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14 March 2024

Dear Kenneth

**SCOTTISH GOVERNMENT RESPONSE TO THE FINANCE AND PUBLIC
ADMINISTRATION COMMITTEE'S REPORT ON THE FINANCIAL MEMORANDUM FOR
THE CIRCULAR ECONOMY (SCOTLAND) BILL**

I write in response to the Finance and Public Administration Committee's Report on the Financial Memorandum for the Circular Economy (Scotland) Bill.

I would like to thank the Committee for its careful and detailed consideration of the Financial Memorandum. I welcome the Committee's report and am committed to addressing the specific concerns raised.

My officials have considered the evidence that the Committee heard, particularly the concerns raised around some of the assumptions that were made in the Financial Memorandum. Updates are provided in Annex A, which responds to the main recommendations in the Report.

As I set out in my letters of 20 November 2023 and 12 February 2024, we are already engaging with local authorities on how we will work together to co-design the detail of secondary regulations relating to household waste and to develop the associated Code of Practice. I continue to discuss this with Councillor Macgregor, the Cosla spokesperson for Environment and Economy, and we have agreed an approach for moving forward in line with the Verity House Agreement, based on inclusive working informed by the best available evidence. We are utilising key partnership mechanisms, such as the Joint Scottish Government/Local Government Strategic Steering Group on Circular Economy and Waste, to oversee and jointly drive this work. I also continue to engage with businesses, representative bodies and wider stakeholders, including productive discussion on provisions relating to reporting on waste and surplus.

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I hope that my response addresses the issues raised in the Committee's report on the Financial Memorandum and is helpful in the Parliament's further consideration of the Bill. I am also copying this response to the Convener of the Net Zero, Energy and Transport Committee, Edward Mountain MSP.

I look forward to debating the Stage 1 report on 21 March 2024.

Kind regards

LORNA SLATER

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Annex - Scottish Government response to Report on the Financial Memorandum for the Circular Economy (Scotland) Bill

Enforcement costs and potential income

12. The Committee notes the Scottish Government's position that enforcement powers are needed to drive positive behaviour change and act as a deterrent. However, we expected to see much greater detail in the FM on the anticipated costs that could fall on local authorities with differing populations and geography, based on the assumption that these enforcement powers will be used.

13. Based on the evidence we received, the Committee believes that enforcement costs are likely to have been underestimated and, while we note the Minister's argument that these powers would be used at local authorities' discretion, they should nevertheless be accurately reflected in the FM. Ensuring that all local authorities are financially able to utilise the enforcement powers will be important if the Bill's ambitions are to be delivered.

I agree with the Committee that effective enforcement activity will be critical to achieve Bill ambitions and accept the importance of more detailed analysis of potential enforcement approaches and associated costs, taking account of the impact of local circumstances. My officials continue to engage actively with local authority colleagues regarding enforcement requirements and, as noted during the Committee session, further work will also be undertaken during the development of relevant secondary regulations. I have provided some additional clarification of our approach and initial assumptions below in response to the Committee's general concerns.

Estimates associated with enforcement were based on advice from Zero Waste Scotland (ZWS) that took account of engagement with some local authorities and partners; however, we appreciate that approach to enforcement, and therefore costs, will vary across local authorities and so may be viewed as low by some. 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.

Given the range of methods of delivering enforcement activity across local authorities, and differences in the number and exact role of staff at this stage it is not possible to determine the exact costs of enforcement across all local authorities. The interaction of a number of factors, such as operational service design choices, existing enforcement resources, distribution of populations, communications materials for residents, etc., is complex and varied. For example, in terms of operational service design, it is possible that not having an administration function specifically for enforcement activity could mean that in some circumstances the administrative burden would fall on staff at a higher pay grade.

The additional salary cost estimates (£35,000 to £45,000 per enforcement officer) included in the Financial Memorandum were benchmarked against existing enforcement officer salaries at the time and factored in a proportion of on-costs. Given the comments during the Committee's evidence session about underestimation of costs, the Scottish Government has engaged with representatives of the local authority Waste Managers Network, and

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considered local authority job adverts for waste-specific, or similar, enforcement activity available in February 2024.

This evidence suggests that salary ranges for enforcement officers currently range from approximately £24,000 to £36,000 per annum. Assuming 30% on-costs, which was mentioned during the Committee's evidence, and which has been confirmed in further discussion with local authorities, this would bring the approximate costs to between £31,000 and £47,000 per enforcement officer. This suggests that the range provided in the Financial Memorandum is not unreasonable.

We have identified more senior enforcement officer roles, with managerial responsibility, where salaries range from approximately £36,000 to £44,000 per annum (£47,000 to £57,000 including on-costs). This is clearly closer to the figure mentioned during the Committee's evidence. However, our assumptions were that the additional officers would be primarily required 'on the ground' rather than in supervisory positions.

I recognise that the differing operational models deployed across local authorities, as well as interaction with other areas, such as wider communication activity, will impact on these assumptions. As such, costs and assumptions for differing enforcement models will continue to be reviewed during the development of secondary regulations, based on a more detailed understanding of enforcement requirements, local authorities' preferred approaches and, in turn, the demands on enforcement teams. I will be happy to provide the Committee with updated figures when available.

18. In line with the Parliament's Standing Orders 11, the figures presented in any FM should be based on best estimates. The assumption in this FM of a 100% payment rate for fixed penalty notices is entirely unrealistic. Therefore, given that the level of income from fines assumed in the FM is not attainable, it should not be used to 'off set' some of the costs of enforcement, such as in relation to fly tipping. We consider this approach to identifying potential savings to be unsatisfactory.

19. The Committee notes the Minister's commitment that feedback will be taken 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".

The Financial Memorandum calculations did not assume a 100% payment rate for Fixed Penalty Notices (FPNs) but rather this assumption was made only for Civil Penalty Notices in relation to littering from vehicles. I accept that it would have been preferable to include a range of scenarios to highlight the impact of different payment rates, although this has a marginal impact on the overall costings included within the Financial Memorandum. No income figures were included in relation to FPNs and costs used were illustrative.

The Committee refers to a witness who noted that these "income assumptions appear to be based on 100% payment rate which is unlikely" and pointed out that between 10 and 15% of fines for similar offences are normally paid in relation to FPNs. The Scottish Government agrees with the witness that, if a person chooses not to pay an FPN, the local authority will then report the offence to the procurator fiscal and that the local authority will therefore not receive any money. This is not the case with civil penalties. If they are not paid, then there is no option to report the offence for prosecution and it will be open to a local authority to pursue any such unpaid fines as civil debts, when they feel it is appropriate to do so.

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The Scottish Government has, however, also considered whether any further data is available in relation to payment of FPNs. Data relating to FPN payment rates are not routinely reported and access to published information is sporadic and may be inconsistent in how it is set out (e.g., time period, aggregation of different FPN offences). Payment of fixed penalties also vary based on the issuing authority and the nature of the offence. Consideration of publicly available data from the past ten years shows that comparable collection rates have varied between 46% and 85%¹. I recognise that there are limitations with available data on payment rates and we are exploring ways to strengthen reporting in this area, as part of wider efforts to strengthen data through our National Litter and Flytipping Strategy.

20. We ask the Scottish Government for information on timescales for undertaking further research on littering and fly-tipping, along with an explanation why the relevant research was not undertaken when the gap in information was first identified.

The Scottish Government commissioned work on key barriers to enforcement of litter and flytipping in 2022 following the consultation on the National Litter and Flytipping Strategy which closed in March 2022. This was when it was determined that this research would provide valuable insights into effective enforcement. The Scottish Government committed to publishing this research in the National Litter and Flytipping Strategy Year One Action Plan and recognises that this is a vital part of progressing work to improve enforcement outcomes for litter and flytipping. It is expected to be published by May 2024.

Additional work is also underway to improve data on flytipping, including work by SEPA to improve the consistency of flytipping data which will be incorporated into a new Scottish national database. SEPA has commissioned work to identify and map available baseline data in order to give a more robust picture of fly-tipping across Scotland. The project will also provide a set of recommendations to aid more effective, consistent reporting in the future. The project is expected to be completed this financial year, and work in coming years will be informed by this initial activity.

Education and communication costs

26. Evidence received suggests that further work is required in developing the costings for education and communication programmes. Engagement with the public will be a key element of implementing the policy, regardless of the outcome of the co-

¹ Examples are:

- Police Fixed Penalty collection rate is currently **85%** across all offences (https://scotcourts.gov.uk/docs/default-source/aboutscs/reports-and-data/quarterly-fines-reports/qfr59/1---quarterly-fines-report-59---2023-24-q2.pdf?sfvrsn=2c1873ca_1)

- Investigation into Glasgow litter FPNs identified **46%** payment rate between 2015 and 2018 (<https://theferret.scot/glasgow-litter-fine-unpaid/>)

- City of Edinburgh Council reported overall payment (domestic and trade) rate for litter and flytipping as **53.8%** in 2014/15

(https://democracy.edinburgh.gov.uk/Data/Transport%20and%20Environment%20Committee/20150602/Agenda/item_713_-_impact_of_the_increases_to_fixed_penalty_notice_amounts.pdf)

- Aberdeen City Council reported assumption of **50%** payment rate for waste-related FPNs in June 2015 (<https://committees.aberdeencity.gov.uk/documents/s48846/Waste%20Enforcement%20Review.pdf>)

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design process, therefore these should be taken into account and accurately quantified in the FM.

I agree that engagement and communication with the public is key in delivering our circular economy ambitions and, as the Committee notes, this will be a fundamental part of the planned co-design process.

In relation to the assumptions set out in the Financial Memorandum in relation to Bill provisions, the indicative cost of £2.95 per household for “*local communication costs*”, included within the estimate for local authorities to align with the existing Household Recycling Code of Practice, was benchmarked against actual costs for projects in which ZWS was involved. These costs include development and delivery of all communication for previous service changes relating to local authority alignment with the current Recycling Charter Code of Practice. The standard method of communicating these service changes with funding provided by ZWS has been leaflet mailing and bin stickers, so a similar approach was assumed when estimating future costs.

In addition to the £2.95 figure, the Financial Memorandum included the potential requirement for short term project management costs for local authorities. This estimate was also benchmarked against the average of actual costs incurred by local authorities who have aligned services with the Charter’s Code of Practice in the past.

It is therefore thought that £2.95 per household is a reasonable and accurate figure associated with standard service changes within local authorities based on available evidence on actual costs incurred.

I recognise that local authorities argued that more intensive education programmes would be required. An integral part of the co-design process will be consideration of how we make the right choices easier for householders and support positive behaviours and will include learning from high-performing services and the communication and other mechanisms used. Developing associated costs will be further considered as part of that work and I will be happy to keep the Committee updated.

More generally, I would also ask the Committee to note that the Circular Economy and Waste Route Map consultation sets out further skills, education and communication-focused measures in train or planned. These measures go beyond the scope of powers sought through the Bill and were therefore not included in the Financial Memorandum. Nevertheless, these measures will have a bearing on household behaviour and waste composition.

This includes planned research on behaviour change-based approaches focused on sustainable consumption, building on recent research by Consumer Scotland regarding the presentation of sustainable behaviours and choices. This work will align with Scotland’s Let’s Do Net Zero communications campaign, to raise consumer and business awareness of the impacts of consumption and alternatives to buying new, or at all.

Infrastructure investment and alignment with the code of practice

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39. The Committee notes the cost estimates from Zero Waste Scotland of bringing all local authorities into alignment with the existing code of practice would be £88.4 million. We are therefore unclear how much more funding will be required to support local authorities to meet any “further requirements” in the proposed mandatory code which the Scottish Government considers necessary to meet its waste targets.

40. The Committee is concerned that this lack of clarity concerning the funding required for local authorities to align with a new, upgraded, mandatory code of practice could render the approach unaffordable and unsustainable.

41. We note that the vast majority of the RIF has already been allocated, however, 11 local authorities are yet to receive money, with less than £10 million left in the pot and high disparity between the amounts allocated to local authorities. The lack of headroom is particularly concerning given most of the funds available to implement changes have already been distributed and used, yet the co-design process has still to commence. The remaining RIF funding does not appear to be sufficient to support the significant improvements needed to implement any future mandatory code of practice.

The draft Circular Economy and Waste Route Map consultation (published on 18 January [Supporting documents - Circular economy and waste route map to 2030: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents-circular-economy-and-waste-route-map-to-2030-consultation)) set out the range of factors that will inform the co-design process to develop the code of practice, including research exploring the features of high-performing services in different geographical, socio-demographic and operational contexts. Developing detailed costings will be an integral part of that co-design process.

The Route Map also sets out that there will be a review of funding mechanisms for services to ensure modern, efficient and affordable outputs. Such a review will build on key findings from long term investment, including over £1bn made through the former Strategic Waste Fund between 2008 and 2022, the Recycling Improvement Fund (RIF), and the new provisions set out in the Circular Economy (Scotland) Bill.

Since the Financial Memorandum was published further awards have been made under RIF, which has now allocated £60.6 million to 25 local authorities. These are already starting the process to help more local authorities align with the existing Code of Practice. The existing Code provides the starting point to inform development of the new code, and so we expect the RIF investments to date will contribute to local authorities meeting new standards.

Changes to waste, recycling and reuse services and the move to a mandatory Code of Practice, will be closely linked to forthcoming changes in Packaging Extended Producer Responsibility and its funding model. This will require producers to pay local authorities the full net cost of operating an efficient and effective household packaging collection service and represents a significant source of funding to local authorities, estimated at £1.2bn per annum across the UK.

The proposed review of service charging will ensure that this is incentivising the right choices to increase recycling. Consideration of the available markets and reprocessing capacity for collected materials, and opportunities to facilitate this, will also be crucial. This process will ensure that we design modern, efficient and, critically, affordable waste and recycling service standards.

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We continue to engage with local authorities on the design of the detail of secondary regulations relating to Household Waste as well as developing the associated Code of Practice. I note the Committee's concern regarding the potential unaffordability of the future code and would reassure the Committee that, in partnership with Cosla and local authorities, specific consideration will be given to potential costs and financial and wider economic benefits of any refreshed standards.

Lack of certainty and value for money

48. The introduction of the Bill and its interaction with related schemes, including the DRS and the UK-wide EPR, have created an uncertain environment which has led to local authorities entering into short-term contracts that can provide little value for money. This is an area that is not properly acknowledged in the FM. We ask the Scottish Government to respond to the concerns raised and to explain how they will ensure greater certainty in relation to future proposed schemes.

I recognise that uncertainty can impact on contractual decisions and that certainty of policy direction is important in mitigating associated risks. The draft Circular Economy and Waste Route Map consultation ([Supporting documents - Circular economy and waste route map to 2030: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/Supporting%20documents%20-%20Circular%20economy%20and%20waste%20route%20map%20to%202030%3A%20consultation%20-%20gov.scot)) sets out the strategic direction and lays the foundations for how we will deliver our system-wide vision for Scotland's circular economy. It includes the priority actions from now to 2030 to accelerate more sustainable use of our resources and is designed to align with the legislative framework set by the Circular Economy (Scotland) Bill. For example, one of the proposed actions is publishing in 2025/26 a product stewardship plan to identify and tackle the environmental impact of at least three priority products – with mattresses, tyres and textiles under consideration and delivery timelines to be included.

We are working with the UK and devolved governments on reforms to Extended Producer Responsibility (EPR) schemes for packaging with the first scheme expected to begin from 2025 when producers will begin paying local authorities the full net cost of managing household packaging waste. We also remain committed to the delivery of a successful Deposit Return Scheme (DRS) for single-use drinks containers, with the UK Government committed to launch a UK-wide DRS by October 2025. However, the onus is on the UK Government to provide certainty on delivery timescales for these schemes, and ensure they are launched successfully and on time.

As set out in the draft Route Map, the co-design is an opportunity to consider these issues in the round, providing a template for long-term service design and ongoing improvement that will build on previous and current investments. This includes upcoming service demands and material flow and composition changes, for example, as a result of DRS and EPR. It will also include an assessment of the potential for multiple local authorities to collaborate or partner to deliver services as well as the potential efficiencies and economies of scale that this may offer.

Co-designing the detail

54. The Committee has reservations regarding the sequencing the Scottish Government has opted for in introducing this Bill. The choice to introduce primary legislation prior to completing or, in this case, even commencing the co-design

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process, means that financial estimates are not available at this stage, making financial scrutiny incredibly challenging, if not, impossible.

55. Scrutiny of this FM reinforces the concerns raised in our recent Pre-Budget Scrutiny 2024-25 report that “affordability does not appear to be a key factor in Scottish Government decision-making”. We note the Minister’s commitment, in relation to this Bill, that “any secondary legislation brought forward will be consulted on and will be accompanied by relevant impact assessments, including a BRIA [Business and regulatory impact assessment], setting out associated costs and benefits.” However, we do not feel this replaces the affordability assessment which should take place at the point of a Bill’s introduction.

56. The Committee is not convinced that the FM in its present form meets the requirements set out in the Parliament’s Standing Orders to provide “best estimates of the costs, savings, and changes to revenues to which the provisions of the Bill would give rise”.

57. We request that the updates, committed to by the Minister in her letter of 20 November 2023 be provided to the Committee every six months. These updates should include updated information on the expenditure incurred to date, any changes in forecast costs and any savings arising from the Bill and the subsequent Act (subject to the Bill being passed) and relevant secondary legislation, until all provisions are operational.

As I noted in my letter of 20 November, 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. 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. Discussions are also underway at official level to develop and plan the delivery of the co-design. Since then, as detailed above, we have published the draft Circular Economy and Waste Route Map which sets out a range of factors that will inform the co-design process and the development of more detailed costings.

I note that the Net Zero, Energy and Transport Committee has recommended that robust costings be provided to the Parliament when regulations are brought forward, and I am happy to do so.

I also note that the NZET Committee supports your request that regular updates should be sent to the FPAC committee. I am happy to commit to updating both Committees as we progress ongoing work with local authorities, businesses and other stakeholders and when updated forecasts of costs and savings are available. I would suggest that appropriate timings would be as regulations are being developed.

Scrutiny of Financial Memorandums for framework legislation

62. The Committee does not disagree with the principles of co-design or engaging with stakeholders on policy proposals, both of which support better outcomes and improve decision making. We are, however, unconvinced by the argument that co-design and engagement must follow on from the legislative process instead of being used to inform and refine policy proposals in advance of legislation being introduced.

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63. The increasing use of ‘framework’ bills that seek to provide future Governments with enabling powers and which do not, as a result, enable the best estimates of all the costs, savings and changes in revenue to be identified, effectively undermines Parliamentary scrutiny. It also risks the Parliament passing legislation which may in the end, once outcomes are fully understood, be unaffordable.

64. Ultimately, we consider that the increased use of framework bills, with no clear identification of the estimated costs of implementation, also poses long-term risks to the Scottish Budget, both now and for successive governments.

65. The Committee is disappointed that the Scottish Government does not appear to have learned from the recommendations we have made in relation to our examination of previous FMs and post-legislative scrutiny, where we set out our expectations around the level of financial data, clarity and transparency required. In the end, it will be for Parliament to decide whether, when voting on the general principles of a framework bill, the outcomes the bill seeks to deliver are such that they outweigh any financial or affordability considerations.

I acknowledge the Committee’s position and, as set out above, I recognise the Committee’s need to scrutinise the costs and benefits of the Bill. As I set out in my letter of 20 November, in deciding that some provisions should give powers to make subordinate legislation the Scottish Government carefully considers 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.

By necessity, the Financial Memorandum therefore provides strategic-level cost and benefit data. I would reiterate that I am committed to updating the Committee as regulations are developed.

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