



OFFICIAL REPORT
AITHISG OIFIGEIL

Net Zero, Energy and Transport Committee

Tuesday 14 November 2023

Session 6



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CONTENTS

	Col.
INTERESTS	1
DECISION ON TAKING BUSINESS IN PRIVATE	2
SUBORDINATE LEGISLATION	3
Parking Prohibitions (Enforcement and Accounts) (Scotland) Regulations 2023 [Draft]	3
CIRCULAR ECONOMY (SCOTLAND) BILL: STAGE 1	16
UNITED KINGDOM SUBORDINATE LEGISLATION	55
Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Revocation and Consequential Amendments) Regulations 2023	55

NET ZERO, ENERGY AND TRANSPORT COMMITTEE
32nd Meeting 2023, Session 6

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

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

*Jackie Dunbar (Aberdeen Donside) (SNP)

*Monica Lennon (Central Scotland) (Lab)

*Douglas Lumsden (North East Scotland) (Con)

Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Phoebe Cochrane (Scottish Environment LINK)

Michael Cook (Circular Communities Scotland)

Murdo Fraser (Mid Scotland and Fife) (Con)

Fiona Hyslop (Minister for Transport)

James Mackenzie (Action to Protect Rural Scotland)

Elise McIntyre (Scottish Government)

Fred O'Hara (Transport Scotland)

Kim Pratt (Friends of the Earth Scotland)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament
Net Zero, Energy and Transport
Committee

Tuesday 14 November 2023

[The Convener opened the meeting at 09:27]

Interests

The Convener (Edward Mountain): Good morning, and welcome to the 32nd meeting of the Net Zero, Energy and Transport Committee in 2023. We have received apologies from Mark Ruskell and we are joined by Bob Doris, who is a new member of the committee. I welcome him officially to the meeting. We are very pleased to have you here, Bob.

The first item on the agenda is a declaration of interests by our new member. Bob, do you have any interests to declare?

Bob Doris (Glasgow Maryhill and Springburn) (SNP): Thank you, convener. It is a pleasure to be a member of the committee. As usual, I draw members' attention to my entry in the register of members' interests, but I do not think that anything there is particularly relevant to the work and proceedings of this committee.

The Convener: Thank you. I remind members that, if they wish to declare an interest in connection with any item that comes up, they may, of course, do so.

Decision on Taking Business in
Private

09:28

The Convener: Agenda item 2 is a decision to take agenda items 7 and 8 in private. Item 7 is consideration of the evidence heard on the Circular Economy (Scotland) Bill, and item 8 is consideration of our work programme. Do members agree to take those items in private?

Members indicated agreement.

Subordinate Legislation

Parking Prohibitions (Enforcement and Accounts) (Scotland) Regulations 2023 [Draft]

09:29

The Convener: Our next item of business is consideration of a draft statutory instrument. I am pleased to welcome the Minister for Transport, Fiona Hyslop, who is joined by two Scottish Government officials: Elise McIntyre, a principal legal officer at the Scottish Government legal directorate, and Fred O'Hara, head of road policy for Transport Scotland. I thank them for joining us today.

The instrument is laid under the affirmative procedure, which means that it cannot come into force unless the Parliament approves it. Following this evidence session, under the next agenda item, the committee will be invited to consider a motion that the committee recommends that the instrument be approved. I remind everyone that officials can speak during this item but not during the debate that follows.

I invite the minister to make a brief opening statement.

The Minister for Transport (Fiona Hyslop): Thank you for inviting me to provide evidence on the Parking Prohibitions (Enforcements and Accounts) (Scotland) Regulations 2023.

As members are aware, the Transport (Scotland) Act 2019 prohibits pavement parking, double parking and parking at dropped kerbs and provides for penalty charges to apply where those prohibitions are contravened. To support that, the regulations laid in Parliament last month provide local authorities with the procedure to follow when enforcing the parking prohibitions. That will enable them to issue penalty charge notices to those in contravention of those prohibitions of £100, reducing to £50 if paid within 14 days.

That brings to a conclusion a significant package of work that was progressed following the implementation of the act, including regulations that were brought into force in December 2022 that gave local authorities a procedure to follow to exempt areas of footway in their areas from the pavement parking prohibitions. We have also progressed commencement regulations to bring the relevant provisions of the act into force. Passing these regulations will be the final part of enabling those important parking prohibitions to come into effective operation.

Earlier this year, as part of the development of the regulations, a public consultation was carried

out. Almost 500 responses were received from a mix of individuals, local authorities and community councils. The feedback from the consultation showed that the public are overwhelmingly in support of the regulations to improve accessibility on our roads and pavements.

My officials have been working closely with local authorities across Scotland to assist them in preparing for the regulations coming into force. The input received was vital in shaping the regulations that are now under discussion. In addition, my officials continue to work closely with local authorities and the Convention of Scottish Local Authorities to identify what further funding will be required to facilitate the implementation of the regulations and provide support to authorities in setting up back-office functions to enforce the regulations effectively.

The regulations and the subsequent parking standards guidance, which will go hand in hand with the regulations, are needed to provide local authorities with a procedure to follow when enforcing the parking prohibitions and will be in line with the powers that are provided in the 2019 act. They also set out the procedures to be followed in relation to the appeals process and the circumstances in which a penalty charge notice may be appealed. The regulations also lay out the procedures to be followed in respect of the keeping of accounts and the purposes for which any financial surplus can be used.

It is important to stress that inconsiderate, obstructive or dangerous parking can and does cause serious problems for everyone and puts the safety of pedestrians and other motorists in jeopardy. The parking prohibitions are aimed at promoting, supporting and advancing the rights of pavement users, to ensure that our pavements and roads are accessible for all. Transport Scotland will also launch an awareness campaign in the coming days to ensure that the public are aware of the new regulations and the fact that local authorities will have the power to issue and enforce penalty charge notices from 11 December, should the regulations be approved by Parliament.

The campaign will focus on changing the behaviour of drivers who park inconsiderately and on raising awareness of the impact that that can have on all pavement users. I am happy to answer any questions that the committee might have on the content of the regulations.

The Convener: Thank you very much, minister. I followed the Transport (Scotland) Act 2019 through the Rural Economy and Connectivity Committee at stages 1 and 2, and then through Parliament. Pavement parking was probably one of the most contentious issues. Agreement was reached, but the issue was refining the details, so I will just drill into some of the details, if I may.

The bill gives ministers the ability to give councils directions on exemptions. Have you issued such directions and do you think that those are sufficient?

Fiona Hyslop: As the convener will know, I was deputy convener of this committee when it studied the exemptions regulations as they passed through Parliament. Some local authorities have identified the roads that they want to exempt, but many are still in the process of doing that. Therefore, there is on-going engagement between my officials and different local authorities, but it is up to local authorities to identify which of their roads they want to be exempt.

The Convener: How far down the line are you? Have you issued any exemptions or is there enough time between now and December to issue the exemptions that are needed?

Fiona Hyslop: It is an on-going relationship. It is important that it is done in a co-operative way between central Government and local authorities, and that engagement continues. It has been done in a very co-operative way.

Perhaps Fred O'Hara can give an indication of the level of engagement, but I would prefer not to be issuing directions, if that is the invitation. It is better that it is done in co-operation.

The Convener: My understanding is that local authorities can request exemptions in certain areas. I am asking whether any local authorities have requested exemptions and whether you have indicated that you will accede to them.

Fiona Hyslop: They are in the process of doing that. Some will have done so and some will not, as yet, have done so, but they are in the process of doing that.

Perhaps Fred O'Hara can give the committee more information about that engagement.

Fred O'Hara (Transport Scotland): I am happy to come in on that.

The exemptions were in front of the committee last year, so the exemption procedures are now through Parliament and in statute. The ministerial directions for those at that time were issued in December last year, and those were the guidelines as to where a local authority could potentially exempt a street. We are in discussions with COSLA and the Scottish Collaboration of Transportation Specialists—SCOTS—to look at how many exemptions are being brought in. The process is for local authorities to follow, which they have been doing.

We are actively trying to figure out how many are coming through, but it is still in process. We will, in fact, issue a questionnaire to all local authorities later this week to find out exactly where

each one of them is and how many exemptions they are potentially bringing in. We are trying to get more of that information out of the local authorities.

The Convener: It strikes me that time is marching on. If you do not have an exemption, you are not exempt, and the areas where there are problems and bottlenecks might fall within the legislation.

Fred O'Hara: It is for the local authorities to ascertain where those are. We fully funded the exemption order process two years ago. We issued £2.4 million of funding for local authorities to go and look at the streets that they think they need to exempt. Some are further forward than others on that. We are pushing to ensure that they use the funding that we have already given them to go and assess the streets.

The Convener: Okay. I will crack on with a few questions that I have.

There are slots, or bays, where drivers are allowed to park on pavements. There are some exemptions to allow them to do that. Are you happy that those are sufficiently regulated to ensure that they do not multiply or are not lost?

Fiona Hyslop: It would be a commonsense approach for a local authority to determine in its own local area whether it has such bays and what it needs. It is important to understand that you have in front of you the regulations for the enforcement and the penalties and so on. It will be a matter for local authorities to establish in their own local areas how, and the degree to which, the regulations are enforced and how the exemptions—as opposed to the areas that are already designated for parking—are treated.

The Convener: This is a technical question. The fine is issued to the person who owns the vehicle that gets the parking ticket, although they may not be the operator of the vehicle. Is there an ability to pass the fine on to the person who was operating the vehicle, or is it up to the owner of the vehicle to pay the fine and try to get the money back?

Fiona Hyslop: I will ask Elise McIntyre to come in on that.

Elise McIntyre (Scottish Government): The penalty charge is payable by the registered keeper of the vehicle except in certain defined circumstances that are set out in the regulations. Those include, for example, circumstances in which the registered keeper had sold or transferred the vehicle before the contravention occurred; then, the fine would be for the person who was the keeper of, or who was in charge of, the vehicle at that time.

There are various other possibilities. For example, if it was a hire car, the registered keeper would be the hire company.

I am sorry—I am going into too much detail.

The Convener: I understand that, if you hire a car, you are responsible for it. However, there are lots of other situations. For example, within a family, if the registered keeper was a parent but it was their child who was racking up the fines, the parent would be the one who would cop it. Are you happy with that?

Fiona Hyslop: I think that that is normal practice for these things.

The Convener: Is it?

Fiona Hyslop: The registered keeper has the responsibility for fines. There is an awareness issue, and we are going to try to raise awareness among everybody. However, if I were in a family in that situation, I think I would be telling my children not to pavement park, because there should not be pavement parking anyway and because I would not want them to make me liable for fines.

The Convener: Okay. I have a final question, which I know other committee members have, too. In some loading bays, for very good reason, there are dropped kerbs to allow people to move stuff from lorries up on to pavements. As I understand it, if a dropped kerb is not being used by or is not designated for wheelchair users, it will not be caught under this legislation. It would help to have clarity on whether that is the case.

Elise McIntyre: I think that that is correct. If a dropped kerb is outside commercial or residential premises, it will not be caught by the prohibition.

The Convener: Thank you. Monica, do you have a question that you want to ask?

Monica Lennon (Central Scotland) (Lab): Yes. Good morning, minister and colleagues. Convener, you have touched on some of the questions that I had about the work that is being done to survey the streets and see which ones should be exempt. I think that Fred O'Hara said that £2.4 million in funding has already been allocated to local government. It would be good to get more detail, after today's session, of how that money has been used over the past two years to resource this exercise and to get an update on which streets, if any, will be exempt.

I also have a question on the attitude to enforcement. I appreciate that it is for the local authorities to carry out enforcement, but I wonder whether the minister has a view on the approach that should be taken. We know what the procedures are. Some might call them intelligence led, but sometimes there is a lot of discretion, which leads to a lot of variation. For example, my

office has been asked to look at enforcement around engine idling. We did some freedom of information requests on that and found that most local authorities take a non-enforcement approach to engine idling and try to identify teachable moments to educate on it. Does the minister anticipate that councils will take a similar approach to pavement parking, or will there be a more robust approach?

Fiona Hyslop: There are a number of things to say on that. I think that the committee has looked at clean air enforcement issues more generally and has reflected on the fact that local authorities use their discretion. In some circumstances, however, they have taken a stronger enforcement line when they have been trying to persuade people to understand the issue.

It is clear that local authorities have powers in this area. Normally, the Government gets criticised for being overzealous in telling local authorities what to do, but this is an issue on which we have to respect local authorities, who know their communities, their towns and their areas, and so they know the level of enforcement that they want to carry out. That is why they have discretion in the extent to which they carry out that enforcement. We are giving them the powers to enable that, and the penalties will be, we hope, a diversionary implement.

The use of “teachable moments”—if that is the term that you used—is really important. We all know that there are many behaviours in relation to cars—such as not wearing seat belts and drink driving—that, over many years, have changed in line with changes in what is acceptable. In recent years, coming through the pandemic, people have walked their streets more, they own their places more and they want to be able to do that in comfort. All of us who have children have probably been in a situation with pavement parking—I was reflecting that I had two children in a double buggy. The most frustrating thing when someone is pavement parking is that they are, by and large, forcing women with young children on to the streets. We are saying, “Do you know that that isn't acceptable? Why don't we just agree that we don't do that?” There is a behavioural aspect, which is why there will be a marketing campaign to persuade people to change that behaviour.

On enforcement, local authorities have the tools, they have the legislation and they now have the opportunity to use penalty notices as well. We are providing the tools so that, if they want to use the stick, they can. However, why do we, as a country, not just say, “Let's stop pavement parking and allow people to use the pavements with freedom”? Whether we are talking about people with guide dogs or in wheelchairs, elderly people walking their dogs in narrow spaces or parents or

grandparents with buggies, we should let people use the pavements.

09:45

Monica Lennon: In your opening remarks, you talked about public support for the legislation and its aim of reducing the impact on people of pavement parking. You also mentioned that it is important that back-office functions are resourced properly to ensure effective enforcement. Can you give an update on the funding picture for the measure?

Fiona Hyslop: We have some estimates, but again we are working with SCOTS—that is, the transportation officers—and with local authorities on what they think that they will need. Obviously, it is part of the on-going discussion that we are having with COSLA and local authorities.

Monica Lennon: Thank you.

The Convener: We have a whole heap of questions to get through. I call Douglas Lumsden, to be followed by Bob Doris.

Douglas Lumsden (North East Scotland) (Con): I remind the committee of my entry in the register of members' interests, which shows that I was a councillor at the start of the current session.

As far as inconsiderate parking is concerned, minister, I think that we are all behind you with regard to the situation that you have described of buggies and wheelchairs trying to get down the pavement. Indeed, I would say that other areas, such as hedges overgrowing pavements, need to be tackled, too.

Sticking with pavement parking, though, I can think of streets in some of our bigger cities that have tenement buildings on either side of quite narrow roads. As a result, people park on the pavement to ensure that there is still space down the middle. I guess that, come 11 December, people who live in one of those areas could get a ticket every day. Is there anywhere that residents can go to see whether the council considers their street to be an exemption zone? Is there some process by which residents can lobby the council to make their street an exemption zone—as long, of course, as the pavement is wide enough to cope with wheelchairs, buggies et cetera?

Fiona Hyslop: The committee looked at the exemptions process in the regulations last year. That is the process to enable local authorities to identify such exemptions, and part of that is consultation that the authorities carry out. I do not know what has happened in each of the 32 local authorities, but that is the process for identifying streets where there might be issues. My understanding is that local authorities are able to advertise whether an area is eligible for pavement

parking. Some authorities have done that work, and some are in the process of doing it. Again, though, they will need to take a commonsense view as to what is practical. At the same time, this is, as you have said, about how we make sure that our streets are accessible.

Douglas Lumsden: I am concerned about the issue, as we are not that far away from 11 December. Given that we do not know how many applications there have been for exemptions, how will residents know whether they will still be able to park outside their house in a month's time?

Fiona Hyslop: I will bring in Fred O'Hara to give you some information, but I would have thought that the sensible thing would be for local authorities to identify and publicise that on their websites. However, they will also want to go through a process with their committees on how to enforce the measure. We know that that discussion has just started in Edinburgh, where the council thinks that it will be the first to put the measure in place. There might be a period of time before local authorities know that they are ready to enforce the penalties that we are providing them with the powers to enforce, should the committee and the Parliament agree to the instrument.

Fred O'Hara: The local authority has the power to introduce exemption zones but, in doing so, it has to sign and line where people are allowed to park on the pavement. This is a national ban, and it applies unless one of those sign-and-lines areas is on the pavement outside your house.

It is for local authorities to advertise the process, which is what the committee looked at last time. The exemption order process is there for them to follow, and it includes advertising the orders and putting them on their websites—and even in the local press, if they so wish. The process is very similar to, for example, the traffic regulation order process that already exists for double yellow lines. A local authority's website should have a list of the exemption orders that it is already putting through as well as any potential orders.

Douglas Lumsden: I come back, then, to the convener's original question: have you seen them?

Fred O'Hara: We have seen some from certain local authorities. We have seen some movement from Dundee and Inverclyde, for example, and they have things up and running and are looking at what they need to put in. I have not seen any that are complete or which are on the ground yet, but that is certainly how they are going, and most of the other local authorities are following this through, too.

Douglas Lumsden: Would you expect local authorities to have a bit of leeway to start with—maybe to issue tickets that will not be enforced,

just to make people aware that they cannot carry on with their behaviours until an exemption order is in place or they can ask for an exemption order?

Fred O'Hara: We have been through the process with local authorities and talked about how they would handle this in the initial period. Some of them are going with a soft launch campaign, in which they will put leaflets, as opposed to tickets, on windscreens. They are looking at raising awareness first; then, once their exemption orders are in place, they will start ticketing.

Douglas Lumsden: Minister, you said that there is still quite a lot of work to be done in the background—I think that you said that it is some admin. Will that all be done before 11 December?

Fiona Hyslop: Again, it is up to local authorities to decide what they need to do when it comes to their own processes. Some are further ahead than others, but we are providing the powers for them to carry out enforcement using penalty notices if they choose to do that. It is up to them to work out their level of enforcement. Clearly, some local authorities might want to take a heavier hand sooner rather than later, but the more commonsense point of view, which has just been illustrated, is to give people notice in some shape or form to raise awareness—it is about saying, “Look, this is coming in now,” whether that is through leaflets or whatever, in the relevant streets.

Bob Doris: I had no interest to declare but, as I was listening to the questions, I thought that perhaps I should mention that I am patron of the Glasgow Access Panel, which is based in Maryhill in my constituency, and that there is a crossover in some of the work. Although that is not formally declarable, I put it on the record for the sake of transparency.

I have a couple of questions. My first relates to the education and awareness campaign. Most people accept that pavement parking is pretty inconsiderate—drivers know what they are doing, but they are a bit inconsiderate. We have to change that culture. However, drivers are often oblivious to dropped kerbs. That is an unintended consequence, which is due not to wilful ignorance but to a lack of awareness. Will the education campaign take that on board? There is a difference in where drivers are in relation to those things.

Fiona Hyslop: I was keen to bring forward the marketing campaign because, although there was a lot of awareness at the time that the Government adopted Sandra White's member's bill into the Transport (Scotland) Act 2019, which was passed at the end of that year, time has passed since the ban was brought in on double parking, dropped

kerb parking and pavement parking. That is why it is important to remind people that the Parliament passed that law in 2019, and that what is happening now is the delivery, the operation and the final elements of bringing it into force by providing the enforcement and the penalty notice process.

There has to be action on awareness, because of the passage of time. There is a duty and responsibility on us all to help in making sure that people are aware—because, I suspect, they might not be aware. Although they might be aware of pavement parking as an issue, they are not necessarily aware of the dropped kerb issue. That is a challenge because, as you said, people might not be sighted on dropped kerbs. Again, it is for local authorities and their enforcement officers to identify what is reasonable or unreasonable, and what a commonsense approach would be in such a situation.

Bob Doris: I want to ask about enforcement and the guidance on that.

Glasgow City Council—certainly in my constituency—is very good. I have constituents who use wheelchairs and mobility scooters and who had no access to local services. The council had a direct conversation with them about their lived experience and put in dropped kerbs to allow them to go about their lives.

However, when it comes to enforcement, there are breaches from drivers. I get that enforcement has to be intelligence led, practical and cost effective. That might lead to enforcement in areas where other enforcement is already taking place—where there are clusters of potential driver breaches. In addition, it might not be in their local communities that those on a mobility scooter or in a wheelchair have their lives devastated by not being able to cross the road. A constituent of mine has had to travel an alternative route of almost one mile because of breaches involving dropped kerbs.

What guidance is there that local authorities should not focus their enforcement only on clusters of potential breaches or on areas where enforcement is cost effective, but should carry out enforcement where there are individual breaches that could absolutely devastate the lives of those with mobility issues?

Fiona Hyslop: That is an important point. Again, it is a decision to be made by local authorities, but local authorities should be informed by local communities. The continuous dialogue that is helping to inform the guidance on parking standards will come out at the same time as we commence the regulations, should they be agreed to when the committee and the Parliament vote.

On the responsibility of individuals, councillors will no doubt be approached by people who have individual circumstances. They can take that up with the local authority. Similarly, MSPs will no doubt be contacted. Local authorities increasingly have access panels of the type that the member spoke about, and the Government consults the Mobility and Access Committee for Scotland to get its advice. That is proper and responsible community engagement. Any individual issue can be addressed with representation, but I cannot make local authorities do that; they have to do it themselves.

Bob Doris: That is all positive, and I get it and have sympathy for local authorities. They are on tight budgets, and they need to be practical and realistic about where enforcement will take place, but is there guidance to ensure that they do not focus only on areas where they can get the largest amount of income or have the biggest impact in enforcing breaches, rather than individual cases such as those that I highlighted, where enforcement might have a much bigger impact in changing the quality of a person's life?

Fiona Hyslop: The guidance is being prepared and finalised. Mr Doris makes a very good point, and I am sure that, if it is not already shaped in the guidance, we could consider putting it in. It is a very good point; it is not about whether the regulations have either a mass impact or an impact on the quality of life for one individual, because both are important.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Good morning. I welcome the fact that the regulations are being put in place to implement these important aspects in the 2019 act.

Quite understandably, during the process of the 2019 act, the needs of businesses for deliveries and unloading were considered, and exemptions were made in section 55(6) to allow pavement parking in reasonable circumstances as long as there is a gap of 1.5m at the edge of the pavement and the parking does not take place for more than 20 minutes. Unfortunately, in my constituency and others in urban Scotland, deliveries take place in an unreasonable way, which means that there is not adequate space left at the side, and delivery vehicles are parked for longer than 20 minutes.

We do not want to punish people; we want to change attitudes and practices—as the minister said—so, as part of the delivery of the enforcement of the regulations, as well as a public marketing campaign, will there be significant engagement with businesses, organisations, the large supermarkets and the prominent delivery companies—of which there is a long list—such as Parcelforce, DPD and UPS? It will be important to inform the drivers that change is coming.

Fiona Hyslop: Engagement with key delivery companies has been continuous. It has been part of the process of drawing up the regulations. Marketing will be general, but communications can be done nationally, and I am keen that that takes place. However, I also expect local authorities, along with their local Chamber of Commerce, to actively engage with businesses on particular streets where they will want to enforce the measure. I reassure you that ensuring that drivers are aware is part of an on-going process.

In reflecting on the issues with parking, we have recognised that, although some deliveries take place in branded vans and white vans, so we know who they are, increasingly, they are done by people in their own vehicles. However, if someone is making deliveries for a business purpose, as long as they abide by the regulations that the member referred to, they will not be subject to a penalty notice.

10:00

The Convener: Those were all the questions that we had; there was quite a lengthy list this morning.

The next agenda item is a debate on the motion calling for the committee to recommend approval of the draft Parking Prohibitions (Enforcement and Accounts) (Scotland) Regulations 2023.

Minister, would you like to speak to the motion and move it, or just move it?

Fiona Hyslop: I am happy to just move it.

I move,

That the Net Zero, Energy and Transport Committee recommends that the Parking Prohibitions (Enforcement and Accounts) (Scotland) Regulations 2023 be approved.

The Convener: Do any members want to make a contribution?

Monica Lennon: It is not a contribution but, given the nature of what has just been discussed, I refer to my entry in the register of interests, under the voluntary section, as I am a patron of Disability Equality Scotland. I want to be transparent about that.

The Convener: That is noted. As no other members have any comments, minister, can I ask you to sum up and respond to the debate?

Fiona Hyslop: I thank the committee for its questions and contributions, and I hope that there is support for this important final part of the regulations.

The Convener: The question is, that motion S6M-10704, in the name of Fiona Hyslop, be approved. Are we agreed?

Motion agreed to.

The Convener: The committee will report on the outcome of the instrument in due course. I invite the committee to delegate authority to me, as convener, to finalise the report for publication. Are we agreed?

Jackie, you look nervous about that. Are you happy about it?

Jackie Dunbar (Aberdeen Donside) (SNP): Yes, I am delighted.

Members *indicated agreement.*

10:01

Meeting suspended.

10:10

On resuming—

Circular Economy (Scotland) Bill: Stage 1

The Convener: Welcome back. Our next item of business is an evidence session with environmental advocacy groups as part of our stage 1 scrutiny of the Circular Economy (Scotland) Bill.

I am pleased to welcome Phoebe Cochrane, who is the sustainable economics officer at Scottish Environment LINK; Michael Cook, who is the chief executive officer of Circular Communities Scotland; James Mackenzie, who is the circular economy advisor at Action to Protect Rural Scotland; and Kim Pratt, who is a circular economy campaigner from Friends of the Earth Scotland. Thank you for joining us today and for submitting evidence in response to the committee's call for views. I also welcome Murdo Fraser MSP, who is joining us in connection with a specific aspect of the bill.

We have allowed up to 75 minutes for this agenda item and we will move straight to questions from committee members. I will kick off with an easy question and will give each witness an opportunity to answer. You will not get the opportunity to answer every question, but the first one is easy. Is it useful to have a circular economy strategy as part of the bill, and should that be in the bill rather than something that is produced later?

James Mackenzie, would you like to begin?

James Mackenzie (Action to Protect Rural Scotland): We do, of course, support having a circular economy strategy. It is not clear to us why that should be a statutory requirement when ministers could make their own strategy. However, the bill as drafted, or perhaps as amended, has the potential to enhance the way in which Parliament can scrutinise ministers and see how they are living up to their objectives.

It would be more useful if the bill included an explicit purpose, like the aims in the National Parks (Scotland) Act 2000 and in some other legislation. This bill does not have that. It says that there should be "regard to" various elements of the circular economy, but it does not have the core purpose that would help to inform the strategy and other policies in the bill.

Michael Cook (Circular Communities Scotland): We support the provisions in the bill that relate to a strategy. I may be stating the obvious, but it is better to have a strategy than not to have one. Providing for a strategy in the

legislation means that its frequency can be set, with the potential to set out what other legislation must be taken into account.

I agree with what James Mackenzie said about a purpose. We would like there to be greater clarity on what we are trying to achieve with the strategy, and in what timeframe. That might include taking a top-down approach to the waste hierarchy, or valuing the environmental and social impacts that the circular economy can deliver. We would like those things to be explicitly stated, but we are supportive of a strategy.

Phoebe Cochrane (Scottish Environment LINK): We support a strategy being in the legislation. After all, we have had a strategy since 2016, but a lot of that has not been delivered. Putting a strategy into legislation, with the reporting requirements that go along with that, would give it greater strength. We also think that the strategy should be linked to the delivery of the targets, once those have been set, but that is not included in the bill.

Kim Pratt (Friends of the Earth Scotland): We generally welcome the bill and any comments that I make here today are about making it as robust as possible.

We also support the strategy being included in the bill. We suggest that the Climate Change (Scotland) Act 2009 is a useful template for the framework that should be in the bill. That act includes a strategy—the climate change plan—and that strategy is quantified, is linked to targets and sets out plans for each sector. That is what we need for this bill, too.

The Convener: Thank you; that is useful. Some parliamentarians—I put myself in that bracket—are very nervous about framework bills, which leave a lot of things to be agreed after the legislation comes into force. To my mind, that does not allow for full parliamentary scrutiny. Are you concerned as I am, or are you happy that this is a framework bill and that the meat will come later?

I will start in the middle of the panel and work my way outwards. Michael Cook, you are just about in the middle.

10:15

Michael Cook: Framework legislation has its place but, by itself, it is like a chair with one leg—it is not stable. You need to be clear not only what powers you are creating but how those will be used and what the unintended consequences of those powers might be. In this case, with this bill, the waste route map is another leg to that chair, and it should be seen alongside the bill.

With regard to what is in the waste route map, if we have the power to create charges, what would we plan to use those charges for, in what products and what might be the unintended consequences of that? The devil is always in the detail. Therefore, we are supportive of the powers in the bill, but we are keen to know how those will be used—as you will be.

The Convener: I will turn to James Mackenzie. I am just throwing the question around so that you cannot predict when you are going to speak next. *[Laughter.]*

James Mackenzie: That is absolutely fine, convener. I am happy to be put on the spot. In general terms—more broadly than this legislation—I share your concerns about the extensive reliance on framework legislation. There is a middle position where there are more detailed framework parameters for how ministers should use powers under secondary legislation. Obviously, the use of secondary legislation reduces scrutiny. By the time that a statutory instrument comes to this committee, you cannot amend it. It can go only up or down, and you will have to rely primarily on the Government's consultation process.

From our perspective, the framework ought to be broader. Not for the first time, I will talk about producer responsibility. There is nothing in the framework on producer responsibility, which we think should be the core of the bill.

The Convener: I will go back to Phoebe Cochrane.

Phoebe Cochrane: In these circumstances, we support a framework bill. For issues such as the circular economy and climate change, which are multifaceted, legislation needs to operate at all levels and in all sectors. Those are also fast-changing areas, with innovations and policy developments coming through all the time. Without keeping the option of a broad-scope approach, you would come across hurdles that require more legislation down the line.

The Convener: Kim Pratt, you have predicted that you are next.

Kim Pratt: Yes, I agree that we need framework legislation to create a circular economy. We need to completely change the way that we use materials in our system and, to create those system-wide changes, we need a strong clear framework to lead us on that path.

Again, the Climate Change (Scotland) Act 2009 can be a useful guide for that. We see the need for four main elements in the framework for the bill, drawn from that climate change legislation, which was supported by this Parliament. We want consumption-reduction targets to be set in primary

legislation. Those should be based on science and be legally binding. We need a strategy. We need monitoring and reporting requirements that are specified in the bill rather than by ministers; that should include a new independent body to monitor progress. We also need just transition principles, which are completely missing from the bill.

The Convener: I am hearing mixed messages of support. That is where I am at with those responses.

Monica Lennon: Good morning. Kim Pratt, you have gone straight in to talking about targets, which I wanted to ask about, but we have already heard about the link between the strategy and the targets and what those might be, so I might come back to you.

Phoebe Cochrane, perhaps you can go first to say a bit more about what circular economy targets you would like to be introduced and whether you are satisfied with the framework that the bill provides for setting those targets. The committee is also interested to hear any relevant international examples of consumption-based targets.

Phoebe Cochrane: I will not pretend that the targets are not a difficult area, but we definitely need consumption-based targets. That is the backdrop to the urgency of this legislation and our climate and biodiversity crises, of which our material consumption is the key driver and is increasingly recognised as such. We need targets that relate to the quantity of materials that we are consuming and the environmental impact of that consumption. We have proposed that targets are introduced on our carbon and material footprints.

We recognise that there will be arguments against those targets with regard to the reliability of the data. However, the carbon footprint especially is something that we already report on—we have done so for some time—but no target has been associated with it. We have been publishing the material footprint for a couple of years now, and the data on that is improving, so that could also be used to set a target.

The Dutch Government introduced a material footprint target a good few years ago. It was one of the first Governments to do so. The European Parliament has approved footprint targets and various other jurisdictions have footprint targets, including Flanders and—I am struggling to remember other examples now; they are somewhere in my notes. Kim Pratt will probably jump in with other examples. Those targets look at overall footprints.

On the other end of the process, residual waste per capita is a useful target for which we definitely have data, and that aspect is easy.

Looking at the most harmful and most carbon-intensive materials or goods, food waste is a target that should be in legislation and there should be increased ambition on that. Food waste is one of the key areas that can have the biggest impact, on both biodiversity and climate, with regard to increased circularity. I will let others come in.

Monica Lennon: That is really helpful. I will come back to Kim Pratt and ask Michael Cook to respond next.

Michael Cook: Targets have their place. So far, we have talked about strategy and targets. To put it simply, targets are about where we want to go and strategy is about how we are going to get there. In this case, targets without system change are targets that we will miss. I point to the current recycling targets as an example. We had a target of 60 per cent by 2020 and are currently at 43.3 per cent for last year. Therefore, targets have their place, but you will not hit them simply by setting them.

We support Friends of the Earth's call for a consumption target, but one target that we would love to see and that is missing is a re-use target. There is a lot of focus in the bill and, indeed, in current targets on recycling. However, re-use is a lot better for the environment and for people than recycling. I will give an example to make that clear. If I recycle a laptop, I recycle the plastic, the glass and the metal but, if I re-use it, it remains a laptop, and, if it is broken, I fix it. That is so much better for jobs and the environment.

We believe that we need—this is slightly technical—a preparation for re-use target. That target would be on the percentage of material that is presented at local authority household waste recycling centres that goes for re-use over other processes, whether that is landfill, incineration or recycling. That would be a huge strength for this bill, because re-use is a second-class citizen to recycling with regard to how money is spent and how facilities are orientated to the behaviours that come afterwards.

On international examples, Flanders has implemented a re-use target. Instead of doing it in an abstract way, it has related it to head of population, so it is expressed as kilograms of re-use per person living in an area. That makes a city comparable to a rural area, for example. Undoubtedly, that has driven up levels of re-use, which has, in turn, created jobs and made it more convenient and easier for the public to re-use more, so you have a sort of virtuous circle.

Monica Lennon: Thank you. If there is a perception that, in the waste hierarchy—to use your words—“re-use is a second-class citizen” compared with recycling, are you nervous that the

opportunity to redress that balance in the bill might be missed? There is a lot of discussion about the recycling part of the bill, so are you nervous that re-use is not given the prominence that it perhaps needs?

Michael Cook: Yes, absolutely. If you imagine the waste hierarchy as a ladder, the bottom rungs of that ladder are landfill, incineration and recycling. The top rungs are re-use, repair and tackling consumption—they are to do with the reduction of consumption. The bill contains a huge amount about recycling and a lot about litter and fly-tipping. All those are good and well-intended initiatives, and we support them, but they are really only taking our feet off the ground and putting them on the bottom few rungs of the ladder, when we should be focusing on the top rungs and where we need to be.

Zero Waste Scotland's circularity gap report in 2023 said that Scotland is 1.3 per cent circular. I will give an example of the problem with bottom-up policies. If you have a landfill ban, it will drive up incineration capacity. We would then have an incineration review, tackle that and move on to recycling. We have a target to achieve net zero by 2045. There is not time to take the waste hierarchy ladder one rung at a time, in effect building capacity for the next level, and then to decide that, actually, we want to move to the level beyond that.

Therefore, we need a clear signal to the industry and local authorities that we are moving to a re-use and repair economy in which we make products last. That name of the 2016 strategy that Phoebe Cochrane referred to is "Making Things Last: A circular economy strategy for Scotland". Of course, if something cannot be re-used, recycle it, but, if it can be re-used, that is what we should do.

Monica Lennon: That is really helpful.

James Mackenzie: I draw a distinction between targets that the Government sets for the country as a whole, regardless of whether it has the measures beneath them, and targets that Government can set for individual producers, retailers or sectors.

I completely endorse what Michael Cook said about focusing on the top of the waste hierarchy. In many respects, the bill focuses on litter, waste and recycling rather than the top end of the hierarchy. There are really good examples around Europe right now of requirements being placed on producers to build in re-use. For example, in 2020, Austria passed legislation with a binding and enforceable re-use target of 25 per cent by 2025. Portuguese law requires that 30 per cent of all packaging—of any material—on the market must be re-usable by 2030.

A Government target is an ambition. There is an ambition in the climate change plan and there is

an ambition in the bill to be a circular economy, but the examples that I gave are requirements in the same way that there were requirements in the deposit return scheme legislation that said, "You must get this return rate." Those requirements really drive action. They tell businesses that we need to shift away from single-use products—this linear economy, which is not even a race to the bottom; the race is finished and we are almost at the bottom right now.

There are plenty of examples of such requirements. Everyone is talking about different targets, and I apologise for adding to that target-fest, but, from our perspective, the targets that would be very important would be those that are placed on producers. It is about producer responsibility.

I recommend to the committee a paper that was published recently by Zero Waste Scotland and others—its title briefly escapes me but it is about recovery. It focuses on another target: the reduction in the use of virgin materials. That is kind of a market measure. It uses commercial pressure to say, "You can achieve this any way you want. If you can achieve it through reduction by lightweighting, that is great. If you can achieve it through re-use, that is great. Refillables—that is fine". However, you set those targets and place them on industry. It has to meet them, and then it is up to the industry to innovate in order to do so. Those targets are binding. The target on a Government is never binding, as we have, regrettably, found out in a number of other policy areas.

Monica Lennon: I will try to get through the next couple of questions quickly, but that was really helpful. Kim Pratt, I will come to you. If you have anything to briefly add to that first discussion, please do, but are you satisfied that you will have the opportunity to engage in the detail of target setting and the scrutiny of proposals via secondary legislation? The bill sets out what that process might be.

Kim Pratt: We need targets to guide the scale and pace of change and those targets should be set in primary legislation, in the bill.

The goal of a circular economy is to make the consumption of materials more sustainable, so the targets must reflect that. At the moment, Scotland measures the impact of its consumption in two ways: through its material use and through the carbon impacts of that material use. Those are sometimes called our material footprint and our carbon footprint. We would like our carbon footprint to be used as the primary driver for a circular economy. That is because we have a better understanding of carbon; we have been measuring it for longer than we have been measuring material use.

It would also stop the problem of carbon leakage that we have with our existing climate targets. Those focus on reducing our emissions within Scotland, which is important, but those are only part of the impact that Scotland has. In fact, 58 per cent of Scotland's carbon footprint comes from our imports, which are not currently being included in our climate targets.

We would therefore like to see the carbon consumption targets within the bill being used alongside our existing climate targets to ensure, together, that Scotland's progress towards a more sustainable future is as effective as possible. To do that, they need to be in the same units, of greenhouse gas emissions; they both need to have the same goal, of net zero by 2045; and they need to be set at the same legislative level in primary legislation so that one is not seen as more important than the other.

10:30

Monica Lennon: Phoebe Cochrane, can you come in on the opportunity to engage in the process?

Phoebe Cochrane: I cannot quite remember what the provisions in the bill say in that regard, but I think that there would be a consultation on the targets. If there was stakeholder engagement and a normal consultation in relation to developing the targets, we would feel that that was adequate.

Monica Lennon: If there are no other views on that point, I will ask one more question.

The bill provides that the Scottish ministers "may" set targets. Are our panel satisfied that that goes far enough? In the context of the climate and nature emergency, what should be the timeframe for setting the targets, and should that also be reflected in the bill? Kim, do you want to go first?

Kim Pratt: We would like to see mandatory targets in the primary framework of the bill, because we know that Scotland's consumption impacts are already extremely serious and extensive. Earlier this year, Friends of the Earth Scotland published a report called "Unearthing injustice: A global approach to transition minerals", which looked at Scotland's supply chains for certain materials and found extensive environmental and social impacts right across those chains.

That does not align with Scotland's goals and aims. For example, our national performance framework goals include the economic outcome that

"our economy is ecologically accountable as well as socially responsible."

At the moment, that is not the case with the way in which we use materials. We need to change the whole system to make that happen.

Moreover, the fact that, at the moment, we do not account for materials in our policy making is a risk to the success of those policies. The energy strategy is a particularly important example of that. When the energy strategy consultation was published earlier this year, there was no plan for how we would obtain the materials needed to transform our energy systems, despite the fact that some of those materials are rare and difficult to obtain. That is a risk to the success of those plans.

Monica Lennon: Does anyone have any further contributions?

James Mackenzie: I think that "must" would make more sense than "may". I agree with Kim Pratt—we are in an urgent situation.

I will quote very briefly from the Zero Waste Scotland paper that I talked about. It refers to the United Nations Environment Programme in pointing out that

"a circular economy allows us to end our war with the planet without giving up the benefits of modern life".

That seems like a good objective, which we should expedite.

Monica Lennon: Should there be mandatory targets?

James Mackenzie: Yes—and the correct targets and action plan.

I will add just one little footnote, which is that the bill is being considered at the same time as a future vision for the circular economy is being developed. Doing both at the same time seems rather peculiar. I can see the point of having the vision first and then creating the primary powers to deliver it, or of having the primary powers and then setting the vision for how to use them, but we are slightly held back by the current process.

Monica Lennon: Thank you.

The Convener: I should point out that the *Official Report* notes only what you have said, not your nods, so I just want to get this right. You all appeared to nod when the point was made that the bill should say "must" rather than "may". Is that right?

Michael Cook: Yes. We want mandatory targets.

Kim Pratt: Yes.

Phoebe Cochrane: Yes.

The Convener: You believe that the word should be "must" rather than "may". That is clearer for the record.

The deputy convener has some questions.

Ben Macpherson: Good morning. We have heard from you about recycling and reuse, but what are your thoughts on the opportunities to redistribute unsold goods rather than dispose of them? What initiatives are there already in Scotland to build on that? Is there anything you would like to cite for our awareness?

Michael Cook: We support—indeed, strongly support; let us go that far—the proposed powers around restrictions on the disposal of unsold consumer goods. There have been stories in the media about examples of perfectly good goods not being used once and going to incineration or recycling.

There are limits to the bill as proposed and areas where we would like it to be improved. We would like an acknowledgement of the waste hierarchy, because reusing a product for its original purpose is better than recycling. There is also an opportunity to maximise the social impact by, for example, donating things to a charity or redistributing them to help the economically disadvantaged. Thirdly, we need to keep it local, instead of exporting. There is a clothing mountain in the Atacama desert that is visible from space, and we do not want to add to it.

We talk about reuse; in many cases, though, products have not been used once, so it is not even reuse—it is just use. The simple truth is that a product that has been created has carbon embodied within it. It took carbon to run the factory where it was made, to extract the materials to put into the product and to bring the product here. Although there would be certain exemptions—on health and safety or medical grounds or with things with a best-before date—we believe that perfectly good products should have a useful life and that that useful life should be maximised. Therefore, it would be worth sending a clear signal to the private sector that we cannot just destroy things because there is a brand to protect or whatever.

I will mention a couple of words from the bill. The first is “consumer”, which suggests the end of the supply chain, but what about further up the supply chain? The bill refers to durable goods or “unsold consumer goods”, but what about food and food waste? One of our members is FareShare, which already does a lot of work on food waste, and a simple statistic from it is that food that is fit for human consumption and which is eaten is 17 times better for the environment than food that goes to animal feed. We should not have both food poverty and food waste. A food waste target would support that approach, but could measures on the destruction of goods include food? Could it include food further up the waste hierarchy?

That sort of thing is being done in Europe. In 2016, France passed a bill specifically on food waste. Spain has passed legislation relating to durable goods being destroyed, and it has seen greater levels of reuse and all the environmental and social benefits that come from that.

Ben Macpherson: That is interesting. Building on that, food providers currently have relationships with FareShare, and big retail companies have relationships with community third sector organisations—indeed, that happens in my constituency. You talked about legislation being key—obviously, we are looking at a bill—but, as part of the practical implementation of the circular economy, should the state be doing more to connect such organisations so that we get that flow-through and ensure the utilisation of products rather than the creation of waste?

Michael Cook: I do not think that policy makers can get into the warehouse. Hopefully, the market would follow the right nudge towards the innovation that needs to follow from a clear statement that the goods cannot be destroyed.

Ben Macpherson: You are saying that, as well as being encouraged and mandated through legislation and otherwise, the private sector needs to step up.

Michael Cook: Absolutely. Companies—internet retailers, for example—are fantastic at logistics; they do those things so well. What this requires is the application of that same skill set to the priority of reducing waste and maximising the social and environmental benefit of those goods. In my view, therefore, the key things that are missing from the bill are statements of the waste hierarchy, the local over the international and social as well as environmental benefit. Those three protections would avoid unintended consequences.

One unintended consequence that we want to avoid is a situation in which a retailer already has a partnership with a local charity and gives goods to it; the requirement to do this sort of thing at a different scale suddenly creates a big private sector industry; and that charitable enterprise and the local benefits of that activity get swept away. One example of that is the extended producer responsibility legislation in France; it used to be done at a small scale but, in the desire to do more for the planet—which is good—the social benefits got lost. We want to avoid that.

Therefore, there are three provisos: the waste hierarchy; the social impact; and the need not to export in order to get around the problem.

Ben Macpherson: It is all about being cognisant of unintended consequences.

Michael Cook: Everything can have unintended consequences in such a complicated economy. When you bring in more circular practices, you have to be clear that a balance is needed.

Ben Macpherson: Thank you. I see that James Mackenzie is looking to come in.

James Mackenzie: I will do so very briefly, deputy convener.

I completely endorse everything that Michael Cook has said. It is quite extraordinary to find a way to make something that is worse than make, use and dispose; what we are talking about is literally just make and dispose. It is an iconic moment of corporate bad behaviour.

However, although I completely support what has been said, the problem is relatively small, albeit totemically awful. The policy memorandum says that, on an estimate based on per capita figures from France, it would involve £22 million-worth of goods. That should not be happening—and I support what is in the bill—but I would just note that that is a little less than one seven-hundredth of 1 per cent of the Scottish economy. It is good that the provision is in the bill, but we should not overstate the difference that it will make.

Ben Macpherson: Do any of the other panellists want to come in?

Phoebe Cochrane: We definitely support this element of the bill. It places a responsibility on producers and retailers and has the potential to change business practice. At its best, it could change the type of goods that producers and retailers produce and manufacture. If they have to deal with returned goods, they will want those goods to have some value, so that could affect their choice of how the goods that they produce and sell are manufactured.

Recently there was an interesting paper that reported on a series of interviews with retailers about that very problem and talked about what they called the “downstream” side—that is, the problem of passing those goods on. It talked not just about third sector organisations such as Michael Cook’s, but about the development of big enterprises whose purpose would be to refurbish and manage those goods. That is an example of what, potentially, is needed, but it would be even better if the organisations and businesses that had produced those goods altered their own supply chains to incorporate those goods back in. That would be the best outcome.

That sort of approach works well when combined with the reporting requirements, because those and other measures in the bill are needed to identify where the surpluses are, to raise awareness of them and as a way of

informing where the restrictions should be applied. I have read that that aspect is not included in the ban in France, which means that it has been less effective.

10:45

Kim Pratt: We also support that element of the bill. I agree with what my colleagues have said already, but I would make one further point: extended producer responsibility could be used to hold businesses more to account in paying for the cost of cleaning up their products. That could be included in the bill as well.

Ben Macpherson: Many international producers operate here in Scotland. What about the challenge of legislating in one place when producers have a wider operation?

Kim Pratt: Under the powers in the Environment Act 2021, Scotland has the power to take such measures. There is a similar issue with other types of progressive environmental policies, which can have wider impacts, too.

We want to bring in larger corporations that act outside of Scotland. At the moment, the profits being made by large corporations do not stay in Scotland, and that money could be used to fund a circular economy. That is why extended producer responsibility is so important; it is how we will fund a circular economy in Scotland, so it is disappointing not to see more such opportunities being taken in the bill.

Ben Macpherson: We could talk about that particular point a lot more, but I think we should move on, convener.

The Convener: Just before we do so, I think that we might have a chance to develop the point. I understand that there is already something of an opportunity to redistribute unsold goods, but if goods that belong to a company operating across the United Kingdom are unsold in Scotland, surely the answer is just to pop them on a lorry and send them south of the border to be used down there, where the legislation does not apply. Do you think that we need to work in lockstep across the United Kingdom to ensure that these measures work properly? Can Scotland go it alone on this policy, or does the United Kingdom have to work together on it? I can see such scenarios happening—perhaps I am seeing bears behind trees, though.

Does anyone else want to comment on that? James, do you want to say anything?

James Mackenzie: In general terms, if a progressive and sensible environmental policy that is being developed in Scotland is in line with what is being developed in the rest of the UK, that will be beneficial. With the deposit return system, for example, it is perfectly possible for Scotland to go

off by itself, but systems that are compatible—even if they are not so in every detail—are beneficial. As for the relevance to unsold goods, I suspect that, given the scale of the problem, it is not going to be worth it to large distributors to change their distribution habits to stock from Newcastle or Carlisle rather than the central belt.

The Convener: I was not suggesting that. I was suggesting that, if goods are unsold in Scotland, it would be very easy to put them on a lorry and into a warehouse in England, rather than change the stocking system.

James Mackenzie: Yes—and, as Michael Cook said, the closer the better. The next closest place from distribution or being given away in Scotland is obviously over the border in England.

As for the deputy convener's question about producers elsewhere, the normal proxy is to use importers where it is not possible to regulate the producers directly when stuff is coming into the country.

The Convener: I am sorry—I missed that. Could you say that again?

James Mackenzie: If you are trying to bring in producer responsibility to deal with large international supply chains, the importer is effectively treated as a producer, as in the deposit system.

The Convener: So, if there is different UK legislation, it puts a border on to Scotland.

James Mackenzie: That would be a strong way of putting it. It would be a matter of our regulating for Scotland—or your regulating for Scotland, I should say—and that would be the way to do that.

Michael Cook: The potential unintended consequences that you mentioned are real, but there are some things that would mitigate them. One is the requirement for waste reporting, to allow scrutiny of what people are doing with their waste. At the end of the day, for a retailer or wholesaler, redistributing goods to hard-up households in Scotland makes a better story than trying to get around environmental legislation.

Another way of mitigating this is the idea that what this is trying to achieve for people and planet is a good thing. After all, waste is not a good thing. One response might be to manage our supply chains better so that we do not create surplus stock, which would be an alignment between what the environment would ask for and the producer's profit motive. That might create a more efficient industry.

The Convener: With the greatest respect, Michael, if you were able to make stock match demand perfectly, you would be in huge demand

from some of the big multinational companies. However, that sort of thing is not always possible.

Michael Cook: I am not saying that it should totally match demand, but it should do it more.

The Convener: I take the point. Bob, you have some questions.

Bob Doris: The deputy convener has worked through most of the questions that I was going to ask; however, I will take the opportunity to put something additional on the record. We have talked about needing different business models, particularly from large manufacturers and retailers, and not only in Scotland but internationally, rather than having a “take, make and dispose” economy. I am conscious that the word “use” is not always part of that, given what we have been talking about.

Do you want to say any more about the business models that are really damaging our environment and the circular economy? It would perhaps be more constructive to talk about business models that are being developed that the bill could incentivise or drive, if we could make it stronger. I put that on the record; the deputy convener has covered most of what I wanted to ask.

The Convener: If the witnesses all look away, that means that I have to nominate somebody. That is always a dangerous thing. James Mackenzie—thank you for putting your hand up.

James Mackenzie: I was inviting you to nominate, but I am happy to speak.

The Convener: No—I am nominating you.

James Mackenzie: That is fine. That is the core question on what the bill should be about, so I thank you for asking it. From our perspective, as I said earlier, and as others have mentioned, the way to change is for products to remain the responsibility of producers, even when they pass through your hands. That is how to close the loop.

At the moment, we have an economic system in which, when two companies are competing with each other, if one of them brings its used products back in, refurbishes them and puts them back on the market, that is a costly process. The other company externalises its costs on the environment, local taxpayers and society, and maybe blames the public for littering. As soon as you require companies to close that loop—as soon as they cannot externalise their costs on to us in terms of climate, waste, biodiversity loss and costs to local authorities—you start to build a circular economy.

The Scottish Government talked about that in 2016 in “Making Things Last”, which others have talked about. It is a good document. It says:

“We intend to explore the concept of a single framework for producer responsibility, bringing together common elements into one flexible and transparent system, making it simpler for businesses who are involved in more than one product type and making it easier to add new products and materials to the producer responsibility regime”.

That is what I would like the bill to do—that is how to close the loop. That is how to give an economic advantage to companies that handle and design their products better—that capture their products more efficiently, that lightweight them, that make them easier to reuse, or that reduce demand for them in the first place.

For me, the absolute core of environmental economics and the circular economy is that all producers should be responsible for their products at end of life, and all fillers should be responsible for their packaging, unless they have a really good case for why that does not work. That will take time in some sectors. The matter needs to be considered with delicacy, and you need to talk to industry to work out what can be done when. Without that principle, we will stick with a 1.3 per cent circular economy.

Kim Pratt: I would like to mention one element that businesses will need to incorporate as we transition towards a circular economy: we must make sure that we do that in a just way. There is no mention of a just transition in the Circular Economy (Scotland) Bill, despite the fact that we in Scotland acknowledge that we will have to create the future that we want in a way that incorporates people.

In order to do that, the bill must include three elements of a just transition. First, we have to think about how we support people to transition into more circular jobs. We could be using the just transition principles in the Climate Change (Scotland) Act 2009 as a starting point. We also have to think about how communities have to change their materials and make sure that they are involved and supported through that change. I am thinking particularly of people with disabilities and ethnic minority groups who might have language barriers, for example. We also need to think about our supply chains, which are extremely unjust at the moment.

We also need to think about how we can support a global just transition by embedding just transition principles in the Circular Economy (Scotland) Bill.

Michael Cook: If you do not mind, I will widen the question from the business model to the system, as my co-witnesses have done.

I fear that the bill will do a lot in favour of recycling but no more than that, and I have said that previously. I will give some tangible examples. The Scottish Environment Protection Agency lists

177 local waste and recycling centres. Note the language that we use there: they are waste and recycling centres, not resource and reuse. I will move beyond that quickly.

We know that four out of the 177 centres have a co-located reuse facility. Why do they not all have one? Greece has passed legislation that says that any town of more than 50,000 people should have a local authority reuse facility. It can be in partnership with a charity—the local authority does not have to run it—but there must be one in a town of that size.

The benefits of that include job creation. I am a member of Rreuse, the European body for reuse. Every 10,000 tonnes of waste that goes to landfill creates six jobs, if it goes to incineration it creates one job, and if it goes to recycling, it creates 36 jobs. Great. Let's recycle.

But hang on—reuse of 10,000 tonnes of waste creates up to 296 jobs depending on the material stream. The number for information technology material is higher than that for textiles, for example. Reuse is therefore an opportunity to create jobs, and the jobs are more skilled. It takes more skill to repair a broken laptop than it does to strip it down. We can see that ourselves, when we think it through. I would not be able to repair a laptop, but I could break it up.

Reuse also has social impact. A couple of weeks ago, the Charity Retail Association for the UK published a report saying that, for every pound that is invested in charity reuse, charity retail and your local charity shop, we get £7.35 return in social impact in the area.

That is all on the social side. Reuse is good for people and it is obviously good for the planet. It is terrible for the environment to build a product, to use it only once and then, because something in it is broken, not to repair and keep using it.

Our whole system is geared towards recycling. We are not getting spectacular levels of recycling; 43 per cent does not compare well with what Wales is getting, for example. The best way to turbocharge that change is to take a top-down approach.

I know that some members are concerned about fly-tipping—Mr Fraser is here for that reason. One of the reasons why we have fly-tipping is the actions at the bottom of the waste hierarchy, where we use sticks more than we use carrots—the landfill tax, for example. People find a way round that by not doing the right thing with that resource and taking it to the local authority site, and instead throwing it out at a beauty spot. A top-down approach to the waste hierarchy will help with litter and fly-tipping. If we change our relationship with stuff and see items as reusable or refillable, they will have more value.

Bob Doris: Thank you.

The Convener: Have you finished, Mr Doris?

Bob Doris: Yes; that is fine.

Ben Macpherson: I have a small question. You have made some impactful points, Mr Cook, but is accessibility of facilities not also important? A council recycling site can sometimes be reached only in a motor vehicle. As we consider the process, do we need to think harder and more imaginatively about having reuse facilities in the high streets of towns and cities in Scotland?

For example, the Edinburgh Remakery, in my Edinburgh Northern and Leith constituency, is doing remarkable work with laptops. However, if an iron, for example, broke, I would not—nor, I think, would my constituents—have any idea where to take it to get it repaired, rather than buy a new one. That is just one of many possible examples. Could the charity shop network provide innovative possibilities, given that it has retail units that are already in prominent locations?

11:00

Michael Cook: I totally agree with the premise of the question. My reason for wanting reuse facilities at HWRCs is that—

Ben Macpherson: I should clarify that I was not arguing against that.

Michael Cook: No. I visit those sites and I see perfectly good things that should not be thrown away being thrown away. That does not mean, from a consumer point of view, that we do not want to make the process more convenient. That could involve using local shops or collection services. Kerbside collections work for some goods.

In my opinion, we need to change how we think about waste so that we think about it as a resource. We go to fines and bans quite quickly, but what will change behaviours is our making the process easier, more convenient and more attractive for the 80 per cent of people in the mainstream middle, and giving them the hours of opening that they need. That is what they would respond to, but that all requires investment; charity shops cannot do that on their own.

James Mackenzie made the very valid point that, at the moment, the reuse operation is competing with internet retailers that are able to get people a new item tomorrow at a very cheap cost. Sometimes that is because the costs have been externalised by being put on people in the supply chain or on the environment, either in manufacture of the goods or in the end-of-life treatment of those goods. We all pay the cost of treating waste, through our council tax.

We need to level the playing field by saying that the cost of a product on the environment and on people should be part of the price of the product that is paid at the counter. That means having producer responsibility and a charge for the waste. We would love that money to be used, not to implement a system of subsidising recycling, but to facilitate reuse and repair.

In Austria, a scheme for repair vouchers has recently been created, whereby any member of the public can go to a local shop and say, “I want to get this fixed.” As the consumer, they do not have to fill in a form. The form is filled in by the shop, which then fixes the item. A budget has been set for 400,000 items to be repaired by 2026. The fact that 560,000 items have already been repaired shows that demand has been high.

One might say that the cost of that is high, but the advantage of the scheme is that people pay only when it is used. They do not just pay anyway; they pay when the scheme is used. If such a scheme was paid for out of extended producer responsibility fees for the people who provide the products that get broken and need repairing, it could fund itself.

Ben Macpherson: Thank you.

The Convener: Douglas Lumsden is next.

Douglas Lumsden: I will move on to charges for single-use items. What are the key environmental opportunities of the proposed powers for charges on single-use items? How should charges be incorporated strategically in Scotland? Who would like to respond?

Phoebe Cochrane: I am sorry—could you repeat your first question?

Douglas Lumsden: What are the key environmental opportunities of the proposed powers for charges on single-use items?

Phoebe Cochrane: It has been shown that charges for single-use items can be effective in influencing consumer behaviour. The aim should be to reduce the consumption of those single-use items, and where there is a clear alternative option for consumers, a charge can be useful in doing that. The idea has been thought about mainly in connection with single-use beverage cups. Quite a lot of work has been done on that, and trials have shown that a charge alone could reduce consumption by about 20 per cent. In order for charging to be very effective, we also need parallel mechanisms to encourage consumers to use alternative cups.

There is definitely absolutely no place for single-use items in closed-loop settings such as restaurants, sit-in cafes, hotels, or even at airports, festivals and canteens. You do not need single-use items in any setting where people do not

move far from the place to consume their hot drink or eat whatever they are eating.

We think that there should be a deposit system for reusable cups—the bigger the scale the better, because people could then drop off the cup anywhere. Ideally, such a scheme would be Scotland-wide but—being less idealistic—there could be city-wide schemes. There is quite a lot of experience of those in Germany. Such schemes get around the problem of people not carrying around reusable cups by their being able to access a reusable cup for a small deposit then return it at numerous locations.

Douglas Lumsden: I was going to ask about that, Phoebe, because your submission mentions a national reusables scheme such as has been used in other areas. Would such a scheme mean that a plastic cup from, say, Starbucks, could be returned to Costa when you get your next cup?

Phoebe Cochrane: Yes. Ideally, cups would be unbranded so that people could return a cup from one city in another city—for example, if they hop on the train. You do not want lots of competing reusable cup schemes, because you do not want people ending up with lots of reusable cups. You want people to have one at home and to have access to others when they are out and about, if they have forgotten theirs. The interoperability of such a scheme is really important to make it effective. If the overall aim is to reduce material consumption, the last thing that we want is people having lots of reusable cups. There is obviously considerably more material in those cups than there is in a single-use cup.

Douglas Lumsden: I come to Michael Cook on the same topic. In your submission, rather than talking about reusable cups, you talk about trying to ban all single-use items where available alternatives exist.

Michael Cook: A range of policy interventions—from a ban, to a charge, to a voluntary industry-led scheme—have a higher intervention threshold. Phoebe Cochrane talked about single-use cutlery and plates in canteens. We should just ban such use, not charge for it, because a charge might end up having the same effect as a ban but be harder to implement. In that environment, there is really no need for the convenience and no justification for having single-use items.

In some cases there could be a justification. Under the charge option, it needs to be clear that there is a readily available alternative to the single-use option. The purpose of the charge is to make what is, in effect, an unconscious habit on the part of the consumer—I buy a cup of coffee and it happens to come in a cardboard cup—a conscious choice, because there is, say, a 20p charge for the cup and I would think, “Do I want to

pay that, or do I want to pay for the reusable option?”

However, that only works when there is an option. If there is no viable option, or the option is inconvenient or unattractive, it is just a tax—it is just a way of generating revenue. Where there is an alternative, the hope of the policy maker is that they will create a charge that will bring in money that will deliver systems and behaviour change, and the charge will disappear over time because no one will use the product any more. There will not be a market for it.

One approach is a nudge to change consumer behaviour; the other is a tax to generate revenue. Where the consumer and the voter will be least enamoured by a charge is where it is claimed that it is taking one approach, but it is clearly the other: we would be doing it for environmental reasons, but it would seem just to be creating revenue. Does that make sense? You need to understand clearly what alternative behaviour you want, what target you will set for it and whether the alternative is attractive enough to deliver that change. If it is not, you have to invest in the alternative.

Douglas Lumsden: You mentioned revenue. Where would you like the proceeds from charges to go? Would you like the money to be ring fenced and used for specific things?

Michael Cook: The approach that was taken with the carrier bag charge, which is not a tax, whereby retailers were able to set out a worthy recipient of the money, helped to achieve greater buy-in and less resistance to the idea.

Another point to make is that it feels as though the responsibility is always being put on the end user—the consumer. I echo the point that James Mackenzie made earlier in a different context, about the system giving me two bad choices, so I feel bad if I do not make the better choice from the two bad ones. As we said in our submission, we do not have time to look at one product at a time. If it were up to us, we would say that unless there is a real need for single-use products—there might be a clear medical or health need for them—their use must stop by a certain time and we must find an alternative. That would set a clear direction of travel.

We should be clear that a positive alternative must be provided. It should not just be about taxing the consumer. If money comes in, it should be used to mitigate the adverse impact on the planet of bad behaviour.

Kim Pratt: I support what my colleagues have said. In relation to cups, we recognise that a lot of work has gone into the process so far, and we do not want that work to be wasted. However, in general, we do not have time to change our economy one product at a time. There is an urgent

need to address the climate crisis, and charges are sometimes not a strong enough measure.

Cups are quite a harmful product. They are not recyclable—they contain plastic, so they should not be incinerated because that releases fossil fuel pollution into the atmosphere, and they usually contain cardboard, so they should not go to landfill because methane is released. We should be thinking about banning harmful products.

In the long term, the biggest environmental opportunity will come from having a system in which, when producers design products, they think carefully about whether it is worth bringing on to the market an environmentally harmful product.

Douglas Lumsden: To provide a bit of balance, I note that, in its submission, the Scottish Environment Services Association says that, although single-use disposable cups are

“visible”,

they amount to only

“0.036% of Scotland’s total waste. We would therefore suggest that there are other, more pressing parts of the waste management system in greater need of the Scottish Government’s resources ... with greater potential for carbon impact savings.”

James Mackenzie: Kim Pratt said that we should not focus on one product at a time, and this is an example of that. Members will remember the interest in straws. Your colleague Mr Golden once explained to me that, if we melted down every straw that was given away or sold in Scotland in the year before the ban, that would fill only one of the largest builder sacks. That is not nothing, but we are talking about national usage. In relation to prioritisation, I think that this is an easy win, because it can readily be done.

In response to the Scottish Government’s consultation, even the packaging and retail sector said that it did not think that a charge was the right course of action; it would prefer the introduction of a mandatory take-back obligation. There is no reason not to do it, but we need to prioritise addressing the things that cause the gravest and most substantial environmental harms.

The Convener: I want to clarify something. Is it being suggested that single-use items should be banned as a group because we do not have time to look at each and every one of those items?

James Mackenzie: Where there is a practical alternative—

The Convener: Sorry, I am just trying to follow this through so that I understand what is being suggested. The viable alternative to single-use nappies would be cloth nappies, with people washing them. Would you like single-use nappies to be banned?

James Mackenzie: They are not on my list.

The Convener: They are on Kim Pratt’s list, though. She said that the most dangerous products should be banned, because they contain plastics, including microplastics.

Kim Pratt: Single-use nappies are an example of a product for which there are viable alternatives, and we should be looking at making those the main options. Yes, I think that we need to—

The Convener: It is quite bold to make the comment that you have just made. From a legislative point of view, there could be some disagreement.

11:15

Kim Pratt: We would need to make sure that people were supported in the process of moving over to those systems. We know that many reusable options are cheaper for consumers in the long term, and nappies are one example of that.

We need to appreciate that some of those changes have unintended consequences for businesses. However, up against that is the climate crisis and the emergency that we are facing right now. We have to balance those two things because, at the moment, our climate is at breaking point and we need to do something.

The Convener: I understand that. I was trying to give a specific example of something that may cause a problem if all single use items were banned. I regret doing that, because I have opened Pandora’s box. Monica Lennon and Bob Doris want to come in.

Monica Lennon: I waved my hand because I want to talk about nappies, which is one of my favourite subjects. Thank you for raising it, convener. I have had a discussion with the Government about the opportunity to amend the bill to make it easier for people to transition from single use nappies to cloth nappies—those that can be washed—as well as other similar products, such as period products. The good news is that there is consumer demand for them. I believe that some local authorities that have schemes to help people to access those products have waiting lists.

More seriously, we have had bad news this week. The trailblazing Tots Bots company, which is based in Glasgow, has gone into liquidation and 47 people will be made redundant. The company has been innovative with reusable nappies and other products and it has supplied nappies to the baby box in Scotland.

Trading conditions are difficult. We need to consider whether there are opportunities to work with businesses, nappy libraries and the third sector to give people an awareness of those

products so that they can access them in a way that is affordable or where they can be provided for free. For example, North Ayrshire has a cost neutral scheme, because the council saves money on landfill and people in the area receive reusable nappies for free for as long as they need them. We need to join up those activities and conversations, because the last thing that we want is for responsible and innovative businesses to go bust when we should be doing more on existing supply chains and procurement. I will put that out for discussion.

The Convener: I am conscious of time. I will let a couple of people come in and then I need to go to Bob Doris and Jackie Dunbar.

Monica Lennon: My point was about amending the bill. Do we have an opportunity to be more proactive and put a duty on local authorities?

Michael Cook: I totally get your concerns about an outright ban on all single-use items, convener. It is our job as environmental bodies to ask for that and it is your job to question it, which I understand. I will use some language that I think will resonate. We need a pathway to a future where we do not have single-use items when there is no good reason to have them. At the moment, convenience is trumping the cost on the environment, again and again. There are different tools in the toolbox that policymakers can use: a ban, a charge, or an investment in alternatives so that they become more attractive, such as what Monica Lennon described with nappies.

However, I think that we need to send a message that we are here but we need to be over there. There is no future for the planet in single use; our resources are too valuable for that. A single-use product is the opposite of a circular economy, which is about using resources over and over again. When those products contain damaging materials, create pollution issues and have problems with plastics and microplastics, it compounds the problem. I am not an idealist; I will not say, "Ban them tomorrow." However, I think that we need a pathway from where we are now to where we need to get to. At the moment, nappies are a great example of where we are just externalising the cost. The environmentally responsible thing to do is less attractive and less convenient. We need policies that change that.

The Convener: I will bring in Bob Doris so that he can ask someone else a question. They can answer Monica Lennon's question at the same time.

Bob Doris: My question was not inspired by nappies, although I should declare an interest as I have a two-year-old and it would be a significant burden on me to move to non-disposable nappies. However, I am willing to be convinced for the sake

of environment. It is more about the point that Kim Pratt made that we identify straws, bags or cups case by case, and move at a relatively slow pace, knocking off one at a time.

Is there a need for the bill to cover, or for Government more generally to legislate on, a cluster of items for which we can all agree that single use should not exist, rather than simply asserting that all single-use items should be banned as a matter of course? Is there a better way of doing it than moving forward one campaign at a time? We could bring a cluster of items together and try to legislate on that.

The Convener: James Mackenzie looks keen to come in, so I will bring him in, and then go to Jackie Dunbar.

James Mackenzie: I suppose this is a case of "I would say this, wouldn't I?", but the argument with regard to most products, which allows us to generalise in the way that the 2016 Scottish Government strategy talks about, is that we make the producers responsible. In some ways, that can negate the need for a ban or for something complicated in regulation. If producers are responsible for that aspect, and they have a target for how much they have to get back and they have to use that responsibly, single use suddenly becomes uneconomic, because the cost that they put on to us, they are putting on to themselves.

There is a socialist argument that the current system externalises and socialises the costs and privatises the profits, but there is also an Adam Smith argument, which is that the system gives an economic benefit to those companies that are prepared to innovate and invest, and reduce their carbon footprint and material usage.

There are complexities—for example, we are not going to get to take-back requirements on period products. There are things which are not in that category, so the current approach does not get us out of all the complexities. Nonetheless, across a wide range of products and packaging, that simple framework builds the system that delivers the outcome that we need.

The Convener: I go to Jackie Dunbar—I will give Phoebe Cochrane and Kim Pratt a chance to answer that question at the same time as other questions.

Jackie Dunbar: I go back to what Michael Cook and Phoebe Cochrane said about charges of 20p or 25p for single-use cups, and the idea of folk hiring reusable cups instead because they are more environmentally friendly. For me, hiring a cup would prove to be the more expensive option. Do you think that folk should be charged the same price for single-use cups and for hiring reusable cups, so that they are not being financially penalised for trying to do the right thing, or should

single-use cups be even more expensive than reusable cups?

Phoebe Cochrane: I can jump in—I am sorry if I did not explain that clearly. For the reusable cup, it would be a deposit, so there would be no outlay. You would just put down a deposit for it, which you would then get back when you returned it.

Jackie Dunbar: So there would be no cost.

Phoebe Cochrane: There would be no net cost. For the period that you were using the cup, you would pay a deposit.

Jackie Dunbar: You are speaking to someone who has about 10 reusable cups.

The Convener: The evidence from the SRU on what it is doing with cups at Murrayfield was useful.

I go back to Douglas Lumsden, for his next question.

Douglas Lumsden: My next question is on the UK Internal Market Act 2020, which was mentioned earlier. I do not see that single-use coffee cups would be an issue under the 2020 act, but when we start talking about things like nappies, that could potentially—I think—be an issue.

Let us say that we banned some single-use products such as nappies or disposable barbecues in Scotland. I guess people could still order online, and that could be a potential issue. Would you agree, or do you think that that is something that we could overcome if we had to? I know that James Mackenzie mentioned the 2020 act earlier.

James Mackenzie: Yes—I spent 10 years working on deposit return, so I became unduly familiar with the operation of that legislation. It is clearly a relevant factor. If we talk about charges on single use, that is a condition at the point of sale, which is one half of the matters that are covered by the 2020 act and would require an exemption.

Our view is that the Scottish Parliament and the Scottish Government should deal with the 2020 act by legislating to make good policy. If that legislation requires an IMA exemption, they should seek one and should ideally be provided with one. If there were two equally good ways of getting to the same objective and one of them required an IMA exemption, I would recommend the one that does not require the exemption, in order to expedite the process.

Bans and charges are explicitly covered by that. You hear stuff about glue traps being banned in one part of the UK and not in others. You can end up banning the use of something but not the sale of it. Action to Protect Rural Scotland wrote to the

Prime Minister and other party leaders from across Great Britain arguing that there should be a qualified automatic exemption from the 2020 act for public health and environmental measures.

Part of the premise of devolution was that we would get to try and do things differently, and sometimes things would work and sometimes they would not. The carrier bag charge is an example of that. One of the merits of a take-back requirement is that it is not about the point of sale, so it does not require an IMA exemption. Most of the producer responsibility stuff that I have argued for today is untouched by the IMA, which makes it easier to act in that way.

Kim Pratt: I will add to what James Mackenzie said. Friends of the Earth Scotland believes that the 2020 act must be considered when we implement any environmental progressive policies in Scotland in the future, but it should not stop us making the legislation that we know is needed in the first place.

A lot of good progress has been made in the past when one nation in the UK has taken forward an environmental policy that has proved to be successful and has then been adopted throughout the rest of the UK. We would not want to stop that mechanism from being able to be used. We would like legislation to be made regardless of whether an IMA exemption is needed. If we need the policy, we should legislate for it.

Douglas Lumsden: Making legislation that would not be allowed to go through would be quite wasteful, would it not?

Kim Pratt: We have to assume that it would go through with an IMA exemption. If we decide that we need something such as a circular economy bill, we should make that legislation in the first place regardless of whether there is a potential barrier down the road.

James Mackenzie: I offer a little quote in support of that. The IMA was amended to include the common frameworks that the committee will be familiar with. The resources and waste common framework said that

“Where EU Directives set minimum standards/targets etc., different parts of the UK have been able to set higher standards or targets where they wanted to, and often have done so for waste issues.”

The fact that it might require an IMA exemption does not mean that it will not go through. You cannot assume whether it will get one or not. It requires all four Governments to take part in that framework process in good faith and look at the evidence, and then ultimately persuade UK secretaries of state whether to bring in an exemption to the schedule of the internal market act.

Douglas Lumsden: It seems that we are almost in a situation where we can ban the use of something but perhaps not ban the sale of something, which would, for nappies, be a crazy situation to be in.

Have we run out of time, convener? I am happy to leave it there.

The Convener: We have a lot of questions to go, so I will move on to the next theme.

The committee visited the Binn Group last week, and it was interesting to see what it is doing with recycling and moving away from landfill. I will ask a simple question, which you can all just say yes to if you like—I invite you to do so. We heard that the 32 councils across Scotland have 32 different recycling schemes. Some of them are the same but some of them are different and you could have five bins in one council area and two bins in another. On that visit, we heard that we should have a standard system across all councils in Scotland. I am looking for a yes or no answer—do you agree?

James Mackenzie: Yes, but with caveats.

The Convener: Okay. I will take that. What about you, Michael?

Michael Cook: Yes, absolutely.

The Convener: Phoebe?

11:30

Phoebe Cochrane: Yes, but probably with a few caveats, in that a densely urban situation would require slight differences from a sparsely populated rural area.

The Convener: Kim?

Kim Pratt: Yes.

The Convener: Thank you. I will move straight on to the deputy convener, after which I will bring in Murdo Fraser.

Ben Macpherson: A number of you have mentioned considerations around waste crime. That is a consideration in the bill and it is a challenge more widely for all of us. Further to what you have said already, do you have any thoughts as to what additional measures the bill could take to tackle waste crime? That includes fly-tipping, but feel free to broaden it out to any points beyond that. I know that Mr Fraser will ask about fly-tipping more specifically.

I should just state that, in different ways, fly-tipping is as much of a concern in urban Scotland as it is in rural Scotland, although I appreciate the significant challenges in rural Scotland.

Does anyone want to make a point?

James Mackenzie: If nobody else fancies it, I will have another go.

Ending fly-tipping would move us from the absolute lowest point. Fly-tipping is not even in the waste hierarchy, because it does not deal with things at all—it just involves putting them in the sea, at beauty spots or round the back of Leith Walk. Therefore, it is important to end that, and it is definitely a worthwhile objective. However, the further down the chain you start, the harder it is to make change. If you just try to police the public's activity, you have already lost the battle.

There might be measures that will have some effect, but we are in a system where it is cost effective for somebody to just chuck their mattress in a Perthshire glen, for example, rather than have it reprocessed. I know that this is stuck-record stuff—recycled records—but the situation would be different if there was an incentive to get that mattress back to the manufacturer to get it reprocessed. The British industry wants that, because it is being undercut by imports that do not do that. That is just one example of fly-tipping, although it is quite commonplace. If we had that incentive, we would suddenly start to engage the higher levels of Michael Cook's ladder of the hierarchy.

If you want to enforce fly-tipping measures right at the bottom, you need to start above that—above the local authority level. Local authorities are just picking up the detritus of a linear economy at the best of times, anyway. As soon as there are incentives to take stuff back, why would people fly-tip? Why would people fly-tip something if they could get value out of it and it was part of a circular chain? I am not saying that we should not address the issue at the bottom level, because it is a matter of serious concern to APRS, but the more effective measures will always be those that start further up the chain.

I will give one example of what enforcement looks like. We recently looked at Highland Council data and found that, over the past five years, the council issued just 31 fines for fly-tipping. Of those, 19 were not paid, and no further action was taken. On the council's enforcement across environmental fines—not just fly-tipping, but every single environmental measure that might involve a fine across the Highland Council area—five years ago, 1.7 full-time equivalent people worked on that but, this year, it is 0.15 FTE. That is about five hours a week to deal with all those issues across a third of Scotland. Having more powers in this area is one thing, but that is the reality.

Ben Macpherson: That is interesting. Enforcement is a consideration but, in your view, being more punitive is potentially a less practical solution, and creating more opportunities for

recycling, reuse and upcycling would have greater potential to effect change.

James Mackenzie: If people got paid £5 or £10 to hand a mattress back, rather than having to pay to get it taken away, they would probably not go to the trouble of taking it in a van in the middle of the night.

In addition, fly-tipping is an extremely difficult crime to enforce against. The average bit of Borders countryside does not have closed-circuit television by the burn. Stopping fly-tipping further up the chain is the priority.

Michael Cook: I agree with James. I will put a slightly different lens on this—it is not the whole picture, but it contains some valuable insight. Fly-tipping is exacerbated, or happens more, when the policies at the bottom of the waste hierarchy have not been totally thought through, as I referred to earlier. I will give the example of a landfill ban. When every tonne of waste involves the payment of a certain charge, that creates the potential for a grey economy that will not charge that amount and will instead throw away waste in the nearest beauty spot. The problem is too much stick and not enough carrot, if you know what I mean by that.

Where is the £10 deposit on a mattress, if I do the right thing? Why not even make it £10 and you will collect it from my house? We should make it really easy. When do I need to get rid of a mattress? Often, it is when I buy a new one, so I should be able to hand the old one back in a take-back scheme in which the same delivery driver can pick one up and drop one off and I can get £10 off. That is a carrot at the top of the waste hierarchy, instead of a stick at the bottom.

When it comes to waste crime, if you lined up the whole population in quartiles according to how environmentally conscious they are, at one end of the spectrum are people who will go out of their way to recycle something—they will take it to the local charity shop to donate it—and they are already using reusable cups, for example. Sadly, at the other end of the spectrum, people will break the law—either for themselves, in throwing their own things away out of the car window, or for other people, in collecting goods and fly-tipping them. Although we need to deal with that, please do not forget the mainstream middle. The 80 per cent of people in the middle want to do the right thing if it is convenient, easy, attractive and cost effective. Please focus on creating policy for them that makes it far easier to get their mattresses recycled. Give me confidence in the system such that, if I send goods to the local authority site, they will be reused or recycled, and pick-up does not require me to put something out on the street the night before, when it will rain, meaning that the item cannot be reused. I am talking about the sorts

of policies that make it easier and more convenient for the mainstream middle.

To represent a key member interest of ours, fly-tipping happens in different ways. We think about it happening at beauty spots. However, it can happen that well-intentioned members of the public want to donate to a charity shop. They turn up there. Maybe the volunteer did not come in that day, and the shop is not open, so they leave the donation outside the shop, thinking that it will be used. It rains—weather happens—and, the next day, when the shop is open, the volunteers have waste to deal with, for which, by the way, they potentially have to pay when it gets sent away as waste, because it cannot be used any more, because it has been ruined. Given that fly-tipping happens in different ways, it is necessary to have incentives, not just penalties.

Ben Macpherson: That is an important point. In urban Scotland in particular, a lot of people fly-tip unwittingly. This might be a good juncture to allow others to come in.

The Convener: I will bring in Murdo Fraser. Interestingly, on our trip last week, we heard that it was very easy to print off a waste disposal certificate to allow for the disposal of waste, and that no checks were done online. I declare my interest as somebody who owns land: it is not the council who pays for it but the person whose land it is dumped on. That can be prohibitively expensive if, for example, 50 tyres are thrown out on to a field.

Murdo Fraser, I am sure that you are going to talk about that, so over to you.

Murdo Fraser (Mid Scotland and Fife) (Con): Thank you, convener. Good morning—it is still morning—to the panel. As you probably know, I ran a consultation on a member's bill on fly-tipping, in which I looked at a number of specific measures. I attracted broad support for taking that bill forward, and it is currently going through the drafting process. However, there are opportunities to use the Circular Economy (Scotland) Bill as a vehicle to introduce some of the changes that I proposed, which is welcome.

The Scottish Government produced a national litter and fly-tipping strategy that was published in June, which is helpful. Before I talk about some of the detail of that, I will pick up the point that Michael Cook and James Mackenzie made about barriers. One thing that came out strongly from the consultation that I ran is that, when we asked people about barriers, they said that if legal routes to recycling were more easily available, that would help to tackle the problem. Recently, local councils have reduced access to recycling centres. For example, a number of recycling centres in the area that I represent have reduced their opening hours

due to budgetary issues. Some have introduced a booking system—people cannot just turn up but have to book—or queueing system. Some are closed at weekends. To what extent does that contribute to the problem? How can we tackle that?

James Mackenzie: Of course, if recycling is made harder to do, is more expensive, is more awkward or can be done only while people are at work, those factors will compound the issue.

I sympathise with local authorities. They have tight budgets and, even when stuff comes to them, they have no input into what it is or how it is made. They have no product design role. They are just left to deal with whatever has been bought, sold and—ideally—used. That is a tough job by the time we get to the waste facilities that should be reuse and recycling facilities. It becomes labour intensive and difficult to manage. It is understandable that recycling centres end up reducing their hours, but your argument is correct.

I am sorry to say it, but if there is a responsibility on the producers who made the products, that will take the burden off the public and the local authorities. There are arguments about whether the costs will get passed on. We pay the costs anyway, whether those costs are for an amenity, resource use or local authority staff time or cleansing time. We need to ensure that there is an incentive right from the start to get everything back in. If it is not the individual's responsibility—if you are not left with an unmanageable item that needs to be dealt with by a large uplift—but the one who made the money out of selling it has the duty to pick it up, that stimulates economic activity and reduces pressure at the bottom end of the hierarchy. Fly-tipping is the absolute bottom.

Michael Cook: It is below the bottom.

James Mackenzie: It is.

Michael Cook: I encourage the committee to invite an organisation such as Keep Scotland Beautiful, which is more expert in litter and waste crime than we are, to give evidence. We just see it incrementally.

For example, I do not know whether the committee is aware of this, but there are concerns about persistent organic pollutants—POPs—which are also known as forever chemicals. Understandably, for the environment, more controls are being introduced for the destruction of those. One fear that we have about that is the knock-on impact that it will have for fly-tipping. If it is more expensive for me to dispose of my sofa or my fridge because there is more charging, it becomes more expensive to do the right thing—to dispose of it responsibly—than to do the wrong thing. There is no booking system at the local beauty spot. People can just go out at night time.

Often, the consumer does not fly-tip directly. It can happen as a result of an intermediary saying, “I’ll pick that up,” or “I’ll clear the house.” It is really almost a small business. Fly-tipping is a problem, but I encourage you to lift your eyes off the bottom of the waste hierarchy. Taking the right action upstream would help to mitigate the problem. James Mackenzie’s mattress example strongly supports that. We should make the process convenient so that people can have items picked up and recycled.

Kim Pratt: The independent review on incineration that was conducted for the Government last year made some relevant points. In particular, it said that there was not enough national co-ordination of recycling services, which is leading to an imbalance in the system. The overcapacity for incineration is pushing us towards that, rather than more circular measures. National oversight is important as well.

11:45

Murdo Fraser: I will ask about more specific items. In my consultation, I proposed four changes, one of which was an enhanced duty of care with regard to waste generators. I am pleased to see that that is now covered by section 10 of the bill.

However, there were other measures that I consulted on, which are mentioned in the national litter and fly-tipping strategy but do not appear in the bill. There are three measures. The first is improved data collection. Although it is mentioned in the strategy, there is nothing in the bill about that. The second is the point that the convener referred to, which is the question of liability on the part of the innocent landowner, which seems to be an inherent unfairness.

The third is the question of penalties. At present, the maximum fixed penalty is £200. All the evidence is that that is nowhere near the level that it needs to be in order to be a deterrent. In fact, we heard evidence from council environmental health staff that they catch people in the act of fly-tipping, who say, “Just give us the £200 fine, because it’s cheaper for us to pay that than it would be to legally dispose of this stuff.”

Therefore, could the bill be amended at stage 2 or 3 to address the measures that I have referred to? Would you welcome that?

James Mackenzie: I was waiting to see whether someone else would jump in. I am trying not to hog the mic.

I gave the example of Highland Council. That was after the fines were increased, but the council does not have the capacity to deal with the issue and it is not doing it. Even when it has issued a

fixed-penalty notice, if it is not paid, it does not follow that up in the majority of cases.

I also have concerns—this is about the fixed-penalty notices in the bill rather than the ones that you are talking about—that there is a risk that they will be disproportionately applied to people on lower incomes, people who have chaotic lifestyles, people who do not have English as their first language or people who live in areas where the provision is worse.

There is another risk, which is that the penalties will not get used at all. Our friends at Keep Wales Tidy have been in contact with Swansea Council, which has brought in fixed-penalty notices in relation to household waste. Just this month, it said that, since 2019, it has issued two such notices. I believe that it was the first place in Wales to adopt the measure. Instead, the council is using a traffic-light system and sending out letters that basically say, “Please do better. Really, please do better. Honestly, now.” However, that has led to only two fines being imposed.

There is a need for systemic changes that provide more of a carrot for doing the right thing, rather than using the stick on a member of the public who did not really have a say in how the system was devised.

Michael Cook’s example of persistent organic pollutants is a really good one. You did not know that you were buying some toxic waste—you thought that you were buying a couch. Now it is your problem to deal with this really complicated thing, but it should be the producer’s problem—they need to come to collect it. As soon as that is the case, we will remove a lot of the incentives to fly-tip. Why would you pay somebody with a van to take something away when the producer will collect it for nothing and you know that it is going to be handled properly?

There is room for enforcement once all those things have been done—to catch what remains of that behaviour, which will come down to people who are particularly lazy or irresponsible. However, I think that that is quite a minority of people. Most people just find themselves in a quandary and stuck in a system that is not designed to help them to get their stuff dealt with.

Murdo Fraser: On your point about people struggling to pay the fines, when we did some research, the committee found that, increasingly, organised crime is involved in collecting industrial waste in particular and dumping it. As you fairly said earlier, it is a crime that is very hard to detect, and the chances of being caught are, therefore, very low. If you are caught, the penalties are so low that they are not a risk. The idea of increasing the fines is more to catch those people rather than

the householder who gets rid of a mattress in the wrong place.

James Mackenzie: I think that that is right and, in a way, that is absolutely consistent with my argument about internalising costs. That is a business that has decided that it can make some more money by chucking something in the Tay—or getting someone else to do it. At that level, fines are really the only way to internalise those costs on to business. You will then have to spend a lot of time and effort on enforcement and pursuing the fines, but I fully agree with you on that point.

Phoebe Cochrane: On the data side, I am not very familiar with your consultation, so I am not sure exactly what type of data it was regarding, but would the provision in the bill on reporting on waste and surplus already cover what you are thinking of or could it be modified or expanded to do that?

Murdo Fraser: Yes, I am sure that it could. One of the confusions is that, at the moment, too many different bodies are involved in collecting data. There is a role for local authorities, a role for SEPA and a role for Zero Waste Scotland. My intention was to look at how we might create a duty for the Scottish ministers to properly collect, publish and report on data so that there would be a single collection point. The issue is covered on page 8 of the fly-tipping strategy, but it does not appear in the bill. That is why I thought that it could usefully be put in the bill. I am interested in looking at amendments to the bill that would bring that in.

The Convener: Again, we have people nodding their heads—for the benefit of the *Official Report*, do you agree that it would be useful for the Government to collate data on fly-tipping or are people happy with how it sits with all the other organisations at the moment?

Michael Cook: I was nodding in understanding more than in agreement. I do not disagree; it is just not my area of expertise. I think that you would get some good answers from Keep Scotland Beautiful, for example, or maybe from the local authorities—I believe that you are seeing them next week.

The Convener: Murdo—you can have one further question and then I will have to move on.

Murdo Fraser: No, I think that I am done, unless the panel members want to come back on anything.

Monica Lennon: Clearly, there is an opportunity for members’ bills to complement the circular economy bill, so good luck to Murdo Fraser. I think that colleagues are aware of my interest in ecocide prevention.

We have talked about small-scale fly-tipping. As MSPs, we all know about its impact on our communities. However, as Murdo Fraser was saying, the major challenge is organised crime gangs. The “Disclosure” programme on the BBC, which I think we mentioned more than a year ago to the previous cabinet secretary, Michael Matheson, set out how thousands of tonnes of waste is being buried illegally across Scotland right now.

Just a few weeks ago, SEPA put out a press release about the scourge of illegal sites for end-of-life vehicles. SEPA believes that there are more than 100 unauthorised ELV sites across Scotland, hidden in plain sight. We all know about the impact of that. One insider in a criminal network told the “Disclosure” programme that waste was the new drugs and that these waste gangs are also involved in moving around drugs, weapons and other illegal items. SEPA knows about that and has made it a priority, along with the ELV sites, but SEPA does not really seem to have the resources to do anything meaningful about it.

To go back to the circular economy bill, are you concerned about whether SEPA and other regulators will have the resources and capacity to do anything? From what we are hearing about the scale of this, it is an emergency. A litter and fly-tipping emergency has already been declared and SEPA is clearly very concerned but it does not seem to be able to do anything about it. Is that a concern that you share?

Kim Pratt: It is not my area of expertise but, on a very high level, my understanding is the same as yours—SEPA does not have the resources that it needs to carry out its duties.

Monica Lennon: Thank you. Does anyone else want to comment?

James Mackenzie: Sorry to jump in but my comment relates to a point that Mr Fraser made. There are so many different bodies that might be responsible for dealing with fly-tipping. Also, gathering data on it is very difficult and enforcement is tricky. We have not talked about a police role. It is like so many things—if you are going to have effective regulations, you need to be able to keep track of when they are being broken. I often think that that is forgotten about in a number of environmental policy areas. We legislate with good intentions but implementation gets lost in a guddle between various levels of government and non-departmental public bodies and all the rest of it. My optimistic hope is that some of that might be addressed through the vision document that I mentioned earlier, which I believe will come out while the bill is still under consideration. That might be a good source for questions.

Monica Lennon: In its recent press release, SEPA talked about the role of Scotland’s serious organised crime task force and the joint unit for waste crime. I do not know much about the latter, but the public will find that interesting, because there has been a lot of discussion about the need for behaviour changes on the part of individuals and about the possible use of sanctions—or sticks—against individuals at a time when gangs are operating at a national and international level. Even though those gangs are causing havoc in all our communities and destroying the environment, no one is going after them in the way that we need. We sometimes get pushback from the public if they feel that we are going after individuals rather than the big gangs.

The Convener: That is an issue that the committee can reflect on in our stage 1 report, along with the question of whether there are too many organisations, whether the system ought to be streamlined, and the collection of data. Those are all valuable points.

Bob Doris has a question, after which I will go to the deputy convener. Bob, you must be brief, because we are now up against the clock and the clock always wins—I cannot stop it.

Bob Doris: I will be very brief. The witnesses might not need to respond, but I want to put on record the fact that the site of the hugely serious fire at the former Promat factory in my constituency was one where there had been industrial and commercial illegal fly-tipping over a prolonged period of time. I cannot say too much more about that, but SEPA has made it clear that it needs to have additional enforcement powers. This is my first day on the committee, but that issue is one that I would like us to look at as the bill progresses. Given my constituency interest in the matter, I wanted to put that on the record.

Ben Macpherson: As we move towards a conclusion, there are a few issues on which I would like to hear the witnesses’ views. What are the most problematic waste streams that should be subject to waste or surplus reporting? What criteria should the Scottish ministers apply when deciding which waste streams to prioritise for such reporting?

Michael Cook: There are different forms of “problematic”, but I would highlight carbon impact, because, in that respect, one tonne of waste is not equal to another tonne of waste. I would say that textiles and clothes are quite high up on the list, because we are talking about material. Although its tonnage may not be that high, the carbon impact is much higher. I cannot remember the stats, but I could email them to the committee after the meeting.

The other form of “problematic” is to do with the fact that doing the right thing is disproportionately difficult. We have a system that is more biased towards doing the wrong thing, behaviourally speaking. Single-use vapes are getting a lot of publicity at the moment—another committee is looking at that today. It is estimated that, in Britain alone, the lithium in the batteries in the single-use vapes—this does not include the non-single-use vapes that might be treated as single-use vapes—that are thrown away in a year would be enough to create 5,000 electric car batteries. That is a loop that I would like to close. We should take that lithium and use it, because lithium is a really rare resource.

I would set two criteria. The first is to do with the carbon impact or the impact in terms of CO₂ emissions, and the second relates to rare materials. There is conflict abroad on our behalf to get those materials, so closing the loops there should be at the top of the shopping list.

Ben Macpherson: Thank you; that was very helpful. Does anyone else wish to comment?

Phoebe Cochrane: I would not disagree with what Michael Cook has said. The life cycle impact assessment of a product group should tell you about the environmental impact of the manufacture and disposal of that product. We have mentioned food and the carbon associated with that, and textiles. Electronics come out quite high on the list because of the processes that are involved in manufacturing them and in acquiring the minerals and metals that are used in them. Obviously, plastic is a stream that we need to focus on, because it is harmful to the environment—it does not break down—and it is a fossil fuel material.

Ben Macpherson: Thanks for that. I will go to Kim Pratt and then James Mackenzie.

12:00

Kim Pratt: To add to that list, textiles and plastic are obviously very important from a carbon point of view, and also chemicals. We have a big chemicals industry in Scotland and there is a high carbon impact associated with their production.

In relation to what are sometimes called the critical or transition minerals that we will need in Scotland in order to move away from fossil fuels, the UK has a list of about 18 minerals that will be needed to create a sustainable future, and I recommend that the committee considers that list.

James Mackenzie: In relation to priority, the committee will be unsurprised to hear that I agree with all of that. However, I would be looking for triple alignment. I would like to see those priority items that my colleagues have talked about being

the ones that are reported on and also the ones on which action is either being taken or being considered.

There is a bit of a perception that the environmental movement wants to put endless costs on to business just for fun, and I can assure the committee that that is not the case. If ministers have definitively ruled out acting on a sector or product category, there is no point in gathering the data on it. It is worth gathering the data only if you are either building the case for what would be an effective intervention that would help to build circular economy practices and bring those economic opportunities and environmental benefits, or if you have already done an intervention and want to know whether it is working and whether people are complying with it. There is a bit of a risk that the Scottish Government will end up recommending reporting across a variety of sectors where it does not intend to act, which, I am afraid to say, is simply a business cost for no purpose.

Ben Macpherson: Thanks for all of those contributions.

I will ask a question, because a single-use plastic that has not come up today, or in our deliberations on the bill thus far, is nurdles. In coastal communities, including my own, and particularly where there is extensive shipping activity and industry, the plastic pollution from nurdles on our beaches is significant. If witnesses want to feed in anything on that matter, either quickly now or in writing after the meeting, I would be interested to see it.

The Convener: I will jump in, because I am sure that you will all want to contribute something to that comment, and we are up against it on the clock. I apologise.

I also have a further question, which I would encourage you to respond on in writing to the clerks. We have had a lot of very useful discussions today and covered a huge area of subjects, but we might have missed something that you want to see in the bill. If you have not put it in your evidence, I urge you to write to the clerks about that when you are writing about the question that the deputy convener raised about waste at sea, so that we can consider it.

I thank you all for being very fleet of foot around the subject. You have answered lots of different questions, very persuasively in some cases. I would normally have suspended the meeting to allow you to depart, but because we are so up against it, I ask that you accept our thanks and quietly leave the room while we continue in public session with the issue that we have to deal with next. Thank you very much.

United Kingdom Subordinate Legislation

12:05

Meeting continued in private until 12:39.

Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans- European Road Network) (Revocation and Consequential Amendments) Regulations 2023

12:03

The Convener: The next item of business is consideration of a type one consent notification for the Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Revocation and Consequential Amendments) Regulations 2023. That is a snappy title.

It is a proposed United Kingdom statutory instrument, where the UK Government is seeking the Scottish Government's consent to legislate in an area of devolved competence. On 18 October, the Minister of Transport notified the committee of the UK SI. The committee's role is to decide whether it agrees with the Scottish Government's proposal to consent to the UK Government making those regulations within devolved competence and in the manner that the UK Government has indicated to the Scottish Government it wishes to.

If members are content for consent to be given, the committee will write to the Scottish Government accordingly. In writing, we have the option to pose questions or to ask to be kept up to date. If the committee is not content with the proposal, we can make a series of recommendations.

Before I set out possible recommendations, I ask whether any member would like to express views on the regulations. I see no indications of views.

Is the committee content that the provision that is set out in the notification should be made in the proposed UK statutory instrument?

Members *indicated agreement.*

The Convener: As we are agreed, we will write to the Scottish Government to that effect.

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