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Dear Kenny

Thank you for the opportunity to speak with you at the Committee session on 7 November 2023.

I would like to take this opportunity to follow up on that discussion and address the key concerns that were raised by Committee members.

Enabling powers

As I set out at Committee, the 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 Bill gives Ministers and local authorities the tools they need to achieve our ambitions for a circular economy. It represents a package of new powers and responsibilities that will be underpinned by co-design in line with the principles of the Verity House Agreement.

In deciding that some provisions should give powers to Ministers to make subordinate legislation, the Scottish Government carefully considered the need to:

- achieve the appropriate balance between the importance of developing a more circular economy and the need to provide flexibility to allow Ministers to respond to changing and unforeseen circumstances quickly, in light of experience, without the need for further primary legislation every time a change is needed;
- ensure the proper use of Parliamentary time is made; and
- deal with the unexpected, which might otherwise frustrate the purpose of provisions passed by the Parliament.

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For example, the Bill provides Scottish Ministers with a means of placing a charge on single-use products. While it might be possible for Ministers to use existing powers in the Environmental Protection Act 1990 to impose restrictions on the supply of such products if there is clear evidence of environmental harm, this new power complements that ability and establishes a framework that will allow a proportionate, appropriate and consistent response to the emergence of new single-use products. The alternative would be to establish new charge schemes in primary legislation on a case-by-case basis. This would significantly impede Scotland's ability to react to new single-use products and tackle the climate and environmental problems that they cause, and that this Parliament has committed to address.

By necessity, the Financial Memorandum therefore provides strategic-level cost and benefit data. It is not possible, for example, to foresee what single-use product charges may be needed in the future, or the outcomes of co-designing the new Code of Practice with local government and other stakeholders. However, I understand the Committee's need to scrutinise both the strategic-level costs and benefits of the Bill, and, as far as possible, of the use of the powers in the Bill. To that end, I am happy to commit to updating the Committee as we progress ongoing work with local authorities, businesses and other stakeholders through, for example, the development of the Circular Economy and Waste Route Map.

We are already engaging with local authorities on how we will work together to design the detail of secondary regulations relating to Household Waste as well as developing the associated Code of Practice. I have met with Councillor Macgregor, the Cosla spokesperson for Environment and Economy, and agreed principles for moving forward. Discussions are also underway at official level to develop and plan the delivery of the co-design.

This builds on significant engagement over a much longer period of time. Many of the provisions in the Bill, particularly relating to enforcement, have emerged from those discussions where local authorities have told us they want, and need, extra powers to deliver the change we all want to see. This includes the new civil enforcement powers for local authorities to reduce contamination of household recycling, to give a simpler, cheaper enforcement option than current criminal routes.

Work is also ongoing with wider stakeholders, for example through the Single-use Disposable Cups Charge Advisory Group, which includes a range of business representatives, cup recycling representative bodies, Disability Equality Scotland and numerous others to ensure that proposals for the charge are developed in a collegiate way, recognising the implications of any approach. More widely officials are engaging with the Regulatory Reform Group on the provisions that have direct impacts for businesses within the framework of the New Deal for Business.

Overall, the responses to the Bill consultation gave broad support for all the measures included. We were reflective of responses received and amended proposals where appropriate, for example moving to explore commercial zoning on a voluntary basis rather than on a statutory footing given the concerns raised by those in the waste management sector.

Costs to local authorities

On specific points raised in discussion, Zero Waste Scotland (ZWS) estimated the cost for all local authorities to align with the existing Code of Practice would be £88.4 million. This

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estimate is based on the number of households in local authorities yet to align their services with the existing Code of Practice, at that point in time, and the costs of:

- containers (bins)
- a per household cost for communications, and
- short term project management costs for the LA.

ZWS based this on the actual average costs incurred by the local authorities who have already aligned services with the existing Code of Practice. For example, the estimated cost of bins was based on actual costs provided by LAs, informed by discussions with Scotland Excel on trends in container costs, and inflation adjustments where required.

Included in this breakdown, the Financial Memorandum identified a figure of £2.95 per household to support communication of service changes. This is based on the average cost of support that was provided by ZWS to communicate service changes in local authorities. It includes: local communication costs (using existing design and templates); staff training; and additional staff to support implementation of the service change. While I recognise individual local authorities may have alternative estimates, the figures in the Financial Memorandum reflect the significant delivery experience of ZWS.

Funding for local authorities

Since the Financial Memorandum was published, further awards have been made under the Recycling Improvement Fund which has now allocated £60.3 million to 21 local authorities, already starting the process to help more local authorities align with the Code of Practice. The existing Code of Practice is the starting point to develop the new code and so the Recycling Improvement Fund investments to date will contribute to local authorities meeting new standards.

The Recycling Improvement Fund is in addition to £1.083 billion of funding that was available through the former Strategic Waste Fund between 2008 and 2022 to assist local authorities in the implementation of the Zero Waste Plan. This is a similar figure to recent investment in Wales.

Extended Producer Responsibility for packaging, which we have chosen to reform on a 4-nations basis alongside the other UK governments, will require producers to pay local authorities the full net cost of operating an efficient and effective household packaging collection service. This represents a significant source of funding to local authorities, estimated at £1.2 billion per annum across the UK. When calculating a local authority's efficient disposal costs, a range of circumstances – including factors such as rurality, levels of deprivation and population density – must be taken into account to ensure individual local authority circumstances are fairly reflected in the amounts each local authority will receive. It will also allow for consideration of national policies on waste management so, in the case of Scotland, where the statutory Code of Practice as provided for by the Bill will require a certain level of service, that too will require to be taken into account in assessing an authority's efficient disposal costs.

Enforcement

In terms of enforcement, I appreciate that some local authorities have questioned the identified costs. The costs in the Financial Memorandum were based on estimates

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developed by ZWS that took account of engagement with some local authorities and partners.

I appreciate that approaches to enforcement, and therefore costs, will vary across local authorities so may be higher, or indeed lower, in some councils depending on the approach they decide to take. Therefore, we welcome the ongoing feedback from local authorities and will take this into account in further work to develop more detailed proposals and secondary legislation, including assumptions in relation to collection rates of Fixed Penalty Notices, which are not held centrally.

Next steps

We will be consulting on the Circular Economy and Waste Route Map later in 2023 and finalising this in the first half of 2024. This will set out timelines for the range of activity planned in the coming years.

For example, subject to the passage of the Bill we will be developing a new Circular Economy Strategy from 2025 and developing a monitoring and indicator framework over the course of 2024 to underpin targets from 2025. We will explore restrictions on the destruction of unsold goods from 2025.

Work is already underway in relation to single-use cups and we intend to consult in 2024 and bring forward regulations in 2025. We will also explore with stakeholders the most effective way to implement mandatory reporting for food waste and surplus by businesses by 2025-26.

We will be facilitating a co-design process for high quality, high performing household recycling and reuse services across 2024-25 and developing a statutory Code of Practice alongside strengthening householder's duty of care by 2025-26. We are already in dialogue with COSLA on this matter and will update the Committee ahead of Stage 2. This co-design work will inform statutory recycling and reuse performance targets for household waste services from 2030.

Any secondary legislation brought forward will be consulted on and will be accompanied by relevant impact assessments, including a BRIA, setting out associated costs and benefits, as appropriate.

I hope the Committee finds this information helpful.

Kind regards

LORNA SLATER

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