



OFFICIAL REPORT
AITHISG OIFIGEIL

Net Zero, Energy and Transport Committee

Tuesday 26 September 2023

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Tuesday 26 September 2023

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
CIRCULAR ECONOMY (SCOTLAND) BILL: STAGE 1	2
SUBORDINATE LEGISLATION.....	35
Deposit and Return Scheme for Scotland (Miscellaneous Amendment) Regulations 2023 [Draft]	35

NET ZERO, ENERGY AND TRANSPORT COMMITTEE
27th Meeting 2023, Session 6

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Jackie Dunbar (Aberdeen Donside) (SNP)

*Monica Lennon (Central Scotland) (Lab)

*Douglas Lumsden (North East Scotland) (Con)

*Ash Regan (Edinburgh Eastern) (SNP)

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Cat Hay (Food and Drink Federation Scotland)

Ailsa Heine (Scottish Government)

Ewan MacDonald-Russell (Scottish Retail Consortium)

David McPhee (Scottish Government)

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

Colin Smith (Scottish Wholesale Association)

Haydn Thomas (Scottish Government)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament
Net Zero, Energy and Transport
Committee

Tuesday 26 September 2023

[The Convener opened the meeting at 09:16]

Decision on Taking Business in
Private

The Convener (Edward Mountain): Good morning, and welcome to the 27th meeting in 2023 of the Net Zero, Energy and Transport Committee.

Agenda item 1 is a decision on whether to take items 5, 6 and 7 in private. Item 5 is consideration of the evidence that we will hear today on the Circular Economy (Scotland) Bill and of our approach to future engagement. Item 6 is consideration of the evidence that we will hear today on the deposit return scheme and item 7 is consideration of our approach to the second supplementary legislative consent motion on the United Kingdom Energy Bill.

Do members agree to take those items in private?

Members *indicated agreement.*

Circular Economy (Scotland) Bill:
Stage 1

09:16

The Convener: Our next item of business is an evidence session as part of the committee's stage 1 scrutiny of the Circular Economy (Scotland) Bill. The purpose of the session is to hear from a panel of representatives from Scotland's business sector. Provisions in the bill will have implications for Scottish businesses, including new duties on the reporting of waste, minimum charges for single-use items and restrictions around the disposal of unsold consumer goods.

We are looking forward to the discussion. Sadly, we are one panel member down. Stacey Dingwall, who is the head of policy and external affairs for Scotland at the Federation of Small Businesses, is ill. She could not take part remotely because she has unfortunately lost her voice—a double whammy and we are sorry to miss her. However, we have Cat Hay, who is head of policy for the Food and Drink Federation Scotland; Ewan MacDonald-Russell, who is deputy head of the Scottish Retail Consortium; and Colin Smith, who is chief executive of the Scottish Wholesale Association. Thank you all for joining us.

We will move to questions from committee members and I will start by asking, in very general terms, whether you are concerned that the bill is enabling legislation and does not have a lot of detail in it on what will be implemented. It tells us what can be done, not what will be done. As a parliamentarian, that concerns me. Colin Smith, does it concern you?

Colin Smith (Scottish Wholesale Association): Yes, very much so. Going straight in there, if we compare it with previous legislation at this stage, the Deposit and Return Scheme for Scotland Regulations 2020 were very similar to what we are looking at here and ultimately had huge consequences for industry, business and, eventually, for the Scottish Government with its demise. When the legislation was in committee, it was not scrutinised in the way in which it should have been.

The big ask is that the committee really scrutinises the Circular Economy (Scotland) Bill that we are here to give evidence on, because it still has the potential to explode—or to implode, depending on which way you look at it—in the same way as the DRS did, if the scrutiny is not undertaken at this point. The secondary legislation relating to the DRS was supposed to be scrutinised but it was not because, in general, it cannot be. That is why it is extremely important that the committee does that scrutiny for this bill. I

know that the committee has written to Màiri McAllan asking for more detail on the implications of the United Kingdom Internal Market Act 2020, which was only one of a number of issues that brought down the DRS—there were about another 49 unresolved issues when the scheme was postponed in Scotland.

I know that the committee has also requested more detail on what the charge on single-use items might be, which is a big concern. The Scottish Wholesale Association sits on the single-use disposable cups charge advisory group. There are concerns that we still do not have the detail about how a single-use charge might operate and what other products might be included in it. In our consultation response we referred to Vancouver, which introduced a single-use cup charge but is repealing it after a year in operation, because of the impact that it had on small businesses, its unmanageability and the cost to consumers as well as the industry. That is where we are today. Everything that has gone before is not a reason to postpone our net zero ambitions or putting policy in place. However, we need to consider the unintended consequences and the impact of different legislation from across the UK's different nations, international waters and the European Union, and how those could impact what we are looking to do with the Circular Economy (Scotland) Bill and any other charges that might come down the road.

The Convener: Colin mentioned his concerns about the ramifications of the internal market act. I would be grateful to hear your comments and concerns on that, Ewan.

Ewan MacDonald-Russell (Scottish Retail Consortium): As an obvious proviso, the retail industry is absolutely committed to delivering the circular economy. Our members do a huge amount in the internal market space and perhaps explaining how we operate is a good starting point. Most retailers, and most of our members, tend to operate at scale, which could mean, for example, taking one shop and expanding to five because the proposition works. Retailers could choose to do that UK-wide, Europe-wide or, indeed, worldwide. We work on scale, therefore, whenever we look at public policy, our starting premise is to ask how we can do what is proposed in the most efficient and similar manner in different places.

Lots of the policy measures that we look at are great and seem as though they are perfectly sensible. We have lots of experience with charges, including our work on carrier bags. Our experience with that was to say, "Great, we will do it. Can we do it in the same, or in a roughly similar, way?" We would apply that approach to other public policy initiatives, such as the minimum unit pricing of alcohol, which is a great policy that was initiated in

Scotland. If we ask elsewhere, they say, "Let's do it just like that."

When policy is originated, if it is a policy that we are supportive of and that we are behind, our premise is always to ask whether we can do it in a way that is efficient and works for consumers, as well as working at scale. In principle, we feel that framework legislation is great for laying out broad principles, but we are slightly nervous about some of the specifics in the Circular Economy (Scotland) Bill, such as whether the right protections and considerations are in it. Broad legislation so that we can get the right framework is good. However, some of the elements in the Circular Economy (Scotland) Bill are very broad, which make it hard for us to understand where it goes.

Colin Smith was right to highlight our experience with some other legislation in which the framework was very broad. Secondary legislation can be very technical and is important for our members, but the Parliament does not necessarily have the same opportunity to scrutinise it. Getting it right here in the committee is really important. I am happy to elaborate further when we get into the nitty gritty.

The Convener: I am sure that you will. Cat Hay, is the Food and Drink Federation Scotland also nervous, or relaxed?

Cat Hay (Food and Drink Federation Scotland): Good morning and thank you for inviting me to the committee. Ultimately, we are the part of the supply chain that provides the products to Ewan MacDonald-Russell's and Colin Smith's members. The same applies, in that we look at global scale. Our membership is made up of the largest manufacturing sector in Scotland, which is the beating heart of the economy. Our members have ambitions to be at the beating heart of the circular economy and the opportunities that that provides. They are looking UK-wide when they think about supplying products, which is the way that our industry and supply chains are structured. Anything that could involve interrupting that creates additional burdens for businesses. It is caution, not concern, but, as the other witnesses have outlined, the level of scrutiny is very important.

The Convener: Those were the easy questions. The difficult ones come next.

Jackie Dunbar (Aberdeen Donside) (SNP): Good morning, panel. Thank you for taking the time to come along; we appreciate it. I will ask an open question and will see who wants to answer it first. What should be included in the circular economy strategy in order to maximise its benefits and provide certainty and clarity for businesses to allow them to plan for the future?

Ewan MacDonald-Russell has caught my eye.

Ewan MacDonald-Russell: Colin Smith answered first last time, so it is definitely my turn.

Large parts of the strategy are, to a certain degree, for just the Government to be concerned about, but there are two parts that interact with our members. Is the right infrastructure in place in Scotland to allow my members and our customers to do the right thing? Those are the two areas in which we are particularly interested.

On recycling infrastructure, it is astonishing that we still cannot manage to have a single system for the same bins across Scotland. Scotland is not that big a country, so it should not be that difficult. How can we do the practical things that we know work? How can the Government put in place those building blocks so that we can work around them? We need to have the right recycling infrastructure in place for different products. Our members never want to dispose of goods; they always try to find the best way to get value out of them. That is the right thing to do, and it is also in our economic interest.

We want to know how the Scottish Government's approach synergises with the great work that my members and other businesses are doing. We want to know how it synergises with the work that is being done across the UK and the European Union, because we operate at that scale. How do we get crossover? How do we get commitments so that we can invest with confidence?

The Government has a great leadership role in setting the parameters that we can follow. We want to do this, but we need the confidence that we are doing the right thing. I hope that that is helpful.

Colin Smith: I agree with Ewan MacDonald-Russell. The Scottish Wholesale Association represents food and drink wholesalers and distributors that are based in Scotland and that supply 5,000 convenience stores, 30,000 hospitality, tourism and leisure venues and the public sector.

The food and drink supply chain is complex. We operate across not just the UK, but Europe. Our members are not just wholesalers that move boxes of food and drink; we are importers, exporters, producers and manufacturers. Our members own retail stores and some of them even own hotels. Wholesale therefore involves a complex supply chain. Our members are complex; they are not homogeneous. The sector is diverse, with 90 per cent of our members being Scottish small and medium-sized enterprises.

Clarity was mentioned; it is fundamental to any legislation and policy. We need the confidence to know what is expected of us. Often, that is missing from policy, so others—whether it is local

authorities, the Scottish Environment Protection Agency or whoever it might be—are left to decide how to interpret legislation. We need a clear pathway and route map, with clearly defined roles so that we know what is expected of us. Those expectations need to be for everyone, and they need to be manageable for every business and every sector, regardless of size. Otherwise, we will continue to fracture.

The food and drink industry, which is the industry that I am here to represent, will be affected by the DRS, the extended producer responsibility that will be introduced and policies on single-use plastics. It will also be affected by more niche policies, such as sugar taxes and restrictions on food that are high in fat, salt and sugar. Businesses are expected to cope with all the legislation, but we do not do that in isolation from everything else that goes on across the UK and the EU and all the other legislation that we need to deal with.

Clarity is key for us. It goes back to the point about scrutiny. If we do not have scrutiny, we cannot get clarity. I hope that that answers the question in some way.

Jackie Dunbar: It does. Thank you.

Cat Hay: For us, the focus should be on the enablers in the bill. Others have mentioned moving to more consistent household collections. It is not for the industry to tell local authorities how to do that, but there has been a long history of taking a voluntary approach to more uniform collections, and more uniform collections have not happened. Our members need to get valuable material back out of bins in order to get a crisp packet back to being a crisp packet. We are talking about valuable food grade packaging materials, and we, as an industry, cannot afford to lose them. The bill therefore needs to enable the industry's ambitions.

I echo Colin Smith's point about size. There is definitely an issue with large businesses versus small ones. The businesses that I represent include some of the largest companies in the world and some very small individual operators. The bill needs to recognise the complexity of the supply chain, as Colin Smith outlined, and the burden that is placed on businesses.

A large conglomerate can employ somebody to look at data reporting—it is a pain but it can be done. For a single-family business, that becomes very challenging and takes away from investing in the business and getting products out to consumers. That enabler, and anything that the bill can do to de-risk and allow businesses to take risk in relation to the circular economy—some things will work and some things will not—would be really useful.

09:30

As I said in my written submission, it is also about the global good and recognising that Scotland is part of a global supply chain and community. The Scottish Government has published its exporting strategy, and materials will always flow in and out of Scotland—we are not a circular economy on our own. We need to consider our place within the global family and think about the global good.

Jackie Dunbar: How should a circular economy strategy be aligned with the Scottish Government's wider economic and trading strategy? You have spoken about how they should all fit together. How can the aim of reducing consumption be reconciled with the aim of growing the economy?

Cat Hay: We mentioned that challenge in our written submission. The term "circular economy" has two words—"circular" is what we are all talking about, and there is a huge amount of focus on the circularity, but the second part is "economy". If we do not have an economy, we will not have any circularity, because we will not be making anything. There is a question in my mind about whether the exporting strategy will work alongside a circular economy strategy. The answer is that it should and it can, but there needs to be a high-level overview of a lot of those big pieces of policy. The great thing about a cross-party committee is that, with that level of scrutiny, you start to look at the intersection.

We have a lot of challenges. We know that the climate change plan update is coming within, we hope, the next year, and there will be a tonne of new policies in that. How does that intersect with the Circular Economy (Scotland) Bill? Are those things being joined up? That is where the new deal for business really comes into its own. If Government is engaging with the business community, we can help to navigate some of that from our perspectives.

Ewan MacDonald-Russell: I guess that I have got skin in the game on consumption. We prefer to think of it as sales, but Jackie Dunbar is right to phrase it in that way. From a retail perspective, we have a couple of roles. I will be the first one to name our big organisational thing: our climate action road map, which is all about the steps that our industry is taking to move to net zero. Sourcing is a huge part of that. It is about how we ensure that the supply chains that we are sourcing from are sustainable, both from the greenhouse gas perspective and the perspective of materials. How do we move away from using virgin materials to recycled or reused materials? How do we change consumer culture and consumer behaviour, getting people away from using throwaway things into using things that are

potentially higher cost but also higher value? How can our businesses interact with that? When people do not want clothes, can we reuse the textiles and find different markets?

There is a huge amount of work in converting and moving from the throwaway approach to something that is more circular. That works for us as an economic model. If you have been to a clothing store, a DIY business or anything like that, you will have seen the way that products are being reused and that we are moving away from less sustainable approaches. We are committed to that and will remain committed to it.

I want to talk about an issue on the business side that has been touched on. This is a complicated public policy area. There is all the work that happens at UK level with the extended producer responsibility changes and plastics tax, and there are lots of elements at Scottish Government level, as well as local authority interactions. On top of that, there is a lot of other regulatory work. Something that is very difficult for Government to catch and that we hope will be caught through the new deal for business is how we get an overall picture of regulation and prevent unintended consequences. We do not want a world in which we are trying to do something in the health space, something in the environment space and have an economic incentive, but they either cancel each other out or lead to undesirable outcomes.

We need a real laser focus to ensure that, when we ask customers to do something, we give them clear messages because, if we confuse customers, they definitely will not do what we want them to do.

Colin Smith: I do not have an awful lot to add to what Cat Hay and Ewan MacDonald-Russell have said, but I echo Ewan's point that industry is already doing a lot to reduce consumption and to move to more sustainable goods and business practices. We do not want to undermine the good work that is already being done. That would cripple the economy—Cat Hay picked up on the economic impact. We must take cognisance of the fact that what we are doing on one hand might impact economic development and everything that we are trying to do the other hand. Like Ewan MacDonald-Russell and the FDF, we have a wholesale sector route map at national level and at Scotland level, and we hope to achieve net zero by 2040, if the right policy enablers are put in place.

What we are talking about today is part of that strategy for decarbonising the wheels to the food and drink industry. The wholesalers sit in the middle of Cat's members, taking those producers' goods on the journey to the convenience and food service outlets. Within that, supported by the

Scottish Government, we are looking at how we can get more local produce into our warehouses, vehicles, schools and retail stores. That alone will help to decarbonise the food supply chain.

With regard to the material that food is stored in or that people get their coffee in, we must recognise the need for the integrity of the food and the containers that are used. You cannot throw a ready meal in a cardboard box without ensuring the properties that maintain freshness for the consumer and prevent the food from going mouldy. Likewise, you will not go into a convenience store, ask for a coffee and take it away using your hands like a bowl—you need a receptacle.

We can look at Scotland's economy and at the growth—and now demise—of the high street. The growth of the high street was due to coffee shops and a new European culture. That required single-use items. If we suddenly got rid of all those single-use items, what would happen to those coffee shops, the high street and the employees? We need to look at the life cycle of products. Rather than thinking, "This is single use; this is bad; we must go to a multi-use product," we need to look at the impact of washing that cup or plate. What is the carbon, water and energy use involved in that? There must be a balance, and not disrupting what is in place is also key.

Jackie Dunbar: Sometimes, it is also about changing people's perceptions and getting everyone to take a bit of responsibility.

The Convener: I gently ask the panel to help me because I have to live with this committee beyond today and if I do not get everyone in with all their questions, it will become quite difficult and I might be recycled. There are 20-odd questions, and we have cracked four in the best part of 20 minutes. We cannot be here for a very long time, so short answers are always appreciated and will save me from getting into trouble. Mark Ruskell wants to come in briefly before we move on.

Mark Ruskell (Mid Scotland and Fife) (Green): Yes, I have a brief question that was prompted by the question on parliamentary scrutiny. My understanding of the DRS is that the enabling legislation was the Climate Change (Scotland) Act 2009, which was followed by a piece of secondary legislation that went through a very lengthy super-affirmative process in Parliament over three or four months in 2019. Were you involved at that stage? Did that process give your industry enough opportunity to contribute its views on how that scheme would look, and how does that relate to this bill and the statutory instruments that might come out of it?

Ewan MacDonald-Russell: I am happy to go first on that. I was involved in the process in 2019.

The committee did absolutely everything possible. I remember the meeting: we had not much more time than we have today, and there must have been 15 people representing every aspect of the legislation in a single oral evidence session. There were lots of opportunities to provide evidence in writing, but it was difficult for the committee to have the time to scrutinise our perspectives properly and effectively but also to get everything that it needed for that process.

I was not involved in 2009, so I cannot comment on that.

The DRS legislation was probably a very unusual piece of legislation. It was more complex than the bill, but it is the example that we come back to. There were lots of things that we did not necessarily know then, but it was certainly an abbreviated discussion and I am not sure that that was in anyone's interest. If we had had a full process, such as we have here, we would have got much better legislation and we would not have had to do it again, which I do not think that anybody has enjoyed.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Good morning. I will build on some of the previous answers. As has been said, many of the considerations around this primary legislation are to do with behaviour change. In fact, the policy memorandum states that the legislation is about moving towards sustainable consumption and production. However, a lot of that behaviour change is already happening, and the question for us as a Parliament is whether we require primary legislation and how that should be considered and implemented in order to accelerate the change that I think you have all communicated is a shared ambition.

A lot of that innovation is already taking place, so how should the Scottish Government and the Parliament, in its scrutiny, ensure that any future targets that are introduced using the powers in the bill strike the right balance between encouraging innovation and investment in circular business models and not disrupting the innovation that is already taking place?

Cat Hay: One of the biggest hills that you will have to climb is changing consumer behaviour—that is a huge hill still to climb. Businesses have reputational demands and, in some cases, shareholder demands on them that mean that they have to change. I know from my members that our customers are going to demand it—Ewan MacDonald-Russell's members and others will be absolutely scrutinising the approach and demanding that we become ever more circular. However, there is a huge hill to climb when it comes to the consumer; therefore, the question will be about how we can get our consumers to value these products as much as we do,

particularly on aspects such as food waste and packaging. That will be really challenging.

It is about the high-level overall mapping of what is already going on in industry, and we can help to provide that to the Parliament. Organisations such as ours that represent a wide business community can certainly feed into that process. We can provide information on the voluntary achievements that are already happening, and we can gather feedback from industry to coalesce around the key support that we will need to unlock innovation.

For my members, there is a lot around decarbonisation and net zero. We are asking for de-risking support to ensure that we are moving towards decarbonised energy and unlocking the recovery of materials that I mentioned earlier.

We have a question—I guess that we might get into this later—on some of the data gathering and the purpose behind it. It is about having a two-way conversation on what the Government needs to enact as enablers for the industry with regard to data and reporting, and what just becomes a burden on businesses.

Ben Macpherson: Is there a need to have consistency of expectation from businesses? Some businesses more than others are already undertaking innovation. How challenging is the industry of others and any lesser commitment to sustainability? Do some businesses that are being more sustainable think, “Well, that’s not very fair. I’m putting in all this effort and cost to do my part, so why is my competitor not doing the same?” Will the bill help in that regard?

Cat Hay: It is about self-policing, to be honest. I have talked to my members, including large and small businesses—global businesses and family operators—and everyone has ambition to be more sustainable. I have never come across any business that does not feel that way.

Ben Macpherson: Have we therefore seen a culture change universally?

Cat Hay: I think that there is an absolute acknowledgement that, collectively—I include those round the table from the political side—there is an ambition to save the planet. That is not a new concept; it is very much a concept that we can all get behind. Again, it is about economies of scale and size. A global business with thousands of employees can put a team on this. A very small family business might have huge ambition, but it is about whether it has the investment capacity and knowledge within the business to drive that change. That is where political certainty and long-term sensible policy can help to drive certainty, and then businesses can invest.

Ewan MacDonald-Russell: I have little to add. I simply note that the bill could be very valuable

where specific tools are needed for tangible and carefully considered purposes. I am sure that we will talk about externality charges later, and I am happy to come on to that. They can be potentially very valuable if they are set up right. If we have a mechanism set up now that can work for single-use cups, which the Government is considering at the moment, it would be great if it can be done the same way for other items. That makes it a lot easier.

My only note of caution is that there is an opportunity cost to businesses to any such measures. Businesses can do some of those things, and the more that they are told they must do certain things, the more they will follow that regulatory obligation, which can have an impact on innovation. This is not an argument that we should leave businesses alone and everything will be fine; it is about how we balance the opportunity cost, which, in the current climate, includes both financial and people resources.

Ben Macpherson: I will build on that and go on to the next question.

As the convener opened with, much of the bill—in particular, the part that is relevant to you—is a framework. You have spoken about how, in certain circumstances, it may be beneficial to see more detail in the bill. I imagine that we will get into that in stage 2 of the process, but it would be useful to know about anything that you want to highlight at this juncture.

09:45

It is very normal to have framework aspects of legislation and then for secondary legislation to provide the detail on the greater policy analysis. However, sometimes, as you have highlighted, it is important to consider what could be in the bill. In a previous answer, Colin Smith talked about the right policy enablers. If you can add anything on that now, or as a follow-up, that would be interesting.

Colin Smith: You spoke about the scrutiny of secondary legislation. That did not happen with the DRS. To go back to Mark Ruskell’s question, there was only one oral evidence session on the DRS. I was involved in that, along with Ewan MacDonald-Russell and 20 other industry bodies. That is not enough time to look at detail.

Ben Macpherson: I take your point but, in many other instances, secondary legislation has worked effectively and has been scrutinised well. We should learn the lessons as you have articulated them but, to put everything in the bill would be impractical, so it would be good to hear of any specific changes you would like to the bill.

Colin Smith: I pass that to colleagues.

Cat Hay: I am happy to come in on that. To get into specifics, the committee's call for evidence asked a question about waste and surpluses. In our response, we were clear that there is an issue with ministers having powers to require persons to publish information on

"anything stored or disposed of by them".

To us, that seems completely over the top. A food manufacturer can have hundreds of ingredients, personal protective equipment and office stationery. To report on everything that they hold in a factory seems a complete overreach. That aspect of the bill is not very useful. It would create a huge burden on businesses, and the outcomes—the change that that would drive—are very unclear. There is a separate question about the reporting of surplus and waste, but the term "anything" is unacceptable to us.

Ewan MacDonald-Russell: I agree with that. I have a specific point. I am sure that we will come on to a discussion about the disposal of unsold consumer goods. The term "consumer goods" is incredibly broad—it covers pretty much everything that we sell—so even considering what that might or might not involve is very big for us. We do not want to get rid of the whole thing, but we would ask how it is caveated or framed to be more specific. I suspect that it is probably not to do with leftover doughnuts or whatever, but the risk is that we start having to consider it in that sense. That is an issue that we are a little nervous about.

I completely agree with the points on reporting, which we share.

Ben Macpherson: Thanks very much, all.

The Convener: Monica Lennon has quite a few questions.

Monica Lennon (Central Scotland) (Lab): Yes, but they are all related, being about the restriction on the disposal of unsold goods. It would be good to get into a bit more detail on that. I start with Ewan MacDonald-Russell. Do you agree that there is a need to restrict the destruction of unsold goods in Scotland, and are you aware of the extent to which that is done in the sector that you work in?

Ewan MacDonald-Russell: We are not sure—that is the perhaps slightly ambiguous answer. That is because, at the moment, to be honest, the way in which our members deal with unsold products is predicated on the best economic option. It is always best to try to resell a product first; if that cannot work, to redistribute it; then to recycle it to get the value out of it. The disposal of products—generally, through incineration rather than landfill—would be required only if there were no viable alternative way of dealing with the material.

If the proposal is about products—as I said, we are a bit nervous about the use of that very broad term—for which there is a recycling infrastructure, it is probably slightly redundant from our members' perspective, because we would want to find the right approach for those anyway. That is in our interest as much as the regulatory one. If there is no viable recycling option, the material would have to be moved outwith Scotland, which is probably not desirable either.

We would not necessarily object to the idea if it were to be predicated on having the right structures and recycling materials in place. However, the issue is whether we are just trying to ban something because we think it might be a problem.

There is an issue about what will happen when we get the secondary legislation, which will contain the detail of the conditions and triggers. The current position is broad, which just leads to nervousness. Quite a few members have come back to me to ask whether particular products will be affected. Obviously, I do not know the answer.

That is where we are coming from. Our starting point would always be to find the best solutions for the afterlife of used or returned products. That is in our interests, regardless of what is in the legislation.

Cat Hay: For us, it does not make good business sense for there to be surplus products. We want each product to find the home that it is intended for. Food and drink are quite different from, say, clothing products, in that they have a shelf life, so we have to get them to the right places as soon as possible.

I will also go back to Jackie Dunbar's point about the intersection with other policies such as the recently published plan on ending the need for food banks. We do not take a position on those either way but, on food surplus, one of the avenues is to ensure that it gets to people who need it and to find a value for that product. Thinking about that in the round is quite difficult.

On Ewan's point about pushing waste elsewhere, where a product cannot find a new life because it cannot be donated or given as surplus to food banks, the unintended consequence is that it becomes someone else's problem. Once that product leaves the manufacturer, it might go to a retailer, a food bank or a redistribution charity that is then left with it. The unintended consequence of moving it elsewhere needs to be thought about carefully.

Monica Lennon: If Colin Smith would like to develop that notion of unintended consequences, that would be helpful.

Colin Smith: In our sector, there is a similar issue with food and drink to the one that Cat Hay described. The last thing that we want is for any food to go to waste, so we work with FareShare Scotland, community food banks, food hubs and so on.

During the Covid pandemic, when markets crashed and we had lots of food in our warehouses, the sudden transition meant that we had to find new routes to market for our products. Those have stayed to this day, as have the enablers who helped us to ensure that we did not have food waste.

One unintended consequence might arise in relation to the reporting of waste, which we will come on to. As I articulated earlier, the wholesale channels, which act as ladders for the hospitality industry and convenience stores, can suddenly end up with more food stored in our warehouses. That is because the way for the end users that we supply to reduce their food waste is to order less but to do so more frequently. The unintended consequence is that we could end up with not only more food waste but a greater carbon footprint. We might need to do more deliveries with fewer products, if end users cut back on the stock of food that they hold to allow them to report less food waste.

Monica Lennon: It would be helpful to hear more about the opportunities for redistributing, rather than disposing of, unsold goods. We have mentioned a few examples involving food banks and so on; it would be good to hear a bit more about those and about where innovation is happening.

I am also aware that, in France, supermarkets are now legally required to redistribute unsold food. What is your view on that? Does it make you nervous, or should we consider taking such an approach here?

Cat Hay: On innovation, we work closely with an organisation called the Company Shop Group. It takes in products that are of absolutely perfect quality and are not short dated, but might have a slight issue in their labelling—for example, the printing might have come out slightly squint. I was privileged to go down to the redistribution facility where it takes goods in. It has a fantastic team who relabel and repackage goods and get them out to Company Shop branches. Any business that is related to food and drink manufacturing can access it and people can shop for everyday goods in an environment that they recognise—a supermarket environment—with dignity. There is still a cost for those goods, but they are heavily discounted. The organisation also has community shops. There are two in Scotland—there is one in Wester Hailes. In those shops, people from the local community can go and shop with dignity

using their own money—no vouchers are required—and can access really good products that are of perfect quality and are not short dated. That provides dignity and affordability and stops products going to waste. It is a really good initiative.

Ewan MacDonald-Russell: I am happy to talk about supermarkets, as they are in my bailiwick. From our larger members' perspective, legislation such as that which exists in France would do little for us. We are slightly nervous about how it would work on marginal products because the charities with which we work might not have the supply chain to enable them to take on chilled or frozen products. That is the sort of thing about which we get nervous.

Our large members—pretty much all our members—try to find different routes for products. They first try to sell them at a discount. We are happy to do the right thing, but if there is a bit of money to be made first, that will always be our approach. However, after that, the approach would be to go through various charitable partnerships.

We have put a lot of investment into that, and not just through food donations. Particularly in the pandemic, there was a huge amount of investment in helping to support food banks and the big charities that work alongside them and we will continue to do that. We also work with apps such as Olio and Too Good to Go. A lot of our food-to-go members have got into using such apps, through which people are able to pick up a mystery parcel of goods, for example. That is all fab.

It does not relate to the bill, but is a good example of crossover in that we are a bit nervous about some of the provisions and potential restrictions on high-fat, high-salt and high-sugar goods. Will we start to say that such products cannot be discounted? We want, at the end of the day, to discount products so that they do not have to be thrown out. There are tensions to resolve.

We always look for the Government to give us a hierarchy. What is the priority? Do you want us to ensure that the food goes somewhere? Do you want us not to sell the unhealthy things? We do not mind and will follow the path. However, there is a bit of a difficulty where there is a challenging interaction.

Monica Lennon: I will pick up on the point—*[Interruption.]* I am sorry, I have lots of Post-it notes. I will pick up on the point that was made that the power for ministers to require people to publish everything that they store is too wide. Cat Hay gave the example of what is in the stationery cupboard—although a lot of unnecessary purchasing can go on for stationery cupboards. If that power is too wide, how would the witnesses

narrow it so that the provision still has meaning but strikes a better balance? What are your thoughts on that? It is an important point.

Cat Hay: It does not make any business sense for every business to have to report on everything that it holds. The new deal for business group would query that. The question from the food and drink businesses that I represent was to ask what the purpose of the power is. That goes for quite a few things in the Circular Economy (Scotland) Bill. It is not that we are concerned about or opposed to them; we need to understand the rationale for some of the reporting provisions.

Politicians consistently tell us that they need more data. When we ask what data they want, they say, "We don't really know. Give us what you've got", then they do not know what to do with it. A huge amount of data already comes out through voluntary commitments, including food waste reporting through the Courtauld commitment 2030 and the United Kingdom plastics pact. The Scottish Government supports those and tonnes of data comes out of them. At UK level, the food data transparency partnership, which is potentially transformational, is considering sustainability data, among other things.

A lot of data is already available. I understand the Scottish Parliament's desire to understand what is going on in Scotland, but that brings us back to our earlier point that we are part of a global supply chain and it can be challenging to split off Scotland. It is about understanding what we need that will allow our policy makers to make good policy. If we know where the data gaps are, we will see how we can fill them.

Ewan MacDonald-Russell: I cannot believe that you named all the different things that we do.

Cat Hay: And more.

Ewan MacDonald-Russell: I have nothing further to add.

Monica Lennon: My final question is on the definitions of "consumer goods" and "unsold goods". I am keen to understand whether there is enough clarity in them and whether you have a view on what goods should and should not be included.

I will come to Colin Smith because he has had a rest.

10:00

Colin Smith: To go back to what Cat Hay said earlier, food and drink could be defined as consumer goods, but we have to be careful about what that means in the bill and about what might be imposed on food and drink manufacturers,

wholesalers and retailers if food is classified as a consumer good.

I am getting a bit tongue-tied, so I will hand over to Cat, who might be able to expand on that.

Cat Hay: We had some good engagement with Scottish Government officials and asked what was meant by "consumer goods". The answer was that they are keeping the definition broad, so it is a catch-all term. We understand that the bill is primary legislation, but businesses want to know whether their products will be in scope and we do not know that yet: the devil will be in the detail.

One exercise that could be carried out is a look at the circularity map for Scotland, showing material flows, that was produced recently; the priority might be to look at the evidence about where materials are leaking out of the economy, which might help to refine which specific consumer goods should be looked at. I also wonder whether food and food waste are seen as separate things or are being looked at together, along with other goods. That is a legitimate question to ask, but I do not know the answer.

Uncertainty is always a challenge for our members, so clarity would be good.

Ewan MacDonald-Russell: I will speak from the SRC perspective, which is a non-food one. The French legislation, which is referred to in the policy memorandum, covers durable goods. Many of those are covered by legislation such as the Waste Electrical and Electronic Equipment Regulations 2013, in which there is a duty to recycle. That seems to be a sensible framework.

Where there are already regulations that businesses should be following, those regulations work because they separate those who are virtuous from those who might be avoiding things. Anyone who is following the correct regulatory processes at the moment should not necessarily be too affected by the bill. There are people who are not following regulations, especially in textiles and some consumer electrical goods. A huge number of individual small businesses, some in and some outwith Scotland, are trading through online marketplaces; they might come up on a very well-known website. The reality is that there is a very small business behind that, which might not be fully following the process. The difficulty in that is probably caused by smaller businesses rather than larger ones, and the burden is certainly more likely to fall on businesses that are not doing the right thing at the moment.

As Cat Hay said about the circularity framework, we should look at what regulations and duties we already have and we should dovetail with those, and almost put a stick on top of the carrot.

The Convener: There are a few follow-up questions. In order to help me, I ask members who have follow-up questions to limit them to one witness.

We will hear from Douglas Lumsden, then Mark Ruskell.

Douglas Lumsden (North East Scotland) (Con): My question is for Ewan MacDonald-Russell and is about unintended consequences. Is there a risk that retailers will simply move their distribution network south of the border, where reporting and penalties might well be different?

Ewan MacDonald-Russell: A policy would have to be quite stringent for that to happen, because networks tend to be pretty well established. Where products are distributed from will definitely be considered. If there is a product that cannot be dealt with in Scotland that comes under the burdens, a company might choose to move it from a distribution centre elsewhere. The question might be hypothetical.

The suggestion might be more plausible in connection with returned goods. If nothing can be done with those goods in Scotland, they will have to be distributed elsewhere, which will have a consequent impact on carbon emissions and should be avoided.

If we are focusing on goods and products for which there is recycling infrastructure, the bill should not have that impact. That nuance is quite important.

Mark Ruskell: I come back to the issue of unsold consumer goods and goods that might be problematic. In its submission, the SRC talked about the difficulty of recycling mouldy clothes. That feels like a pretty niche issue, but are there other defined categories of consumer goods that can quite easily be described as problematic, so that we can include those in any later guidance?

Ewan MacDonald-Russell: That would be a huge exercise because of the sheer variety of what we sell: there are many different products of many different types. Even if we look only at textiles, we are talking about different materials in different conditions. One of our members gave me the example of mouldy clothing, which does not mean something that has a tiny mark on it somewhere, but something that is significantly damaged or has been left in the wrong conditions. We just cannot do anything with that.

That does not mean that we cannot recycle textiles. There is a distinction between things that are damaged or that customers have not looked after that come back to retailers, and pristine products. As a rule of thumb, we would be able to do things with pristine products. That is probably the easier distinction to make, rather than using

bespoke categories. It is certainly something that we are happy to discuss further with our membership. I am not qualified to talk about every category.

The Convener: I am looking to see whether anyone is jumping up and down. I thought that you were trying to do that, Cat. Do you want to come in on that, very briefly?

Cat Hay: I should have mentioned product recalls earlier, in relation to unsold goods. In terms of unintended consequences, it is really important that we acknowledge that we would not be looking to resell, for very obvious reasons, a product that had been withdrawn from sale because of an undeclared allergen or contamination.

The Convener: Thank you for those answers. We will go back to the deputy convener.

Ben Macpherson: Section 9 is to do with considerations around charges for single-use items. You have touched on this somewhat already, but it would be good to hear what potential impacts you foresee from implementation of charges on single-use items. What are the key business opportunities and risks? When it introduces any further charges on single-use items, what lessons should the Scottish Government learn from its approach to previous environmental charges, such as the single-use carrier bag charge and aspects of the deposit return scheme?

I note the point that Colin Smith made earlier about there being certain circumstances in which a reciprocal arrangement is needed. Although we want to encourage people to use reusable products where they can, the circumstances are different when people are buying a beverage or going to a supermarket or any shop for physical goods. Can you talk through some of your considerations around that? It is the same issue, in principle, but the circumstances are quite important.

Ewan MacDonald-Russell: I am happy to go first—not least because I have been doing this for long enough to have been around when we brought in the single-use carrier bag charge. That has been a great success that has eliminated use of single-use carrier bags in a huge way. It has generated a huge amount of revenue for good causes and charities and it was something that consumers got on with quite quickly. It was probably a uniquely helpful product to go after, in that there was not a good need for such bags.

The lessons that we would learn from that are, first, about the consumer impact. Is the consumer impact simultaneously low enough that the charge is not regressive and disproportionate but high enough to cause behaviour change? That is really challenging and will be different every time. What

someone will pay in a charge for an expensive coffee is probably different from what they will pay for other items.

There is something to be said about the Government owning any charges that come forward. The carrier bag charge and minimum unit pricing for alcohol are two great examples of policies on which the Government was absolutely crystal clear to consumers. It said, "We're doing this. The price of your drink has changed. The price of your bag has changed." We had material that we could put in stores. That matters, because it is shop workers on the floor who have to articulate such things. It is a lot easier to point at the sign and say, "The Government is doing this," than it is to justify externality policies. There is something valuable in that.

There should also be consistency in putting charges in place, so that we can do the same thing for charges in the future, while making sure that they do not interact in a problematic way with other costs, including hidden costs such as extended producer responsibility or the plastics tax. We should put a cost on a product before we start putting externality on it. In an inflationary time, that is the thing to do.

A final very specific thing that we would say, which I have already alluded to, is that with the single-use carrier bag charge we were enabled to use the net proceeds for good causes or charities. That meant that my members were able to support their national charity partners or to support the local football team with strips. The ways in which the proceeds were used were quite broad; we have reported on that.

The proposal in the bill, which is almost hypothecating the charge towards only environmental causes, feels oddly specific for very general legislation. We would have significant problems with that. What worked with the carrier bag charge was that businesses, both large and small, were given autonomy on the proceeds. They did not get any money out of it, but they had the opportunity help the community, which is a good bit of public relations for the business, and it allowed the charge to be seen as a positive thing in communities. Perhaps, for example, a local football team got a new strip because people were paying a charge for carrier bags. There is something valuable in that, so we are slightly concerned by the narrowing in the bill.

Broadly, however, we think that this sort of charge can be useful and that framework legislation is exactly the right way to introduce it.

Ben Macpherson: Does anyone have anything to add?

Colin Smith: We need to understand—again, this goes back to scrutiny—what is intended in

putting a charge on a single-use item. Is it to reduce consumption? Is the intention to move towards a reusable alternative because it is more environmentally sustainable? It would be good if the committee could ask the Scottish Government what cost impact it thinks the charges will have on business, and whether there could be unintended consequences.

As I said before, there is a place for specific single-use items—for example, to ensure the safety of individuals, or in situations where alternatives are not feasible. I am thinking of sports stadia, for example. If the intention is that reusables will be used in sports stadia, we need to think about what that will mean for consumers. Will they be able to get their products? It all comes down to commercial decisions. We can apply a charge to an item, but it will still be up to individual businesses to decide whether to offer the product in that container. If it is unfeasible and unprofitable for the business to make that product available to the consumer, the consumer will lose out, because the business owner will think, "I'm not gonnae bother; it's too difficult and too onerous."

Therefore, we must understand why we are imposing a charge on a single-use item in the first place, and we must decide whether a phased approach will be taken. Will there be exemptions to the charge and to where it might apply, so that consumers can still get their goods or services where and when they want them? There is a balancing act. Business needs to know when a charge might apply, what it will apply to and what it is supposed to do if a charge applies.

It would be remiss of me not to go back to the DRS. I mentioned the failures of the DRS under the internal market act. There were other elements on which the DRS failed, which are linked to single-use cup charges. We did not have clarity on the VAT on the deposit and on how that would be managed in accountancy terms or with the consumer. We also did not have clarity on the advertising of a deposit—in this instance, we are talking about the advertising of a charge—because those powers were reserved to Westminster, rather than being devolved. We come back to the issue of how the Scottish Government is going to overcome those aspects, which also relate to the single-use charge.

Ash Regan (Edinburgh Eastern) (SNP): Good morning. I will continue in the direction that Ben Macpherson was taking in his questioning. There were issues with the process that was followed for the DRS and with the engagement with businesses on the detail of the DRS. I guess that lessons will be learned from that.

If we reflect on those lessons, what should the Government's process look like? The Government is trying to decide which single-use items to

impose a charge on. We have touched on certain categories of item for which such a charge might not be appropriate. What should that decision-making process look like? How should it differ from what we have seen before? How can we best engage with business on this topic?

The Convener: Ewan raised his hand quickly, so he can go first.

Ewan MacDonald-Russell: There are lots of opportunities for that work to dovetail with the work that is being done on the new deal for business that the Scottish Government has committed to. In particular, I note the work to refresh the framework for business and regulatory impact assessments, to ensure that those are done in a really strong way.

There is also a need to ensure that equality impact assessments are done really well. We talk about unintended consequences. The ban on certain single-use plastic items was introduced very quickly. That was a perfectly good policy and our members charged forward and implemented it very quickly. However, we realised afterwards that there were quite significant equalities considerations, for example in relation to people who needed to use plastic straws. We must ensure that we capture those things.

A lot of the time, businesses will be told, "You must go this way," and we will get on with it. The Government almost needs to cover off that aspect for us so that we can invest in good faith. It is clear from things such as the work on the BRIA process and the bringing back of the regulatory review group that the Government is listening.

I do not think that any policy issue has had more engagement between the Government and industry than deposit return—we had endless meetings, but they did not necessarily change the policy direction. Perhaps that is the real challenge for the Government. Also, we need to differentiate between things that we do not like but can make work, and things that will cause big challenges.

10:15

We need to make sure that the BRIA process and the engagement process for business differentiate between things that are a pain to do and things that will not help the Government with its objectives. Getting closer to that sweet spot, particularly on things such as charges, will work well.

Our coffee shop members do a huge amount to try to change customer behaviour. They always try to sell reusable containers and many will provide discounts or incentives for reuse. How would that frame into a hypothetical example of a potential charge? It is not that we would oppose such a

charge, but how could we tailor it to go with what business is doing and in the policy direction that is required?

Ash Regan: That is helpful; would anyone else like to come in?

The Convener: Sorry, Ash; Cat Hay is keen to come in. I will let her in and then come back to you.

Cat Hay: In high-level bills such as this one, we would generally not be in favour of creating exemptions for specific businesses or sectors, but I will flag one issue in our submission, which is that of single-use items and charges relating to items for food hygiene and safety. This links to my earlier point about unsold goods and safety recalls. Government needs to engage with the business community on single-use items that it might need to make sure that hygiene and safety are considered. I guess that the same would be true in the national health service and other places. I am thinking of personal protective equipment such as gloves and so on. That will be really important.

I echo Ewan MacDonald-Russell's points about engagement and the BRIA process.

Ash Regan: You might be aware that the committee has run a bit of community engagement on the topic. One theme that came across strongly was that consumers lament the fact that they are always paying extra charges and that they are seen to have the responsibility to drive that change. Consumers thought that manufacturers and retailers should take more responsibility. What are the panel's views on that?

Cat Hay: Many people do not see the work that goes on in a food factory, because they tend to be anonymous grey boxes in an industrial estate, but a huge amount is going on that the public is perhaps unaware of. Our organisation tends to talk to politicians, policy makers and the business community; perhaps we are not getting those messages out to the consumer. One reason for that might be that you are making an own-label product for a brand.

I have another point that is perhaps slightly off-piste from the Food and Drink Federation. It would be interesting to know from consumer research what people perceive as single use. I will give a brief example. We talked this morning about a festival at which 80 per cent of tents were left behind. It is clear that the consumer, consciously or unconsciously, perceives such tents as single use. It is obvious when things such as cups are single use, but there are other things that the consumer treats as single use that were never designed as such. Any research on that would be interesting and would help us think about how we can respond as a business community.

Colin Smith: I am here to support our members and to support the work that we are doing collectively to do more circular reusing and repurposing, and on the drive to net zero. However, there is a cost attached to everything that we do. The wholesale sector works on a net margin of 1.3 per cent and additional burdens placed on business to comply with legislation inevitably increase our costs. That could include bringing in specialists to upgrade software or help our members comply with the regulatory process.

During Covid-19 and the Ukrainian war, we were unable to absorb all the price increases that came through and we needed to pass them on to the end user. Ultimately, increases got passed on to the consumer. Unfortunately, that is the way of life. We make commercial decisions about what we do and do not do, and about the products that we bring in and the products that we delist or no longer offer for sale because they are not viable.

I understand consumer frustration: all that consumers see is inflation upon inflation and the rising cost of everything that they buy. That is just a consequence of the policy and legislative landscape that we live in. The only way that we can potentially stop some of that is to re-look at that landscape and ask what it is that we really want to do and what would be the most effective use of our policy-making decisions in order to make the biggest impact, as opposed to putting in place legislation that is so wide reaching that the unintended consequence is that more costs are borne by the consumer.

Ewan MacDonald-Russell: There is little—

Ash Regan: Right—thank you.

The Convener: Sorry—I think that Ewan MacDonald-Russell was going to jump in. He said that there was little, and then he got cut off, so I am sure that he wants to say something.

Ewan MacDonald-Russell: Very briefly, convener.

I think that consumers sometimes think that they would like more things to happen to business, but they are very uncomfortable when the costs of that are passed on to the product shelves, as we have seen recently. I can understand why that is, but everybody likes to think that it is somebody else, rather than themselves, who needs to take action, which might be what is driving that.

Looking at the costs that we have coming from the extended producer responsibility and all the other measures, I think that it is significant how much money business is already spending on that area. Externality charges might be a good way to make customers recognise the impact of their environmental choices.

Ash Regan: Ewan MacDonald-Russell mentioned the UK's extended producer responsibility. I finish by asking the panel for their views on coherence with other parts of the UK. We have previously seen issues with the internal market act; presumably, that might affect the proposals for this bill. What are your views on that? How should the Scottish Government approach that?

The Convener: Ewan is jumping in quickly.

Ewan MacDonald-Russell: I am not remotely—we could do an entire evidence session on extended producer responsibility.

The SRC would make a couple of observations. There are currently some problems with the way that the measure is being pushed through. It had to be delayed, because our members did not know what they were going to be charged and what the costs were going to be. That is pretty challenging.

EPR is such a powerful tool if it is set up right. It should be incentivising us to use the best materials all the time, but it should also, we would hope, generate revenues that will enable Government—or rather, Governments—and local authorities to put in place the right collection materials.

The SRC is slightly nervous that that money is not necessarily hypothecated—we worry that it is going to come as a lump sum in various parts of the UK and might well go to the many other priorities that local authorities in particular currently face. I completely understand why that would happen, but we feel very strongly that we want the revenues from extended producer responsibility to be absolutely devoted to improving recycling and getting us to a circular economy.

There will be very significant revenues accruing from EPR, to which our members will all be contributing. I hope that the Scottish Government ensures that those revenues are used in the best way possible. One thing that would help with that would be taking a more uniform approach to recycling across the country so that we can tell consumers what to do.

The Convener: Ash, is that your questioning complete?

Ash Regan: Yes, thank you, convener.

The Convener: The next questions come from Douglas Lumsden.

Douglas Lumsden: I thank the witnesses for their submissions, which I found interesting and helpful. We touched earlier on reporting on waste and surpluses. You take different approaches to that in your submissions.

Ewan MacDonald-Russell mentioned that quite a lot of reporting

“is done at a UK level”.

Cat Hay mentioned the difficulties with ingredients and how they change so rapidly. Colin Smith stated that

“The calculation of food surplus and waste can prove difficult”,

and that we need to take into account other demands being placed on businesses just now.

Are you worried about the cost and the burden of reporting? Is there a balance to be struck?

Cat Hay: I can answer that very quickly: yes. We are always concerned about the burden of reporting; I refer to my earlier point that it is about the need for data and the understanding of where data already exists.

As I said, I am sure that the SRC’s members hold a lot of information about the products that the Food and Drink Federation’s members are manufacturing, and on the carbon impact of that and various other things. I query the need for, and the purpose of gathering, that data. What do the policy makers need to help us to unlock and move towards a more circular economy?

Ewan MacDonald-Russell: Obviously, I agree with that. There is a fiscal cost to those things, and there is an opportunity cost. There are many things that our members can and do report on. Particularly post-pandemic, our businesses are very optimised and there are not huge numbers of people working in this area, so they have an awful lot of priorities to work with. If there are extra reporting requirements and they are valuable, that is great and a good thing to do, but that will come with a trade-off. By necessity, regulatory requirements will come before voluntary ones, as we have to do what we must to be compliant. Therefore, the more reporting that is asked for, the more that will squeeze the ability to look at other, more innovative approaches. It is about balance, exactly as Cat Hay said.

A lot of reporting is done already in a huge number of areas. Our members report to us on some issues, and they report through the Courtauld commitment and in other ways. The first step should always be to consider what data we can use, and only go into that space when we really need to.

Douglas Lumsden: In your written submission, you suggest that going away from a four-nations approach might be difficult for some of your members. Is that correct?

Ewan MacDonald-Russell: Yes. We would delineate it by saying that anything that goes beyond the scale that a business works at adds

complexity. We tend not to report internally in that way, and lots of our members do not operate on that basis; they operate on the basis of where distribution centres or stores are. They carve the country up by population, so it might not necessarily be on political lines. That can be done—of course it can—and we do it in certain areas but, every time, it is in effect a bespoke job that does not just involve pulling something easily off a spreadsheet. That is why it creates cost and complexity.

Colin Smith: Whatever the reporting is, we need clarity on why we need it and what it will be used for. Equally, the reporting metric that is used needs to be standardised and proportionate as well as fair and just for everyone because, as I said, SMEs do not have the same resource—Cat Hay articulated well the point that they do not have the same resources as bigger multinational organisations. Reporting then becomes a burden, and any burden becomes a cost. That then becomes a disincentive to business operators and makes them potentially question why they are doing things such as investing in the local community, as local employers, if all they seem to be doing is having to comply, as opposed to getting on and doing things.

We have brought in a head of sustainability to help our membership and our sector to decarbonise and to look at food waste and everything that that involves. Looking at the issue from outside the food and drink point of view, reporting could be a game changer if we are looking at products and their reuse. Cat Hay mentioned tents. In extending the life of a product, you need to take it outwith your current circle, and that means sharing information on what, where and when with other people, other resources and other industries. That is where reporting can be useful but, as I said, it comes down to the purpose and how the reporting would be used to ensure that a product gets to a new market and is reused in a different way.

Douglas Lumsden: I guess that the Government would say that the more data you have, the more you can measure the problem and then try to improve the situation. Do you not feel that there are advantages to some Scottish businesses by reporting more? You mentioned software upgrades. Better use of technology might enable your members to reduce the amount of waste that they have and in return increase their profitability.

Colin Smith: Absolutely, but it comes back to the point that we cannot just ask for information for information’s sake. We are working with one large wholesale member to help it to monitor its waste and consider how to reduce and repurpose it. As a trade body, we are trying to use that as a best

practice example to share with other members. That will instil confidence that reporting does not need to be onerous and that there is a commercial benefit, if it enables products to be repurposed and reused.

I like to think that, as a sector, we throw very little to waste, because we try to repurpose and send products to FareShare, the Company Shop and so on. Actually, some of our members are taking food products from elsewhere and making them into meals for local communities. That might involve taking carrots and potatoes and making them into soup.

One of the barriers to doing more of that is that those commercial kitchens are unable to take in product from suppliers that are not within their supply chain, because of food legislation and the tracking and monitoring requirements. There are barriers to enabling more food to be repurposed and given to good causes.

10:30

Douglas Lumsden: Does anyone else want to add to that?

Ewan MacDonald-Russell: Colin Smith has covered that pretty well.

Cat Hay: From a manufacturer's perspective, you are absolutely right about reporting. However, on internal reporting, the question is, again, what the policy makers need to know versus what the public needs to know. That is not about hiding things; it is about improvement. If you come to any food and drink manufacturer, you will see boards everywhere about waste, efficiency, product planning and manufacturing schedules, which is to ensure that waste is always minimised, because there is a cost implication to not doing that.

The other thing about public reporting is that sometimes that data can be quite a blunt instrument and how that is interpreted publicly can be a bit of a challenge. Say a manufacturing process creates a lot of by-products that are not fit for human consumption. That would come across as the producer having a huge amount of waste and people would say, "That is food waste. Those are things that could be going to feed people." However, that will not be the case if the by-products are bones, shells and peelings.

Douglas Lumsden: What criteria should the Scottish Government apply when deciding what waste streams should be subject to or exempt from reporting?

Cat Hay: I will go back to my earlier comments about the circular economy map. As I said, we as a sector have not looked at that very closely, but there must be material flows that are of particular concern. If we had a bit of a conversation with

policy makers about what those are and what our members are making that falls within those flows, maybe we could look at that area from a food and drink manufacturing perspective.

Ewan MacDonald-Russell: There is also the question of what is already being done, and whether that can be worked on or whether we can use the same thing. If food waste is something that our large members would tend to report on at a UK level, can we do that in Scotland using similar metrics and a similar baseline? As soon as you create new criteria, reporting is not very helpful for the first couple of years because you are baselining off zeroes. If there is established data that can be used, even if we can then take that and redo it for Scotland, that is a lot better.

There is also a feasibility question. I cannot give a general answer to that, because that will genuinely be almost issue by issue. There will be some issues where retailer systems will broadly work, with the caveat that every retailer has a different system, but there will be times when it will be very difficult. I do not have the specifics on that; we would need to consult with business on that.

Sometimes, it will be really easy and it might be a case of Government-sponsored voluntary regulations being the right place to go. Can we get the scale that we need from some businesses? We have done that sort of work on various areas, but it is quite issue-specific, and I would have to consult before giving you exact answers.

Ben Macpherson: We have talked about the re-use of food that has not been sold in various outlets. Colin Smith mentioned in his previous answer that there are some barriers. Will you follow up with the committee in detail on what those are? Potentially, that would be really helpful, and there might be opportunities to change some of that as we go through the legislative process.

Colin Smith: I would like to go back to the membership to ask for more examples of that, and I can feed that back to the committee. I will come back to you with more detail on the restricted repurposing of food during Covid, specifically in relation to bringing meat into a production kitchen that did not have the facility to handle meat or the ability to handle it because of their processes.

Ben Macpherson: That sounds like a reasonable restriction in some ways, but if there are considerations in which less waste can be achieved to the benefit of communities by providing them with food, it would be good to be aware of that.

Cat Hay: Zero Waste Scotland did work on barriers to food redistribution and I am happy to point the committee in the direction of that research.

Ben Macpherson: Thank you both very much for that.

The Convener: That is very useful. If you could send that information to the clerks when you have it, they will make sure that it circulates to the committee. Mark Ruskell has some questions.

Mark Ruskell: We have had a number of submissions that refer to the importance of education and skills development. I want to get your reflections on that. Could something be put into the bill that would help to strengthen the development of that? It is an open question. I can see Cat Hay nodding. Do you want to come in? *[Laughter.]*

Cat Hay: I will have a go.

Mark Ruskell: Nodding is dangerous.

Cat Hay: I am speaking off the top of my head, but we are very much involved in skills work. We get Scottish Government funding to administer the future in food programme, which is very much about upskilling the industry and encouraging new recruits into the sector, but you are right that there is definitely opportunity. Maybe it is not so much about the skills but about the training and knowledge. It is about making sure that, if someone is operating in a food factory, they understand the correct processes and that procedures are in place to make sure that anything that is potentially fit for human consumption or surplus is stored and labelled appropriately, so that it gets to where it needs to get to. That is an idea of something that would be quite useful.

I remember one of my first food factory visits, when I went to visit for the purposes of resource efficiency and watched somebody pouring a large vat of caramel down a drain. We were taking pictures to say, "This is what you don't do," and the guy who was pouring it thought that he was doing a great job, so he gave us a big thumbs up and smile. He was thinking, "Great! I am getting rid of my waste efficiently." It is about how we help to enable in-business training around the circular economy. There is definitely a role for the Scottish Government and agencies to support that.

Mark Ruskell: I cannot get that image out of my mind.

The Convener: I know—what a waste!

Mark Ruskell: Generally, in terms of how you drive innovation and the role of skills and education within that, I am still fishing to see whether there is something that the bill could and should address.

Colin Smith: I do not know whether I can add much to what Cat said on the skills piece but we put the innovation piece in our submission, as did

Cat. If we look at waste and product coming to market in the future, and the way that manufacturers label the product, we have technology coming fairly soon that has radio-frequency identification chips and QR codes that will replace the barcode. Indeed, the packaging with barcodes that we see currently on products will be redundant by the end of this decade.

Technology allows more product information to be embedded within QR codes and RFIDs, such as the point of manufacturing, when it was manufactured, or the cow that the milk came from. The RFID chips allow us to track a product all the way through the supply chain from manufacturer to waste, without it necessarily having touched a till or scanning checkout or a back door when it comes into our warehouses. Every chip is individual to that container. Suddenly, we have a mechanism by which we can track everything from the manufacturer to the bin and, potentially, the person who purchased it as well, so we would have accountability.

Mark Ruskell: That is a bit like DRS.

Colin Smith: That would have been the solution for DRS. We would have had a DRS system, but at the kerbside. You would not have needed investment in all the machines that are now redundant in the supermarket car parks. Indeed, trials are going on in the Brecon Beacons in Wales on a digital DRS, although it is not as advanced as what I have just described. Those chips are a potential game changer for the circular economy, the move to net zero and everything that we are trying to achieve. If we really want to make a change, we need to look at the technology that is in front of us. Five years ago, I spoke about RFID chips when I gave evidence to the committee and also spoke to Roseanna Cunningham, but people said, "No, it is too far away—it is not going to happen." It is going to happen and, in fact, the QR codes are already in place in the dairy industry. A two-litre jug of milk has a QR code that contains information, although not necessarily all the information that I have just described. However, there is technology that will solve all the problems that we are talking about.

Ewan MacDonald-Russell: Innovation is a very hard thing to legislate for. It is the sort of thing that perhaps happens outwith legislation. In waste, the driver for so much of that work is that it is in the businesses' commercial interests to do lots of those things, and there is huge innovation in packaging to make sure that it is more environmentally friendly, to use less of it and to extend shelf life. There might be something for Government to look at in the strategy part of that, to consider how agencies are encouraged to share information to the businesses that do not have the

large research and development budgets that drive the work.

My larger members have teams working on that and have the ability to take risks with different types of packaging. They can do things such as vacuum packing steaks to see how that works, but smaller businesses probably do not have that R and D or that ability to offset. It is important to look at how that can be communicated to help businesses be more commercially effective.

Regarding skills, although it may not be directly related to the legislation, there may be something in how we use the modern apprenticeship framework, which our members are very supportive of. It would be good to look again at the funding of apprenticeships to help businesses get more support to take on apprentices, rather than having to fund that themselves, but that may be a discussion for another time.

Mark Ruskell: Thank you for that. My last question is whether you think that anything that should be in there is missing from the bill. A number of areas, including direct variable charging for householders, have been consulted on. Are you content with the bill, or could other things be brought into it?

Ewan MacDonald-Russell: We think that there is quite a lot in the bill already for our members and we are content with there being no further possible regulations on them.

This is not strictly about legislation, although it might be of interest to the committee: point 41 of our submission notes that we are campaigning at UK-level for the current VAT relief on products donated to charities for onward sale to be extended to cover direct donations of products. We want to make it easier for businesses to make donations. I know that that is not a devolved matter, but we think that it is important to ensure that the fiscal incentives are lined up so that businesses are not penalised for doing the right thing.

Mark Ruskell: Does anyone have any other comments?

Cat Hay: Our members did not say that anything was missing from the bill. There are many areas to clarify and we very much welcome the scrutiny that the committee can provide.

The Convener: I am looking around to see whether there are any more questions. There are none.

This has been a very interesting session. As a parliamentarian, I find framework legislation terrifying, although I am sure that it enthuses the Government because it allows all things to happen. The points that you have made about various issues, such as regulatory divergence and

definitions, are helpful. I am sure that you will listen to future evidence sessions and will want to feed back to the committee. On the basis of what we have heard today, more information to help us make our decisions would be very useful. On behalf of the committee, I thank you for your time.

I will briefly suspend the meeting to allow for a changeover of witnesses and I ask committee members to be back at 10:45.

10:42

Meeting suspended.

10:48

On resuming—

Subordinate Legislation

Deposit and Return Scheme for Scotland (Miscellaneous Amendment) Regulations 2023 [Draft]

The Convener: Our next item of business is consideration of a draft statutory instrument, the Deposit and Return Scheme for Scotland (Miscellaneous Amendments) Regulations 2023. The instrument has been laid under the affirmative procedure, which means that the Parliament must approve it before it comes into force.

The main purpose of the instrument is to amend the date for the full implementation of Scotland's deposit and return scheme to 1 October 2025. Eagle-eyed members who have read the committee papers will have noticed that there was an error at point 1, which talked about "2024", but the date is 2025.

The minister will move the motion on the instrument under the next agenda item. Before that, we will have an evidence session on the instrument and will have a more general update on the DRS.

I am pleased to welcome Lorna Slater, the Minister for Green Skills, Circular Economy and Biodiversity, and, from the Scottish Government, Ailsa Heine, a solicitor; David McPhee, the deputy director of the deposit return scheme; and Haydn Thomas, the head of the deposit return scheme unit. Thank you for joining us. I remind everyone that the officials can speak during this agenda item but not during the next one.

I invite the minister to make a brief opening statement.

The Minister for Green Skills, Circular Economy and Biodiversity (Lorna Slater): I last appeared at the committee to discuss our DRS not long after we had received the UK Government's fatal decision of a partial and conditional exclusion from the United Kingdom Internal Market Act 2020, which made the scheme impossible to progress and forced a delay until at least October 2025. After intensive engagement with businesses to understand the effect of the UK Government's decision, it was clear that that was the only course of action available to us. No business could seriously be asked to proceed, given that we were unable to say what the deposit would be or what labelling requirements would be in place. As a result, we halted our scheme and agreed to work with the UK Government to develop a UK-wide approach, including a common start date. The

draft regulations that the committee is scrutinising set that date.

We have always said that we recognise the need for interoperable schemes, and we designed our scheme in good faith that it would align with schemes across the UK when those launched. When we developed our scheme, both England and Wales planned to include glass in their deposit return schemes. England U-turned on glass only recently, reducing interoperability with Scotland and Wales as a result. Even the UK Government's analysis shows that the inclusion of glass significantly increases the environmental and economic benefits of the scheme.

Waste management, which includes the DRS, is wholly within devolved competence, so it is extremely disappointing that the 2020 act has been used by the UK Government to undermine this Parliament's ability to introduce a DRS in Scotland. As a result, business confidence in the DRS has been damaged.

Scottish Government officials have continued to work with their counterparts in the UK, Welsh and Northern Irish Administrations over the summer to develop interoperable deposit return schemes based on the conditions that are set out in the UK Government's IMA decision letter. Many of those discussions have been shaped by the experience and expertise that were gained through work on the Scottish DRS. Although there has been positive progress, it is important that the UK Government sets out its scheme in regulations in order to maintain momentum, build business confidence and ensure that the DRS launches successfully.

We are in a climate emergency and we need to take action now. Scotland's towns, countryside and beaches remain plagued by littered cans and bottles. We need to move away from a throwaway culture and embrace new ways to reduce our waste and emissions. The DRS will help us to achieve that.

It is disappointing that Scotland's DRS will not launch in 2023, but we will continue to work in a spirit of collaboration to realise the economic and environmental benefits that the DRS will bring when it launches across the UK. The onus is now on the Department for Environment, Food and Rural Affairs to make a success of the DRS.

I am happy to take questions.

The Convener: Before we go to questions, I draw your attention to, and remind the committee of, the fact that we wrote to the Secretary of State for Scotland before the summer recess. In his response, he referred us to DEFRA, but DEFRA said that it did not want to attend a meeting. I have since written again on behalf of the committee, asking for a response and saying that we are not

happy at being pushed from one arm of Government to another. Unfortunately, the response is not due until 30 September. I urge the UK Government to assist the committee's understanding of the reasons behind the situation. That is all that I will say on the issue at this stage. Obviously, once we get a response, we can come back to it.

Minister, I will ask a very simple question. Glass was out, but cans could have been in. Would something not have been better than nothing? Should we not have gone with recycling cans?

Lorna Slater: As we said at the time, it is possible to operate a deposit return scheme in Scotland with cans and plastic bottles, but it seems absurd not to include glass, because the environmental and business case supports its inclusion. It would have been possible to run a scheme without glass, but it would not have been as good. However, as we said at the time, any deposit return scheme is better than none.

Glass was not the only reason why we had to halt our scheme. There were two further issues. They relate to the other conditions that were laid out in the partial and temporary exclusion to the 2020 act, which were about labelling and the deposit level. As you know, businesses require certainty to be able to deliver something this complicated. If we were not even able to say what the deposit level or the labelling requirements would be—from working with businesses, especially small businesses, on Scotland's DRS, we know that it requires up to a year, and in some cases longer, to change labelling—they simply would not have been able to deliver a deposit return scheme. Businesses could not deliver the DRS without knowing those things, and we could not know those things because the UK Government has not made a decision on them and has not passed regulations setting out what it intends to do. That meant that we were left with no option.

However, the convener is correct that it is possible to run deposit return schemes without glass.

The Convener: Have you thrown everything out as far as cans and plastic bottles are concerned? Was there not perhaps a year to work on getting the labelling and the deposit level correct, so that we could have gone ahead with the scheme? I think that most people in Scotland felt that there would be a benefit from recycling cans and plastic containers.

Lorna Slater: It was not a matter of getting the labelling or the deposit level correct; it was a matter of knowing what those things were once the UK Government had said to Scotland, "We're not going to allow you to set these things. We're

going to intervene with the internal market act and not allow that. We will set them." The UK Government does not have a timeline for setting those things.

One of the ideas that has been proposed is that, unlike in Scotland, under a UK scheme, the scheme administrator—what the UK calls a deposit management organisation or DMO—might set the deposit level. That would mean that the deposit level would not be in place until after the DMO was in place and after it had done its market research to set that level, which could take as long as two years.

It was not a question of getting the level correct. We are now at the mercy of DEFRA and the UK Government's timescale and regulations. I could not have said to Scottish businesses that we did not know when the deposit level would be set but that they still needed to get the scheme going in August 2023 or even March 2024. Businesses simply cannot operate under those conditions.

The Convener: I understand that, to an extent, but you could have set a very low level of deposit on cans and plastic bottles, which the UK Government might have accepted. When you were going to introduce the deposit return scheme, you were talking of having stick-on labels for some small producers. You had not even sorted the labelling out, so I am not sure that it is possible to blame everyone else.

Were we too premature in throwing it out? Would it be possible, with a year of fruitful negotiation, to come up with a scheme that allows cans and plastic containers to be recycled through deposit return?

Lorna Slater: I will address your two points, convener. With respect to a low level of deposit, deposit return schemes as envisioned by all parts of the UK—certainly Scotland—are run by industry itself, so the deposit needs to be set at a level that allows the scheme to operate. It is a business; the industry runs a business to collect the materials and get them recycled. The UK Government might consider a scheme in which the DMO sets those levels, but the DMO will still be obliged to set them high enough for the business to operate. The research that we had done on putting in place Scotland's scheme determined that 20p was the level that was needed to make the scheme viable on a business case. It might be that, for a UK-wide scheme, that figure could be set at a different level—some schemes around the world even have different levels for different types of material—but the level for the Scotland scheme was 20p. If we lowered that, we would be undermining the business case. How can industry run a scheme that is a business without a business case in place? Setting the deposit too low means that the scheme cannot operate.

With respect to labels, the Scottish Government cannot set labelling requirements as that is not a devolved power. The industry had supported labelling changes. The big companies have sophisticated systems in place to get their labelling up to spec—they have much faster line speeds and so on in getting product through. Small businesses need to buy in quantity in order to make it worth while for them, but then it takes them a long time to work that product through. We cannot and did not set labelling requirements. However, the UK Government might do that, if you see what I am saying. I would have been saying to businesses in Scotland, “We’re going to put in place a deposit return scheme, but I can’t tell you what you’re going to have to say on the label and I can’t even tell you what the deposit is, which means that you can’t make a business case.” That would have made the scheme unviable, so we were unable to proceed.

The Convener: It sounds as though an awful lot of moving parts were not tied down before we got to the date when the scheme was meant to start.

Mark Ruskell: Given all that, and your answers to the convener, what needs to happen in order to enable a scheme to be implemented by 2025? Will you take us through the steps that must happen to ensure interoperability by the target date of 2025?

11:00

Lorna Slater: I am happy to go through what is needed. The UK Government has committed to delivering the scheme. It has yet to decide what its regulations will look like, so it has not decided how to set the deposit, the exact terms for excluding businesses, what the producer fees might be and what the labelling requirements might be, such as how shelf-edge labelling will be handled. It still has to decide on all the same things that we needed to determine, and it might make different decisions from or the same decisions as Scotland. Over the summer, we have been feeding into the UK Government all our learning and all the work that we did with businesses, so that it has the benefit of that knowledge.

The next thing that the UK Government needs to do is get its regulations through the UK Parliament. That will allow for the creation of a DMO, which is what we called the scheme administrator. There will need to be Scottish, Welsh, Northern Irish and English versions, because of the way in which the regulations will operate, but the DMOs will work together closely. The DMOs will have to do the work that Circularity Scotland Ltd did, which involved bringing in investment, hiring a team, getting in place the information technology infrastructure, starting to build business relationships and getting the governance sorted out. In addition, it is very

possible that they will set the deposit level, which CSL did not have to do.

The UK is much bigger than Scotland and has a much wider variety of businesses. I will describe a challenge that DEFRA has. The undermining of Scotland’s scheme undermined about £300 million of investment that went into the scheme in Scotland overall and, specifically, the investment that went into Circularity Scotland was lost. How will DEFRA go back to all the businesses, such as Coca-Cola, that invested in Circularity Scotland and say, “Okay—we collapsed that scheme, but please put money into our scheme”?

What the UK Government did to Scotland has undermined its ability to deliver the scheme, so it will have to somehow support the DMO to get the required investment. I do not know what steps will need to be taken to do that, but the DMO will need to get the investment, engage with industry, set deposit levels and set up all the exclusions, exemptions and small producer support that we did before it can launch. The intention is to do all that between the end of next year, when the DMO is created, and October 2025. I am cynical about whether it is possible in that timescale, but that is the intention.

Mark Ruskell: As the convener said, it would be ideal if we could ask the UK Government our questions. Do you have any sense that DEFRA is putting in place those steps? Is it making substantial progress towards step 1?

Lorna Slater: Over the summer, we have been working with officials to come up with sensible conditions for interoperability, such as how we will agree on how we will set the deposit and on how exclusions will work. That has been discussed among officials, and it is now for DEFRA and the UK Government to sign that off, to agree on what the conditions will be and to set that out in its regulations.

We are waiting on DEFRA’s timescale; I do not have a timescale for that. I do not know whether my officials have more of an update.

David McPhee (Scottish Government): My understanding is that the UK Government’s plan was to lay regulations early next year. It is still working that through and it intends to appoint the DMO towards the end of next year. That is still the plan, but some of what has happened has caused a bit of delay, because UK Government officials were not planning to sort out all these questions, as the Scottish scheme would have been up and running with the United Kingdom Internal Market Act 2020 exclusion.

Not having that exclusion changed the UK Government’s plans to some extent, but it is still working towards a timeline of getting the regulations laid and moving towards a DMO. The

minister described all the things that the DMO will have to do to prepare for October 2025. After learning from what Scotland went through, the UK Government now understands a bit more of the detail.

I go back to the point about readiness without glass, which relates to questions about the UK Government's plans. In Scotland, we had large producers who were keen on pushing ahead; in fact, they were keen on pushing ahead with a date of August 2023 and they saw no reason to delay. They changed their minds when the decision on the exclusion was made, because they saw the changes to the scheme at that late stage as being significant and meaning that they would be unable to prepare in time for the March 2024 launch. At that point, those large producers said that they would rather wait so that they could go at the same time.

Although glass not being part of the scheme did not bring the scheme to an end, changes affecting interoperability and glass at that late stage meant that it was very difficult for producers to be ready. It is worth remembering that it was at that point, and because of that significant change at a late moment, that they came on board with the idea that there should be a UK-wide scheme.

Mark Ruskell: Is there any wriggle room that would allow for a phased launch? Different regulations could be considered in different parts of the UK. Is that a possibility, or are we now looking at complete alignment?

Lorna Slater: That is a question for DEFRA. It is for DEFRA to say how it wants to implement the scheme and how it intends that scheme to operate in the UK.

Jackie Dunbar: What assessment has the Scottish Government undertaken of the environmental and economic implications of delaying the scheme until October 2025?

Lorna Slater: We have updated the business regulatory impact assessment for the regulations that the committee are looking at today. You have that in front of you. The major change caused by the scheme coming in later is that all the carbon and waste benefits that we would have had by getting the scheme up and running in August this year, as was originally intended, are being lost. There will be two more years of that pollution and waste.

My officials can give you more detail about the BRIA.

David McPhee: I am opening up my document to get the figures completely correct. Haydn Thomas might also want to jump in. Our recent strategic environmental assessment said that the impact of moving from 2024 to 2025 would be 166

kilotonnes of CO₂ equivalent. Every year that you move on from that will have a further impact on the CO₂ equivalent.

Off the top of my head, the impact on the net present value for that one-year delay is £18 million. There will be an impact on the net present value in every year of delay. Those assessments look only at the delay from 2024 to 2025: any delay beyond that would have a further impact.

Jackie Dunbar: Haydn Thomas, do you want to come in?

Haydn Thomas (Scottish Government): Those are the correct figures, so there is nothing for me to add.

The Convener: That takes me back to my days of looking up net present values in "Parry's Valuation and Investment Tables" and working out how we get to certain interest rates or tax rates. We will move swiftly away from that topic and have some questions from Douglas Lumsden.

Douglas Lumsden: Minister, Circularity Scotland is now in administration. It believed that Scotland's DRS scheme could still have went ahead without glass. Was that wrong?

Lorna Slater: I am sorry; I was distracted. Could you repeat the question?

Douglas Lumsden: Circularity Scotland, which is now in administration, believed that the scheme could go ahead without glass. Was that wrong?

Lorna Slater: As I already said to the convener, it is absolutely possible to run schemes without glass. That was not why we had to halt our scheme. That happened because of the rule changes, particularly regarding labelling and the deposit level, which would have made us unable to tell Scottish businesses what the scheme would look like.

The level of deposit is core to how the scheme operates, because it is tied into the business model of how the scheme is funded. If you do not know what the deposit level is or what the labelling requirements are, you cannot operate a scheme. Had we known those things, and had the UK Government said that the only thing that it was doing was removing glass from the scheme, we would have been able to go ahead because there would still have been a case for the scheme. The case would not have been as strong or as good, but we could have made it.

Douglas Lumsden: Was there any way to avoid Circularity Scotland going into administration? Could that have been avoided by having some sort of scheme?

Lorna Slater: If we had been able to run a scheme, Circularity Scotland would have been

able to operate it. As you rightly point out, Circularity Scotland was willing to operate a scheme without glass, but none of us can operate a deposit return scheme if we do not know what the level of the deposit will be, so we were unable to proceed.

Douglas Lumsden: Would there not have been a case to proceed with something to try to ensure that the Scottish National Investment Bank's £9 million investment did not go down the pan?

Lorna Slater: The member is absolutely right to be concerned about this point, and you can imagine that it was a great concern to me as well at the time. There was not only the investment but people's jobs, including those of the employees of Circularity Scotland and all the people who had contributed to the work that they were doing to build IT systems and so on. All those people were affected by that decision so it was something that I took very seriously.

However, we were unable to proceed with the scheme because, when you are working on a deposit return scheme—as you will have heard in the chamber from other members—businesses need certainty. Deposit return schemes are enormous and complex, and our scheme will affect every single person in Scotland and tens of thousands of businesses. Anyone who sells, handles, purchases or in any way procures either drinks or their containers will be affected.

What businesses need is certainty. They asked for that at every single meeting with them and they asked us to tell them exactly how the scheme was going to work. With the partial and temporary exclusion, the UK Government threw a huge amount of uncertainty into the works. If I cannot even say what the deposit level will be in a deposit return scheme, I cannot go ahead.

When the First Minister and I sat down at a business round table after 26 May, when we got the letter from the UK Government laying out the temporary and partial exclusion, businesses said that they just could not deliver the scheme at all given the level of uncertainty. They said that, even with all the investment that businesses had made, they would now prefer to align with the UK.

Douglas Lumsden: To go back to my point, was there no way of saving Circularity Scotland and the £9 million of investment?

Lorna Slater: There was no way with the conditions that were imposed on us.

Douglas Lumsden: The Scottish National Investment Bank's annual report is out tomorrow. Should we expect heavy losses as a result of this?

Lorna Slater: I am in no way involved with the Scottish National Investment Bank, and I do not know what it will be reporting.

Douglas Lumsden: But you would not expect that £9 million to come back.

Lorna Slater: Circularity Scotland is in administration, and I am not familiar with what the administrators will be able to manage through that process.

Douglas Lumsden: It looks like £9 million of taxpayers' money will be lost. That was not done just to pick a fight with the UK Government, was it, minister?

Lorna Slater: The UK Government made this decision. It was its decision to undermine our scheme, and it is responsible for the impact that it has had. I and everybody at Circularity Scotland was fully committed to making the scheme work. As David McPhee has just pointed out, big businesses and big producers were also fully committed. You will have seen reverse vending machines going in in many supermarkets. We were fully set up to get operational in August this year, but when those conditions came in, even the big producers that had invested millions, and Circularity Scotland, said, "We can't do it; these are not conditions under which we can launch the scheme."

Douglas Lumsden: Minister, do you take no responsibility at all for the £9 million of taxpayers' money that is now being lost?

Lorna Slater: The scheme would have gone ahead in August 2023 if the UK Government had granted a full exclusion on the timeline that we had previously agreed.

Douglas Lumsden: You take no responsibility and it is all to do with the UK Government.

Lorna Slater: That is correct.

Douglas Lumsden: Okay.

The Convener: Monica Lennon, you have the next question.

Monica Lennon: Good morning to the minister and the witnesses.

The committee's stage 1 scrutiny of the Circular Economy (Scotland) Bill is under way, and we are keen to understand what lessons have been learned about progressing circular economy policy under the United Kingdom Internal Market Act 2020 and the common framework.

Lorna Slater: The challenge that I have there is that, in this case, the common framework failed to do its job. We engaged from 2021 with the UK Government on the deposit return scheme legislation. We went through every step of that common framework. The common frameworks are the mechanisms by which the UK and the devolved Governments work together to come to agreement. Our officials had worked together. I

met my UK Government DEFRA counterparts monthly, and we had worked through the framework all the way through. We had done everything that we needed to do. We understood that we would secure the full exclusion from the 2020 act because we had done everything that we needed to do in order to secure it.

We did not get the exclusion that we expected to get as a result of the common framework process, nor did we get the partial and temporary exclusion that we did get in a timely manner. That came very late in the day, at the end of May, but we had been working with UK Government on the scheme for years.

If UK Government ministers are not following the process of the common framework or agreeing to abide by the common framework, and can, in fact, change their mind at the 11th hour on a whim, we have a challenge. The other point is that the UK Government has not provided any evidence for the change. The UK Government did not do impact assessments on the change and, as far as I am aware, it has not even written out to say why it made this change. If the UK Government can proceed in that way, the common frameworks are clearly not working.

I am almost certain that the UK Government would not take it well if I stepped away from the common frameworks process and changed my mind at the last minute about something that had previously been agreed. I feel that that would go down badly.

11:15

Monica Lennon: What I am hearing is that, prior to May, there had been extensive regular dialogue between the Scottish ministers, UK ministers and, obviously, officials—lots of engagement and discussion. Given where we are now—that is, things have not ended up in a good place—what discussions and engagement have taken place on the Circular Economy (Scotland) Bill? Are you confident that we will end up in a better place on that bill, or are there risks that we will end up having discussions such as this one on that legislation?

Lorna Slater: There are two points to make in response to that. First, I do not think that the common frameworks are working—because they allow for a lot of work to be done over years then for ministers to swoop in at the end and say yea or nay. There is a larger project, therefore, not just within my portfolio, about how the common frameworks work between the two Governments. I suspect that that will mean having to get ministerial agreement at various points in the process, so that people can have confidence as they move forward. Throwing out two years of

working together by officials is not an efficient way for any of us to work. There is therefore a bigger picture about making those common frameworks work properly, because clearly, in this case, the UK Government has not done so.

Secondly, my understanding is that, because the Circular Economy (Scotland) Bill is a framework bill, there are no inherent internal market issues. I ask Ailsa Heine to come in and correct me if I have that wrong.

On whether we should take forward specific measures in the bill, you will know from your session this morning that, for example, we want to take powers to put charges on some single-use items. That in itself is not an issue; however, if, for example, we look at putting charges on single-use coffee cups, that specific piece of legislation could then have internal market act implications. It depends on exactly how that is implemented. As you heard in your discussion, there are lots of ways in which that could be implemented. There are lots of places that the money could go to when it is collected. There are lots of models, Exactly what model we chose might have more or fewer internal market act implications. Ailsa Heine may have more to say.

Monica Lennon: That is important. We will bring in Ailsa Heine in a second. We heard from earlier witnesses that they are nervous about the lack of certainty in relation to some areas of the bill and, because it is a framework approach, about some of the detail that would potentially come later and about not knowing what amendments will come forward. I would be interested to hear from Ailsa Heine on those points.

Ailsa Heine (Scottish Government): I agree with what the minister said. There are enabling powers in the bill, and we can assess at the point of their use exactly what the impact would be when it comes to the internal market act. Through the resources and waste framework process and discussions among officials, the existence of the bill is known. That has been raised, and members of the framework process at official level are aware of it.

Monica Lennon: Thank you.

Convener, thank you for your earlier remarks. I think that we were all frustrated at the UK Government's responses, or lack of them, and we all want more co-operation with the committee. Thank you for your stance on that.

The Convener: Thank you.

As members have no further questions, I have two very quick ones. The first relates to an observation. Framework bills are great. Civil servants and ministers love them. However, parliamentarians hate them, because they cannot

scrutinise what is coming. Is that assessment fair or unfair, minister?

Lorna Slater: I understand the frustrations around a framework bill. When it comes to the circular economy, I take the example of disposable vapes, which have become an issue very quickly—only in the past couple of years. We can all see that, if we had to pass primary legislation every time that a new product becomes a challenging problem, that would tie up a lot of parliamentary time. By taking a framework power, we are able to react more dynamically to things such as emerging products and to manage those things much more quickly and efficiently. We do not know what products might be developed in the future, or the environmental impact that those might have. Having that suite of tools means that we can react and put in place measures for the products of the future that we do not yet know might exist.

The Convener: That sounds very convincing, but it does not convince me. It will minimise scrutiny by the Parliament.

I will ask my final question. The statutory instrument does not remove glass from the DRS. The UK Government has said that glass will not be included. In October 2025, will you have to bring another statutory instrument to remove glass from the Scottish scheme, or will you bring a whole heap more? I ask that just so the committee knows what is coming down the track.

Lorna Slater: That is a fair question. It is almost certain that we will need to revise the regulations again anyway, because, for example, if the DMO is able to set deposit levels, we will need to remove our 20p deposit from the Scottish scheme. There may be other conditions. For example, we have written into the regs the exclusion of producers who produce 5,000 or fewer of a particular line. Our exemption rules are in our regulations. If the UK Government has completely different ideas about all that, we would have to repeal it all. Rather than coming back to the Parliament repeatedly, we will wait to see what the UK Government puts into its regulations and, provided that it is in line with what we have agreed through the common framework and our negotiations, we will bring forward those regulations, so that you will have to see them only once and will not have to look at them over and over.

The Convener: Okay, so we have a lot more to look forward to in 2025, including glass.

Since there are no further comments or questions from the committee, we move to the formal consideration of motion S6M-09842. Minister, do you want to say anything more?

Lorna Slater: No, thank you, convener.

The Convener: I see that no member wishes to contribute. *[Interruption.]* How remiss of me, minister. I should have asked you to move the motion, as I assume you are here to do.

Motion moved,

That the Net Zero, Energy and Transport Committee recommends that the Deposit and Return Scheme for Scotland (Miscellaneous Amendment) Regulations 2023 [draft] be approved.—*[Lorna Slater]*

The Convener: I assume, minister, that you do not want to sum up on what you have heard from members.

Lorna Slater: No, thank you, convener.

Motion agreed to.

The Convener: The committee will report on this outcome in due course. I invite the committee to delegate to me as convener the authority to finalise the report for publication.

Members indicated agreement.

The Convener: I thank the minister and her officials. That concludes the public part of the meeting, and we move into private session.

11:22

Meeting continued in private until 12:05.

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

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba