNP):** On Monica Lennon's questions about SCIAF's call to amend the bill, I pushed SCIAF quite hard last week about what that would mean in practice. How can we do due diligence for public sector and corporate supply chains, considering the nature of full supply chain procurement, which could be global? There could be human rights implications. What would that mean in practice? SCIAF seemed to admit that it would be hugely difficult, but that is not a reason not to have it as an objective or to put it in a strategy, although we would have to be realistic about what we could do. I just wanted to put that on the record. Does that make you minded more to move in that direction, but with a great deal of realism about what we could achieve? It would be difficult, but that is not a reason not to try.

**Lorna Slater:** Absolutely—you are exactly right. Measuring circularity in Scotland, never mind measuring circularity in different places around the world, is difficult. Monica Lennon is right that we should consider that. Exporting of our carbon footprint and our waste is not the goal. Our goal is to reduce consumption of materials overall, so that we reduce our impact here and globally. You are

right that getting the detail on that is challenging, just as it is in developing specific targets, because this is all new and cutting edge.

**The Convener:** Bob Doris might have been told that he is exactly right, but he might have to make his peace with another member, whose question he has inadvertently stolen.

**Ben Macpherson:** I will build on the end of my first question.

We have discussed various impacts of the bill. Overall, we share the collective position that it makes sense to repair and reuse things if we can. There is huge opportunity in that for skills, jobs and economic development. How will the strategy, when it is produced, provide the conditions for a thriving reuse and repair sector in Scotland? What consideration has been given to how the strategy can encourage reuse and repair hubs, which I mentioned earlier, and to whether that should be public sector-led or facilitated in collaboration with the third sector and social enterprises? There are huge opportunities for the social enterprise sector. How do we encourage and expand the networks? Can you set out in more detail the practicalities of delivering reuse and repair on a larger scale?

**Lorna Slater:** As I highlighted, the circular economy strategy, as set out in the bill, talks about reduction in consumption of materials. The most effective reduction in consumption is to move materials up the waste hierarchy towards minimising their use in the first place, and towards reuse over discarding and recycling. That is built right into the strategy.

We have had a bit of discussion about what details might be included in the bill, but strategies would be produced every five years. As Gareth Heavisides has highlighted, they relate to particular sectors and systems—for example, putting in place repair cafes and the systems that we would need in order to implement that approach. The strategy sets out space for those to be created.

**Ben Macpherson:** I appreciate that. However, I am conscious that the approach will require a significant increase in the number of accessible facilities that people can walk to or get the bus to, and do not need to drive to. What are our timelines in that regard? What is the vision? What will the approach look like in urban areas and rural areas? I appreciate that that will be set out in the strategy, but it would be good, at this juncture, to get a sense of where we are moving to. I think that your official is keen to come in on that point—at your discretion, of course.

**Lorna Slater:** The most relevant provision in the bill in that regard relates not so much to the strategy, which absolutely could encompass those things, but to practical implementation. So much of

the practical implementation will be done by our local authorities, so it is most likely that it will take effect and take shape under the provision for development of the code of practice.

**Ben Macpherson:** Will that mean un-ring-fenced funding for local authorities and the third sector, to give them the freedom and the capacity to deliver, in the spirit of the Verity house agreement? Delivery is everything.

**Lorna Slater:** Absolutely. The approach would need to be developed in the spirit of the Verity house agreement. We need to develop the processes, systems and intentions at the same time as the funding regimes.

There are, of course, significant opportunities for setting up businesses—especially businesses that are associated with local authorities. I will flag up again Moray Waste Busters, which is an excellent example of a business that is associated with a local authority. It triages the waste that comes in and captures items that could be reused. Not all local authorities have such facilities, but where one has something like that in place, it is not only leasing a bit of land to a business, but that business is removing from the waste stream items that the local authority would otherwise have to pay for.

The issue is not always about supporting local authorities with costs; sometimes it is about supporting local authorities to find opportunities for savings—or even for increased revenue, such as through pre-recycling.

**Ben Macpherson:** Such organisations are going to have to be funded somehow. They will have in their model a return in terms of sales. For example, the Edinburgh Remakery has a sales revenue stream from repairing and reselling laptop computers.

Local authorities and the third sector are going to be absolutely crucial to delivery, if central Government is not going to do it itself. We need to be very clear about how that is to develop and what it will look like, so that we get buy-in from people, and so that they know where to go and want to go there. I think that people want to do the right thing. If they know about a facility, they will go and use it, but we need to create the facilities and we need to raise awareness of where they are and what they do.

**Lorna Slater:** Absolutely. We need to work with local authorities to set out what we want local authorities to deliver and what they are prepared to deliver, and then, of course, we need to set out how that investment will take place.

Do you want to come in, Janet?

**Janet McVea:** I want to make two or three brief points on that, and to provide illustrations of some of the key points that Ben Macpherson made.

This is absolutely about making it easier for households to make the right choice, and about the key role that local authorities and the third sector have, along with Government, in making that happen. However, we recognise the reality that work will continue to be required to co-design what “good” looks like and the infrastructure that is put in place.

I will illustrate what we have been doing on that already. “Recycling improvement fund” is potentially a bit of a misnomer, because it is also about promoting reuse opportunities, but there are certainly two or three examples of how the RIF has already been supporting enhancements in local authority infrastructure to support accessible good-quality experiences for reuse. Those include a recent award of nearly £900,000 to Argyll and Bute Council to support enhancements of six household waste recycling centres—including on the council’s islands—to support reuse.

A second example is Stirling Council, which has made enhancements to three recycling centres in order to increase opportunities for reuse as well as recycling. Aberdeen City Council got one of the early awards, which was nearly £40,000, to expand its reuse service. Those examples illustrate our recognition that we need to improve the infrastructure.

Secondly—

**The Convener:** I understand about the fund, which everyone has to bid for—and councils are in competition. Not all local authorities have bid for that funding, have they?

**Janet McVea:** All local authorities have the opportunity to bid for it, and we have awarded £16 million to 21 local authorities to date.

**The Convener:** Do you know how many authorities out of the 32 have applied for the funding?

**Janet McVea:** I would need to check that. I know that there have been 21 awards. A number of councils have not applied, for various reasons, so the board has been looking into that to understand the reasons for it. We have been supporting local authorities, through Zero Waste Scotland, to ensure that there is not a capacity barrier. Some councils have intentionally not applied for further—

**The Convener:** It would be interesting to know that it is not a matter of the sharpest local authority having applied 21 times.

**Janet McVea:** No. The board has been alive to that to ensure that there are no barriers and that

there is parity of access, which is the absolute north star for the board.

The second point that I was going to make, apart from on the examples involving the recycling fund, is on the code of practice, which the minister spoke about earlier. We envisage that the code of practice will provide opportunities to embed reuse much more strongly. Circular Communities Scotland is keen for us to do that, and we have had some discussions about it. As we outlined in our policy memorandum, we envisage co-design, with a refreshed code providing an opportunity to embed reuse much more clearly.

In essence, there is a combination of measures. The bill will have a role to play, potentially through the code and the high-level strategy, but there are also non-legislative actions, including further support to local authorities and the third sector. We are also considering the procurement opportunities that local authorities have. There are some very positive examples of that, including under the Circular Communities Scotland scheme—which I understand got an award at the social enterprise awards in the past week or so.

There is more work to do on that. Great strides have been made, but we recognise that there are more opportunities for reused material, through procurement.

**The Convener:** I have a couple of questions. Stakeholders were worried about the very broad definition of “consumer goods”. Should they be nervous? The definition sort of encompasses everything, does it not?

**Lorna Slater:** No—I do not think that stakeholders need to be nervous. Since he gave evidence to the committee, I have had a meeting with Ewan MacDonald-Russell of the Scottish Retail Consortium to clarify exactly that point. He was concerned that the definition might include food and other perishable goods, so I wanted to reassure him that that is not the case. The description of “consumer goods” is intended to be used in relation to durable goods, not perishable goods. I have agreed to write to Mr MacDonald-Russell to clarify that point.

The intention is to cover goods that are currently being disposed of that have a significant impact. The model that we are examining is the one that applies in France, where rules have been imposed for electronics, textiles, hygiene products and cosmetics. That is the model that we will consider, although we will do a full consultation before we implement it.

**The Convener:** Surely it is an issue that your bill says that, if I was running a big company in Scotland and was unable to sell its product here, I could not dispose of it but I could send it to England or elsewhere to sell it, and there would be

nothing that you could do about that. Will the legislation disadvantage small and medium-sized businesses that do not have the ability to move things around the world?

**Lorna Slater:** The bill is absolutely not intended to target small and medium-sized businesses. It is—

**The Convener:** It might not be intended to target them, but it appears that it might do that.

**Lorna Slater:** That is where the detail would come in regulations. The intention is that we cover larger businesses. It is all about the significance of the impact and about proportional implementation. Where such measures have been implemented, they have concerned large companies that produce significant amounts of goods. The bill is not at all intended to target small or medium-sized enterprises.

You are right that there are concerns about what the measures would look like, including in relation to where export fits in.

The bill might need to include provisions to address people trying to get round the legislation by deliberately contaminating clothing and textile waste so that it cannot be reused. Secondary legislation needs to capture all that.

10:30

**The Convener:** Hold on, minister—I want to understand the approach. It is fine to say that, but if I operated a huge company with warehouses all over the world, and decided that I could not sell, in Scotland, something that I was not allowed to dispose of in Scotland, I might be able to sell it somewhere else. I could put it on one of my hundreds of big trucks and send it somewhere else in the world to sell. Surely that is the simple answer. What can you do about that? I do not see that you can do anything.

**Lorna Slater:** That will depend on exactly how the regulations are drafted, but the intention is to prevent things that could be used from going to incineration or landfill. Whether the regulations will permit export use will have to be considered in consultation.

**The Convener:** If I ran a small business and I did not have a big warehouse in every part of the world—if I had just a small warehouse in Scotland—I would be really hard hit. Are you going to give small businesses a bye and say that they do not have to take part? That would negate the whole point.

**Lorna Slater:** No—that would not negate the whole point. The regulations need to be proportionate; we are looking at large businesses whose activities can have a significant impact on

the carbon footprint. The bill is absolutely not intended to target small and medium-sized enterprises or to disadvantage small businesses in any way. We are looking specifically at the impact of large businesses.

**The Convener:** Large businesses can just move things around where they want to. I am sorry. Am I not phrasing my question correctly? Bob Doris can ask his question and then I will come back in.

**Bob Doris:** The line of questioning is interesting. Will the regulations give small to medium-sized businesses dispensation in relation to some requirements? Given the minister's exchange with the convener, I am interested in how that might pan out.

**Lorna Slater:** A recent example comes from the regulations for the deposit return scheme, which allowed retail businesses of certain sizes to apply for exemptions and which exempted producers that produced fewer than 5,000 items of a particular product line. It is absolutely possible to draft regulations so that they target the businesses that have the most environmental impact, and that is the intention.

**Bob Doris:** It is really helpful to hear that that is already in the Government's thinking. It sounds as if the convener and the minister might be in agreement for once.

**The Convener:** I am completely confused about how that will help me out. I do not understand how the Government will regulate a large company moving things around its supply chains as that suits it, unless a company is totally based in Scotland and cannot sell anything anywhere else.

It is brave to mention the deposit return scheme, because that related just to Scottish producers and not so much to producers around the world.

**Lorna Slater:** The deposit return scheme also covered importing goods, so the legislation had to have provisions on that. That scheme is a good example because the regulations for it stipulated the size of businesses that would be affected and gave a variety of exemptions for smaller businesses at the retail end and the producer end.

The regulations to address disposal of unsold goods are intended to deal with businesses that have the most significant environmental impact. That can be informed by consultation of the businesses that would be affected. The intention is absolutely not to impact small and medium-sized businesses, whose carbon footprint and footprint of goods are necessarily small, so including them would not be proportionate.

**The Convener:** I still do not understand how you can force somebody to do what you specify.

**Douglas Lumsden (North East Scotland) (Con):** I will come in on that point. If we deal with only larger businesses, is there the unintended consequence that some of them will move their distribution centres south of the border, where the same legislation to prevent them from disposing of unsold goods is not in place?

**Lorna Slater:** Many larger businesses already work in this space—for example, Amazon has a charity that it sends its unsold and returned goods to. Lots of businesses are already working on the issue because they know that they need to get to net zero. It is not good for their bottom line to waste materials. As I said, there are examples. France has already introduced such a ban; it is not a new thing and there are models.

**Douglas Lumsden:** I absolutely agree, but is there not a concern that big distributors, such as Amazon, which you mentioned, will just move their distribution south of the border to get round some of the legislation that you are going to put in place?

**Lorna Slater:** I do not share the concern that companies will build different infrastructure just because we made them send their unused goods to charity—[*Interruption.*—]—instead of to the incinerator—[*Interruption.*] That seems a bit extreme.

**Douglas Lumsden:** Minister, companies such as Amazon already have distribution south of the border. What is there to stop them closing centres in Scotland and moving everything south of the border so that they can distribute from there?

**Lorna Slater:** The provision is not that burdensome—

**Douglas Lumsden:** We do not know that yet, because we have not seen all the detail.

**Lorna Slater:** We will look at that in consultation. It is necessary to ensure that goods are not being produced and then sent straight to incineration or landfill. I am sure that the member can appreciate that, during a cost of living crisis, it is absolutely in our interest to ensure that perfectly usable goods—

**Douglas Lumsden:** Minister, I absolutely agree—

**Lorna Slater:** —such as hygiene products and clothing, get into the hands of the people who need them.

**Douglas Lumsden:** I am not saying—

**Mark Ruskell:** I cannot hear what people are saying.

**The Convener:** Hold on. Whoa, everyone. We need a little bit of decorum. I have explained before that I am slightly deaf. If everyone talks

over each other, the only person who cannot hear is probably me, although it will probably not be me: it will probably be all of us. Please speak quietly, and one at a time.

**Douglas Lumsden:** My apologies, convener. I will ask the question again. Is there not a concern that companies such as Amazon will just move their distribution south of the border? I absolutely get that we do not want unsold goods being sent to landfill. We are all in agreement on that, but there may be unintended consequences.

**Lorna Slater:** I am not concerned about that. Section 50 of the policy memorandum shows that an existing duty of care in legislation already

“requires that waste producers must take all reasonable measures to apply the waste hierarchy when disposing of goods and must also ensure that the waste is managed”.

Businesses already have a duty to do that, but we must ensure, as in all things, that we are making progress and moving forward. Banning the disposal of unsold consumer goods is the next step in that direction, but it is something that many companies are already doing.

**The Convener:** Douglas, you have had a fair crack at that. I will come to questions from Mark Ruskell and Ben Macpherson.

**Mark Ruskell:** I am struggling to see how that will cost companies more money when it is about saving money. Are there good examples of big businesses saving money by delivering more efficient supply chains and managing their unsold goods more effectively, rather than shipping them round the world, which is something that I had not heard of?

**Lorna Slater:** I am not aware of goods being shipped around the world, and the intention is to prevent the disposal of goods, not their re-export. Do any of the officials want to come in on that?

**The Convener:** I will let Ben Macpherson come in.

**Mark Ruskell:** Will I get an answer to that question?

**The Convener:** You will, but I want to bring Ben in and then get an answer to your question and his at the same time, because I think they are interlinked.

**Ben Macpherson:** Sorry, Mr Ruskell. My question builds on Mr Ruskell’s constructive points. If section 8 of the bill were to be passed, that would give the Scottish Government powers to make regulations. However, if we see businesses changing their approach and see behavioural change towards the more circular economy that we all want to realise, those regulations may never have to be utilised.



As you said, minister, we have already seen the changes that Amazon, one of the biggest distributors in the country, is undertaking. The goods that it is sending for re-use are being utilised in parts of my constituency. Without discounting the point that my colleagues have made, this is about getting to a position in which no business lets goods go to waste. Ideally, we would not need to use the law to do that, because it should not be happening anyway.

**Lorna Slater:** There is a really good example of that. One of the things that we considered in the consultation was whether to apply those regulations to food, but we decided not to do that because food businesses are already doing quite a lot in that space, so we felt that legislation would not be necessary.

You are absolutely right that it looks as if regulation might be necessary here. It is estimated that about £22 million-worth of items that would be covered by that provision are destroyed by landfill and incineration in Scotland each year. That is £22 million-worth of perfectly usable items that are going not to the needy or to people who could use them, but straight to landfill or incineration, both of which produce carbon and greenhouse gas emissions.

We need to address that by developing the regulations and through consultation. We also have the French model. I am sure that we all want to achieve that; nobody wants perfectly usable goods to end up on the bonfire. Having that provision in the bill is an important step.

As for Mark Ruskell's question about specific examples, I do not have any specific examples with me. Officials may have some, or we could write to you about that.

**Janet McVea:** With permission, I could give a specific example that relates to the benefits, including those to the bottom line, of voluntary actions in the food waste space that might illustrate a general point. It is also relevant to one of the other provisions in the bill on the benefits of mandatory public reporting.

The example does not relate to durable goods, but to some specific evidence from the "Food Waste Reduction Roadmap Report 2022", which is published by WRAP. It reports on the voluntary Courtauld agreement. More than 350 significant organisations across the UK participate voluntarily in that agreement to help drive efforts to reduce food waste. The majority of the large retailers, including supermarkets, are involved. I will quote one piece of evidence in the 2022 report, which is that those retailers that provided tonnage data—those that reported on their food waste tonnage for 2018 and 2021—reported a reduction in food waste of over 19,000 tonnes, or about 8 per cent.

That is equivalent to almost £62 million-worth of food that did not end up in waste. Some of the actions taken to achieve that include redistribution, for example. However, production of that tonnage of food would have been associated with the equivalent of 60,000 tonnes equivalent of GHG emissions.

That demonstrates the minister's point. There is a range of efforts already under way. There is scope for further legislation, but that shows the economic benefits to businesses and it demonstrates the environmental impact as well. We can support that with some very specific evidence. That is part of what the other measures in the bill will seek to support as we scale up some of those efforts. I hope that that specific example was helpful.

**Mark Ruskell:** We need to get the economic benefit—£62 million-worth of food—on the record. If one sector has already gone down that route, it is quite tantalising to think about other sectors that could and what the benefits of that could be.

**Janet McVea:** Yes. As I said, that relates to voluntary measures, not specifically to the measure in the bill that you have been talking about. Those are wide-ranging measures to tackle food waste.

**The Convener:** We drifted a bit off track in the excitement, so let us go back to speak about the inclusion of food waste. Do you want to say something about that, minister? Does the bill enable the inclusion of food waste in more ways than Janet McVea mentioned? We have heard how important it is to avoid food waste, and we have also heard how important it is that it is recycled if it is not being used.

**Lorna Slater:** Absolutely. Just to reiterate, section 8, on the disposal of unsold consumer goods, does not apply to food and perishable goods.

The strategy and the high-level targets absolutely do incorporate food waste, but the specific provision in the bill that the member is alluding to is the one that refers to the reporting of waste and surplus.

Section 17 of the bill would require businesses to report on their waste and surplus. The intention is to use those provisions sector-by-sector, with food waste being the first one that we are considering, because that is such a high priority—as the member rightly pointed out. I would like construction to be the second sector that we look at, for exactly the reasons that the deputy convener mentioned.

The requirement is for businesses to publicly report on the waste and surplus of food; again, that is looking at large businesses. Several large

businesses already do reporting of that kind voluntarily, including Tesco, Hovis, IKEA and Unilever, so there are already good models of what that looks like in the voluntary space. About 300 UK businesses already do voluntary reporting and about 60 of those operate in Scotland. It is about taking that good practice and spreading it across industry so that all large food-related industry businesses have to do such reporting.

**The Convener:** I am interested in the order of the priorities that you gave—food and then construction.

10:45

**Bob Doris:** I am unclear whether the minister has inadvertently answered the question that I was going to ask. I might just ask it anyway, so that it is clear in the *Official Report*.

Some stakeholders have argued that targets should be clearly set out in the bill, but, during an earlier exchange, the minister mentioned that NGOs, for example, were not clear what targets they would like to be set, and she said that some of the science and methodology around how they would be established is still emerging and evolving, so secondary legislation might be a much better way of setting targets. I just want a bit of clarity on the Government's position on that.

The second part of my question is about whether there might be a different case for consumption targets, because the Scottish Government already publishes carbon footprint information under climate legislation requirements. Might it be possible to introduce consumption targets to the bill?

Those two questions for the minister are intended to mop up any gaps in evidence, convener.

**Lorna Slater:** The intention is not to put any targets into the bill. I have the section on targets in front of me, and it uses the phrase "consumption of materials". It says:

"In considering the imposition of targets ... the Scottish ministers must have regard to"

the fact that the

"processes for the production and distribution of things"

and

"the delivery of services"

are designed

"so as to reduce the consumption of materials"

and so on. The targets that we set must be about the consumption of materials.

We are in agreement about the kinds of targets that we want to set; the discussion is about what

those targets are and where they are captured. As I set out earlier, developing those targets will be a process, because there is no consensus on methodologies or data sets yet. That information is just not available, so work needs to be done to decide what the targets would be, how they would be effective and fit within our devolved powers and how we would measure and report on them.

**Bob Doris:** Thank you. That gives a bit of clarity to what was said earlier.

**The Convener:** It also poses the question of how the Parliament will be able to scrutinise those targets if they are not in the bill. Perhaps we should seek clarity on that at stage 2. If the Parliament knew how it would be able to scrutinise those targets, it would give us a certain amount of clarity.

Monica Lennon is next.

**Monica Lennon:** Thank you, convener. My question is on a similar topic and it has been asked a few times in different ways. It is important to emphasise that we have heard a lot of support for the Circular Economy (Scotland) Bill in principle, but we have also heard from many stakeholders, including Circular Communities Scotland, that the bill lacks focus on sharing, reuse, repair and remanufacture, and we have been given examples of other countries and regions, including Austria and Flanders, that are able to give clear targets where reuse is being mainstreamed. I understand why the minister wants to get the bill right, but there is also a lot of frustration that we cannot get clear answers on the targets that everyone should be aiming for.

The minister might not want to put a national reuse target into the bill, but you must have some idea of what ideal targets would look like. Have you given a lot of thought to reuse targets? What discussions have taken place? If the targets are not in the bill, how could they be manifested? How can the Parliament scrutinise that?

**Lorna Slater:** I am happy to go into that. I listed all the elements of the bill that could relate to reuse in answer to Ben Macpherson's earlier question, so I will not take up the member's time by going through that again. The bill contains substantial provisions throughout to increase reuse, specifically those in section 6(3). The regulations that can be created under section 6(1) may set targets for one or more of the following:

"reducing the consumption of materials, ... increasing reuse, ... increasing recycling, ... reducing waste".

That is what is in the bill. We can set targets around increasing reuse and around the consumption of materials.

The nitty-gritty is what those targets would be and who they would apply to, whether it be local

authorities, businesses and certain other sectors. We need to do some work to understand exactly how those targets would apply.

I am sure that everyone in this room agrees that sectors, businesses and local authorities would need to understand and be involved in developing those targets. We need to do that work together. Realistically, we are likely to be looking at a suite of targets, because things will be different for businesses as compared with local authorities, for example.

**Monica Lennon:** Okay. On reuse, I am thinking about the baseline as it is now. We know that there is too much consumption and waste, and that we are very much a throwaway society. We do not reuse materials and goods that we have. What does good look like in terms of reuse?

**Lorna Slater:** That is an interesting question. I would need to look at international examples to know what we are looking for there.

**Monica Lennon:** I assume that you have already looked at international good practice.

**Lorna Slater:** What good would look like to me is what we need to do to meet our net zero targets. We know how much waste we need to reduce not only to meet our waste target but, in the bigger picture, to help the country to reach net zero. The specific answer to your question is that good would look like what the sector needed to do on our pathway to net zero.

**Monica Lennon:** I think that the committee and the public want to get an idea soon of what we are aiming towards, so that we know that the legislation will be fit for purpose and will meet its aims. However, I will leave the issue of targets for now.

It would be good to get a bit more of the flavour of some of the carrots and sticks that will be used to encourage people and organisations to reuse.

You and I met in June to discuss the particular challenge of nappy waste and single-use nappies. We know that hundreds of thousands of single-use nappies end up in landfill every day. Some local councils have really good schemes. North Ayrshire Council is the example that I left the minister with. The real nappy initiative is free for citizens to use and I believe that there is now a waiting list. It is good to hear that there is demand for that. What investigation has taken place? I know that you were going to discuss the issue with the Convention of Scottish Local Authorities.

Can we expect such schemes to be supported and mainstreamed? People want to do the right thing, but they need a little support and guidance. There is good practice in small pockets of the country but it is not being mainstreamed. What

can the bill, your strategy or your route map do about that?

**Lorna Slater:** It is a really good point to highlight that no legislative powers, for example, are required to introduce that excellent nappy reuse scheme. I have spoken to the member about that before. I understand that it is a cost-neutral scheme that North Ayrshire Council runs.

I have asked Zero Waste Scotland to take on a role facilitating best practice among councils, because the recycling services that our councils provide and their reuse services are enormously variable. Given that the nappy scheme is a cost-neutral provision—it saves the council from having to deal with nappies, which are, I am told, a real problem for the contamination of waste and are not easily recyclable—it could be a real benefit for councils. I have tasked Zero Waste Scotland with that and I absolutely expect to see that in the route map.

I do not know whether any of the officials want to comment on the route map in that regard.

**Gareth Heavisides:** We recently commissioned some research on nappies. Obviously, one of the big issues relating to nappies is behaviour change and the barriers to that. For a long time now, nappies have been included in the baby box and the vouchers. The issue is how we increase take-up and drive behaviour change from single-use to reusable nappies.

On the route map and other areas of reuse that we will focus on, construction has been touched on a couple of times. That is one focus for the route map because of the scale of construction waste. Particular consideration is given in the consultation to a programme for the reuse of construction materials. That will come through in the route map too.

There is a range of different activities around reuse and repair.

**Monica Lennon:** Are you not slightly concerned that we are in a climate and nature emergency and we need to do everything in a hurry? Obviously, we need to get it right, but we need to act fast. I gave the example of North Ayrshire Council. There are others, but that is the best example. That approach is not new; it has been going on for maybe four or five years now. There is some good practice. Obviously, there is not a duty on local government to do more, but we have heard that the North Ayrshire approach is cost neutral. I know that there have been discussions with COSLA. I am considering amendments, and we will continue to discuss the matter with the Government, but are you not concerned that, if such a requirement does not go into the legislation, those good ideas will not happen, possibly because there is a lack of resource and

capacity in local government? Are you worried about the pace of any of this?

**Lorna Slater:** The member is right that there is an urgency in relation to the pace. Of course, because of the Verity house agreement, I am not comfortable with imposing things on local councils in primary legislation without going through that process. The member is right to identify the code of practice as the route for that.

We have the Zero Waste Scotland facilitation of best practice and knowledge sharing, but the route to implementing it would be the mandatory code of practice that the bill proposes. We are proposing to develop that code of practice with local authorities. There would then be targets associated with that, which would not come into play until 2030. I understand if the member feels that that is quite a lengthy time period. During that time, our councils can invest in infrastructure and build new facilities. We would need to do a lot of work before we were in a position to impose targets on councils. I am confident that we have the route to get to where we need to go, but there is a lot of work that we need to do with councils and a lot of investment that we need to make collectively to make sure that that can happen.

**Monica Lennon:** As the Verity house agreement was mentioned, I will make a brief point in relation to that. Many of us are nervous about saying, "Let's put a duty on councils," because councils feel under so much pressure. However, where there is co-production and good discussion, councils are often the right place to take things forward.

Just this morning, we saw in the media—I think that she has written directly to the committee as well—that Councillor Gail Macgregor, who is the COSLA economy and environment spokesperson, has raised serious concerns. She says that the approach is

"not in tune with co-production, or the Verity House Agreement"

and that the Scottish Government has been asked to remove from the bill reference to penalties that councils would incur. At this stage in the bill process, that is quite worrying. What is the Government going to do to put that right?

**Lorna Slater:** That is an interesting provision in the bill. If the convener will allow me, it is worth my going into that in some detail, as it is an important point. I have the letter from COSLA in front of me. Councillor Gail Macgregor says:

"There is no need to make the Charter for kerbside collection services mandatory. All 32 Councils have signed up to it."

However, only a third of the councils actually implement the charter. That is the problem with a

voluntary charter: there are no consequences for not implementing it. You can sign on the dotted line and then not do it.

The bill proposes a move to a mandatory code of practice to be developed by councils so that we know that it is feasible and that it provides for different geographies, tenancy types, building types and built environments. It needs to have all those provisions, and it needs to take into account where councils currently are. As we know, some councils are very nearly at their 60 per cent target and some are a long way away from it.

Given all the development that needs to be done, the bill proposes a mandatory target. The reason for that is evidence based—it is because that is what works elsewhere. We have international examples of that. Wales is, of course, our closest example. That is how Wales has driven recycling to the levels that they are at there.

In Scotland, recycling levels have stalled at just over 40 per cent on average—between 40 and 45 per cent. We have stalled, so we have to do something new. We have to bring in what works. The Verity house agreement commits to co-design, but it also commits to being evidence led, and the evidence tells us that we need to do this.

**The Convener:** I am looking rather blankly around the room. That is not a letter that I have seen.

**Monica Lennon:** I was referring to an article in *The Herald*, I think, this morning.

**The Convener:** Was it circulated with the committee papers? I do not think that it was.

**Lorna Slater:** I am sorry, convener. I was referring to a letter addressed to you dated 30 November.

**The Convener:** Okay. I will have a look at that. I have to say that that completely passed me by, but there we go. I am sorry, Monica—keep going.

**Monica Lennon:** I am conscious of the time, convener, and I know that you want me to wrap up.

I heard what the minister said about other examples. I am sure that COSLA colleagues will be listening. Does the Government believe that it is important to have the power to fine councils in the bill? I think that Janet McVea wants to come in, but I will go back to the minister first.

**Lorna Slater:** Yes, absolutely—that is what the evidence tells us. The approach to implementation in Wales, which is an excellent model, is that fines are an absolute last resort. If a council has not met its targets, there is a conversation about why that is. Of the ones that did not meet their targets, only one had a fine applied to it, and even that might have been waived.

I will bring in Janet McVea.

11:00

**Janet McVea:** You are right, minister. I think that Audit Wales has identified up to 20 examples of where targets were missed but, as the minister noted, the Government has chosen to waive fines. I think that there was one instance in which a fine potentially was applied.

The point that I was going to make, which the minister emphasised, is that, although there has been a lot of focus on that particular aspect of the household waste provisions, the intention is that financial penalties would absolutely only be a potential last resort, and the bill is crafted in that way.

The primary focus is on ensuring that the targets are achievable. They would be co-designed with the local authorities. It is not about setting up local authorities to fail. The primary focus is absolutely on supporting and enabling local authorities, and ensuring that they have the tools to achieve the targets, including through the co-designed code of practice, as well as complementary non-legislative measures. Last year's route map consultation set out the importance of supporting householders as well as local authorities to apply best practice.

We have a lot of strong evidence from local authorities in Scotland. Although the average recycling rate is, as the minister said, just over 43 per cent, we have extreme variation among local authorities, ranging from about 20 per cent up to about 57 per cent. There are examples of local authorities in Scotland that are achieving higher recycling rates. We know that circumstances vary. As you have heard from some of your expert witnesses, we clearly have to recognise that, across Scotland, one size may not fit all.

For example, some of your witnesses have noted the challenges of high-density housing—such as flats and tenements—and communal recycling, as well as rural areas and kerbside collection. The co-design process will give us the opportunity to ensure that the refreshed code of practice better reflects the needs of the range of geographies, as well as the range of local authorities that are dealing with specific challenges, such as those linked to high-density housing in particular.

**The Convener:** I now understand which letter we were talking about earlier. It is not one that was received this morning. I misunderstood what was said.

There are lots of questions still to go, and we are running short of time. I have been generous, and I will continue to be as generous as I can if people are mindful that I am up against the clock.

I think that Mark Ruskell has a brief question, and then Ben Macpherson has one. I will then go back to Mark for further questions.

**Mark Ruskell:** Thanks, convener.

To go back to the issue of targets, I appreciate the complexity and difficulty of bringing forward targets. In some cases, it is not always appropriate to put targets in primary legislation, but do you have a clear timescale for when targets could be brought in through secondary legislation? Is there a sense of when they could be brought in?

**Janet McVea:** I am happy to say a little bit more about that. As the minister noted, it would not be possible for the targets to come into force before 2030. The reason for that is that we recognise that there is a sensible chronology here, as I have noted—

**Lorna Slater:** I am sorry to interrupt, Janet, but I think that you are talking about local authority targets. Mr Ruskell, are you referring to the national targets?

**Mark Ruskell:** Yes.

**Janet McVea:** I beg your pardon. I was talking about the wrong section, so I will defer to others.

**Lorna Slater:** The question, as I understood it, was about the timescale for national targets.

**Mark Ruskell:** Yes. The bill has provisions to set targets, and secondary legislation could be brought forward. I want to get a sense of how quickly they could be developed. I understand that there are complexities and challenges in that but, for stakeholders who are listening, who want targets to be set and who are wondering why they are not in the bill, what certainty is there that the targets will be brought forward? Is there a timescale, or is it difficult to tell at this point?

**Gareth Heavisides:** The first stage in the process is developing and monitoring an indicator framework, which we would use to underpin the logic for any targets that then followed. We are looking to develop that during 2024. That opens up the possibility of looking at and starting to develop targets from 2025. However, that would require consultation on the monitoring framework and on the targets.

**Mark Ruskell:** That is good. Thanks.

**Ben Macpherson:** Janet McVea talked about the code. Do you appreciate the overwhelming evidence that we have heard that, with due consideration to the geographical differences between urban Scotland and rural Scotland in particular, there is a demand and a need for a more consistent approach to household recycling whereby the recycle product is at least similar, if not the same, from different parts of Scotland? That will mean that we can bring investment to

create the facilities that we need to improve our recycling and that we can communicate with the public in a clear and consistent way in order to help to raise awareness and increase public participation in recycling.

**Lorna Slater:** Absolutely. I add that, in revisiting what we collect throughout Scotland, we have the opportunity to collect other high-value products such as textiles, which could then provide revenue streams for councils.

**Ben Macpherson:** We all agree that we need to achieve that consistency.

**Lorna Slater:** Absolutely, and not only for the mainstreaming aspect that you mention—to make sure that everybody participates—but to get the best value for the recycle. I know that you have taken evidence on that. The larger the volume of good-quality, clean recycle that we can collect, the more it will be worth and the greater the value we can get for it.

**The Convener:** Will you clarify something? There are 32 different councils. I am sure that there are not 32 different bin schemes, but there may be quite a few different bin schemes. You said that you want standardisation. Are we going to recycle the bins so that we all have the same bins and we know what we are doing? Edinburgh has a different way of doing it from the way that we do it in Moray, and everyone gets confused about what they should put in each bin. Are you going to change that?

**Lorna Slater:** That will need to be developed through the code of practice. I do not intend to impose an approach on councils; I intend to co-develop it with them. However, you are right. There are some really good international examples in that area. For example, the Scandinavian countries—not just within the countries, but across multiple countries—have standardised bin colours and labels so that, whether someone is at a train station, at home or at their place of work, the same colours are used for the same materials. We could aim for that if local authorities are interested in doing so.

**The Convener:** We visited Change Waste Recycling last week, and it was clear that everyone is doing it slightly differently. No one is following the original seven splits for waste, and we are all ending up with a complete mishmash, which is not valuable.

**Lorna Slater:** That is the case. One of the reasons for moving to the mandatory code of practice is to ensure that we have best practice. Interestingly, that is an area in which research has moved on quite a lot in the past few years. Our best evidence on how to separate waste is different from what it was 10 or 15 years ago.

**The Convener:** Would you do that at the primary source of the waste—when the person disposes of the material—or would you like to see it done later in the journey?

**Lorna Slater:** That is the question. There are different approaches to that. Some of it will depend on the built environment. I live in a tenement flat. In such places, we are not going to have room for multiple different boxes. However, in East Lothian, there is an excellent separation scheme, and there is good evidence that separation by the householders works in that type of built environment.

**The Convener:** It is a wonderful idea that people who live in rural settings have more time to split up their waste than anyone else has.

**Ben Macpherson:** In Edinburgh, multiple companies collect commercial waste in a fairly similar way. It is a cluttered landscape. Is there a need to try to streamline some of those processes, as well as the processes for household waste?

**Lorna Slater:** It is interesting that you ask about that. There was a provision on the zoning of waste in the consultation, but we have not carried that forward into the bill. That would have given councils the power to streamline collections so that there was only one collector in a particular area. There was a good deal of feedback, especially from small businesses, that that would not be appropriate. However, a voluntary model for that kind of streamlining could be undertaken.

I see that the convener wants us to move on. I would be happy to take that up with the member separately.

**The Convener:** I would like to spend all day discussing this, but we do not have the time at our disposal. Mark Ruskell is next.

**Mark Ruskell:** I am aware of the time, so I will be brief.

The Government's policy is to remain aligned with the European Union. How do the bill and the waste strategy—and the provisions that have come out of it—keep us in alignment with the EU, and the single-use plastics directive in particular?

**Lorna Slater:** There are several provisions in the bill that keep us aligned with the EU. The provision on the disposal of unsold consumer goods contains powers to keep us in line with measures proposed by the EU. The EU also requires monitoring of food waste and reporting on waste and surplus, so those provisions in the bill would keep us in line. The provisions on single-use plastics will keep us in line with the EU. We have already put in place a ban on some of the most problematic single-use plastics, and the approach to charging for single-use plastics keeps us in line with the EU directive.

I could go into that further but, in the interests of time, I will just say that many of the provisions are either in line with the approach of the EU or move us in the same direction.

**Mark Ruskell:** The EU is taking a strategic approach to driving out waste and increasing circularity. Is that something that will come through the bill? In the past, the approach has been to look at individual items, such as plastic bags and single-use cups. Will the bill create a more overarching approach to waste?

**Lorna Slater:** Yes. That is the fundamental difference between the bill and the specific provision on charging for single-use bags. The bill is a framework bill that will put in place powers to enable us to bring forward measures in a strategic way. By setting out a requirement for the Government to create a circular economy strategy and targets associated with that, we have put in place a framework to enable a more overarching approach.

**Mark Ruskell:** I have another question about calls to ban particular products. You will be aware of the strong campaign to ban single-use vapes. What are your views on that as a Government? Do you see particular cases for banning individual products? Can that be done through the Circular Economy (Scotland) Bill or in a different way in relation to the things that the Government is consulting on? What is in your sights?

**Lorna Slater:** That is something that I have been thinking about a lot. There are three basic approaches to problematic items, particularly single-use items. One approach is to ban them. That is the approach that we have taken to certain single-use plastic items, such as styrofoam cups. We are looking at that approach to single-use vapes at the UK level. Another approach is to introduce charges, which is what we did for single-use plastic bags and are thinking about doing for cups. Another approach is to use producer responsibility schemes, such as the deposit return scheme and the packaging scheme. Europe is considering such a scheme for textiles.

We have those three broad tools that we can use for particular items. It is a question of ensuring that we are using the right tool for the right job. I think that banning is the right tool for the job in certain cases. That is why we are considering that approach at the four-nations level for single-use vapes. However, we do not require any provisions in the bill for that because we already have the powers that we need.

**Jackie Dunbar (Aberdeen Donside) (SNP):** For transparency's sake, given that we have discussed the Convention of Scottish Local Authorities and the local authority recycling scheme, which I was previously heavily involved

in, I should declare an interest having been a councillor for Aberdeen City Council.

We have heard in evidence that businesses have concerns about the broad nature of the powers to require reporting on waste and surpluses. How will the Scottish Government target the use of those powers to ensure that the requirements are proportionate and necessary to drive the change that is needed?

**Lorna Slater:** As we have already discussed, the intention is to use the provision on reporting of waste and surpluses in the first instance for food waste in particular, targeting those waste streams that have the biggest environmental impact. We are considering larger businesses—I have given the examples of businesses such as Tesco, Unilever and Hovis, which already carry out such public reporting. It should be really clear what kind of businesses and sectors we are looking at. We might look at the construction sector as a follow-on.

I recently met Ewan MacDonald-Russell of the Scottish Retail Consortium, who had some of the concerns that you mention. I have agreed to meet him early in the new year and to meet some of his members who already do such reporting. The concern that he raised with me—perhaps he brought it to your evidence session as well—was exactly how onerous the reporting will be and what it will look like. However, given that some of his members already report such data voluntarily, I considered it a good opportunity to meet them to understand what they do and whether it would meet our requirements so that we have a working model to go from.

Ewan MacDonald-Russell said that his members would find it comforting to know what those reporting requirements would be. I have endeavoured, as we have with the single-use cup charges and with COSLA, to start working on that even before the bill is passed, so that businesses can have some comfort as to what they will be looking at.

11:15

**Jackie Dunbar:** How will the data from that reporting help future policy making? How will you use it?

**Lorna Slater:** That is an interesting question. Certainly, reporting on food waste and surplus is helpful to us in meeting our waste targets. We are currently off track for meeting our food waste targets. If we—not just the Government but industry—understand where waste and surpluses arise, that can signpost us to mechanisms for dealing with those matters.

As we have said, we did not include food in the proposed ban on the destruction of unsold goods; we are looking at just reporting. Once we have the data, the policy would need to consider how we can support industry in doing better. However, the evidence suggests that, once industry is clear on waste and surplus, reducing it in the first place and finding good use for it follows along naturally.

**Janet McVea:** I have two brief points on businesses' obligations. First, there are already some obligations in terms of what producers of waste have to record. The second important point is that the bill should also be seen in the context of other measures that are in train, notably, for example, the development of digital waste tracking across the UK. Therefore, Ms Dunbar, on your question about how the bill can help to inform policy measures, in effect, the range of measures that we have sought—

**Jackie Dunbar:** I was asking about the data, not the bill.

**Janet McVea:** I beg your pardon?

**Jackie Dunbar:** I asked about how the data that you would get from the reporting would be used for future policy making.

**Janet McVea:** Exactly. The point is that, through reporting and other measures such as digital waste tracking, the data will give a much better line of sight for businesses to target their measures, as well as allowing us at policy level to understand the sources of waste and how it moves across the system. That will enable much more targeted, effective and efficient action by businesses as well as regulators.

**Jackie Dunbar:** Thank you—sorry, I was being a bit rude.

Businesses have also said that they would like more certainty about how the Scottish Government intends the reporting requirements to operate in practice. What do you intend to introduce as a standard for how data is collected, prepared and published?

**Lorna Slater:** That is what the meeting that I have arranged with Ewan MacDonald-Russell of the SRC is about. I have arranged to meet some of his members who already do such reporting to understand what good practice looks like, and then we will be able to develop the standards from that. There is no need to reinvent standards when there is already really good industry practice. About 60 companies in Scotland already do such reporting, so I want to understand what they already do and move forward with that best practice.

**Jackie Dunbar:** Does the Scottish Government already have powers to require due diligence reporting by businesses—for example, in the

Regulatory Reform (Scotland) Act 2014—or could the bill support that?

**Lorna Slater:** We already have extensive powers to require businesses to report. I will hand over to Ailsa Heine for more details on that.

**Ailsa Heine:** We have powers in the Regulatory Reform (Scotland) Act 2014 to require the provision of information about industrial emissions, waste and the end destinations of waste.

**Jackie Dunbar:** During the passage of the Environment Act 2021, there was a lack of agreement between the Scottish and UK Governments regarding legislative competence to impose due diligence requirements on businesses regarding forest risk commodities. What is the Scottish Government's current position on that, particularly given developments with the EU's corporate sustainability due diligence directive and the Scottish Government's aspirations to keep pace with it?

**Lorna Slater:** I need to come to officials on that matter.

**Ailsa Heine:** I do not cover that area.

**Jackie Dunbar:** Could we get a report?

**Lorna Slater:** I will write to the member on the matter.

**The Convener:** It would be better for you to write to the committee, so that we can—

**Lorna Slater:** Sorry—I will write to the committee.

**The Convener:** We will of course circulate that to the member.

**Bob Doris:** Hi, minister. We are living with the United Kingdom Internal Market Act 2020. That is just a reality, irrespective of the different views around the committee table. How do you envisage that the new powers in the bill—in particular, on single-use charges and the disposal of unsold goods—could interact with that act?

**Lorna Slater:** Because the bill is largely a framework, it does not have any implications for the internal market act. However, Bob Doris is right that the enacting of some of its provisions may have such implications.

The single-use cup charges are substantially different from the deposit return scheme. The deposit return scheme covered items that cross borders—imported goods and things that are carried across the border between Scotland and England. The single-use cup charge is for someone who is physically in Scotland selling an item to someone who is physically in Scotland. No border crossings are involved. We therefore believe that we can draft the legislation for single-



use cup charges in a way that does not affect or come into contact with the internal market act and would therefore not require an exemption.

I ask Ailsa Heine to explain our thinking on whether matters around the reporting of the disposal of unsold goods might require an exemption to the internal market act.

**Ailsa Heine:** At the moment, we think that such provisions would not require any kind of exemption from the internal market act. However, that will always depend on the details of the restrictions that are being imposed and whether they would meet the definition of what is called a “relevant requirement” in the internal market act. Therefore, when the regulations are being drafted, an assessment will be needed as to whether there is any impact from the internal market act and whether we can prepare the regulations in a way that does not conflict with it. It will always come down to the details of the restrictions that are imposed.

**Bob Doris:** I know that we are nowhere near that situation at the moment, but it is good to talk, minister, as you know. Has there been any initial dialogue with UK Government officials, even at this stage? In particular, I am conscious that, as we heard last week, environmental NGOs believe that there should be a qualified automatic exemption to the internal market act for public health and environmental purposes. Is there an on-going dialogue with the UK Government ahead of the front loading of a lot of the work that we have heard about?

**Lorna Slater:** There is certainly on-going dialogue. I myself have had dialogue with the UK Government about the deposit return scheme, wet wipes, single-use vapes and other matters. I come to officials for the dialogue that has been happening at official level.

**Ginny Gardner (Scottish Government):** We have a common framework working group, which meets regularly. It is part of the process that has been set up through common frameworks post-Brexit. That involves regular engagement with our counterparts in the UK Government and in the other devolved Administrations. They are therefore aware of the provisions in the bill. We discuss those and make them aware as things arise.

**Bob Doris:** That is helpful. It partially pre-empts my final question, which is good. How could common frameworks be used to support policy coherence and the pace of progress in this area? Could they help to manage divergence? In saying “divergence”, minister, I am thinking about a twin-track approach, because I suspect that the end destination for all four UK nations will be the same. It is about having policy coherence so that, if Scotland wishes to go more quickly, we can do so

in a managed way. Do you have any comments on how common frameworks can be used to support policy coherence?

**Lorna Slater:** I will make a quick comment then hand over to Ginny Gardner again.

The intention of the common frameworks is to manage divergence. The challenge over the past year has been that the UK Government has discarded the common frameworks and made decisions outwith them. There is a question about how functional the common frameworks process is if UK ministers discard the work that is done under it. That is a frustration for us. I am not sure that the UK Government would be happy with me discarding the common frameworks, but it feels free to do so. The intention is to manage divergence, but that depends on all UK nations having some tolerance of divergence, and the political landscape has shifted in that regard.

There are some examples of the process working. For example, we were granted an exemption in relation to single-use plastics, but we were not granted one in relation to the deposit return scheme, and the UK Government went ahead with the consultation on wet wipes outwith the common frameworks process. I have clearly been struggling with that process.

I do not know whether Ginny Gardner wants to come in.

**Ginny Gardner:** I was simply going to mention the example of single-use plastics, with Scotland being granted an exemption in advance of what other Governments in the UK were doing.

**Lorna Slater:** Thank you. I can share the more frustrating examples.

**Bob Doris:** I have no further questions. I might share the minister’s characterisation of the political environment, but the committee is keen to scrutinise the nuts and bolts of the bill. It is positive to hear about the on-going discussions at official level.

**Douglas Lumsden:** Minister, in relation to the previous questions, we have had discussions with the Office for the Internal Market. Have you had discussions with it, too? It is not part of the UK Government; it is there to advise all Administrations on potential issues relating to the internal market act.

**Lorna Slater:** I have not had any conversations with it. I do not know whether officials have had any.

**Janet McVea:** We have not. I think that colleagues in constitutional teams are in regular contact with the Office for the Internal Market, but we can provide more information on that. It

certainly has an important complementary role to play.

**Douglas Lumsden:** Will you reach out to that organisation when you have an idea of your plans to see whether there could be any conflicts?

**Janet McVea:** I expect that we will engage with all relevant organisations. As we have noted, there is a consideration to be made further down the line, and we will make sure that we follow all sensible processes.

**Douglas Lumsden:** A route map was mentioned a few times earlier. Minister, I think that you said that it would be published “soon”. Can you provide a bit more clarity? Will it be published later this year or in the first quarter of next year? When do you expect it to be published?

**The Convener:** It sounds quite tight for it to be published this year.

**Douglas Lumsden:** I know, but that would be “soon”, convener.

**Lorna Slater:** I am keen to get the route map to you as quickly as we can. Do we have an updated timescale?

**Ginny Gardner:** It will not be published before Christmas, but it will be published as soon as possible in the new year.

**Douglas Lumsden:** I do not want to labour the point, but should we expect it in the first quarter of 2024?

**Ginny Gardner:** Yes.

**Douglas Lumsden:** Thank you. I will move on. Earlier, we heard from the convener about the Finance and Public Administration Committee’s report on the financial memorandum. In its letter, COSLA said that the financial memorandum does not capture the full cost to local government. My question is simple. How will the Scottish Government reassure local authorities that they will be provided with accurate assessments of costs and the necessary resources to deliver the ambitions of the bill?

**Lorna Slater:** My reassurance is that we will follow the Verity house process and do the co-design together. It is not entirely a question of imposing things on local authorities and expecting them to get on with it. Together, we need to understand what local authorities want to achieve and how best to achieve that. As I highlighted earlier, it is not just about what we want local authorities to do for us in the waste space; it is about the opportunities that we can help them to unlock so that they get better value from their recycle and get income streams to reduce the costs that are associated with litter and handling waste. Monica Lennon made a good point on reusable nappies, for example. By taking items out

of the waste stream, we save local authorities money.

Douglas Lumsden will understand that there are lots of different moving parts. There are different scopes for savings and different revenue-raising opportunities. Of course, a big thing that will be coming into play is the extended producer responsibility for packaging. That will result in substantial funding for councils, but we do not have the details yet. All those resources can go into the mix, alongside developing an approach that ensures that we will be successful.

**Douglas Lumsden:** In its letter, COSLA talks about co-production and the Verity house agreement and says that the threat of penalties is not in tune with that agreement. Do you not agree with it that the threat of penalties is not the way of building relationships and having a joint way of working?

11:30

**Lorna Slater:** I absolutely hear what COSLA is saying and understand that it has concerns about the possibility of imposing penalties. I will make a couple of points on that. One point is that the Verity house agreement commits to evidence-led policy, and the evidence tells us that voluntary codes of practice and targets are not sufficient. They need to be mandatory, and that means that there must be consequences for not complying, as there are in Wales.

We have also committed to making that sort of penalty a last resort. The intention is to support councils to deliver good services, not to penalise them, but there must be consequences for not meeting a mandatory obligation. I will be honest and say that, as we develop the code of practice with local authorities, I feel that those local authorities that invest heavily and do the work to comply with it will feel frustrated if other local authorities are simply not bothering to comply. Through that process, we will probably get to a point where they revisit that view, because it would be unfair for some local authorities to put in so much work to meet the targets if other local authorities simply decide that they will not bother.

**Douglas Lumsden:** During our evidence sessions, we heard from Orkney Council, which has quite a low recycling rate just now—I think that it is about 22 per cent, or around about that. However, it said that the amount of waste going to landfill was not high, because it has energy from waste, for example. It feels that, if it was to push that higher, it would mean more cost for it and probably be worse for the environment, as it would have to start shipping goods off to be recycled on the mainland, to Aberdeen or wherever.

What would you say to Orkney Council? Does it simply have to reach that higher target, even if it is worse for the environment?

**Lorna Slater:** We need to develop the targets together with local authorities, which we have committed to doing.

Our islands impact assessment in relation to the bill highlights that there are significant opportunities for islands. In Kirkwall in Orkney, there is an excellent facility for reusing furniture, which is doing work in that circular economy space. There are opportunities in Orkney to move things up that waste hierarchy.

We commit to setting those targets in line with local authorities and taking the geographic impacts and so on into consideration. The national target is to meet those 60 per cent recycling rates, but Orkney will, of course, contribute only a very small amount to that overall. There needs to be some common sense when applying those targets.

**Douglas Lumsden:** So, you expect some dispensations for some of our island communities, which may not have to reach a higher figure. Orkney Council said that it would prefer to be judged on the percentage of its waste that is going to landfill, which it thinks is quite low.

**Lorna Slater:** I have not said that everybody has to meet the same target or that everybody would be meeting the same target or that local authority targets would exactly map to national targets. The national target is 60 per cent, but developing specific targets that are appropriate for local authorities is a different matter.

**Douglas Lumsden:** So, the target for places such as Orkney and Shetland could be lower.

**Lorna Slater:** There is nothing in the bill that says that they must be the same.

**Douglas Lumsden:** We have heard concerns about potentially criminalising households, with new fines for not recycling correctly and with criminal proceedings in situations in which, for example, a man with a van whom they have hired to get rid of a bulky item has fly-tipped that item. Should households fear that they may be criminalised because of aspects of the bill?

**Lorna Slater:** I want to make clear that Douglas Lumsden is discussing two different provisions.

I will first cover section 11 on household waste requirements. It is already a criminal offence to not respond to a notice to desist from contaminating recycling. No new offence is being created there. The overall aim of the creation of a fixed-penalty notice for the offence is to give local authorities a more proportionate and civil offence route to go down, as opposed to the criminal sanctions, which are the only option right now. Local authorities

already have an obligation to enforce that, but, obviously, criminal proceedings for contaminating recycling would be appropriate only in some pretty extreme circumstances. Having a fixed-penalty notice regime gives local authorities a much more proportionate response. Contamination of recycle is a big problem for local authorities and is very costly for them, which means that having effective powers for dealing with that offence is helpful to them.

On the other matter, it is useful that we have Mr Fraser with us today, because the provision is similar to what he proposes in his member's bill. The provision is about creating a new criminal offence relating to the householder's duty of care. Householders already have a duty to ensure that their waste is dealt with properly and that it does not become part of a waste crime. Currently, however, although the person who tips the waste can be accused of a criminal offence, there is no offence associated with that for the householder.

The provision will put in place for Scotland a provision equivalent to that which already exists in England and Wales. It states that a householder can be charged with a fixed-penalty notice if the local authority

"has reason to believe that"

the householder has breached the duty of care and has not taken "reasonable steps" to ensure that the waste handler to whom they have given their waste is licensed.

**Douglas Lumsden:** From some of the evidence that we have heard, it seems that it is actually quite easy to get a waste carrier or waste handler licence. Is there scope to tighten up that provision to try to reduce the amount of rogue people—let us say—who collect rubbish and then fly-tip it elsewhere?

**Lorna Slater:** I absolutely agree with the member on that. The issue has been highlighted—George Monbiot wrote an essay for *The Guardian* in which he described how he got his fish a waste-handling licence. That is how easy it is to get a licence, at least down in England.

Here in Scotland, the Resource Management Association Scotland has raised with me the issue of wanting to create a higher bar for waste carriers. We are absolutely looking at that issue, under something called the integrated authorisation framework—have I got that right?

**Janet McVea:** Yes.

**Lorna Slater:** We do not need to make legal provision for that in the bill, but work is under way on the issue because it is—as you rightly highlight—something that we need to do.

**Douglas Lumsden:** My final question, which ties in with that, is about waste charging for bulky uplifts and whether that potentially disincentivises good behaviours. We often hear that some local authorities charge too much for a bulky uplift, which may send people down the road of using somebody else who might fly-tip elsewhere. Would you like to see more consistency between local authorities in bulky uplift charges?

**Lorna Slater:** That is an interesting question. In the consultation, we consulted on charging for waste collection, but we have not brought that forward in the bill.

You make a good point about the standardisation of charging and what it would look like to incentivise and support people to do the right thing. We will now need to take that forward with local authorities through the code of practice. We do not intend to impose that on local authorities through the bill; I would like to develop it with them through the code of practice.

**The Convener:** Again, I come to the deputy convener, who has some questions. I note that the clock really is ticking quite quickly.

**Ben Macpherson:** I agree with my colleague's points; we have heard strong evidence that there needs to be a much more robust process for licensing waste handlers. If we are going to put obligations on people to be more cognisant in checking how their waste is disposed of and ask them to use a licensed waste handler, we need to improve that process significantly.

With regard to the creation of a civil penalty, does the minister agree that we still need to do much more, across local authorities and the population as a whole, to inform people about recycling processes in order to help them to do the right thing?

I think that a lot of the contamination and fly-tipping is inadvertent. It happens because people are not aware of the rules, as they live busy lives and have other things to think about, so I am slightly concerned about the measure. When we create new civil penalties or criminal offences, we need to think carefully about enforcement, proportionality and ensuring that the processes are in place to help people to do the right thing. We have got more work to do in that regard.

**Lorna Slater:** Yes, I agree with the member on that.

**Ben Macpherson:** Did you want to add anything, Janet McVea?

**The Convener:** I thought that that was a beautifully succinct answer. [*Laughter.*]

**Janet McVea:** The primary focus will be on providing support and making it easier for

householders to make the right choices, which we talked a bit about previously. There needs to be a jigsaw of measures, and the provision that we are talking about is one tool for local authorities. If we again use the example of tackling contamination, WRAP Cymru colleagues told you that that measure is one part of a much broader jigsaw of measures that are primarily about social norms and supporting householders.

The application of such a penalty would be envisaged at the end of a lengthy process with householders. A whole ladder of measures would come into effect, beginning with support and education. It would only be after that that the civil regime and the fixed penalties come into play. As I said, that would come very much at the end of a process that is primarily focused on supporting householders.

**Ben Macpherson:** Will it be introduced at a later juncture, after the act is implemented?

**Lorna Slater:** Do you mean the support measures?

**Ben Macpherson:** I mean the civil penalty. Is a staging of the implementation of the act envisaged or is the intention to implement it as a whole?

**Lorna Slater:** No, there is no staging approach to implementation as the householders' duty of care already exists. Issuing a fixed-penalty notice of £200 pounds is absolutely intended to be, as Janet McVea said, a last resort when there is no basis for supposing that the householder made an attempt to meet their duty of care. The measure is to tackle persistent and repeat offenders.

On other work that I am doing in this space, I have met Gumtree—twice, I think—to talk about how the company can support its users and customers to do the right thing. One of the things that we have suggested to Gumtree, which I believe that it intends to implement—this is not something that we are legally obliging it to do—is that people who advertise white-van-man waste services should post their waste management licence. That would enable the householder to complete their duty of care, because they could point to having seen a waste management licence number.

That is an example of measures that we can help online platforms and other services to put in place, so that the householder can say that they have met their duty of care.

**Ben Macpherson:** Thank you, both.

**The Convener:** I will give Murdo Fraser and Sarah Boyack one question each, for which I apologise. In fact, I will be generous—they can have two questions if they are quick. Sarah can go first.

**Sarah Boyack (Lothian) (Lab):** The minister's opening statement referenced £1 billion of investment in recycling services for local authorities during the previous decade. Is it possible for the committee to get a breakdown of that? Can we also get more information about the recycling improvement fund? The Society of Local Authority Chief Executives and Senior Managers said that the fund is ending in the next year to 18 months. What will replace that? Finance has been an issue for local authorities since the first consultation on the bill in 2019.

**Lorna Slater:** I am very happy to write to the committee with the breakdown of the funding and where the earlier funding went.

In terms of replacing the recycling improvement fund, I spoke with my officials about that this week, to understand what investment will be required. There are lots of moving parts in this space with the extended producer responsibility for packaging, which will provide funding to operate an efficient and effective recycling scheme for those materials. However, there will not necessarily be upfront capital, so money would need to be found for that. I am undertaking the work to set that out so that we can have clarity on that as we develop things.

**The Convener:** That was almost two questions in one. Sarah, you can have another question, if you are quick.

11:45

**Sarah Boyack:** Infrastructure is the issue. Councils are setting their budgets for 2024-25 now, so 2030 is not far away. They are having to make estimates about waste and recycling centres, vehicles and the need for infrastructure, as well as about communication. Local authorities and SOLACE have said that they do not agree with the statistics in the Scottish Government's financial memorandum. What is your response to that? Do you have other information to fill the huge gap between what Government and local authorities are saying?

**Lorna Slater:** We need to develop that. We are starting that process now, as we begin developing the code of practice and start to understand the extended producer responsibility funding model. As the code of practice develops, we will understand what infrastructure investment Scotland will need. We are at the start of that process.

**Murdo Fraser (Mid Scotland and Fife) (Con):** I will try to be as brief as possible, convener.

Minister, you will be aware that I have carried out a consultation on fly-tipping, as part of work on a member's bill, which is progressing very well.

There are four elements to that. I am pleased to see that section 10 of the bill picks up the issue of the householder's responsibility. We will discuss the level of fines later, so I will not ask about that, which helpfully leaves me with two issues and two questions.

My first question is very straightforward and is about data collection. The picture is quite confused at the moment because a number of bodies are involved in data collection, including local authorities, Zero Waste Scotland and the Scottish Environment Protection Agency. Your fly-tipping strategy recognises the need to improve the consistency and quality of data collection. Would it be helpful to amend the bill at stage 2 to put a specific duty on ministers to collect and publish data, so that we have a central point, rather than having that responsibility spread across different organisations?

**Lorna Slater:** I do not think that we need legislation in order to undertake that particular exercise, but the member is absolutely right that we do have to do it. As you rightly said, the national litter and fly-tipping strategy sets out measures to improve data collection by creating a stakeholder data sharing agreement to support the gathering of data and to work with stakeholders to improve the consistency of data collection. We are exploring the idea of incorporating data into a national database and ensuring that we have fit-for-purpose mechanisms for citizen reporting of fly-tipping. That work is under way, but I do not think that we need to legislate for that.

**Murdo Fraser:** My second question is one that I know the convener will be interested in, because it is about liability, and is a question that has been raised with me for many years, particularly by NFU Scotland. It is very aggrieved, because the current law says that an innocent landowner who has waste dumped on their land is responsible for the cost of clearing that up. That is an offence to the polluter-pays principle that is made clear in the fly-tipping strategy that underpins the Scottish Government's approach. What we have at the moment is not the polluter-pays principle but the innocent victim of fly-tipping being held responsible for the cost of cleaning that up. I have numerous case studies from the NFUS, Scottish Land & Estates and others of cases in which innocent landowners have been held liable by SEPA for clean-up costs. We must get that sorted, because it is not fair.

**The Convener:** Before you answer that, minister, and because Murdo Fraser referred to the fact that I am a landowner, I refer members to my entry in the register of members' interests. I am a landowner and I have suffered from fly-tipping, most recently this past weekend. Having

put that on the record, I invite the minister to answer the question.

**Lorna Slater:** I can only imagine how frustrating it is to have a waste crime committed on your land, convener.

I will answer, but I will also hand over to Ailsa Heine, because there are some legal points to make in connection with this particular question.

Section 59 of the Environmental Protection Act 1990 does not place an immediate legal liability on the occupier of land, but it does provide a means of serving a notice to compel the occupier to remove waste from the land in some circumstances, which must be what has occurred in the situations to which Murdo Fraser referred. Although that power could be used in any circumstances, it is likely to be used by SEPA or by local authorities only when there is substantial evidence that the landowner bears some responsibility for the deposited waste. SEPA and local authorities also have powers to remove waste from land, so they can do it themselves.

Although we recognise that private landowners are often the victims of fly-tipping and we recognise the need for further action to support those victims, the proposal contained in Murdo Fraser's proposed member's bill would significantly affect SEPA's ability to tackle serious waste crime, and removal of the provision in section 59(1) of the 1990 act would allow occupiers of land who bear some responsibility for fly-tipping waste to escape liability for unlawful behaviour, which would leave the public purse to bear the removal and clean-up costs.

**Ailsa Heine:** What the minister has said is right: section 59 of the 1990 act does not impose legal liability for the costs, but it allows enforcement authorities to serve a notice requiring the landowner to clean up the waste. It does not impose liability for the clean-up costs; it is simply a mechanism. SEPA and local authorities have powers to clean up waste themselves. SEPA would not necessarily follow the route of imposing a notice on the landowner to clean up the waste. The issue with removing the ability to serve notice on landowners is that it would cause other problems regarding landowners who were complicit in allowing fly-tipping to happen, and there would be no means for SEPA to enforce payment of the costs. As the minister said, the public purse would then be left to meet all the clean-up costs. That is the difficulty here.

**The Convener:** I am not sure who is bearing the costs. If the landlord is served a notice, it must be the landlord.

**Murdo Fraser:** Notwithstanding what you say, minister, I can give you examples, and I am sure that NFU Scotland could give you lots of

examples, of instances when its members have had notices served on them in circumstances in which they have been entirely innocent. That is a major concern for the NFUS. Are you aware of any other area of public policy where the innocent victim of a crime is held responsible for it?

**Lorna Slater:** The specific requirement is that SEPA and local authorities must have substantial evidence that the landowner bears some responsibility for the deposited waste. The question is not so much around the legislation; it is perhaps around how it is being implemented. I cannot comment on any particular individual circumstances, but I absolutely recognise the point that victims of waste crimes have a grievance, and I am interested to hear about what other measures we could take to support them in that.

**Jackie Dunbar:** Regarding what Ailsa Heine said about SEPA and local authorities having powers to pick up material where there has been fly-tipping, that does not mean to say that they have to do that, does it? Just because they can do that does not mean that it is their responsibility to do it. I am asking for a bit more clarity on that point. I know from past experience that local authorities could pick up from anywhere, but they would always charge. What Murdo Fraser is trying to ask is whether the farmer or landowner would still have responsibility to pay for fly-tipped waste to be picked up. I am sorry if I am putting words in Murdo Fraser's mouth.

**Janet McVea:** We are very much aware that that is a live issue, which has been raised as a priority through the fly-tipping forum that the minister established. We had a specific discussion about the issue, which was brought to the surface. The forum provides a focus for sharing and working through concerns, including those from the NFUS. That is an on-going mechanism for working through such issues.

The issue has been specifically recognised in the litter and fly-tipping strategy, which Mr Fraser noted. To position the Circular Economy (Scotland) Bill in the context of other measures, I note the specific work to develop guidance and carry out trials to better support private landowners to deter and deal with fly-tipping on their land. That includes grants.

We are very much aware of the issue, through the fly-tipping forum and the strategy work, which are giving us a focus. We can continue the conversations.

**Ben Macpherson:** Mr Fraser has rightly raised concerns regarding rural Scotland. In urban Scotland, the biggest fly-tipping that we tend to see is that of old mattresses and sofas. Mr Lumsden pointed out that the charge for collection can sometimes be prohibitive.

Discussions on extended producer responsibility are taking place across the UK and, together, we will keep a close eye on how that develops. If that does not result in an obligation being placed on providers of mattresses, sofas and other commonly fly-tipped items, would the Scottish Government consider using devolved powers to oblige those companies to make sure that there is safe, effective and appropriate disposal of those items?

To go back to my first question on the bill, considering the cost of collection and the challenge for low-income households in particular, will the third sector or local authorities be empowered and financed to help households to dispose appropriately of items that are commonly fly-tipped?

**Lorna Slater:** I am open to discussing charging for services as part of the discussion that we have with local authorities about the code of practice. The first circular economy and waste route map consultation in 2022 suggested that we identify at least three priority products for further action on producer responsibility schemes. Through the UK Environment Act 2021, Scotland has extensive powers to put in place Scotland-based producer responsibility schemes. We are looking at things such as textiles, mattresses, sofas and tyres. That is part of the consultation, and we are absolutely considering taking that forward.

**The Convener:** Douglas Lumsden wants to make a quick declaration.

**Douglas Lumsden:** Earlier, I asked questions about the Convention of Scottish Local Authorities. I should have declared that, at the start of this parliamentary session, I was a councillor at Aberdeen City Council.

**The Convener:** We are nearly at the end of our time. I know that committee members are looking at me, and I am going to look down at my notes so that they do not make grumpy faces at me.

Minister, we are doing a report on the bill, and when the policy memorandum was published, we were told that we would get the route map in 2023. We have a deadline of the middle of January for producing our report, but I do not believe that we will be in a position to meet that deadline without seeing the route map. I will wait to hear the committee's views on that. That is a gentle reminder—could one be given more gently than that?—that you need to get it to us as soon as possible.

**Lorna Slater:** Understood, convener—I absolutely agree.

**The Convener:** We have not really talked about this point; I am simply looking for a yes or no answer. Part of the success of the bill will be in

educating people about what is required of them and driving that forward. The Finance and Public Administration Committee made the point that providing the equivalent of £2.95 per household will be insufficient to meet the cost of educating people. I am not asking you to give me a decision now, but will you review that? I have learned a huge amount during this process, and other people could learn as much if we spent a bit more on education. I am making a plea for you to look at that.

**Lorna Slater:** Yes, convener. I have committed to revisiting the numbers in the financial memorandum that the FPAC highlighted to me.

**The Convener:** On that note, we come to the end of the evidence session. I will briefly pause the meeting to allow officials to leave before we move on to the next agenda item. It is 11:58, so I ask committee members to be back and ready to start again at 11:03—I am sorry; I meant 12:03. We cannot go backwards in time.

11:58

*Meeting suspended.*

12:03

*On resuming—*

## Subordinate Legislation

### Fly-tipping (Fixed Penalty) (Scotland) Order 2023 (SSI 2023/335)

**The Convener:** Our next agenda item is an evidence-taking session on an order subject to the negative procedure, which means that it will come into force unless the Parliament agrees to a motion to annul it.

Yesterday, Murdo Fraser lodged a motion to recommend annulling the order. Before we formally debate that, I thought that it might be helpful to have a brief evidence session with the minister and her officials, which will give us the opportunity to ask questions and seek clarification.

I welcome back Lorna Slater, the Minister for Green Skills, Circular Economy and Biodiversity; Ailsa Heine, a solicitor in the Scottish Government; and Janet McVea, head of Zero Waste Scotland. The minister will make a brief opening statement.

**Lorna Slater:** Thank you for the opportunity to discuss the order, which will change the amount that is payable under a fixed-penalty notice for fly-tipping offences from £200 to £500. That is the maximum level that the fixed-penalty amount can be set at by order under section 33A(10) of the Environmental Protection Act 1990.

We are taking this action to show that we are serious about tackling waste crime. Updating the amount of the FPN for fly-tipping is a commitment made in the national litter and fly-tipping strategy and in the year 1 action plan, which was published in June 2023. It will strengthen the existing enforcement regime for fly-tipping so that the fine issued by a fixed-penalty notice will now be a flat rate of £500.

The increase has broad support from the public and relevant organisations. The response to the public consultation on the national litter and fly-tipping strategy, which concluded in March 2022, showed strong support. The analysis of responses showed that 84 per cent of the 925 responses supported the increase, and 90 per cent of the 79 organisations that responded supported the increase to £500.

There are small financial implications for enforcement bodies such as local authorities, Loch Lomond and Trossachs National Park and Police Scotland, which will, as a result of the increase, incur minor administration costs in changing notices and internal procedures, although I note that those organisations were among those who responded positively to the increase during the consultation process.

Increasing the FPN is not the only action that we will take. It sits alongside a range of other measures that are set out in the national litter and fly-tipping strategy and year 1 action plan, such as publishing research into the enforcement of littering and fly-tipping, working to develop more effective collaborative working across organisations such as SEPA and local authorities, and supporting SEPA in offering a grant scheme to private landowners so that they can find ways to deter and deal with fly-tipping.

**The Convener:** At this point, I remind members of my entry in the register of members' interests. I am a landowner and have been subjected to fly-tipping, as I guess most landowners in Scotland have.

During the evidence session on the Circular Economy (Scotland) Bill, we heard that £500 would barely scratch the surface of the costs of clearing things up. You have said that this is covered by legislation. Is there no way that the fine could be higher?

**Lorna Slater:** Ailsa Heine has the full details on that, but this is only one part of the enforcement regime around fly-tipping. SEPA has a separate range of civil penalties that it can issue for offences under section 33(6) of the 1990 act, including fly-tipping. Those penalties include monetary penalties of £600 and variable monetary penalties of up to £40,000, which is the maximum fine upon summary conviction for these offences. Those remain unchanged. Criminal proceedings are also possible, including conviction on indictment through a jury trial, imprisonment of up to five years and an unlimited fine.

However, fixed-penalty notices are intended for small-scale crime. A £1,000 or higher penalty would not be proportionate for the dumping of a sofa. If we are getting into serious waste crime, however, there are much more punitive measures.

At this point, I will hand over to Ailsa Heine.

**The Convener:** I do not know whether the minister knows this detail, but what if no one has ever been charged with fly-tipping? I am not sure whether Moray Council has ever raised a fly-tipping fine. Do other councils do it?

**Ailsa Heine:** I cannot answer the question whether councils are raising the fines. They are responsible for enforcing fly-tipping offences, as is SEPA, which would be involved when the crime was perhaps more than just an isolated incident in one local authority. Councils are responsible for enforcing the regulations, but I do not have the detail on how many fines they are issuing. The fine is not intended to compensate the council for the costs—it is a penalty charge, and it is imposed for the commission of the offence.



**The Convener:** Okay, but I just remember when a deep freeze full of food appeared, along with its wrappings and the name of the person who had bought it. No one was going to impose a fine for that for the simple reason that they did not know who put it there. A fine is fairly meaningless if it requires evidence of who put it there, because the person who threw it away was probably not the person whose deep freeze it was. It might have been a white van man.

**Lorna Slater:** That is a specific example, but when waste that has been fly-tipped can be identified, the provision in the Circular Economy (Scotland) Bill would allow a fixed-penalty notice of £200 to be charged against the homeowner.

**The Convener:** I will throw it open to the committee. Douglas Lumsden, do you have a question?

**Douglas Lumsden:** I was going to ask the same question that you asked, convener, about how many fixed-penalty notices have been issued in the past 12 months. Is the issue that we do not have that data to hand today, or do we just not have the data at all?

**Janet McVea:** The Scottish Government does not hold that data—it would be available from local authorities. That is also relevant to the discussion on the Circular Economy (Scotland) Bill.

**Douglas Lumsden:** So, to find out, the committee would have to write to every local authority to get that data.

**Janet McVea:** I think that that would be the case. Certainly, we do not hold the payment data.

**Douglas Lumsden:** Minister, you mentioned that SEPA can take action. Do we know how many actions it has taken in the past 12 months? You quoted fines of up to £40,000. How many people have, for example, been taken to court in the past 12 months?

**Lorna Slater:** I do not have the data on that but, if the information is with SEPA, I presume that we can write to the committee with it.

**Janet McVea:** We could certainly undertake to provide what we have. We will recheck all the available data, and we can provide what we have, but there are limitations to what the Scottish Government holds.

For the record, I should say that I am not head of Zero Waste Scotland—I have not usurped Iain Gulland. Just for clarification, I am head of the zero waste unit at the Scottish Government.

The minister positioned the SSI in the context of wider work and noted the range of agencies that are involved. A big focus of the new national litter and fly-tipping strategy that we published a few months ago is on supporting more effective

collaboration between the range of agencies that are involved in enforcement. We are looking at getting clarification, including for the public, of who is involved and how the different agencies can collaborate better to maximise the totality of the tools that are available to them.

**Mark Ruskell:** We have a motion to recommend that the Parliament annul the instrument. This might seem an obvious question, but what would be the impact if the motion were agreed to? Would it just mean that fines would stay at £200 and would not go up, or are there wider implications?

**Lorna Slater:** That is my understanding—that the fines would stay at £200.

**The Convener:** Murdo, are there any questions that you would like to ask?

**Murdo Fraser:** Thank you, convener.

I have lodged a motion to annul, but that was largely a device to ensure that the convener would allow me time to ask questions, which I hope has had an appropriate impact.

**Lorna Slater:** That just shows how effectively you can scrutinise secondary legislation using the negative procedure. Well done.

**Murdo Fraser:** Thank you, minister.

I actually welcome the increase—my concern is that it might not go far enough. Perhaps I can give a small anecdote to illustrate that. When I was doing research on fly-tipping, I spoke to a local authority environment officer in Edinburgh who said that he and a colleague had caught in the act an individual with a white van who was dumping mattresses by the roadside. He challenged that person and said that they would get a fixed-penalty notice. When that individual was told that the fixed-penalty notice would be £200, they said, “Well, just give it to me, because that’s less than it would cost to dispose of these legally.”

Clearly, there is a need to increase the charges, because they are not at a level where they are acting as a deterrent. We also know that, increasingly, people involved in illegal fly-tipping come from an organised crime background. Therefore, penalties need to be at a level where they are a deterrent. I think that £500 is helpful, but I urge the Scottish Government to consider whether it should go further and increase the level.

Another point that I want to raise came out of the session that the committee had two or three weeks ago with COSLA and local government representatives. It is about whether fixed penalties could help create an additional revenue stream for local councils and whether the money could be ring fenced in council budgets to support better enforcement. We have heard that local

government has real issues with being able to devote resources to the issue. We can have as many fixed penalties as we want but, if we do not have people on the ground who can enforce them and issue notices, that will have little impact.

We also know that, due to budget pressures, councils across the country are having to reduce access to recycling centres. Based on the feedback that I got from my members' bill consultation, that is the issue that most people raised as a contributory factor to fly-tipping. That a person cannot dispose of the goods legally is never an excuse for fly-tipping, but clearly, the more barriers that are put in the way of legal disposal, the more likely we are to drive up the number of cases. Do you have any view on the extent to which revenues from fixed-penalty notices might be helpful in supporting enforcement action by local councils?

12:15

**Lorna Slater:** I will go through all those matters in turn. First, I make it very clear that fixed-penalty notices are only part of the enforcement regime. As I have said, SEPA has a range of civil penalties available to it, including variable monetary penalties of up to £40,000. A fixed-penalty notice is just that—a fixed-penalty notice—and increasing the fine above £500 is getting into territory where it becomes disproportionate. As Ben Macpherson has highlighted, we sometimes get a little bit of fly-tipping next to the bins in Leith, and slapping someone with a £1,000 fine for that would be disproportionate. A fixed-penalty notice does not allow for variability—its intention is to deal with low-level offences.

You are absolutely right that organised waste crime is a serious concern, but that is why the higher penalties and offences exist. Ailsa Heine has more detail on that, so I will hand over to her in a moment to tell you how the hierarchy of enforcement works.

I am not supportive of ring fencing, because that would not be in line with the Verity house agreement. However, as discussed in the context of the Circular Economy (Scotland) Bill, councils can make decisions on their enforcement choices based on what revenue they might get or what cost savings they might make through enforcement that could, for example, prevent them from having to take on clean-up costs.

I am aware that access to recycling centres has been restricted, partly due to Covid and other concerns. We are concerned about that and will be looking at it.

**Ailsa Heine:** In relation to the example that you gave of the white van man dumping mattresses and saying, "Well, it will cost less to pay the fine,"

determining how an offence should be enforced is a matter for local authorities, and in a situation of that kind, a fixed-penalty notice would perhaps not be the most appropriate sanction, so the council could consider reporting for prosecution. The fines for fly-tipping that a court could impose on prosecution would be considerably higher and would potentially take into account the gains that the person is making from the crime.

The fixed-penalty notice has its place in dealing with low-level offending, but the case that you have highlighted does not sound like that; the person in question could be a repeat offender who is making a lot of money out of that activity. That is not really what a fixed-penalty notice is designed to deal with. If we put the fixed-penalty amount up to £1,000, we risk local authorities having no means of dealing with low-level offending, because it would be disproportionate for somebody to get a fixed-penalty notice of £1,000 just for dumping a small amount of waste.

A hierarchy of sanctions is available. Local authorities can also call in SEPA to help deal with enforcement in cases of larger-scale fly-tipping. It can impose a wider range of civil penalties, including variable and fixed monetary penalties, and it can also report for prosecution. However, it is subject to guidance from the Lord Advocate in deciding whether to impose civil sanctions or whether to report for prosecution. One of the matters that SEPA has to take into account in considering whether to report for prosecution is the level of financial gain that the person has made from the crime, along with the level of environmental damage and the seriousness of the crime.

A lot of things come into play in dealing with such offences. The fixed-penalty notice is meant to allow local authorities to deal with very straightforward, low-level offending efficiently and effectively—it is not there to deal with higher levels of offending. That is why, under the original power, ministers are restricted to setting a fixed penalty of up to level 2 on the standard scale, which is £500. The provision is meant to deal with low-level offending, so it would not necessarily be appropriate to have powers to impose vast amounts for fixed-penalty notices. As I have said, however, the levels of fines with prosecution, and penalties that are issued via SEPA, are considerably higher.

**Murdo Fraser:** Thank you for that response. I have a couple of points on what you have raised. One issue that came out strongly in the consultation on my member's bill was frustration from local authorities that they would report people for prosecution but those people were not then prosecuted. I do not have the figures with me, but we did some research into the number of

prosecutions that were taken forward, as opposed to the number of people who were reported to the procurator fiscal. The number of prosecutions was tiny—it was in the low teens, if I remember correctly.

We know that, as with all other areas of public policy, the Crown Office and Procurator Fiscal Service is under huge pressure. If you are a procurator fiscal looking at your casework, you have all sorts of crimes against individuals to deal with, and tackling fly-tipping crimes is not a priority. A very small proportion of the incidents that were reported to COPFS, therefore, were actually taken forward. That is a great frustration for local authority environmental staff, because they pass the papers through and nothing happens, and people get off scot free.

That is why the fixed-penalty notices are important—they are a practical step that can be taken at local level. I hear what you have to say about the levels. Could we create a new legislative framework—as my bill is looking at doing—whereby there would, in effect, be a sliding scale of fixed-penalty notices that could be issued by local authorities? For very low-level offences, such as dumping a sofa, the penalty might be £500, but where an offence was more serious, the penalty could be increased to a higher level. That would be at the discretion of the local authority.

I am happy to explore that with you separately, minister.

**The Convener:** Minister, I give you a gentle nudge that perhaps a meeting with Murdo Fraser afterwards might avoid a long discussion in the committee room, as I am struggling to find time to fit everything in. I am sorry—I do not want to put words in your mouth.

**Lorna Slater:** No, no—that is a good suggestion, convener. If the member would be content with that, we can certainly take the discussion out of this space, if that would be convenient.

**The Convener:** A few committee members would like to come in. I will go to Bob Doris and then Monica Lennon.

**Bob Doris:** I will try to be brief, convener.

Minister, I think that Mr Fraser is using parliamentary process to promote his member's bill, which I appreciate, but I suspect that he also supports the order. I will certainly not be supporting the motion to recommend annulment.

I have three questions on the specifics of the order that is before us. It is my understanding that, if the legislation is passed by the Parliament, the powers will be in force by January next year. Is that correct?

I will roll my questions together, as I think that that would be helpful, given the time constraints. Secondly, is there any distinction between commercial and household waste in relation to these fixed-penalty notices? I sympathise with Mr Fraser's point about a sliding scale of fixed-penalty notices, and the question whether we can evidence a repeat offender, perhaps commercial. Is there any distinction between a householder and a commercial offender?

Finally, I think that there is a feeling in the committee that there needs to be better, more robust data collection across the whole area. Data has to be collected consistently across 32 local authorities, and the courts as well, and it all has to sit in one place.

I have tried to roll up all three questions, convener, so I do not have to come back in. I hope that you got a note of those, minister.

**Lorna Slater:** Absolutely. On the data collection point, I said in my response to Mr Fraser that we are working on creating a national database and ensuring that we are pulling that data together. We agree that the work needs done; I just do not think that legislation is required to do it. That is fine.

With regard to changing the fixed-penalty notice in the SSI that is in front of us, we are not seeking to change the crime at all—we are not changing who will be fined. I clarify that, in relation to the householder's duty of care in the Circular Economy (Scotland) Bill, which were talking about earlier, the fine for the householder is £200 and will remain at that level. This SSI is different and is to do with existing fly-tipping offences under section 33A(9) of the 1990 act. It is those offences for which the fixed penalty will be going from £200 to £500. The fixed penalty in relation to the householder's duty of care will remain at £200.

**Monica Lennon:** It is probably quite timely that the Scottish litter survey for 2023 was published last month. It will not surprise colleagues that nine out of 10 people believe that litter is a problem in Scotland; that opinion has grown over the past three years. There have been questions about data on what local authorities and SEPA are doing. Minister, I know that you do not hold all that information, but you are able to access it and to have those conversations.

One of the things that came out in the litter survey—and in another report that I think that Diffley Partnership consultants were involved in—is that there is quite a bit of inequality between the most and least affluent communities. If you live in a less affluent area, you are more likely to have litter problems. It looks as though that is not being tackled as robustly as it is in wealthier areas.

I wonder whether I can get a commitment from you, minister: when you look at the data on how

much discretion has been applied to taking action, can you look at the equality impact of that as well? There was an equality impact assessment for the fly-tipping strategy, but I hope that the Government agrees that it is not fair that, just because you live in a less wealthy area, you have to put up with litter and fly-tipping and it is not seen as a priority compared with areas that are better resourced and where people have more power and wealth. I am keen to get your views on that.

**Lorna Slater:** Of course I am concerned about the equality impact of these matters. It is absolutely true that improved enforcement can benefit deprived communities because, in many cases, they are the ones that are suffering most from the impacts of litter. Wherever we take action on litter prevention and give local authorities and SEPA more powers on litter prevention, we intend to benefit deprived communities.

**Douglas Lumsden:** The committee heard evidence from the waste industry about sofas that contain POPs, or persistent organic pollutants, being banned from going to landfill. So many recycling centres across Scotland are no longer going to accept them. Are you concerned that that will feed into more fly-tipping—that people who go to a recycling centre with a sofa and are told that the site will not accept it might decide to dump it elsewhere instead, perhaps on the drive home?

**Lorna Slater:** Yes, we absolutely share that concern. Dealing with POPs waste is a regulatory requirement; it needs to be incinerated safely. However, I would note that sofas that have fire-retardant chemicals on them are perfectly safe to use and reuse. We need to look at how we get those items into the reuse stream and not consider them to be waste when they are still perfectly good to use. It is only when they come to the end of their life that we need to ensure that they are disposed of properly.

**Douglas Lumsden:** The information about POPs took the committee by surprise, so do you think that people are aware that they cannot take those sofas to recycling centres and that they need to make alternative arrangements to get rid of them?

**Lorna Slater:** That is a very good point. The guidance for local authorities has been published only recently, so it is probably not in the wider public domain. Therefore, yes, absolutely, we can have a think about that.

**Janet McVea:** As the minister said, we are very alive to that, and that is certainly a key consideration for SEPA and local authorities. There is work in train, involving Zero Waste Scotland and SEPA, to support clear and consistent communication by local authorities. We

have seen some good examples of that communication.

**Douglas Lumsden:** However, we have heard that some local authorities have already stopped taking such items, so that could lead to a big problem with fly-tipping down the line.

**Janet McVea:** Yes, it is a key aspect of the work that is in train; it is really important.

12:30

**The Convener:** Thank you. As I do not see anyone wanting to ask any more questions, that concludes our evidence-taking session on the instrument.

Item 4 is the formal debate on motion S6M-11534, in the name of Murdo Fraser, calling on the committee to recommend to the Scottish Parliament that the Fly-tipping (Fixed Penalty) (Scotland) Order 2023 (2023/335) be annulled.

Now, Murdo, I am going to ask you at the outset whether you are going to move or not move the motion. If you do not move it, you will not be able to speak to it. Would you like to move the motion?

**Murdo Fraser:** I will move it, before withdrawing it, convener, as I want to make a very brief point.

*Motion moved,*

That the Net Zero, Energy and Transport Committee recommends that the Fly-tipping (Fixed Penalty) (Scotland) Order 2023 (2023/335) be annulled.—[Murdo Fraser]

**Murdo Fraser:** Thank you for the opportunity to come to the committee in order to raise these important matters. I welcome the fact that penalties are to increase to £500—it is a helpful step in the right direction. However, I think that more needs to be done in this area, and I look forward to meeting the minister separately to discuss some ideas that I might have about how we might bring that into effect.

With that, I will withdraw my motion.

**The Convener:** You might have moved it and withdrawn it, but I still have to take comments from other members. I will take Mark Ruskell, Bob Doris and then Ben Macpherson, and then I will make a proposal. We are going to be busy.

**Mark Ruskell:** I sort of understand the method that Mr Fraser has used today in order to provoke a debate on the matter but, given the context of the debate, I just want to ask him about his member's bill. I am aware that a consultation on the bill took place last year, and that a final proposal was lodged in November 2022, but where is the bill sitting at the moment? Clearly, the Scottish Government has gone to the limits of its powers under primary legislation, and we have heard from the minister about the thinking behind

setting fixed-penalty notices at £500, and about the wider legal framework with regard to penalties and enforcement. That discussion has been useful.

However, Mr Fraser has a very clear set of legislative proposals that have been consulted on; indeed, I believe that a level of £2,000 for fixed-penalty notices was part of that consultation. It would be good to know when that member's bill will be presented to this committee, because, given that we are dealing with the Scottish Government's Circular Economy (Scotland) Bill, the timescale for which has been well understood for a while now, it might have been opportune for Mr Fraser to have presented his bill at the very point at which we are considering whether primary legislation is adequate to deal with fly-tipping and a whole range of other issues.

I therefore ask Mr Fraser when he winds up this debate, such as it is, to reflect a bit on his own member's bill proposal. Having done a number of such bills myself, I am well aware of the process and the constraints, perhaps, on parliamentary support. However, Mr Fraser has a clear proposal. When are we going to see it?

**The Convener:** Murdo Fraser will get a chance to answer that question when he sums up at the end. Having failed to finesse things in quite the way that I had hoped to, I will go to Bob Doris and ask whether he has any questions that he wants Mr Fraser to clear up when he sums up.

**Bob Doris:** There are probably lots of questions, convener, but I have to say that you merely caught my eye. I do not wish to comment.

**The Convener:** You do not?

**Bob Doris:** I do not wish to comment.

**The Convener:** Ah. I call Ben Macpherson.

**Ben Macpherson:** I will be brief.

This comment might be as much for the minister as it is for Mr Fraser—perhaps more so—but I just want to highlight on the record the helpful commitment from Mr Fraser and the minister to having a follow-up meeting and to say that it would be useful and good if the committee could see a note of that meeting in due course.

**The Convener:** I will let Sarah Boyack make a brief comment, too, before I come to Murdo Fraser for his summing up.

**Sarah Boyack:** This has been a really useful debate and, like others, I was interested to see it coming forward. Again, a lot of this comes back to the issue of finance for local authorities not just to ensure that facilities are available but to communicate with our constituents so that they take the right route and we do not see any more

fly-tipping. After all, it damages our communities, and we need to get rid of it.

**The Convener:** The clerks have just reminded me that I was trying to finesse this almost too cleverly. The minister now gets an opportunity to comment on the points that have been raised before I come to Murdo Fraser.

**Lorna Slater:** The only comment that I think pertains to me came from the deputy convener. What he has asked for is not a problem at all.

**The Convener:** I now ask Murdo Fraser to sum up and to move or withdraw the motion.

**Murdo Fraser:** Thank you very much, convener, and thanks to colleagues who have commented.

The only substantive question that I think that I need to respond to was from Mark Ruskell on timing. He is probably as frustrated as I am at the lack of progress on the bill, but that has nothing to do with me. I am afraid that it is simply to do with the time pressures on the non-Government bills unit.

That said, I have now seen an initial draft of the bill, which—from memory—was submitted to me about three or four weeks ago. A draftsman was appointed, a lot of work has been done and we are now tweaking that draft. I am in the hands of the parliamentary authorities and, as Mr Ruskell has rightly acknowledged, there are major resourcing issues when it comes to supporting members who bring forward bills. However, I hope, at the very least, to be in a position to publish a final version of the bill within the next few weeks. Indeed, depending on my conversation with the minister, I might well be able to bring forward some of my proposed bill as amendments at stage 2 of the Circular Economy (Scotland) Bill instead of presenting a stand-alone piece of legislation. That might be helpful to the committee.

That is the only substantive point that I had to deal with, convener. Given the undertaking that I have had from the minister, it is not my intention to press the motion.

**The Convener:** As the member is not pressing the motion, does any other committee member wish to do so? If the answer to that question is no, which it appears to be—

**Bob Doris:** I am sorry to be a stickler for process, but Mr Fraser has already moved the motion. He now needs to seek permission to withdraw it. That is the process.

**The Convener:** Say that again, Bob.

**Bob Doris:** Mr Fraser has already moved the motion—speculatively, so that he can have more airtime in the committee. I commend him for his

opportunism, but the process now is that he should seek permission to withdraw the motion.

**The Convener:** Do you seek permission to withdraw your motion, Mr Fraser?

**Murdo Fraser:** I do.

**The Convener:** Does the committee agree to the motion being withdrawn?

**Members** *indicated agreement.*

**The Convener:** I now invite the committee to agree that it does not wish to make any recommendations in relation to the instrument. Are we agreed?

**Members** *indicated agreement.*

**The Convener:** We will report on the outcome of the instrument in due course and I invite the committee to delegate authority to me as convener to finalise that report for publication. Is the committee happy to do so?

**Members** *indicated agreement.*

**The Convener:** I thank the minister and her officials for attending. I will push on with the next item and ask the minister to leave quietly.

### **Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2023 (SSI 2023/336)**

**The Convener:** Item 5 is consideration of another negative instrument. As the instrument has been laid under the negative procedure, its provisions will come into force unless the Parliament agrees to a motion to annul. I am very pleased to say that no motions to annul have been lodged.

If members have no comments, I invite the committee to agree that it does not wish to make any recommendations in relation to the instrument. Are we agreed?

**Members** *indicated agreement.*

**The Convener:** Thank you. That concludes the public part of our meeting, and we will now go into private session.

12:38

*Meeting continued in private until 12:56.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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