Introduction

1. The Rural Affairs and Environment Committee (“the Committee”) specifically requested that it be appointed as secondary committee on the Climate Change (Scotland) Bill\(^1\) to scrutinise provisions which fall within the Committee’s remit, namely forestry (section 47), waste recycling and reduction (sections 52 to 61) and muirburn (section 46).

2. The Committee would wish to begin by thanking all those who provided written evidence or gave oral evidence to the Committee on these provisions in the Bill.

3. Before considering each set of provisions in turn below, the Committee wants to highlight some issues on the enabling nature of this legislation, the content and timing of the Bill and its impact on parliamentary scrutiny.

Parliamentary scrutiny

4. Before commencing evidence taking on the Bill the Committee wrote to the Scottish Government to express its frustration at the late stage at which a number of consultations on the provisions were undertaken\(^2\). The letter focused specifically on the forestry consultation which closed on 27 January. Given the need for this Committee to report to the lead Committee in advance of its evidence session with the Minister for Transport, Infrastructure and Climate Change as the final session of evidence taking at Stage 1, this Committee has had to scrutinise these provisions without copies of the responses to the Scottish Government’s consultation being available.

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\(^1\) Climate Change (Scotland) Bill (as introduced). Available at: [http://www.scottish.parliament.uk/s3/bills/17-ClimateChange/index.htm](http://www.scottish.parliament.uk/s3/bills/17-ClimateChange/index.htm)

5. The Committee acknowledges that the Minister for Environment at that time, Michael Russell, offered an apology for the late introduction of the consultation, and the Committee also appreciates that the Government provided a preliminary analysis of responses to a short timescale. Regardless of this, introducing a Bill in advance of the conclusion of consultations on its contents is not appropriate. Parliamentary committees should be afforded the right to undertake scrutiny of legislation with all of the relevant information at their disposal.

6. The Committee is also concerned that a number of areas of uncertainty remain about the specifics of the Government’s proposals that the Bill’s provisions would enable. Limitations in the accompanying documents and in the supplementary information provided by the Government creates a perception that the Government’s proposals are still evolving despite the Bill having been introduced a number of months ago.

7. The Committee wishes to express its frustration that it has been asked to scrutinise and potentially endorse broad enabling powers to a relatively tight timescale and with a lack of sufficiently detailed information at its disposal.

8. Furthermore the Committee is concerned that a number of the Bill’s provisions provide for new powers that are notably broad. This is not the first time that enabling powers have been proposed within primary legislation with the intention of the detail being provided within subordinate legislation. However, some of the powers, while limited to dealing with climate change, might still be seen as broad enough to be used in a different way to those proposed by the current administration. This concern is exacerbated when the specific proposals, such as the leasing of Forestry Commission land, are proving contentious.

9. This committee or its successor would of course have the opportunity to scrutinise the necessary subordinate legislation required to allow Scottish Ministers to use these powers. However there are limitations to the scope of the Parliament to scrutinise secondary legislation. For example the timetable for consideration once laid is considerably shorter than for most bills (40 days) and once laid committees are unable to amend this form of legislation.

10. There are a number of provisions where, although the powers have been criticised for being too broad, the policy direction behind these powers has received wide support from stakeholder groups, such groups are relatively relaxed about subordinate legislation being used to flesh out the detail of these proposals following passage of the Bill.

11. However, for the most controversial proposal, specifically the forestry leasing proposal as detailed in the Policy Memorandum\(^3\), it is clear to

\(^3\) Climate Change (Scotland) Bill Policy Memorandum. Available at: [http://www.scottish.parliament.uk/s3/bills/17-ClimateChange/b17s3-introd-pm.pdf](http://www.scottish.parliament.uk/s3/bills/17-ClimateChange/b17s3-introd-pm.pdf)
the Committee that the principle behind the provisions does not have a body of support, the Committee’s preference would be that this proposal should not be permitted by the wording of the Bill.

12. Notwithstanding paragraph 11 relating to leasing, in addition the Committee invites the Government to give serious consideration to amending the Bill to place limitations on the scope of secondary legislation stemming from it where powers are particularly broad. The Committee has flagged up specific suggested amendments to this end later in this report.

13. The Committee also considers that all secondary legislation stemming from these broad enabling powers should be subject to ‘super affirmative’ procedure. This effectively provides the committee likely to be referred the relevant instrument additional time to scrutinise it by allowing the committee to view it in draft. Importantly, scrutinising an instrument in draft affords the Committee the opportunity to take evidence on its provisions and to propose amendments to it before it is laid before Parliament. To allow committees maximum opportunity to take evidence on these draft instruments the Scottish Government should notify committees at the earliest opportunity that any such instruments are approaching a state of readiness to be laid before Parliament.

Forestry

14. Section 47 of the Bill provides for subordinate legislation to allow Forestry Commissioners within the Forestry Commission Scotland to form or participate in corporate bodies or trusts. In addition Commissioners would have the power to provide loans and act as an officer of a body corporate, or a trustee of a trust. The detail of the proposals behind section 47 are described in the Policy Memorandum, which states that the Government is proposing two specific policy areas. The Forestry Commission would be allowed to enter into joint venture arrangements for renewable energy developments. Such provisions on joint ventures replicate provisions already in force in England and Wales. The second proposal is to release capital by leasing up to 25% of Forestry Commission Scotland land for up to 75 years with the intention of using the funding gained to implement measures to contribute towards mitigating climate change. In this context the Committee agrees with successive governments’ stated objective of increasing the acreage of forestry in Scotland, within the context of an integrated land use policy.

Themes arising from evidence

15. The Committee issued a call for evidence on the forestry provisions. The Committee then held a roundtable discussion involving: Stuart Goodall, Chief Executive, Confederation of Forest Industries (ConFor); Allan Mackenzie, representative of Forestry Commission Trade Unions; Dr Calum Macdonald, Forestry Commissioner and Chairman of the
National Committee for Scotland, Forestry Commission Scotland; Lisa Duggan, Landscapes Manager, Loch Lomond and the Trossachs National Park Authority; Angus Yarwood, Convener of the Woodland Task Force, Scottish Environment LINK; Janice Cassidy, Policy Officer, Scottish Rural Property and Business Association; and Gavin Ellis, Director, Scottish Tourism Forum⁴;

16. This session was immediately followed by evidence from the Minister for Environment at that time, Michael Russell MSP, and his accompanying officials Anne Cairns, Solicitor, Rural Affairs Division, Scottish Government, Jo O'Hara, Head of the Natural Heritage Management Team, Scottish Government, Bob McIntosh, Director, Forestry Commission Scotland, and David Henderson-Howat, Policy Adviser, Forestry Commission Scotland⁵.

Leasing
17. All of the submissions received in response to the Committee's call for written evidence that commented on the leasing proposal either opposed the proposal or raised concerns about it.

Consultation
18. ConFor suggested that the timescale of the development of the proposal has been challenging stating that—

“It would have been ideal to have had a longer timescale and an opportunity to consider how forestry can contribute to tackling climate change in the context of a wider land use policy and the wider benefits that forestry provides.”

SE LINK⁶ added that—

“…we would like a longer discussion and more opportunity for all the stakeholders to get involved. We would prefer it if a later legislative opportunity was taken to introduce specific powers, once it has been determined what they should be.”

Loch Lomond and the Trossachs National Park Authority⁷ supported this position stating that—

“Although we support providing more land for forestry, there has been limited consultation on the proposals in the climate change action plan, so we have not explored other mechanisms for doing

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The Minister argued that the consultation on the forestry proposals was a genuine consultation and that on that basis alternatives to the leasing proposal were welcome. The Minister was also clear in evidence that the timing of the consultation is not ideal but that it is imperative that the Government acts at the earliest opportunity on climate change, and that this Bill makes provision for this to happen.

The Committee appreciates that consultations should not have a preconceived outcome and is concerned that consultation was undertaken during Stage 1 on a proposal already contained in documents supporting the Bill. There is sufficient concern about the leasing proposal for the Committee to be unwilling to recommend that the Bill allow this proposal to go ahead.

As detailed below the leasing proposal is contentious for numerous reasons and the consultation process for this proposal is considered to be inadequate by key stakeholders.

The Committee recommends that the Government does not progress this leasing proposal and amends the enabling section in the Bill.

Funding

On the issue of how any funding generated by this policy would be used, Dr Calum Macdonald from Forestry Commission Scotland stated that—

“…I would be keen for any money that is raised from joint ventures or by the commission to be spent on achieving forestry strategy targets.”

ConFor stated that its members were concerned that there had not been definitive reassurances from the Government that the money raised from the leasing proposal would be channelled back in to forestry based measures to improve carbon sequestration as opposed to being redirected into other Government initiatives to mitigate climate change. The Committee notes however that the Policy Memorandum does specify that funding generated would be used for woodland creation.

The SRPBA raised concerns from its members that any organisation or organisations leasing land could access funds from the Scotland Rural Development Programme which is already considered to be insufficient to support existing organisations and difficult to access funding from.

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The SRPBA also suggested that, if there were only one or two leases, a company or companies with a large proportion of the land could “outcompete” all of its members.

26. The Committee is aware that one of the appeals of the leasing proposal is the potential to provide the Government with a substantial sum of money up front as opposed to over a prolonged period, as is likely to be the case with the release of funding from joint ventures proposals. Members also raised concerns with the Minister that, should the leasee tap into SRDP funds at a rate of £2m per annum then over a 75 year lease £150m of support would be provided, leaving the Government with a net profit over that time of £50m. This figure of £50m does not reflect any loss of income or expenditure to the Forestry Commission Scotland and assumes that £200m is still the market value of the lease once the Bill is enacted.

27. If the Government proceeds with the leasing proposal in the Bill the Committee considers that it should clarify, before the end of Stage 1, how it envisages the mechanism for allocating funding released towards woodland creation working in practice, and to what extent the leasee will be able to call upon SRDP funds. The Government should also provide further detail on the calculations upon which the proposal’s viability has been assessed.

28. Finally, the Committee recommends that the Government should provide, as part of its reporting duties under Part 3 of the Bill, details to Parliament on which budget lines the funding generated from the leasing of land has been allocated to and for what purpose.

The remainder of the National Forest Estate

29. Concern was raised by some witnesses that, if the most profitable parts of the forest estate are leased off, there may be funding issues regarding the delivery of multi purpose and climate change benefits in the remaining 75%, which would by definition, be less profitable. Suggestions were made that the most profitable 25% would remove around a third of the commercial income of Forestry Commission Scotland.

30. If the Government proceeds with the leasing proposals, the Committee considers that detailed costings showing the economic viability of the remainder of the national forest estate should be provided to Parliament.

Not for Profit Trust

31. The Bill and Accompanying Documents contain little information on a proposed not for profit trust, with the Financial Memorandum stating:

“Detailed proposals have yet to be developed, and will include consideration of State Aid issues”
32. The Minister in evidence seemed sceptical about the idea, stating:

“Although the proposal for a trust is interesting and would offer certain advantages, I see little overall advantage. It might be overbureaucratic. That is my personal view, although I have not come to a final view on all the submissions on the subject. However, very few submissions were in favour of the trust.”

33. The Committee notes and shares the Minister’s reservations on a not-for-profit trust. Should the proposal for a trust proceed by way of secondary legislation, the Committee requests that an explanation of potential state aid issues be made available to Parliament, as well as a convincing justification for the inclusion of such a proposal.

Employment
34. Forestry Commission Trade Unions oppose the leasing proposal, in evidence Allan Mackenzie explained that—

“…our opposition is focused first and foremost on the effect that leasing might have on staff members who are transferred from the public to the private sector. Staff are frightened about issues such as their future employment prospects and long-term pension provision.”

35. Members raised concerns that forestry workers were coming to them on a private basis saying that when they attend workshops they are being told that if they do not accept the proposed transfer they will be deemed to have resigned and will not receive redundancy payments. The Minister assured the Committee that there would be no compulsory redundancies and that the Government would seek to ensure that affected employees are offered alternative employment.

36. The Committee expresses its concern at this interpretation of the Government’s message that there will be no compulsory redundancies. The Committee seeks assurances from the Government that if employees refuse to transfer to the private company leasing the land, that this will not impact on their employment rights and therefore they should not be deemed to have resigned.

37. The Committee also seeks assurances from the Government and the Forestry Commission that there will be no compulsory redundancies and that they will seek to secure that transferred employees’ contractual obligations include conditions of service.

equivalent to those adopted by the Forestry Commission. Finally, the Committee seeks assurances that the Government and Forestry Commission will take steps to ensure longer term security for affected staff, improving on the short term security provided by TUPE regulations.

Conditions attached to the lease

38. The possibility of writing into the lease conditions for the private company leasing the land to adhere to was regularly raised in written submissions. Essentially such conditions would seek to ensure that, as far as possible, a private company would perform many of the functions currently undertaken by the Forestry Commission Scotland.

39. ConFor suggested that the leasing conditions would need to be suitably robust to ensure that the use of the land by any private company would incorporate measures to mitigate climate change. For example, it should be required to give consideration to planting particular types of trees in particular areas to achieve maximum carbon sequestration. As noted above, funding is available via the SRDP for forms of planting which are sustainable but not necessarily self-financing, such as planting native broadleaf forests. Presumably without Government funded support or stringent conditions attached to the contract a private company would be more likely to plant more productive species of trees to maximise return.

40. A number of submissions made to the Committee raised concerns that the Forestry Commission’s valuable current role of ensuring supply to sawmills and other industries reliant on timber is maintained regardless of the market value of such timber and would not be carried by a private company with financial motivations. If sawmills are not assured of a steady supply of timber they may not be prepared to invest in expensive new infrastructure and may be vulnerable during downturns in the market. Stuart Goodall, ConFor acknowledged in evidence that—

“...the Forestry Commission provides long-term production forecasts, which it is pretty good at meeting. The private sector is not able to do that in quite the same way.”

41. In evidence Gavin Ellis, Scottish Tourism Forum raised concerns about the potential conflict of interest “that is inherent in the commercial realities of private enterprise” and praised the role the Forestry Commission has taken in integrating recreation, health and education benefits with Scotland’s forests. A number of written submissions also highlighted the value of the Forestry Commission’s focus on managing its land in a sustainable way, including promoting biodiversity.

42. Lisa Duggan, Loch Lomond and the Trossachs National Park Authority\textsuperscript{13} added, in relation to access to land within the Park, that the welcome onto private land that visitors get is not as positive as on Forestry Commission land—

“…they are told ‘if you want to come in, you can. We are not going to lock the gate.’ That contrasts with the Forestry Commission approach, which is one of saying, ‘you are welcome to walk here. These are the signs for you to follow. Here is what we have put in place for camping’.”

43. Stuart Goodall, ConFor\textsuperscript{14}, noted that the private sector already works closely with the Forestry Commission and has set standards which it self-polices. For example, he explained that the private sector is currently working with the Forestry Commission to produce a standard that takes account of carbon stating “that is not a principal concern about the effect of private sector planting on carbon capture. It is minor.” He later added that “We have spent a lot of time over the past 25 to 30 years developing standards and ways of identifying where to plant to avoid a flow country situation.”

44. Members presumed that even if the private sector does not self-police in this and other respects conditions could be attached to the lease and raised questions on possible conditions with the Minister. The Minister\textsuperscript{15} responded in relation to whether current requirements on the Forestry Commission would be placed on the private company stating that—

“There are statutory protections that the Forestry Commission observes and which a private owner would have to observe too...conditions will have to be attached to the lease, and they will refine the planting carried out by the private sector.”

45. The Committee appreciates assurances from the Minister on the importance the Scottish Government would place on contract conditions for any private company leasing land. However placing restrictions on the private investor would reduce the attractiveness of the lease and the likely income available from it. If the proposal goes ahead, the Committee believes that Parliament must have the opportunity to view and comment on the draft contract or a summary of its requirements before it is finalised.

\textsuperscript{13} Scottish Parliament Rural Affairs and Environment Committee. \textit{Official Report, 11 February 2009, Col 1435}

\textsuperscript{14} Scottish Parliament Rural Affairs and Environment Committee. \textit{Official Report, 11 February 2009, Col 1430}

\textsuperscript{15} Scottish Parliament Rural Affairs and Environment Committee. \textit{Official Report, 11 February 2009, Col 1454}
Capping scope of subordinate legislation

46. As the powers within the Bill which would allow leasing to take place are so broad witnesses suggested there was a need to refine the scope of these powers on the face of the Bill. SE Link\textsuperscript{16} stated that—

“…the powers in subsection (1) and (2) are very broad. We support the Subordinate Legislation Committee’s suggestion that the nature, scope and extent of the modification powers should be restricted.”

47. The written submission from Jean Balfour suggested that the 75 year lease period sat awkwardly with planting cycles. Stuart Goodall, ConFor\textsuperscript{17}, suggested there is no ideal length of lease as—

“We are talking about 100,000 hectares of Forestry Commission land, not all of which will have the same planting periods. It will always be the case that for some forests, two rotation periods will be involved whereas for others, only one will be involved. Almost any period could be chosen.”

48. The Minister was clear in evidence that this length of time was set as an upper threshold for the length of lease and that he or his successor may well be amenable to an amendment to the Bill that reflects this upper threshold. The Minister suggested that the Government could also be receptive to the idea of an upper threshold on the proportion of forestry commission land that could be leased at any one time to 25%.

49. At present the provision in section 47 of the Bill would enable both leasing and joint ventures but does not specifically refer to either policy intention. The specifics of the Government’s intended uses for the powers in section 47 are detailed in the Policy Memorandum. The Minister confirmed in evidence that the enabling nature of the existing provisions would not preclude amendments to the Bill to restrict the maximum length of the lease or the proportion of land leased. The Committee appreciates that in order to amend the Bill in these ways the express intention to lease land would need to be referred to on the face of the Bill. The Committee considers that having the policy intention explicitly referred to in the Bill would also aid Parliamentary scrutiny as it would aid members of Parliament seeking to lodge amendments on this matter.

50. 

\textbf{Should legislating for this policy in this Bill remain the Government’s position, the Committee recommends that the Bill be amended to cap the scope of the powers provided to reflect the specific policy proposal behind these powers. In doing so, the Committee recommends that the Bill be amended to make the distinction between provisions enabling joint ventures and...}


\textsuperscript{17} Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 11 February 2009*, Col 1436
provisions enabling the leasing proposal, as at present the same provision enables both proposals.

51. **The Committee specifically recommends that an upper threshold on the length of the land lease should appear on the face of the Bill as should a maximum threshold for the proportion of land to be leased at any one time.**

**Community leasing**

52. In the Minister’s opening statement Michael Russell noted that wide support has been given in consultation responses to the idea of leasing Forestry Commission Scotland land to communities as opposed to private interests. The Committee supports community leasing as a concept but understands that community leasing proposals could not necessarily be put on the face of the Bill perhaps without skewing the proposal to angle it towards potential benefits from community leasing that would mitigate climate change. It would seem more sensible to include provision for community leasing in future legislation which can take into account the social benefits and other environmental benefits stemming from community leasing.

53. **The Committee recommends that the Scottish Government incorporates provisions to allow for community leasing in future legislation.**

**Joint ventures**

54. All of the written submissions received supported the idea of the Forestry Commission Scotland entering into joint ventures with private companies for the development of sustainable energy such as wind farms and hydroelectric infrastructure. A lack of detail on the specifics of such proposals within accompanying documents was raised as an issue in a number of these submissions but the general principle of pursuing joint ventures for this purpose received wide support.

55. Members of the Committee explored the possibility of funds released from joint ventures being sufficient to remove the requirement for the leasing proposal considered above. Janice Cassidy from the SRPBA\(^{18}\) stated that—

“Our members’ view is that joint ventures would generate enough money without having to introduce leases, which would be complex and very long term. Our members felt that they did not receive sufficient information about the leases to back them as they stand. They thought that joint ventures would produce sufficient benefits.”

56. In response to the same line of questioning, specifically whether he accepted that the potential income stream from joint ventures would be

\(^{18}\) Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 11 February 2009, Col 1441*
sufficient to meet the Government’s planting objectives, the Minister stated—

“I do not dispute it. Both possibilities are desirable, and the short-term imperative makes it necessary to do both. However, the situation is not certain. Much will depend on what happens with the renewables market, and much will depend on the Forestry Commission’s ability to enter into sustainable joint ventures. I do not dispute what you suggest, and I do not want to fall out with you about it.”

57. The Committee is well aware that the joint ventures proposals are not just intended to generate funding, they would have other benefits including allowing the Forestry Commission Scotland to take a more strategic overview and control of developments such as wind farms on Commission land.

58. The Committee is keen, given the wide support for this method of harnessing renewable energy, that the full potential for income from joint ventures should be explored. The Committee recommends that joint ventures be encouraged. However the Committee appreciates from the Minister’s evidence that there is an issue about the timing of funding generated, with joint ventures beginning to generate funds in 5 to 10 years as opposed to potentially £200m being generated within two years for the leasing proposal.

59. The Committee also appreciates that beyond requiring the powers in the Bill to be enacted to enable such joint ventures, receiving the relevant planning permission and meeting the environmental regulation criteria set out by SEPA is also a requirement for such renewable energy developments and this can be a time consuming and potentially unsuccessful process. There are therefore practical issues to be considered when estimating the likely potential income and timing of realising that income from joint ventures.

60. The Committee acknowledges that joint ventures may not generate the same level of funds as the leasing proposal, or generate funds to the same timescale. However given the notable support for the joint ventures policy the Committee recommends that, in considering alternative approaches to leasing, the Government should explore the full potential of encouraging and supporting the establishment of joint ventures schemes.

Power to modify functions of the Forestry Commissioners

61. Section 47, which enables both leasing and joint ventures, includes a subsection which provides Scottish Ministers with the power to modify...
the functions of the Forestry Commissioners where they consider it expedient or necessary in meeting the targets set out in sections 1 to 3 that aim to mitigate the effects of climate change. To use this power would require subordinate legislation to be approved by Parliament under the affirmative procedure.

62. The Committee questioned in evidence whether this power could be used to remove over-arching duties imposed upon the Forestry Commissioners in other pieces of legislation, for example the duty to further the conservation of biodiversity in the exercise of their functions in the Nature Conservation (Scotland) Act 2004. The new Minister for Environment, Roseanna Cunningham MSP, provided written clarification on this issue following this session confirming that the Government does not consider that the duty in the Bill could override duties imposed in other legislation.

63. The Committee considers that there may be other legal interpretations of how widely this power could be used but appreciates that the Parliament will have the opportunity to scrutinise any Government proposals to use section 47 (2) within secondary legislation.

**Waste reduction and recycling**

64. The provisions on waste reduction and recycling are intended to contribute towards the Scottish Government’s zero waste policy. The Policy Memorandum says that zero waste is about—

“...reducing the unnecessary use of raw materials, sustainable design of products, preventing waste, and recovering value from products and materials when they reach the end of their lives through recycling, composting or energy recovery.”

65. The Government has capped the extent to which certain techniques can be used to contribute towards the achievement of zero waste. For example, no more than 25 per cent of municipal waste should be treated as energy-from-waste by 2025.

66. The Government expects that the amount of waste sent to landfill will reduce as a result of the policy levers currently in place. These levers are various voluntary agreements, for example, on reductions in packaging and in the use of plastic carrier bags, and fiscal measures such as the Landfill Tax accelerator. In addition, as noted in evidence to the Committee, the noticeable cultural shift towards practices such as recycling municipal waste and reusing carrier bags has aided efforts to reduce waste sent to landfill.

67. The Cabinet Secretary wrote to the Committee in response to a request for information on the likely timescale for subordinate legislation on each of the waste provisions. The response is annexed to this report. The Government anticipates that should any of the
measures in the Bill be implemented then this could increase the rate of reduction and therefore the Government could use all of the enabling powers in the Bill on waste reduction and recycling. However, when asked whether the Government would not use the provision on plastic carrier bag tax unless voluntary agreements did not work the Cabinet Secretary replied “That is fair comment. I would not expect to use the provisions if we achieved the same objective outwith legislative routes.”

68. The Scottish Government took the requirements of the EU Revised Waste Framework Directive into account when considering the waste provisions in the Bill. The Bill does not transpose the Directive (which must be transposed into domestic legislation by 12 December 2010). The Directive requires that all EU countries must recycle 50 per cent of their household waste and 70 per cent of construction and demolition waste by 2020. The Directive also re-iterates the waste hierarchy, which is a priority order for waste prevention and management legislation in member states. The hierarchy is a) prevention, b) preparing for re-use, c) recycling, d) other recovery e.g. energy recovery, and e) disposal.

Policy intention section by section

69. Section 52 would enable the Scottish Ministers to make provisions requiring certain persons to prepare plans for the prevention, reduction, management, recycling, use and disposal of waste produced by or otherwise associated with their activities. The Policy Memorandum cites the construction industry and general office-type businesses as being likely to be affected by this section.

70. Section 53 would enable Scottish Ministers to make regulations to require businesses and public bodies to provide information to SEPA about the waste that they produce. The cost to government and local authorities of providing this information is considered to be marginal. The Policy Memorandum states that ‘it will e difficult to move to a zero waste society without much better information.’

71. Sections 54 and 55 are intended, according to the Policy Memorandum, “to encourage recycling by providing people with opportunities to deposit waste for recycling when they are not home”. The Explanatory Notes state that section 54 could be used to require offices to have facilities to collect paper etc. Section 55 empowers local authorities to issue notices requiring organisers of temporary public events to provide recycling facilities. Both sections require the waste collected to be, as far as practicable, recycled.

72. Section 56 would give Scottish Ministers the power to set binding requirements on businesses and public bodies so that specified items procured or constructed by them must include or contain a certain amount or proportion of recyclate. The Financial Memorandum states that this provision is unlikely to add additional costs to government, public bodies or businesses because the type of materials likely to be
specified are traded widely, likely to be priced competitively and that the replacement of virgin materials with recycled ones is unlikely to increase costs.

73. Section 57 would give the Scottish Ministers powers to set binding targets for overall reductions in packaging. The Policy Memorandum states that the duty is likely to fall primarily on retailers but may also fall on those who supply packaged goods to retailers. There are a number of different ways of achieving a reduction in packaging and the Policy Memorandum suggests a number of them, including encouraging the use of refills, buying in bulk or supplying concentrated products.

74. Section 58 would give the Scottish Ministers powers to set up a statutory deposit and return scheme. The Financial Memorandum cites the experience in Denmark and Norway as an indicator of costs to bodies (other than for local authorities and government) individuals and businesses and estimates the costs at £15-20 million per annum. The Financial Memorandum states that costs would have to be recovered, for example, via deposit fees and the sale of recyclate. In addition, the Policy Memorandum states that any scheme may have financial benefits by reducing the amount of waste that local authorities are required to handle.

75. The purpose of section 59 is to reduce the number of carrier bags in circulation by making regulations about charging by sellers of goods for the supply of carrier bags and for requiring that the net proceeds of such charges be applied to environmental good causes. This is an area where there is already a voluntary agreement in place with many major retailers for carrier bag reduction initiatives. It is estimated that the cost of enforcement of regulations requiring charges would be in the region of £3.5 million per annum. Depending on the nature of the regulations, income is estimated at £8.14 million whilst publicity campaigns would cost in the region of £750,000.

76. The Bill also details the penalties which could be used in the enforcement of the waste provisions within subordinate legislation. These penalties are set out in section 61 of the Bill. Local authorities and SEPA could therefore incur costs if appointed as enforcement bodies.

Evidence taking

77. The Committee heard evidence from three panels of witnesses on the waste proposals. The panel on 28 January involved Professor Jim Baird, Glasgow Caledonian University; Pauline Hinchion, Chief Executive, Community Recycling Network Scotland; Susan Love, Policy Manager, Federation of Small Businesses in Scotland; and Dirk
78. A further panel on 4 February involved John Ferguson, Unit Manager, Sustainable Energy and Resources, SEPA; Iain Gulland, Director, WRAP Scotland; Dr Colin Clark, Head of Waste Management, COSLA. This panel was immediately followed by evidence from Richard Lochhead MSP, Cabinet Secretary for Rural Affairs and Environment and his accompanying officials Kim Fellows, Deputy Director for Waste and Pollution Reduction, Louise Miller, Solicitor, Food and Environment Division, Kevin Philpott, Waste Regulator Senior Policy Officer, and Simon Stockwell, Waste Strategy Team Leader, Scottish Government.

**Issues emerging from evidence taking**

**Zero waste**

79. The Committee discussed whether zero waste was achievable during both of its evidence sessions on the waste reduction and recycling provisions. All witnesses agreed that zero waste was desirable and a number of witnesses noted that there were encouraging statistics emerging to suggest that in the future it may be achievable. For example, Iain Gulland, WRAP Scotland, stated that “there is growing evidence that more than 90 per cent of what is in the waste stream can be recycled.” The Cabinet Secretary acknowledged the ambitious nature of the target in evidence stating that “a zero-waste policy is an ambitious policy. It is also an aspiration.”

80. It would appear to the Committee, from representations made to it and in response to the Scottish Government’s zero waste consultation, that stakeholders do not contest that the policy directions set out within sections 52 to 61 of the Bill will contribute towards achieving zero waste, with the possible exception of the proposal on carrier bags in section 59. To what extent these policies contribute to achieving this depends upon the progress made under voluntary agreements, the timing and approach to using the powers in the Bill, and if need be their effective enforcement.

**Infrastructure**

81. One of the main barriers to making good progress towards zero waste highlighted to the Committee was a lack of infrastructure, particularly

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for use by small to medium sized businesses. Susan Love, FSB, stated that—

“The FSB has been involved in the issue of recycling waste for several years, investigating possible further options for small and medium sized businesses, but we keep coming back to the same problem that there are no facilities for SMEs to use...it will not be remotely possible to implement many of the bill’s measures unless we make progress with facilities.”

82. Dirk Hazell, SESA, noted that, irrespective of the aspiration to achieve zero waste, there is an issue with meeting existing targets—

“...there is nowhere near enough waste infrastructure anywhere in the United Kingdom to comply with existing European obligations. We need to accelerate our transition from a disposal to a recycling society but to do so requires more infrastructure.”

83. John Ferguson, SEPA, also noted the need for improvements in existing infrastructure and entirely new developments but noted that the rate at which infrastructure will require to be developed to meet the various Government targets will be a “challenge to the planning system”.

Carrier bags

84. This Committee has received numerous written submissions opposing the policy behind this section of the Bill. This opposition is in large part based on evidence to suggest that proceeding with this policy may not necessarily deliver the intended environmental benefits. A similar proposal was considered by the Environment and Rural Development Committee in Session 2 during its scrutiny of the Member’s Bill introduced by Mike Pringle MSP entitled the Environmental Levy on Plastic Bags (Scotland) Bill. That Committee noted that “the net environmental impact of the proposed levy is an issue of considerable dispute in a range of areas”. The conclusion section of its Stage 1 report reflected the complexity of the issues raised by the Bill (reproduced at annexe A). The report’s final conclusion was as follows—

“The Committee reiterates its support for the Bill’s stated objectives. To achieve these objectives, the Committee urges the Executive to include ambitious measures to address plastic bag use in its waste prevention strategy. The Committee is not persuaded that the levy as currently proposed in this Bill is an effective means to achieve

these objectives. The Committee, therefore, recommends that the Parliament does not agree to the general principles of the Bill."

85. Following publication of the Stage 1 report the Bill was withdrawn by the Member. The Committee appreciates that there has been movement on this issue since the publication of the report in 2006, through the voluntary agreement with retailers and also by the cultural shift amongst the public towards bringing reusable bags to shops with them instead of using carrier bags once. However the considerable scrutiny undertaken by the previous committee should be used as a valuable assessment of the issue and this Committee draws the contents of the Stage 1 report to the attention of the lead committee on this basis.

*Current market conditions*

86. A number of witnesses explored the idea of the current market downturn representing an opportunity to develop certain waste based markets in Scotland. For example Iain Gulland, WRAP\textsuperscript{27}, noted that—

“When I met people seven months ago to talk about market development, they were interested in this country but, as long as the Chinese were paying high prices, materials were going straight from local authorities, through brokers, to the far east. It was difficult for Scottish industries to gain a foothold in the marketplace, because they could not compete. Now the markets are depressed and the Chinese are no longer offering the same prices—so there is a great opportunity for us to build an industry in Scotland for the future.”

*Non-municipal waste*

87. A clear theme arising from evidence taking was the need for commercial and industrial waste to be subject to the same legislative requirements as municipal waste. For this reason the provisions in the Bill requiring businesses and public bodies to provide information to SEPA about the waste that they produce were very much welcomed as measuring the extent of the problem was seen as the first step to addressing it.

88. SEPA and WRAP went further than the Bill’s existing provisions suggesting that commercial and industrial waste, such as biomass, should be banned from being sent to landfill. Dr Clark from COSLA\textsuperscript{28} noted the anomaly between the requirements for the limitation of municipal waste sent to landfill and commercial and industrial waste stating—

\textsuperscript{27}Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 4 February 2009*, *Col 1397*

\textsuperscript{28}Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 4 February 2009*, *Col 1398*
“A huge rump of commercial waste just gets landfilled. It is outwith the context of the landfill directive, but if I landfill it, I am subject to that directive...The municipal waste data are excellent, because the concentration has been on municipal waste, of which there is less than 4 million tonnes in Scotland. Commercial and industrial waste has been left to blow in the wind, frankly.”

**Definition of recycling**

89. Dirk Hazell, SESA, suggested in evidence that the definition of “recycling” adopted in the Bill differs from that specified in the Directive as the Bill definition includes forms of re-use and other processes that the Revised Waste Framework Directive does not define as recycling. Mr Hazell suggested that this definition makes the targets easier to achieve. In response to this criticism the Cabinet Secretary clarified in a letter to the Committee that the basis for the definition of recycling being used as more of an umbrella term under the Bill was for drafting purposes. The Committee notes both sides of this argument and considers that the key point is that Government policy direction under the Bill, including those outlined within subordinate legislation should always seek to align with the waste hierarchy as set out in the Revised Waste Framework Directive.

**Social and economic factors**

90. Some unintended consequences of prioritising lowering carbon emissions, including in remote and rural areas, were highlighted to the Committee. Pauline Hinchion CRNS gave the following example—

“We have members in Shetland who collect, recycle and reprocess glass into really nice glass awards. Theirs is a small business, but Shetland is a small place and they do great work. Under the bill, it would probably be better for the climate if they just put the glass on to a ship and sent it down to Alloa to be processed. We have to be careful that the powers do not become too instrumental and that some of the other factors that may have to be taken into consideration are not ignored.”

**Deposit and return and kerbside collection**

91. Dirk Hazell, SESA, suggested that the establishment of deposit and return schemes could detract from local authority efforts to establish kerbside collection and may be confusing for the public who have only recently adapted to this form of collection. Members of the Committee appreciated this point but suggested that in remote and rural areas of Scotland, and in certain forms of accommodation such as tenements, there was no scope for kerbside collection.

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92. Pauline Hinchion, CRNS, suggested that there would be carbon emissions from people driving to central points to return packaging or bottles for reuse, although it was also noted that these sites are usually near supermarkets or other large outlets in an attempt to ensure that people can return items when on journeys to undertake other tasks.

93. The Committee considers that the two processes have merit and that if recycling and reuse rates are to increase the public should ideally have both options at their disposal. It would be undesirable for the establishment of one process to hamper the functioning of the other.

94. Dirk Hazell\(^\text{30}\) also noted an underlying issue, namely that ways of establishing what the most sustainable method of reducing or recycling waste is central to ensuring that the correct practices are adopted by the public, local authorities and businesses alike—

“The Organisation for Economic Co-Operation and Development…tried to get internationally agreed measures of sustainable conduct…We need robust international—or European at least—agreed measurements of sustainability. That which would make this sort of bill much easier to implement.”

95. Pauline Hinchion\(^\text{31}\) added that—

“…the issue is how we ensure that we measure in the same way and are not comparing apples with pears. There are therefore problems around data quality, the type of data that are collected and, more important, how we measure data—I think that that was Dirk Hazell’s point. Instead of everybody using their own carbon accounting tool we must get agreement on how we measure data.”

96. The Committee notes the importance of establishing a standard approach to measuring carbon and then producing standard indicators as to what extent different practices are sustainable so that the public can make informed choices about whether to re-use or recycle. Recycling or reuse schemes should be as clear and accessible as possible for the public.

Packaging

97. As noted above, the first measure listed in the Waste Directive hierarchy for waste management is prevention. The discussion during the evidence session on 28 January acknowledged that whilst preventing waste by minimising packaging was desirable, without the necessary packaging products such as food can become damaged and become unnecessary waste. For example, Pauline Hinchion suggested that Tesco’s spoilage rate for food that had no packaging was in the


region of 30% and that this waste then produces methane gas which contributes to greenhouse emissions.

98. The Committee also heard evidence that progress was being made towards reducing the amount of unnecessary packaging and consideration was being given to the most sustainable types of packaging to be used by producers and retailers. The Committee also heard of the Courtauld commitment, a voluntary agreement between WRAP and major UK grocery organisations which in 2008 has led to zero growth in packaging despite increases in sales and population.

**Anaerobic digestion**

99. Anaerobic digestion is a managed biological process in which biodegradable waste is broken down by naturally occurring micro-organisms. This process can be used to treat waste, including food waste. The process produces biogas and this, in turn, can be used to generate energy. Other outputs from anaerobic digestion are fibre which can be used as a soil conditioner and liquor which can be used as a liquid fertiliser.

100. In his statement to Parliament on 24 January 2008 the Cabinet Secretary stated that—

“We are proposing that, by 2025, no more than a quarter of municipal waste...should be treated by energy-from-waste plants. Of course, the cap of one quarter will include anaerobic digestion, if it is used to treat mixed waste.”

101. The Committee would appreciate further information from the Cabinet Secretary as to how food waste will contribute to the targets for recycling and composting and whether energy from food waste will be counted as contributing towards the cap on energy-from-waste.

**Conclusions on waste**

102. The Committee recommends to the lead committee that, in taking forward the waste reduction and recycling provisions in an effort to achieve zero waste, the Scottish Government should have regard to the following—

- the urgent need to focus on reducing commercial and industrial waste being sent to landfill;
- the need to address the lack of infrastructure available to implement the policy intentions in the Bill;
- the need to consider issues raised by the Environment and Rural Development Committee in Session 2 on charging by sellers of goods for the supply of carrier bags;
the opportunity that current international market conditions could present for Scottish market development;

the need to ensure measures undertaken are in accordance with both the Government’s definition of ‘recycling’ and with the waste hierarchy set out in the Waste Framework Directive;

the benefits of the Government endorsing one method of measuring ‘carbon footprints’ and to establish criteria based on this reflecting which practice is more sustainable than another; and

the need to take into account any potential negative impact on social and economic factors, including in remote and rural areas, of aiming towards ambitious targets to reduce carbon emissions.

Potential stage 2 amendments

103. The Committee requested supplementary written information from the Cabinet Secretary on amendments to the waste provisions that the Government is already aware of. The Cabinet Secretary’s response, annexed to this report, details amendments focusing on the deposit and return scheme. Specifically, the Government will be proposing amendments to allow for the establishment of a new body to co-ordinate or perform a “clearing-house” function, levying deposits and such like. The Committee thanks the Cabinet Secretary for his informative response and notes that there may be considerable cost attached to the establishment of this new organisation.

104. The Committee recommends that the Scottish Government should provide specific costed proposals for such an organisation to Parliament well in advance of the relevant instrument of subordinate legislation being laid to afford the relevant committee the opportunity to fully scrutinise the proposals.

Muirburn

105. Muirburn is a mainly upland land management technique, and is the act of controlled burning of vegetation on open, treeless, semi-natural habitats (including muir or moorland) and involves the burning of gorse, heather and grass to stimulate new growth. Dates on which muirburn can take place are set down in statute (the Hill Farming Act 1946). The provisions in the Bill allow Scottish Ministers to amend, by subordinate legislation, these dates to adapt to the effects of climate change as there is concern that, given changing weather patterns and rising temperatures, the ecology of these areas could now be compromised by burning within the currently permitted limits.

Themes arising from evidence
106. The Scottish Government’s analysis of consultation responses on provisions relating to muirburn dates found that, of the 56 responses 28 agreed with the proposed power (6 of which qualified this answer). Conversely 24 of the responses did not agree and the majority considered there was a lack of evidence to suggest that such a power was needed, and were concerned that the overall length of the burning season could change. The area of consensus as far as there was one appeared to be that any changes to the permitted dates should be based on a rigorous evidence base.

107. The Committee incorporated a discussion on the muirburn provision into its roundtable discussion and into its evidence session with the Minister on 11 February. The SRPBA commented during the discussion that its members had been anxious about supporting the proposal because it was unclear how the new power would be used stating that “[our members] felt that they were given insufficient information to make an informed decision about any changes to the dates”.

108. The Minister suggested that he had been surprised by the opposition expressed in some of the responses to the muirburn consultation and considered that the lack of detail in the Bill may have led to some overly cautious responses. He assured the Committee that the power would not be used without full consultation with stakeholders and the power would only be used in such a way so as to allow muirburn practices to adapt to the impact of climate change.

109. The Committee appreciates the Minister’s reassurances that the Government will actively consult with all key stakeholders at an early stage in its deliberations on how to use this power.

Conclusions

110. The Committee wishes to highlight the above issues to the lead Committee, for raising with the Minister for Transport, Infrastructure and Climate Change and/or incorporating into its Stage 1 report as its members see fit:

- concerns with the level of detail available in the Bill and accompanying documents for certain proposals; the inclusion of important proposals within subordinate legislation only (which impacts on the potential for full parliamentary scrutiny); and concerns with the timing of some of the consultations for the Bill’s provisions;
- the negative reception from stakeholder groups that the provisions on leasing Forestry Commission Scotland land to release capital has received and the Committee’s recommendations in

response to this - including potential amendments to the Bill should the leasing proposal remain on the face of it; and

- the likely challenges faced by the Government, local authorities and others in implementing the waste reduction and recycling provisions in an effort to eventually achieve the zero waste target including insufficient infrastructure.
Conclusions of the Environment and Rural Development Committee’s supplementary Stage 1 report on the Environmental Levy on Plastic Bags (Scotland) Bill (2006, Session 2)

The Committee stated in its previous report that it wishes to see firm action to tackle resource use and waste management issues. Mike Pringle’s Bill has been valuable in raising awareness of the issues and provoking debate about how environmental benefits and culture change in resource use can be achieved. The Committee very much welcomes that and wants to see that important debate continue and develop.

The likely extent to which plastic bag use may be reduced by a levy (estimates of approximately 90% were given in evidence) does make it a potentially powerful tool. Putting a value on an item can change people’s behaviour and, in at least some instances, there is a place for statutory regulation being used to achieve that. A levy does have the potential to reach virtually every citizen immediately and could cause them to reconsider their resource use decisions. The Committee is, therefore, sympathetic to the aims of the Bill and considers that positive steps are required to achieve these aims.

However, as the Committee stated in its previous report, the evidence it has considered has made it clear that there are a number of complex interacting implications of a levy which make it very difficult to judge whether this particular levy scheme is an appropriate one that will achieve its desired effect.

The Committee welcomes the clarification from HM Treasury (supplied by the Minister in his further evidence) on the application of VAT to the levy. This removes some of the confusion around the administration of a levy.

However, after considering the further evidence received, the Committee remains of the view that there are a number of unintended consequences that appear likely to be connected with using the proposed levy to achieve a large reduction in the number of single-use plastic bags issued at checkouts. The net environmental impact of the proposed levy is an issue of considerable dispute in a range of areas.

The Committee considers that it remains impossible to be definitive about the likely environmental impact of the Bill and the arguments about whether this will be a net positive benefit are very finely balanced. The Committee considers that, on its own, the Bill cannot achieve the obvious and unequivocal benefits that it intends.

While the Committee previously noted that the Executive did not take a formal position on the Bill, at that time it welcomed the Minister’s statement that he
had an open mind on the potential inclusion of a range of measures to reduce bag use in the proposed waste prevention strategy.

However, having considered the further evidence, the Committee maintains its belief that a levy which focuses on one relatively small area of resource use has the best prospect of real success and real net environmental gain if it is integrated within a comprehensive package of measures. That would ensure that public education messages associated with the levy were clear and consistent with those accompanying other waste initiatives. It would also give the best prospect of any unintended consequences or contradictory effects being ironed out.

The Committee also notes that the debate has moved on over the period that the Bill has been under consideration. Some supermarket groups have introduced customer incentives and other schemes to reduce plastic bag use. Integration of the aims of the Bill into a wider waste prevention strategy by the Executive would encourage further development of such initiatives throughout the retail industry. It would also help to ensure that the management of plastic waste is developed comprehensively in accordance with the waste hierarchy (reduce, reuse, recycle).

The Committee notes that the final waste prevention strategy has not yet been published. However, the Committee is disappointed that the Executive has not, to date, responded more robustly to its request to consider integrating the aims of the Bill into its strategy. The Committee considers that a levy has most potential as part of a strategy, and considers that the Executive has the power to promote measures which would achieve the impact of the Bill without the unintended consequences.

The Committee reiterates its support for the Bill’s stated objectives. To achieve these objectives, the Committee urges the Executive to include ambitious measures to address plastic bag use in its waste prevention strategy. The Committee is not persuaded that the levy as currently proposed in this Bill is an effective means to achieve these objectives. The Committee, therefore, recommends that the Parliament does not agree to the general principles of the Bill.