

Stage 1 Briefing

Circular Economy (Scotland) Bill

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Circular Economy (Scotland) Bill¹ (the **Bill**) was introduced by the then Cabinet Secretary for Transport, Net Zero and Just Transition, Màiri McAllan MSP, on 13 June 2023. We submitted written evidence² to the call for views on the Bill held by the Net Zero, Energy, and Transport Committee of Scottish Parliament as part of its Stage 1 consideration of the Bill.

The Net Zero, Energy, and Transport Committee's Stage 1 Report on the Bill (the **Stage 1 Report**)³ was published on 28 February 2024.

We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 1 debate scheduled for 20 March 2024.

General Remarks

We welcome the introduction of the Bill, which looks to develop Scotland's circular economy and help facilitate the development of an economy which reduces the demand for raw materials, designs products to last, while encouraging the principle of "reuse, repair and recycle".

We note the discussion in the Stage 1 Report of the Bill being, in large part, a framework Bill.⁴ We are cognisant of the potential benefits of this approach, for example, allowing greater flexibility in designing and implementing the underlying policy proposals, particularly should these evolve over time. We nonetheless highlight the need for flexibility to be appropriately balanced against ensuring there is clarity in the law, appropriate levels of parliamentary scrutiny underpinning legislative and policy developments, and meaningful stakeholder consultation. Greater detail on the proposals, and how they are intended to operate in practice, would be welcome to better understand their likely impacts and legal implications.

It is crucial to upholding the rule of law that the law is clear, comprehensible and transparent so that requirements can be understood by those affected. Individuals and organisations must be able to guide their conduct based on clear and understandable legal standards. We highlight that a framework made up of primary and significant volumes of secondary legislation can be challenging for those directly affected by the law to access and fully understand.

¹ [Circular Economy \(Scotland\) Bill](#)

² Accessible [here](#)

³ [Stage 1 Report](#)

⁴ Including, for example, at paragraphs 11-20 and 116-157.



We particularly stress the importance of robust consultation on such secondary legislation where appropriate, to provide an opportunity for scrutiny and comment from stakeholders on the details of the proposals.

We consider that changes to the policy and legislative framework in this area would merit an appropriate awareness-raising campaign so as to make individuals and businesses aware of the revised requirements and help support industry compliance.

We commented in our written evidence that we would also welcome greater clarity and consideration on the operation of the UK Internal Market Act 2020 – and that the absence of discussion of this was a notable omission from the supporting documents published alongside the Bill. We note the relevant discussion in the Stage 1 Report and reiterate our previous comments on this point.

We would generally note the importance of ensuring consistency across different areas of law to ensure that the objectives in one area are not disrupted by technical obstacles in others – and highlight this particularly in the context of the ongoing and prospective legislative and policy reform within the wider agricultural and environmental legal landscape.

Comments on Sections of the Bill

Section 1

We consider that having a statutory requirement for a circular economy strategy can strengthen the strategic approach to a circular economy, providing an opportunity to review and refresh national objectives.

Section 2

We welcome the requirement for Scottish Ministers to publish the draft circular economy strategy and consult on this, and would highlight the importance of undertaking a robust consultation process to capture the views of affected stakeholders.

Sections 3-5

We have no specific comments on these sections at this time.

Sections 6-7

We consider that statutory targets can help focus attention and efforts, and therefore could be a useful tool to achieve greater ambition. However, it is important that any such targets would be both realistic and ambitious – and that any aspirations, whether statutory targets or not, are supported by suitable resources.

It is not clear in the Bill what form such targets would take, and we would welcome greater detail on this.

We welcome the requirement for Scottish Ministers to consult affected persons and the general public before introducing targets under section 6(1).

Section 8

There are many practical considerations here which would merit consideration in the context of drafting and formulating the legislative regime.

For example, in respect of the categories of products which may be excluded or prioritised when formulating any regulations pursuant to powers inserted at section 8(2) of the Bill, we consider it may be appropriate to prioritise categories of product with a high raw material or energy input – such as where rare minerals/similar have been used in production or where there is likely to be high product turnover due to trends rather than functionality of the product itself.

We suggest that any items which are inherently unsafe or unstable which cannot readily be made safe for storage, repurposing or recycling should be excluded. It may be appropriate for a phased product or sectoral approach to be initially adopted in relation to these proposals. We also note that consideration will be required as to capacity constraints of third sector/charities to receive the relevant products (if this is ultimately intended under the proposals).

We note more widely here the omission of discussion of the UK Internal Market Act 2020, which we consider to be particularly significant in relation to these provisions.

Section 9

We note that the detail of any regime made under such regulations is not yet known, and would welcome further information on the relevant definitions and how the charge will be levied. We similarly note the omission of discussion of the UK Internal Market Act 2020 in this context.

Sections 10-11

We suggest that these proposals require careful consideration to ensure that a proportionate approach is decided upon, taking into account both practical and legislative factors.

We note relevant practical considerations when formulating the legislative provisions, including ensuring appropriate public-awareness, the impacts of inconsistencies between local authorities as to recycling arrangements, and the availability of suitable infrastructure/resources. Particular challenges may arise where communal facilities are in use, as householders who are complying with the relevant requirements may be adversely impacted by those who are not.

Consideration could be given as to how enforcement may be actively encouraged other than by way of penalties, for example, by awareness raising public campaigns and opportunities for engagement with communities and businesses.

As a general comment applicable to sections 10, 11 and 14, we question whether it is necessary to enact specific new provisions for fixed penalties rather than including the offences within existing provisions. We consider that it would be preferable to use the established schemes consistently across different areas, rather than having a range of distinct, potentially inconsistent schemes.

As referred to in our general remarks above, we consider that changes to the policy and legislative framework on this matter would particularly require an appropriate awareness-raising campaign



so as to make individuals aware of the revised requirements, including in relation to who is an “authorised person” under the proposals.

Section 12

We consider that any proposed change should be underpinned by a robust evidence base.

As currently drafted, section 44ZZA(1) of the Environmental Protection Act 1990 (as inserted by section 12(2) of the Bill) provides that the code of practice will set out the Scottish Ministers’ expectations of local authorities. We suggest that it may also be appropriate for an express requirement to be included for local authorities to have regard to/abide by the code of practice.

Section 13

We similarly consider that any change here should be supported by a robust evidence base.

We consider that if Scottish Ministers are to have the power to introduce statutory recycling targets, then we consider it would be appropriate for there to be incentives as well as penalties in order to ensure that the targets are effective. We suggest careful consideration is required as to how these might be set, to ensure that there no unintended consequences, e.g. with some local authorities being disproportionately affected.

Section 14

We welcome measures intended to improve the enforcement of section 87 of the Environmental Protection Act 1990. We note the policy considerations in the related documents published alongside the Bill highlighting the gap in enforcement where a person who has littered from a vehicle cannot be identified.

The issuing of civil penalty charges is one method to support compliance with the legislation. However, we consider this approach also needs to be linked to raising awareness of the importance of not littering from vehicles as well as the costs of removal – which could be carried out in tandem with any strengthening of the penalty regime as proposed.

We note that the Bill provides powers for the Scottish Ministers to make provision for a number of aspects by regulations. One of these relates to exemptions from liability (section 88C(5)(j) of the Environmental Protection Act 1990, as inserted by the Bill). We consider there to be a number of relevant scenarios which merit specific consideration, for example hired-vehicles, taxis and private hire vehicles.

We also note that there may be merit in considering the position in relation to automated vehicles in order to help futureproof the provisions.

Sections 15-16

We have no specific comments on these sections at this stage.



Section 17

We suggest that consideration is given to the purpose and benefits of reporting as against the administrative burdens of doing so – particularly so that reporting is focussed on driving greater action to create a circular economy, in line with the policy basis of the Bill.

Sections 18-20

These are the final and auxiliary provisions of the Bill, on which we have no specific comments on.



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