



The Scottish Parliament  
Pàrlamaid na h-Alba

## TRANSPORT, INFRASTRUCTURE AND CLIMATE CHANGE COMMITTEE

### AGENDA

9th Meeting, 2009 (Session 3)

Tuesday 10 March 2009

The Committee will meet at 2.00 pm in Committee Room 2.

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 and future consideration of any draft Stage 1 report on the Climate Change (Scotland) Bill in private.
2. **Climate Change (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Stewart Stevenson MSP, Minister for Transport, Infrastructure, and Climate Change, Philip Wright, Deputy Director, Climate Change, Fiona Page, Head of Scottish Climate Change Bill Team, Cameron Maxwell, Climate Change Policy Team, Madeleine Cusack, Climate Change Policy Team, and Kevin Philpott, Waste Regulation Senior Policy Officer, Scottish Government; David Henderson-Howat, Policy Adviser, Forestry Commission Scotland.

3. **Climate Change (Scotland) Bill:** The Committee will consider the evidence heard during its consideration of the Bill at Stage 1.

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The papers for this meeting are as follows—

**Agenda item 2**

Briefing paper

TIC/S3/09/9/1 (P)

Reports from the Rural Affairs and Environment Committee,  
Finance Committee and Subordinate Legislation Committee

[TIC/S3/09/9/2](#)



## RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

### Stage 1 report on the Climate Change (Scotland) Bill

The Committee reports to the Transport, Infrastructure and Climate Change Committee as follows—

#### Introduction

1. The Rural Affairs and Environment Committee (“the Committee”) specifically requested that it be appointed as secondary committee on the Climate Change (Scotland) Bill<sup>1</sup> to scrutinise provisions which fall within the Committee’s remit, namely forestry (section 47), waste recycling and reduction (sections 52 to 61) and muirburn (section 46).
2. The Committee would wish to begin by thanking all those who provided written evidence or gave oral evidence to the Committee on these provisions in the Bill.
3. Before considering each set of provisions in turn below, the Committee wants to highlight some issues on the enabling nature of this legislation, the content and timing of the Bill and its impact on parliamentary scrutiny.

#### Parliamentary scrutiny

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

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<sup>1</sup> Climate Change (Scotland) Bill (as introduced). Available at: <http://www.scottish.parliament.uk/s3/bills/17-ClimateChange/index.htm>

<sup>2</sup> Scottish Parliament Rural Affairs and Environment Committee. <http://www.scottish.parliament.uk/s3/committees/rae/bills/documents/ConvenertoMR-18Dec2008.pdf>

5. The Committee acknowledges that the Minister for Environment at that time, Michael Russell, offered an apology for the late introduction of the consultation, and the Committee also appreciates that the Government provided a preliminary analysis of responses to a short timescale. Regardless of this, introducing a Bill in advance of the conclusion of consultations on its contents is not appropriate. Parliamentary committees should be afforded the right to undertake scrutiny of legislation with all of the relevant information at their disposal.
6. The Committee is also concerned that a number of areas of uncertainty remain about the specifics of the Government's proposals that the Bill's provisions would enable. Limitations in the accompanying documents and in the supplementary information provided by the Government creates a perception that the Government's proposals are still evolving despite the Bill having been introduced a number of months ago.
7. The Committee wishes to express its frustration that it has been asked to scrutinise and potentially endorse broad enabling powers to a relatively tight timescale and with a lack of sufficiently detailed information at its disposal.
8. Furthermore the Committee is concerned that a number of the Bill's provisions provide for new powers that are notably broad. This is not the first time that enabling powers have been proposed within primary legislation with the intention of the detail being provided within subordinate legislation. However, some of the powers, while limited to dealing with climate change, might still be seen as broad enough to be used in a different way to those proposed by the current administration. This concern is exacerbated when the specific proposals, such as the leasing of Forestry Commission land, are proving contentious.
9. This committee or its successor would of course have the opportunity to scrutinise the necessary subordinate legislation required to allow Scottish Ministers to use these powers. However there are limitations to the scope of the Parliament to scrutinise secondary legislation. For example the timetable for consideration once laid is considerably shorter than for most bills (40 days) and once laid committees are unable to amend this form of legislation.
10. There are a number of provisions where, although the powers have been criticised for being too broad, the policy direction behind these powers has received wide support from stakeholder groups, such groups are relatively relaxed about subordinate legislation being used to flesh out the detail of these proposals following passage of the Bill.
11. However, for the most controversial proposal, specifically the forestry leasing proposal as detailed in the Policy Memorandum<sup>3</sup>, it is clear to the Committee that the principle behind the provisions does not have a body of

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<sup>3</sup> Climate Change (Scotland) Bill Policy Memorandum. Available at:  
<http://www.scottish.parliament.uk/s3/bills/17-ClimateChange/b17s3-introd-pm.pdf>

support, the Committee's preference would be that this proposal should not be permitted by the wording of the Bill.

12. Notwithstanding paragraph 11 relating to leasing, in addition the Committee invites the Government to give serious consideration to amending the Bill to place limitations on the scope of secondary legislation stemming from it where powers are particularly broad. The Committee has flagged up specific suggested amendments to this end later in this report.
13. The Committee also considers that all secondary legislation stemming from these broad enabling powers should be subject to 'super affirmative' procedure. This effectively provides the committee likely to be referred the relevant instrument additional time to scrutinise it by allowing the committee to view it in draft. Importantly, scrutinising an instrument in draft affords the Committee the opportunity to take evidence on its provisions and to propose amendments to it before it is laid before Parliament. To allow committees maximum opportunity to take evidence on these draft instruments the Scottish Government should notify committees at the earliest opportunity that any such instruments are approaching a state of readiness to be laid before Parliament.

## **Forestry**

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

### *Themes arising from evidence*

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

and Business Association; and Gavin Ellis, Director, Scottish Tourism Forum<sup>4</sup>;

16. This session was immediately followed by evidence from the Minister for Environment at that time, Michael Russell MSP, and his accompanying officials Anne Cairns, Solicitor, Rural Affairs Division, Scottish Government, Jo O'Hara, Head of the Natural Heritage Management Team, Scottish Government, Bob McIntosh, Director, Forestry Commission Scotland, and David Henderson-Howat, Policy Adviser, Forestry Commission Scotland<sup>5</sup>.

#### Leasing

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

#### *Consultation*

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

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

SE LINK<sup>6</sup> added that—

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

Loch Lomond and the Trossachs National Park Authority<sup>7</sup> supported this position stating that—

“Although we support providing more land for forestry, there has been limited consultation on the proposals in the climate change action plan, so we have not explored other mechanisms for doing that...We are just concerned about how quickly the proposal is going through.”

19. The Minister argued that the consultation on the forestry proposals was a genuine consultation and that on that basis alternatives to the leasing

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<sup>4</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February 2009, Col 1421-1444](#)

<sup>5</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February 2009, Cols 1445-1472](#)

<sup>6</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February 2009, Col 1427](#)

<sup>7</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February 2009, Col 1428](#)

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

20. The Committee appreciates that consultations should not have a preconceived outcome and is concerned that consultation was undertaken during Stage 1 on a proposal already contained in documents supporting the Bill. There is sufficient concern about the leasing proposal for the Committee to be unwilling to recommend that the Bill allow this proposal to go ahead.
21. As detailed below the leasing proposal is contentious for numerous reasons and the consultation process for this proposal is considered to be inadequate by key stakeholders.
22. **The Committee recommends that the Government does not progress this leasing proposal and amends the enabling section in the Bill.**

#### *Funding*

23. On the issue of how any funding generated by this policy would be used, Dr Calum Macdonald from Forestry Commission Scotland<sup>8</sup> stated that—

“...I would be keen for any money that is raised from joint ventures or by the commission to be spent on achieving forestry strategy targets.”
24. ConFor stated that its members were concerned that there had not been definitive reassurances from the Government that the money raised from the leasing proposal would be channelled back in to forestry based measures to improve carbon sequestration as opposed to being redirected into other Government initiatives to mitigate climate change. The Committee notes however that the Policy Memorandum does specify that funding generated would be used for woodland creation.
25. The SRPBA raised concerns from its members that any organisation or organisations leasing land could access funds from the Scotland Rural Development Programme which is already considered to be insufficient to support existing organisations and difficult to access funding from. The SRPBA also suggested that, if there were only one or two leases, a company or companies with a large proportion of the land could “outcompete” all of its members.
26. The Committee is aware that one of the appeals of the leasing proposal is the potential to provide the Government with a substantial sum of money up front as opposed to over a prolonged period, as is likely to be the case with the release of funding from joint ventures proposals. Members also raised concerns with the Minister that, should the leasee tap into SRDP funds at a

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<sup>8</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February 2009, Col 1431](#)

rate of £2m per annum then over a 75 year lease £150m of support would be provided, leaving the Government with a net profit over that time of £50m. This figure of £50m does not reflect any loss of income or expenditure to the Forestry Commission Scotland and assumes that £200m is still the market value of the lease once the Bill is enacted.

27. **If the Government proceeds with the leasing proposal in the Bill the Committee considers that it should clarify, before the end of Stage 1, how it envisages the mechanism for allocating funding released towards woodland creation working in practice, and to what extent the leasee will be able to call upon SRDP funds. The Government should also provide further detail on the calculations upon which the proposal's viability has been assessed.**
28. **Finally, the Committee recommends that the Government should provide, as part of its reporting duties under Part 3 of the Bill, details to Parliament on which budget lines the funding generated from the leasing of land has been allocated to and for what purpose.**

*The remainder of the National Forest Estate*

29. Concern was raised by some witnesses that, if the most profitable parts of the forest estate are leased off, there may be funding issues regarding the delivery of multi purpose and climate change benefits in the remaining 75%, which would by definition, be less profitable. Suggestions were made that the most profitable 25% would remove around a third of the commercial income of Forestry Commission Scotland.
30. **If the Government proceeds with the leasing proposals, the Committee considers that detailed costings showing the economic viability of the remainder of the national forest estate should be provided to Parliament.**

*Not for Profit Trust*

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

“Detailed proposals have yet to be developed, and will include consideration of State Aid issues”

32. The Minister<sup>9</sup> in evidence seemed sceptical about the idea, stating:

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

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<sup>9</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report 11 February 2009, Col 1455](#)



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

*Employment*

34. Forestry Commission Trade Unions<sup>10</sup> oppose the leasing proposal, in evidence Allan Mackenzie explained that—

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

35. Members raised concerns that forestry workers were coming to them on a private basis saying that when they attend workshops they are being told that if they do not accept the proposed transfer they will be deemed to have resigned and will not receive redundancy payments. The Minister assured the Committee that there would be no compulsory redundancies and that the Government would seek to ensure that affected employees are offered alternative employment.
36. **The Committee expresses its concern at this interpretation of the Government’s message that there will be no compulsory redundancies. The Committee seeks assurances from the Government that if employees refuse to transfer to the private company leasing the land, that this will not impact on their employment rights and therefore they should not be deemed to have resigned.**
37. **The Committee also seeks assurances from the Government and the Forestry Commission that there will be no compulsory redundancies and that they will seek to secure that transferred employees’ contractual obligations include conditions of service equivalent to those adopted by the Forestry Commission. Finally, the Committee seeks assurances that the Government and Forestry Commission will take steps to ensure longer term security for affected staff, improving on the short term security provided by TUPE regulations.**

*Conditions attached to the lease*

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

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<sup>10</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February, 2009, Col 1434](#)

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

40. A number of submissions made to the Committee raised concerns that the Forestry Commission's valuable current role of ensuring supply to sawmills and other industries reliant on timber is maintained regardless of the market value of such timber and would not be carried by a private company with financial motivations. If sawmills are not assured of a steady supply of timber they may not be prepared to invest in expensive new infrastructure and may be vulnerable during downturns in the market. Stuart Goodall, ConFor<sup>11</sup> acknowledged in evidence that—

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

41. In evidence Gavin Ellis, Scottish Tourism Forum<sup>12</sup>, raised concerns about the potential conflict of interest “that is inherent in the commercial realities of private enterprise” and praised the role the Forestry Commission has taken in integrating recreation, health and education benefits with Scotland's forests. A number of written submissions also highlighted the value of the Forestry Commission's focus on managing its land in a sustainable way, including promoting biodiversity.

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

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

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<sup>11</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February 2009, Col 1436](#)

<sup>12</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February 2009, Col 1434](#)

<sup>13</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February 2009, Col 1435](#)

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

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

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

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

*Capping scope of subordinate legislation*

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

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

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

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<sup>14</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February 2009, Col 1430](#)

<sup>15</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February 2009, Col 1454](#)

<sup>16</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February 2009, Col 1428](#)

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

48. The Minister was clear in evidence that this length of time was set as an upper threshold for the length of lease and that he or his successor may well be amenable to an amendment to the Bill that reflects this upper threshold. The Minister suggested that the Government could also be receptive to the idea of an upper threshold on the proportion of forestry commission land that could be leased at any one time to 25%.
49. At present the provision in section 47 of the Bill would enable both leasing and joint ventures but does not specifically refer to either policy intention. The specifics of the Government’s intended uses for the powers in section 47 are detailed in the Policy Memorandum. The Minister confirmed in evidence that the enabling nature of the existing provisions would not preclude amendments to the Bill to restrict the maximum length of the lease or the proportion of land leased. The Committee appreciates that in order to amend the Bill in these ways the express intention to lease land would need to be referred to on the face of the Bill. The Committee considers that having the policy intention explicitly referred to in the Bill would also aid Parliamentary scrutiny as it would aid members of Parliament seeking to lodge amendments on this matter.
50. **Should legislating for this policy in this Bill remain the Government’s position, the Committee recommends that the Bill be amended to cap the scope of the powers provided to reflect the specific policy proposal behind these powers. In doing so, the Committee recommends that the Bill be amended to make the distinction between provisions enabling joint ventures and provisions enabling the leasing proposal, as at present the same provision enables both proposals.**
51. **The Committee specifically recommends that an upper threshold on the length of the land lease should appear on the face of the Bill as should a maximum threshold for the proportion of land to be leased at any one time.**

*Community leasing*

52. In the Minister’s opening statement Michael Russell noted that wide support has been given in consultation responses to the idea of leasing Forestry Commission Scotland land to communities as opposed to private interests. The Committee supports community leasing as a concept but understands that community leasing proposals could not necessarily be put on the face of the Bill perhaps without skewing the proposal to angle it towards potential

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<sup>17</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February 2009. Col 1436](#)

benefits from community leasing that would mitigate climate change. It would seem more sensible to include provision for community leasing in future legislation which can take into account the social benefits and other environmental benefits stemming from community leasing.

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

Joint ventures

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

55. Members of the Committee explored the possibility of funds released from joint ventures being sufficient to remove the requirement for the leasing proposal considered above. Janice Cassidy from the SRPBA<sup>18</sup> stated that—

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

56. In response to the same line of questioning, specifically whether he accepted that the potential income stream from joint ventures would be sufficient to meet the Government’s planting objectives, the Minister<sup>19</sup> stated—

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

57. The Committee is well aware that the joint ventures proposals are not just intended to generate funding, they would have other benefits including allowing the Forestry Commission Scotland to take a more strategic

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<sup>18</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February 2009, Col 1441](#)

<sup>19</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February 2009, Col 1465](#)

overview and control of developments such as wind farms on Commission land.

58. The Committee is keen, given the wide support for this method of harnessing renewable energy, that the full potential for income from joint ventures should be explored. The Committee recommends that joint ventures be encouraged. However the Committee appreciates from the Minister's evidence that there is an issue about the timing of funding generated, with joint ventures beginning to generate funds in 5 to 10 years as opposed to potentially £200m being generated within two years for the leasing proposal.
59. The Committee also appreciates that beyond requiring the powers in the Bill to be enacted to enable such joint ventures, receiving the relevant planning permission and meeting the environmental regulation criteria set out by SEPA is also a requirement for such renewable energy developments and this can be a time consuming and potentially unsuccessful process. There are therefore practical issues to be considered when estimating the likely potential income and timing of realising that income from joint ventures.
- 60. The Committee acknowledges that joint ventures may not generate the same level of funds as the leasing proposal, or generate funds to the same timescale. However given the notable support for the joint ventures policy the Committee recommends that, in considering alternative approaches to leasing, the Government should explore the full potential of encouraging and supporting the establishment of joint ventures schemes.**

#### Power to modify functions of the Forestry Commissioners

61. Section 47, which enables both leasing and joint ventures, includes a subsection which provides Scottish Ministers with the power to modify the functions of the Forestry Commissioners where they consider it expedient or necessary in meeting the targets set out in sections 1 to 3 that aim to mitigate the effects of climate change. To use this power would require subordinate legislation to be approved by Parliament under the affirmative procedure.
62. The Committee questioned in evidence whether this power could be used to remove over-arching duties imposed upon the Forestry Commissioners in other pieces of legislation, for example the duty to further the conservation of biodiversity in the exercise of their functions in the Nature Conservation (Scotland) Act 2004. The new Minister for Environment, Roseanna Cunningham MSP, provided written clarification on this issue following this session confirming that the Government does not consider that the duty in the Bill could override duties imposed in other legislation.
63. The Committee considers that there may be other legal interpretations of how widely this power could be used but appreciates that the Parliament

will have the opportunity to scrutinise any Government proposals to use section 47 (2) within secondary legislation.

### **Waste reduction and recycling**

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

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

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

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

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

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

*Policy intention section by section*

69. Section 52 would enable the Scottish Ministers to make provisions requiring certain persons to prepare plans for the prevention, reduction, management, recycling, use and disposal of waste produced by or otherwise associated with their activities. The Policy Memorandum cites the construction industry and general office-type businesses as being likely to be affected by this section.
70. Section 53 would enable Scottish Ministers to make regulations to require businesses and public bodies to provide information to SEPA about the waste that they produce. The cost to government and local authorities of providing this information is considered to be marginal. The Policy Memorandum states that 'it will be difficult to move to a zero waste society without much better information.'
71. Sections 54 and 55 are intended, according to the Policy Memorandum, "to encourage recycling by providing people with opportunities to deposit waste for recycling when they are not home". The Explanatory Notes state that section 54 could be used to require offices to have facilities to collect paper etc. Section 55 empowers local authorities to issue notices requiring organisers of temporary public events to provide recycling facilities. Both sections require the waste collected to be, as far as practicable, recycled.
72. Section 56 would give Scottish Ministers the power to set binding requirements on businesses and public bodies so that specified items procured or constructed by them must include or contain a certain amount or proportion of recyclate. The Financial Memorandum states that this provision is unlikely to add additional costs to government, public bodies or businesses because the type of materials likely to be specified are traded widely, likely to be priced competitively and that the replacement of virgin materials with recycled ones is unlikely to increase costs.
73. Section 57 would give the Scottish Ministers powers to set binding targets for overall reductions in packaging. The Policy Memorandum states that the duty is likely to fall primarily on retailers but may also fall on those who supply packaged goods to retailers. There are a number of different ways of achieving a reduction in packaging and the Policy Memorandum suggests a number of them, including encouraging the use of refills, buying in bulk or supplying concentrated products.
74. Section 58 would give the Scottish Ministers powers to set up a statutory deposit and return scheme. The Financial Memorandum cites the experience in Denmark and Norway as an indicator of costs to bodies (other than for local authorities and government) individuals and businesses and estimates the costs at £15-20 million per annum. The Financial Memorandum states that costs would have to be recovered, for example, via deposit fees and the sale of recyclate. In addition, the Policy Memorandum states that any scheme may have financial benefits by reducing the amount of waste that local authorities are required to handle.



75. The purpose of section 59 is to reduce the number of carrier bags in circulation by making regulations about charging by sellers of goods for the supply of carrier bags and for requiring that the net proceeds of such charges be applied to environmental good causes. This is an area where there is already a voluntary agreement in place with many major retailers for carrier bag reduction initiatives. It is estimated that the cost of enforcement of regulations requiring charges would be in the region of £3.5 million per annum. Depending on the nature of the regulations, income is estimated at £8.14 million whilst publicity campaigns would cost in the region of £750,000.
76. The Bill also details the penalties which could be used in the enforcement of the waste provisions within subordinate legislation. These penalties are set out in section 61 of the Bill. Local authorities and SEPA could therefore incur costs if appointed as enforcement bodies.

*Evidence taking*

77. The Committee heard evidence from three panels of witnesses on the waste proposals. The panel on 28 January involved Professor Jim Baird, Glasgow Caledonian University; Pauline Hinchion, Chief Executive, Community Recycling Network Scotland; Susan Love, Policy Manager, Federation of Small Businesses in Scotland; and Dirk Hazell, Chief Executive, Scottish Environmental Services Association<sup>20</sup>.
78. A further panel on 4 February involved John Ferguson, Unit Manager, Sustainable Energy and Resources, SEPA; Iain Gulland, Director, WRAP Scotland; Dr Colin Clark, Head of Waste Management, COSLA<sup>21</sup>. This panel was immediately followed by evidence from Richard Lochhead MSP, Cabinet Secretary for Rural Affairs and Environment and his accompanying officials Kim Fellows, Deputy Director for Waste and Pollution Reduction, Louise Miller, Solicitor, Food and Environment Division, Kevin Philpott, Waste Regulator Senior Policy Officer, and Simon Stockwell, Waste Strategy Team Leader, Scottish Government<sup>22</sup>.

*Issues emerging from evidence taking*

*Zero waste*

79. The Committee discussed whether zero waste was achievable during both of its evidence sessions on the waste reduction and recycling provisions. All witnesses agreed that zero waste was desirable and a number of witnesses noted that there were encouraging statistics emerging to suggest that in the

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<sup>20</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 28 January 2009, Cols 1359-1380](#)

<sup>21</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 4 February 2009, Cols 1384-1402](#)

<sup>22</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 4 February 2009, Cols 1402-1415](#)

future it may be achievable. For example, Iain Gulland, WRAP Scotland<sup>23</sup>, stated that “there is growing evidence that more than 90 per cent of what is in the waste stream can be recycled.” The Cabinet Secretary acknowledged the ambitious nature of the target in evidence stating that “a zero-waste policy is an ambitious policy. It is also an aspiration.”

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

#### *Infrastructure*

81. One of the main barriers to making good progress towards zero waste highlighted to the Committee was a lack of infrastructure, particularly for use by small to medium sized businesses. Susan Love, FSB<sup>24</sup>, stated that—

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

82. Dirk Hazell, SESA<sup>25</sup>, noted that, irrespective of the aspiration to achieve zero waste, there is an issue with meeting existing targets—

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

83. John Ferguson, SEPA<sup>26</sup>, also noted the need for improvements in existing infrastructure and entirely new developments but noted that the rate at which infrastructure will require to be developed to meet the various Government targets will be a “challenge to the planning system”.

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<sup>23</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 4 February 2009, Col 1386](#)

<sup>24</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 28 January 2009, Col 1361](#)

<sup>25</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 28 January 2009, Col 1361](#)

<sup>26</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 4 February 2009, Col 1389](#)

### *Carrier bags*

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

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

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

### *Current market conditions*

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

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

### *Non-municipal waste*

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<sup>27</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 4 February 2009, Col 1397](#)

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

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

“A huge rump of commercial waste just gets landfilled. It is outwith the context of the landfill directive, but if I landfill it, I am subject to that directive...The municipal waste data are excellent, because the concentration has been on municipal waste, of which there is less than 4 million tonnes in Scotland. Commercial and industrial waste has been left to blow in the wind, frankly.”

#### *Definition of recycling*

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

#### *Social and economic factors*

90. Some unintended consequences of prioritising lowering carbon emissions, including in remote and rural areas, were highlighted to the Committee. Pauline Hinchion CRNS<sup>29</sup> gave the following example—

“We have members in Shetland who collect, recycle and reprocess glass into really nice glass awards. Theirs is a small business, but Shetland is a small place and they do great work. Under the bill, it would probably be better for the climate if they just put the glass on to a ship and sent it down to Alloa to be processed. We have to be careful that

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<sup>28</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 4 February 2009, Col 1398](#)

<sup>29</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 28 January 2009, Col 1369](#)

the powers do not become too instrumental and that some of the other factors that may have to be taken into consideration are not ignored.”

*Deposit and return and kerbside collection*

91. Dirk Hazell, SESA, suggested that the establishment of deposit and return schemes could detract from local authority efforts to establish kerbside collection and may be confusing for the public who have only recently adapted to this form of collection. Members of the Committee appreciated this point but suggested that in remote and rural areas of Scotland, and in certain forms of accommodation such as tenements, there was no scope for kerbside collection.
92. Pauline Hinchion, CRNS, suggested that there would be carbon emissions from people driving to central points to return packaging or bottles for reuse, although it was also noted that these sites are usually near supermarkets or other large outlets in an attempt to ensure that people can return items when on journeys to undertake other tasks.
93. The Committee considers that the two processes have merit and that if recycling and reuse rates are to increase the public should ideally have both options at their disposal. It would be undesirable for the establishment of one process to hamper the functioning of the other.
94. Dirk Hazell<sup>30</sup> also noted an underlying issue, namely that ways of establishing what the most sustainable method of reducing or recycling waste is central to ensuring that the correct practices are adopted by the public, local authorities and businesses alike—

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

95. Pauline Hinchion<sup>31</sup> added that—

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

96. The Committee notes the importance of establishing a standard approach to measuring carbon and then producing standard indicators as to what

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<sup>30</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 28 January 2009, Col 1373](#)

<sup>31</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 28 January 2009, Col 1374](#)

extent different practices are sustainable so that the public can make informed choices about whether to re-use or recycle. Recycling or reuse schemes should be as clear and accessible as possible for the public.

### *Packaging*

97. As noted above, the first measure listed in the Waste Directive hierarchy for waste management is prevention. The discussion during the evidence session on 28 January acknowledged that whilst preventing waste by minimising packaging was desirable, without the necessary packaging products such as food can become damaged and become unnecessary waste. For example, Pauline Hinchion suggested that Tesco's spoilage rate for food that had no packaging was in the region of 30% and that this waste then produces methane gas which contributes to greenhouse emissions.
98. The Committee also heard evidence that progress was being made towards reducing the amount of unnecessary packaging and consideration was being given to the most sustainable types of packaging to be used by producers and retailers. The Committee also heard of the Courtauld commitment, a voluntary agreement between WRAP and major UK grocery organisations which in 2008 has led to zero growth in packaging despite increases in sales and population.

### *Anaerobic digestion*

99. Anaerobic digestion is a managed biological process in which biodegradable waste is broken down by naturally occurring micro-organisms. This process can be used to treat waste, including food waste. The process produces biogas and this, in turn, can be used to generate energy. Other outputs from anaerobic digestion are fibre which can be used as a soil conditioner and liquor which can be used as a liquid fertiliser.
100. In his statement to Parliament on 24 January 2008 the Cabinet Secretary stated that—

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

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

### *Conclusions on waste*

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

- the urgent need to focus on reducing commercial and industrial waste being sent to landfill;
- the need to address the lack of infrastructure available to implement the policy intentions in the Bill;
- the need to consider issues raised by the Environment and Rural Development Committee in Session 2 on charging by sellers of goods for the supply of carrier bags;
- the opportunity that current international market conditions could present for Scottish market development;
- the need to ensure measures undertaken are in accordance with both the Government's definition of 'recycling' and with the waste hierarchy set out in the Waste Framework Directive;
- the benefits of the Government endorsing one method of measuring 'carbon footprints' and to establish criteria based on this reflecting which practice is more sustainable than another); and
- the need to take into account any potential negative impact on social and economic factors, including in remote and rural areas, of aiming towards ambitious targets to reduce carbon emissions.

*Potential stage 2 amendments*

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

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

**Muirburn**

105. Muirburn is a mainly upland land management technique, and is the act of controlled burning of vegetation on open, treeless, semi-natural habitats (including muir or moorland) and involves the burning of gorse, heather and grass to stimulate new growth. Dates on which muirburn can take place are set down in statute (the Hill Farming Act 1946). The



provisions in the Bill allow Scottish Ministers to amend, by subordinate legislation, these dates to adapt to the effects of climate change as there is concern that, given changing weather patterns and rising temperatures, the ecology of these areas could now be compromised by burning within the currently permitted limits.

*Themes arising from evidence*

106. The Scottish Government's analysis of consultation responses on provisions relating to muirburn dates found that, of the 56 responses 28 agreed with the proposed power (6 of which qualified this answer). Conversely 24 of the responses did not agree and the majority considered there was a lack of evidence to suggest that such a power was needed, and were concerned that the overall length of the burning season could change. The area of consensus as far as there was one appeared to be that any changes to the permitted dates should be based on a rigorous evidence base.
107. The Committee incorporated a discussion on the muirburn provision into its roundtable discussion and into its evidence session with the Minister on 11 February. The SRPBA<sup>32</sup> commented during the discussion that its members had been anxious about supporting the proposal because it was unclear how the new power would be used stating that "[our members] felt that they were given insufficient information to make an informed decision about any changes to the dates".
108. The Minister suggested that he had been surprised by the opposition expressed in some of the responses to the muirburn consultation and considered that the lack of detail in the Bill may have led to some overly cautious responses. He assured the Committee that the power would not be used without full consultation with stakeholders and the power would only be used in such a way so as to allow muirburn practices to adapt to the impact of climate change.
109. **The Committee appreciates the Minister's reassurances that the Government will actively consult with all key stakeholders at an early stage in its deliberations on how to use this power.**

**Conclusions**

110. The Committee wishes to highlight the above issues to the lead Committee, for raising with the Minister for Transport, Infrastructure and Climate Change and/or incorporating into its Stage 1 report as its members see fit:
- concerns with the level of detail available in the Bill and accompanying documents for certain proposals; the inclusion of important proposals within subordinate legislation only (which impacts on

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<sup>32</sup> Scottish Parliament Rural Affairs and Environment Committee. [Official Report, 11 February 2009, Col 1444](#)



the potential for full parliamentary scrutiny); and concerns with the timing of some of the consultations for the Bill's provisions;

- the negative reception from stakeholder groups that the provisions on leasing Forestry Commission Scotland land to release capital has received and the Committee's recommendations in response to this - including potential amendments to the Bill should the leasing proposal remain on the face of it; and
- the likely challenges faced by the Government, local authorities and others in implementing the waste reduction and recycling provisions in an effort to eventually achieve the zero waste target including insufficient infrastructure.

**Conclusions of the Environment and Rural Development Committee's supplementary Stage 1 report on the Environmental Levy on Plastic Bags (Scotland) Bill (2006, Session 2)**

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

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

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

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

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

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

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

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

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

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

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



## Finance Committee

### Report on the Financial Memorandum of the Climate Change (Scotland) Bill

The Committee reports to the Transport, Infrastructure and Climate Change Committee as follows—

#### INTRODUCTION

1. The Climate Change (Scotland) Bill (“the Bill”) was introduced in the Scottish Parliament on 4 December 2008. The Transport, Infrastructure and Climate Change Committee has been designated as the lead committee on the Bill at Stage 1, with the Rural Affairs and Environment Committee being designated as secondary committee. In addition, the Economy, Energy and Tourism Committee considered certain aspects of the Bill.
2. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, among other things, to consider and report on the Bill’s Financial Memorandum. In doing so, it is required to consider any views submitted to it by the Finance Committee (“the Committee”).
3. At its meeting on 13 January 2009, the Committee agreed to adopt level three scrutiny in relation to the Bill.<sup>33</sup> The Committee took oral evidence from the Scottish Environment Protection Agency (SEPA) – who also provided written evidence – the Federation of Small Businesses (FSB) and from Scottish Government officials, at its meeting on 10 February. The Scottish Government and the FSB submitted supplementary written evidence after they gave oral evidence to the Committee.
4. The Committee also received written evidence from—
  - Aberdeen City Council
  - East Ayrshire Council
  - Glasgow City Council
  - Fife Council
  - Confederation of Forest Industries

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<sup>33</sup> Information on the Committee’s three-level system of scrutiny for Financial Memoranda is available at:

<http://www.scottish.parliament.uk/s3/committees/finance/financialMemo.htm>

- East Lothian Council
- Highland Council
- UK Committee on Climate Change (UKCCC)
- Scottish Retail Consortium
- Dundee City Council

5. All written evidence received is published as the Annexe to this report. The Official Report of the oral evidence session on 10 February can be found on the Parliament's website.<sup>34</sup>

## THE BILL

6. The Bill sets a long-term target to reduce Scotland's emissions of Kyoto Protocol greenhouse gases by 80% by the year 2050. This target will be supported by a framework of annual targets intended to stimulate policies necessary for achieving the long-term target. Many of the policy measures required to meet these targets will not require legislation to implement them. Certain climate change mitigation and adaptation policies have been identified which do require legislation and the Bill contains provisions in Part 5 which will allow these to be taken forward.

7. The Bill is separated into five Parts—

- Part 1 creates a statutory framework for greenhouse gas emissions reductions in Scotland by setting a 50% reduction target for 2030 and an 80% reduction target for 2050. To help ensure the delivery of these targets, the Bill also requires that Scottish Ministers set annual targets, in secondary legislation, from 2010 to 2050.
- Part 2 allows Scottish Ministers to establish a Scottish Committee on Climate Change, or to designate an existing body, to exercise advisory functions.
- Part 3 requires Scottish Ministers to report regularly to the Parliament on Scotland's emissions and progress towards the targets set in the Bill.
- Part 4 allows Scottish Ministers, by regulations, to impose duties on public bodies in relation to climate change, to issue guidance to those bodies relating to their climate change duties and to require that they report upon the discharge of those duties.
- Part 5 is divided into four chapters—
  - Chapter 1 contains provisions relating to adaptation to the impact of climate change. It requires Scottish Ministers to produce a report setting out their objectives in relation to adaptation to climate change, proposals and policies for meeting them and the timescales within which they will be introduced. It also contains an enabling power for the Scottish Ministers to vary the permitted times during which muirburn may be made.

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<sup>34</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009 available at: <http://www.scottish.parliament.uk/s3/committees/finance/or-09/fi09-0401.htm>

- Chapter 2 allows modification by regulations of the functions of the Forestry Commissioners to enable the Forestry Commission in Scotland to play a greater role in tackling climate change.
- Chapter 3 requires Scottish Ministers to produce an action plan setting out their current and proposed measures to improve the energy efficiency of buildings in Scotland, as well as measures to encourage behavioural change in regard to energy efficiency. It also contains measures for improving the energy performance of existing non-domestic buildings in order to raise the contribution that those buildings can make to mitigating climate change through reducing energy demand and thereby emissions of greenhouse gases. It also places a duty on Scottish Ministers to promote the use of heat from renewable sources.
- Chapter 4 enables Scottish Ministers to make regulations addressing various issues in moving towards a zero waste society, and securing a more sustainable use of resources, thereby limiting the emissions of greenhouse gases which contribute to climate change.

## SUMMARY OF COSTS OUTLINED IN THE FINANCIAL MEMORANDUM

8. The Financial Memorandum contains substantial cost information, and explanation of policy background and assumptions underpinning the cost estimates. The nature of the Bill means, however, that the cost information is not presented in a way that allows identification of clear total one-off or recurring costs associated with the Bill's implementation.

### **Part 1 – Emissions reduction targets**

9. Based on a range of research, the Financial Memorandum estimates that the overall cost to Scottish Government, local authorities, public bodies and Scottish businesses of delivering an 80% reduction in emissions by 2050 would be in the region of 1%-2% of GDP in 2050. In 2006, 1%-2% of Scottish GDP would have been equivalent to £1 billion - £2 billion. These costs would apply across the whole of the Scottish public sector and all business sectors.

10. The exact cost depends on the particular policy measures used to contribute to meeting the target. The Financial Memorandum points out that it is extremely difficult to cost sub-sets of options. However, it outlines one assessment of a set of measures which may, in the year 2050, cost the equivalent of £1.7 billion at 2005 prices.

11. These overall figures do not assess the wider economic costs from implementation or the proportions of costs likely to fall on producers, consumers or taxpayers. However, the Financial Memorandum points out that research estimates the cost to society if no action is taken to alleviate climate change to be 5%-20% of global GDP.

12. The Financial Memorandum states that costing delivery of the 2030 target is also difficult as a straight line reduction trajectory is unlikely. Rather, some more significant emissions reductions are expected to result from step changes in approach.

13. The Bill does not specify the means by which the annual targets are to be delivered, and the costs and efficiencies will depend on many inter-related factors. Future emissions also depend, at least in part, on the general level of economic activity. Ministers will be required to seek advice on the most cost-effective reductions available when setting annual targets. The periodic statutory instruments prescribing annual targets (which will be instruments subject to the affirmative procedure) will be accompanied by a Regulatory Impact Assessment which details the likely cost implications.

14. In the event of failing to meet an annual target, the Bill includes powers to address this by purchasing carbon units. The cost of this would depend on the extent of any failure and the market price of units (estimated to be at least £15-£30 per tonne of carbon dioxide equivalent), and would represent a transfer of funds from Scotland to the country generating the carbon credit.

15. The Bill allows for the establishment of a carbon tracking and accounting scheme, with an estimated cost on the Scottish Government or a designated public body of £60,000 per annum.

## **Part 2 – Advisory functions**

16. The Bill requires Ministers to seek independent expert advice before setting annual targets. At present, the Scottish Government is committed to providing £275,000 in 2008-09 to part-fund the UK Committee on Climate Change, established under the UK Climate Change Act 2008. The Financial Memorandum states that this is regarded as the most cost-effective option for obtaining advice. In the event that Ministers decide to exercise the Bill's power to establish a Scottish Committee on Climate Change, the Financial Memorandum estimates a cost of around £2.5 million per annum. In that event, there may be some potential for savings on payment to the UK Committee for work in relation to Scotland.

## **Part 3 – Reporting duties**

17. Various reporting requirements set out in the Bill are estimated to cost a total of £17,000 per annum, with this cost to be absorbed within existing administration budgets.

## **Part 4 – Duties of public bodies**

18. The Bill provides for the possibility of imposing a duty on public bodies to ensure consistent and fair contributions to delivery across the public sector. The cost of doing this will depend on the circumstances. The Financial Memorandum does not outline any estimates, stating that imposing the duty would be part of the cost of meeting the various statutory targets. It states that, if an order was proposed to impose such duties, a Regulatory Impact Assessment would be produced.

## **Part 5 – Other climate change provisions**

### *Chapter 1 – Adaptation*

19. The Bill requires that, where the Secretary of State has laid a report on the impacts of climate change (under section 56 of the UK Act), Scottish Ministers must lay a programme before the Parliament setting out proposals for adapting to these impacts. The Financial Memorandum estimates staff costs of £30,000 in each year in which such a programme is required (within three years of the UK Act coming into force, and thereafter at least every five years).

### *Chapter 2 – Forestry*

20. The Financial Memorandum states that the power to modify the functions of the Forestry Commissioners in respect of Scotland is intended in the first instance to allow the Forestry Commission Scotland (FCS) to enter into joint ventures for renewable energy development, and to let timber cutting rights to fund climate change activity. Initial costs of establishing joint ventures are estimated at £0.5 million per annum for 2009-10 and 2010-11, to be met from current FCS budgets. It is estimated that the potential net annual income from joint ventures could reach £10 million by 2012 and £30 million by 2020.

21. Initial costs of establishing contracts for letting cutting rights are estimated at £0.2 million per annum for 2009-10 and 2010-11, to be met from current FCS budgets. No estimate of potential income is given. A Regulatory Impact Assessment would be prepared for any secondary legislation to pursue this.

22. Initial costs of pursuing the option of establishing an additional body to pursue woodland creation are estimated at £0.3 million per annum for 2009-10 and 2010-11 – again to be met from current FCS budgets – although detailed proposals have yet to be developed.

23. For all the forestry initiatives, the Financial Memorandum suggests that, after the first two years, running costs will be funded from income generated.

### *Chapter 3 – Energy efficiency*

24. The Financial Memorandum states a range of cost scenarios that may arise from provisions to improve the energy performance of non-domestic buildings. The total cost to the Scottish Government depends on a number of variables, and the Financial Memorandum states that detailed estimates cannot be developed until the Bill is enacted and new responsibilities agreed. The menu of preliminary estimates results in scenarios with one-off costs ranging from £0.3 million to £0.6 million, and average annual costs ranging from £0.3 million to £12.4 million.

25. The potential costs on local authorities are similarly wide-ranging. The Financial Memorandum estimates the average annual costs of the scenarios to be from £2.6-£3.5 million to £27.7-£37 million. Scenarios for the costs on other bodies, individuals and businesses range from average annual costs of £5.3-£6.2 million to £55.4-£64.7 million. Again, any secondary legislation will be accompanied by a Regulatory Impact Assessment.



#### *Chapter 4 – Waste reduction and recycling*

26. The Financial Memorandum states that this chapter of the Bill contains enabling powers to introduce a wide range of secondary legislation. The costs and efficiencies arising as a result of the proposals will vary widely according to how and when they are implemented and it is, therefore, not possible to provide exact costings for the proposals which will come forward in secondary legislation. All secondary legislation will be accompanied by a Regulatory Impact Assessment.

27. The Financial Memorandum includes a table which summarises the potential estimated costs of the provisions in this chapter of the Bill (see Table 8 on page 51).

### SUMMARY OF EVIDENCE

#### **Specific issues**

##### *Advisory functions (Part 2)*

28. Evidence from the UK Committee on Climate Change (UKCCC) supported the assumptions in the Financial Memorandum relating to its advisory functions. It agreed that future Scottish annual contributions to the Committee are likely to be in line with that made in 2008-09, i.e. £275,000. Also, the UKCCC considered that additional funding may be required where it is commissioned to provide advice and the cost of that task is particularly expensive. In fact, the UKCCC considered it likely that such additional funding would be required, but noted that specific costs and the timing of any required funding were yet to be established.

29. SEPA referred to the provision in the Bill to establish a Scottish Committee on Climate Change which would provide the advisory function currently carried out by the UKCCC. SEPA acknowledged that at this stage it was difficult to comment on the scale of additional charges relating to a Scottish advisory function. SEPA expected, however, that the costs of carrying out such a role would be substantial; requiring expertise in climate change science and environmental technology, economic assessment and modelling and understanding of social impacts.

30. In supplementary evidence, the Scottish Government confirmed that its contribution to the funding for the UKCCC is expected to vary year on year. This is partly due to the inclusion in the 2008-09 fees of one-off start up expenditure. Moreover, the Government confirmed that additional funding is also expected to be required for analysis regarding the annual Scottish targets and trajectory. It was suggested that—

“if this work requires, for example, an additional analyst and perhaps some additional research to build on the analysis work already undertaken by the Committee, this could be estimated to be in the region of up to £100,000.”

31. The Government also confirmed that the UKCCC is currently considering the resource implications of work in support of the Bill, in addition to reviewing its funding requirements for 2009-10 with the UK administrations.

32. In relation to the estimated cost of establishing a Scottish committee on climate change, the Scottish Government provided further details of how it had

arrived at its estimated annual cost of £2.5m. Against the UKCCC's annual cost of £2.7m, the Government identified a number of possible savings: through an information sharing arrangement with the UKCCC; employing a slightly smaller secretariat; lower remuneration for committee members; and reduced accommodation costs as a result of co-location. In response to the views expressed in evidence to the Transport, Infrastructure and Climate Change Committee<sup>35</sup> that the cost of a Scottish Committee would be less than estimated in the Financial Memorandum, the Government stated that—

“While we acknowledge that our estimates are not precise sums, we remain convinced that the figures [presented in the Financial Memorandum] indicate the scale of the cost difference between contributing to the UKCCC and establishing a Scottish Committee.”

*Forestry (Part 5, Chapter 2)*

33. In written evidence, the Confederation of Forest Industries (ConFor) considered that insufficient information is available in the Financial Memorandum to be able to assess the likely impact of the proposals on joint ventures and leasing rights.

34. ConFor stated that there is no information publicly available on which to judge the accuracy of the cost estimates for income from joint ventures. It said that, without specifying the areas proposed to be leased and the terms of the lease, it is not possible to estimate the potential income available, the impact of spending this income on planting new forests, or of the impact on wood processing businesses. ConFor acknowledged, however, that further details on joint ventures and leasing arrangements would be provided alongside forthcoming secondary legislation and that at that point, an understanding of the cost impacts would be better known.

35. In evidence to the Committee, Scottish Government officials provided some explanation of the likely costs under the forestry provisions. Regarding joint ventures for renewable energy projects, officials suggested that the estimated income was based on a 150MW wind farm delivering around £3m per year.

36. In relation to the letting of timber cutting rights, officials indicated that the level of income generated depended upon the area that is let and the terms of the lease. They said, however, that any lease arrangement would have a reserve price that would take into account the value of the assets to the FCS and any additional costs that might be associated with leasing, such as paying grants to the lessee. Subject to these factors, officials suggested that the option of a 75-year lease of 100,000 hectares, as mentioned in the Financial Memorandum, could be expected to generate an income in the region of £150m-£200m.<sup>36</sup>

37. The Government also confirmed that the consultation on the forestry provisions in the Bill has just concluded and that it is collating the responses. In

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<sup>35</sup> Scottish Parliament Transport, Infrastructure and Climate Change Committee, *Official Report*, 3 February 2009, col. 1438.

<sup>36</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 979.

parallel, officials have undertaken work on an options review, on which they will report to Ministers by the end of February 2009. It is understood that the review will provide financial analysis of joint ventures, the leasing of forest land and details of costs associated with setting up a membership-led body to which cutting rights receipts could be transferred.<sup>37</sup>

*Energy performance of non-domestic buildings (Part 5, Chapter 3)*

38. Concern was raised in evidence to the Committee about the wide-ranging nature of the enabling powers in the Bill relating to enhanced Energy Performance Certificates (EPCs). In supplementary written evidence, the FSB considered the scope of the Government action to be unclear which, it said, made it difficult to ascertain the potential impact of the Bill. It referred to the seven scenarios for enhanced EPCs as “having severe cost and practicality implications” for business and public bodies (the potential cost to businesses ranges from £5.3m to £64.7m p.a.).

39. A similar point was made regarding the potential costs to local authorities, which the Financial Memorandum states could range from zero (paragraph 193) to £37m p.a. (Table 6 on page 39). Glasgow City Council criticised the Financial Memorandum and suggested that it did not enable an authority the size of Glasgow, which has in excess of 1000 buildings, to accurately compile the increased level of spending and resources that will be required. In relation to the information that will be included in future secondary legislation and a fully costed RIA, East Ayrshire Council stated that—

“it is not until this information is available that local authorities will be able to comment on whether any financial implications are reflected and whether the costs associated with the Bill can be met or made self-financing through the levy of penalty charges.”

40. In other evidence, SEPA recognised that the enhanced EPC provisions in the Bill would likely be a much bigger issue for local authorities, due to the size of their building stock compared with that of SEPA.<sup>38</sup> On the cost estimates themselves, SEPA stated that it was difficult for it to comment on the accuracy of the figures given that it does not get involved in areas such as building regulation.<sup>39</sup>

41. The Scottish Government acknowledged that the seven scenarios for the energy performance of non-domestic buildings covered a wide range of possibilities, which could have significant financial impacts on public bodies, local authorities and businesses.<sup>40</sup> Government officials confirmed that no policy decision had been taken to exclude any of the seven scenarios and highlighted the various factors on which the costs were based. They said that they were currently

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<sup>37</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 979 and supplementary written evidence.

<sup>38</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 951.

<sup>39</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 955.

<sup>40</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 974 and supplementary written evidence.

taking advice on the responses received to their consultation on the different scenarios (which closed on 25 November 2008) with the intention of reporting back to Ministers, and hoped to find a way forward for the next stage of the Bill.<sup>41</sup>

42. The Government also confirmed its intention to address all costs associated with the chosen policy on enhanced EPCs in a detailed RIA, which would accompany the regulations. It was stated that there is every possibility that the regulations will be included within the first 10 years of annual targets and could come in shortly after the end of the current spending review period which ends in 2011. In addition, the Government explained that it would carry out a rigorous review of these regulations (within 10 years of the introduction) to assess their impact.

*Waste reduction and recycling (Part 5, Chapter 4)*

43. SEPA's view was that, as a first cut, the costs relating to the provisions on waste reduction and recycling (presented in Table 8 on page 51 of the Financial Memorandum) are a reasonable set of assumptions. Despite this, however, SEPA accepted in written evidence that "the cost of the waste provisions cannot be fully anticipated because it is not yet known whether the voluntary agreements will be sufficient, thus rendering the provisions unnecessary."

44. Other evidence was more critical of the information contained in the Financial Memorandum. The FSB referred to inconsistencies in the presentation of costs in the Financial Memorandum and suggested that it would have been helpful if all of the costs had been calculated to give a total figure for businesses across Scotland.<sup>42</sup> (The costs given in relation to waste prevention and management plans refer only to the cost of preparing an individual plan.) Whilst the FSB imagined that it would be asked to contribute to modelling work for any future RIA on these proposals, it stated that it would much rather that the Government had already done this work.<sup>43</sup>

45. Also, the FSB noted the different types of plans that could be required under the regulations for waste reduction and management plans. The Policy Memorandum describes them as ranging from plans for an individual construction project to plans for waste generated by a business on an ongoing, day-to-day basis (e.g. office waste).<sup>44</sup> The FSB considered the cost implications of these options to vary considerably and suggested that until the Government was clear about its chosen approach, it was difficult to be able to judge the likely cost impact of the proposals in the Bill.<sup>45</sup>

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<sup>41</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 974.

<sup>42</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, cols. 961-2.

<sup>43</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 962.

<sup>44</sup> Climate Change (Scotland) Bill, Policy Memorandum, paragraph 119.

<sup>45</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, cols. 958 and 961.

46. Glasgow City Council also found the lack of detail contained in the Financial Memorandum to be problematic. The Council referred to the information on carrier bags, deposit and return schemes and waste management plans and stated that it was difficult for the Council to assess the likely cost of widespread introduction of these initiatives.

47. Other evidence queried certain specific cost estimates contained in the Financial Memorandum. SEPA considered the enforcement costs relating to duties to provide recycling facilities (estimated at £15 per hour) to be insufficient and suggested that a more senior member of staff would be required for such a task. East Ayrshire Council made a similar point in relation to the estimated staff costs of registering waste prevention and management plans (estimated at £15 per plan).

48. Fife Council questioned the appropriateness of the £3.5m p.a. cost of enforcing carrier bag charges on the basis that many large retailers already implement such schemes on a voluntary basis. It also, along with the FSB, suggested that Victoria Quay was not a particularly helpful example to use as an indicator of the cost of providing recycling facilities in business premises across Scotland.

49. In relation to the provisions on recycling, the FSB commented on the omission of “the inevitable cost implications to local authorities of providing the necessary infrastructure to support additional recycling.” It suggested that if local authorities – as the main bodies that collect waste from small businesses – do not have the facilities to cope with that task then small businesses will not be able to save money through increased recycling.<sup>46</sup>

50. In written evidence, the Scottish Retail Consortium (SRC) expressed concern that the waste and recycling provisions would have a very serious impact on the operational costs for retailers in Scotland, irrespective of size or location.

51. The Scottish Government acknowledged that the enabling powers in the Bill relating to waste reduction and recycling could have a potentially significant financial impact on public bodies, local authorities and businesses. However, as officials explained, the Government hopes that voluntary work might achieve a lot of the outcomes sought by the Bill, in which case these powers might not need to be implemented.<sup>47</sup> Officials explained that it was conceivable that the backstop of potential secondary legislation (and the related duties that would fall on public bodies and businesses) could encourage people to think more carefully about taking voluntary action to reduce waste. The Government confirmed that if it is decided that regulations are required then the associated financial issues that they raise will be addressed in a supporting RIA.

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<sup>46</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, cols. 958-9.

<sup>47</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, cols. 975-6.

## General issues

### *Adequacy of cost estimates*

52. The Financial Memorandum recognises that, in relation to the action necessary to meet the various emissions reduction targets, there is considerable uncertainty about the cost implications of the Bill. It suggests that where these costs will fall and how they will impact on output by sector will depend upon the paths chosen to deliver the emissions reductions.<sup>48</sup>

53. SEPA told the Committee that, as far as it could see and given the available information, the cost estimates contained in the Financial Memorandum are appropriate and reflect the likely range of uncertainty associated with the proposals—

“We think that the financial memorandum is a reasonable first stab at some of the costs, bearing in mind that the actual costs will depend on the detail. The devil will be in the detail of how the measures are framed, the scope of the duties and powers, and the enforcement regime that is put in place. With all that in mind, we think that the Scottish Government made a good attempt.”<sup>49</sup>

54. Whilst SEPA recorded a slight hesitation about some of the costs which it considered to be underestimations (relating to carbon accounting and enforcement duties relating to the provision of recycling facilities), it was comfortable that greater clarity would be achieved at the regulation stage.

55. A number of local authorities acknowledged the statement in the Financial Memorandum that the cost assumptions cannot be accurately predicted at this time and that many uncertainties exist. Dundee City Council, for example, considered that it had no basis on which to disagree with the figures.

56. Other evidence from local authorities – whilst recognising the inherent difficulties in making such long-term cost estimates – suggested that the information contained in the Financial Memorandum did not go far enough. For example, Fife Council said that it appreciated the difficulty in making cost projections in the face of changing markets and behaviours and unproven technologies, but called for the Scottish Government to provide more detailed and robust estimates. East Lothian Council highlighted what it referred to as the broad brush approach of the Financial Memorandum and added that it required clearer guidance from Government.

57. Aberdeen City Council went further and described the cost estimates provided in the Financial Memorandum as “too vague” and “merely a best guess based on uncertainties”. The Council also suggested that “the costs are difficult to trust since they are only proxy figures based on disaggregating UK costs” and called for greater transparency in the methodologies used to make the projections.

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<sup>48</sup> Climate Change (Scotland) Bill, Financial Memorandum, paragraph 148.

<sup>49</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 953.

58. Other evidence highlighted the fact that some of the measures, such as carbon capture and storage (CCS) technologies, would require significant investment in the short term with savings periods not being achieved until later. SEPA stated that many of the technological improvements necessary to head towards a lower carbon infrastructure will bring costs and noted that the Financial Memorandum does not include anything on invest-to-save or funding for the promotion of reduced carbon emissions programmes for public sector bodies. It suggested that this omission could discourage organisations from taking necessary, timeous action.<sup>50</sup>

59. A number of councils considered that the investment required in, for example, carbon reductions projects, would be challenging when other competing priorities and service needs also have to be met.<sup>51</sup> For example, East Lothian Council considered it to be problematic that some of these technologies will not have financial pay back until several years beyond the current council budget and election cycles making it difficult to approve long-term projects.

60. Fife Council called on the Government to take a more realistic approach and suggested that some of the costings be revised to separate efficiency savings from anticipated outlay costs. The Council referred to CCS technologies and advocated a more cautious approach to the potential savings that could be derived from them until their value in meeting the annual targets has been proven.

61. In relation to their particular circumstances, Glasgow City Council and Highland Council considered that they could experience greater challenges and costs in meeting the Bill's targets. Glasgow City Council considered that the predicted impact on Scottish GDP of the Bill would have a disproportionate impact on Glasgow. Highland Council suggested that its unique geography, climatic conditions and transient population could lead to higher costs.

62. In evidence to the Committee, Scottish Government officials stated that they have taken a macro approach to the Bill, but accepted that "this only takes us so far and we are now looking to put in place secondary legislation and a more detailed analysis".<sup>52</sup>

63. Officials confirmed that, whilst the costings for delivering the 2050 emissions reductions targets are based on UK figures, work is underway – in the shape of a strategic overview – to consider whether they are appropriate using Scotland-specific data.<sup>53</sup> They considered that—

"Many pieces of information are part of the jigsaw, and it is difficult for us to leap-frog over things that are not yet in place. That is why it is a challenging task for the committee to consider the financial memorandum as it stands.

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<sup>50</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 948.

<sup>51</sup> Highland Council, Glasgow City Council, Dundee City Council

<sup>52</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 966.

<sup>53</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 967.

We will be more informed as things progress. When the strategic overview is finished and we know what the UK emissions budgets will be, we will have a much clearer idea of the pace of activity that will be needed. We will be able to add another level when we bring forward our annual targets, which we hope will be put in place through regulations in June 2010.”<sup>54</sup>

64. In response to some of the concerns raised by local authorities about the lack of financial detail in the Bill, officials confirmed that “local authorities will have a contribution to make, but we do not quite know what form that contribution will take.” They said that Part 5 of the Bill, without being overly specific, sets out some of the policies that might in future contribute to reducing emissions.<sup>55</sup>

65. Government officials also responded to the suggestion that Ministers report to Parliament on the impact of the Bill on GDP. They said that because GDP figures are generally UK based it is difficult to extrapolate to obtain Scottish GDP numbers. They also referred to a further difficulty that could arise in attempting to define (in legislation) exactly what is meant by UK and Scottish GDP.<sup>56</sup>

*Detail to be included in secondary legislation*

66. The Bill confers various regulation-making powers on the Scottish Ministers, particularly in relation to the provisions contained in Part 5. The Financial Memorandum states that such regulations will be supported by a fully costed RIA.

67. In evidence to the Committee, the FSB said that it was primarily concerned about the nature of secondary legislation enabled by the Bill. In its supplementary written evidence it stated—

“We of course appreciate the benefits of using secondary legislation, however, this should be of a supporting nature; the intention of the legislation having been set out in the primary legislation. We believe that the measures currently outlined are extremely wide-reaching and the scope of government action unclear. This means it is very difficult to ascertain the potential impact of these measures.”

68. The FSB asserted that—

“With some of the proposals having severe cost and practicality implications... for both business and public bodies, we do not think it is appropriate for Parliament to be asked to vote to allow Ministers such a wide range of legislative powers without more detailed intentions and costings.”

69. As well as seeking clarity of approach from the Government to enable judgements to be made on the costs involved, the FSB considered that “better regulation” would allow an opportunity to design a regime that has the most

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<sup>54</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 969.

<sup>55</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 966.

<sup>56</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 971.



streamlined impact. It suggested that such an approach would increase efficiency, simplify compliance and mitigate the impact on small businesses and other vulnerable groups. The FSB explained that, as the Bill is set out, those opportunities have not been fully exploited—

“For example, if all business premises are to have energy performance certificates—if that is the option that the Government goes for—and waste management plans, that will be an opportunity to consider streamlining such regulations for business premises. In the waste and energy efficiency sections of the Bill, I have counted about six or seven regimes that would require enforcement, paperwork and record keeping. As drafted, the Bill makes it extremely costly both to business and to the public purse.”<sup>57</sup>

70. Other evidence reflected some of the issues raised by the FSB. For example, East Lothian Council commented that it was difficult to comment on the costs of the proposals in the Financial Memorandum ahead of the detailed secondary legislation. Also, Dundee City Council said that it was not possible for it to quantify the likely costs to be contained within secondary legislation.

71. SEPA, however, told the Committee that it was reasonably comfortable for some of the costs to be firmed up by the regulations and accompanying RIAs. It referred to its experience of implementing European legislation and stated that “it is not unusual for us to narrow down on costs as time goes on.”<sup>58</sup> SEPA also confirmed that it is reasonably confident that, as progress is made towards the detail of the RIAs, there will be ample opportunity to establish (with the Scottish Government) what the costs might be and to carry out any modelling that might be required.<sup>59</sup>

72. In evidence to the Committee, Scottish Government officials confirmed that the Bill provides a framework and essentially represents the introduction of enabling powers. They stated that it is not possible at the moment to state with precision the cost implications for local authorities and others as this depends on the exact nature of the regulations that may be made 10 or 20 years down the line, if they are made at all.<sup>60</sup>

73. Officials considered that as it becomes more difficult to meet the emissions reductions targets in the next 30 or 40 years, “we might have to turn to more regulatory measures and enforcement action to squeeze out the necessary carbon to achieve the 80% reduction.”<sup>61</sup>

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<sup>57</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 958.

<sup>58</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, cols. 949 and 953.

<sup>59</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, cols. 953-4.

<sup>60</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 976.

<sup>61</sup> Scottish Parliament Finance Committee, *Official Report*, 10 February 2009, col. 976.

## CONCLUSIONS

74. The Committee acknowledges the uncertainty over some of the costs associated with the Bill, particular in relation to the performance of unproven technologies and methods for reducing carbon emissions. The Committee accepts that the Financial Memorandum adequately reflects these margins of uncertainty.

75. The Committee notes the enabling nature of the Bill, particularly regarding the provisions contained in Part 5. Significant concern was raised, however, in evidence that not enough details have been made available on the likely cost impacts of these possible, future regulations. **The Committee considers that the Financial Memorandum would have been stronger if modelling work had been carried out on the potential financial impact of the measures on businesses and public bodies. The Committee also considers that in a number of areas insufficient policy direction has been provided, which has made it difficult for local authorities and businesses to be able to assess the financial impact of the proposals.**

76. The Committee notes that the Scottish Government is currently undertaking significant pieces of work to finalise some aspects of its policy, namely, the Scottish Government's strategic overview project, an options review on the forestry proposals and the consideration of energy efficiency scenarios. The Committee considers that this work will provide vital indications of future costs. **Given the significant implications of this work, the Committee would have preferred that it had been completed in time for its consideration of the Financial Memorandum to the Bill. As a result, the Committee expects to take an interest in scrutinising the financial impact of the outcomes of this work.**

77. **The Committee, nonetheless, welcomes the Government's commitment that all substantive regulations will be accompanied by a fully costed regulatory impact assessment.**

78. Where significant expenditure associated with a bill will only become apparent with subordinate legislation, the Committee has in the past noted that it will track the subsequent statutory instruments and seek to scrutinise the financial implications. **The Committee gives notice that it may seek to do so for instruments arising from this Bill.**

79. **Given the long-term perspective of the Bill, and the wide range of policy streams that may contribute to its implementation, the Committee recommends that the Scottish Government should consider how it will monitor and control the cumulative costs of implementation.**

## **ANNEXE: SUBMISSIONS RECEIVED**

This annexe contains submissions from—

- Aberdeen City Council;
- Confederation of Forest Industries;
- Dundee City Council;
- East Ayrshire Council;
- East Lothian Council;
- Fife Council;
- Glasgow City Council;
- Highland Council;
- Scottish Retail Consortium;
- SEPA;
- UK Committee on Climate Change;
- The Scottish Government (supplementary – dated 18 February 2009);
- The Scottish Government (supplementary – dated 25 February 2009); and
- The Federation of Small Businesses (supplementary).

### **SUBMISSION FROM ABERDEEN CITY COUNCIL**

#### **Consultation**

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

*Yes, Aberdeen City Council submitted a formal response to the Climate Change Bill Consultation in April 2008.*

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

*No, the financial implications were not readily investigated within the original consultation document. Instead there was a greater focus on carbon trading.*

3. Did you have sufficient time to contribute to the consultation exercise for the Bill?

Yes.

#### **Costs**

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

*The Financial Memorandum document has taken certain issues further than in our original consultation response. For example the issues of waste, energy performance certificates, and ensuring compliance were not previously discussed in great detail.*

*Also the costs to a Local Authority have been mentioned in the Financial Memorandum but again, not in sufficient detail. For example, it is worth considering that in the future Local Authorities may incur penalties and fines for not meeting legislation e.g. Energy Performance Certificates.*

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

*At this time, Aberdeen City Council are uncertain whether the financial costs can be met due to the vague methodologies used and immeasurable financial uncertainties in the document.*

*Plus, it is stated that it is not possible to predict cost profiles in the period leading up to 2050. Surely this is the most important and most costly period for any organisation given the level of work required to meet the 2050 target of an 80% carbon reduction.*

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

*The figures given relating to Scotland's associated costs are difficult to trust since they are only proxy figures based on disaggregating UK costs.*

*The estimates provided in the document are vague and the assumptions made are merely a best guess based on uncertainties. There is also very little transparency of the chosen methodology.*

## **Wider Issues**

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

*No, Aberdeen City Council believes that the associated costs are too vague and not accurately reflected in the Financial Memorandum.*

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

*Yes, Aberdeen City Council believe that there will be future costs associated with the Bill, as the role of ensuring compliance and enforcement often falls to Local Authorities. Therefore there will be costs associated with this.*

## SUBMISSION FROM THE CONFEDERATION OF FOREST INDUSTRIES

### Questionnaire

1. *Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?*
  - A. The recently introduced measures for forestry - joint ventures and leasing on the National Forest Estate - were not contained in the original consultation.
2. *Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?*
  - A. Not appropriate.
3. *Did you have sufficient time to contribute to the consultation exercise?*
  - A. Not appropriate, so far as the consultation on the original Bill is concerned, but the time allowed for consulting on the newly introduced Sections relating to Forestry Provisions was insufficient, particularly as the period spanned the Christmas holidays.

### Costs

4. *If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.*
  - A. There may be implications for private sector companies who enter into a joint venture or lease with the Forestry Commission, and there could be an impact on wood processing companies from a change in management of 100,000 hectares of the NFE, but it is not possible to make any estimate of that given the limited information currently available.
5. *Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?*
  - A. As referred to in the answer to the previous question, there is too little information available on which to make any meaningful estimation.
6. *Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*
  - A. The figure for income from joint ventures is presumably based on information from the Forestry Commission. There is no publicly available information on which to judge the accuracy of the sums quoted, and no mechanism for estimating the impact on private sector businesses.

There is no income figure given for the leasing proposal, simply a recognition that this would depend on a range of factors. Without specifying the areas proposed to be leased and the terms of the lease, it is not possible to make any estimation of the potential income available, the impact of spending this money on increased new planting of forests or of the impact on wood processing businesses.

## **Wider Issues**

7. *If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?*

A. The forestry element of the Bill is potentially significant within the context of the future growth and development of Scotland's forestry and wood using businesses and the role they can play in helping to deliver a low-carbon economy in Scotland.

The sector contributes nearly £1 billion a year to Scotland's economy<sup>62</sup>, provides employment for 20,000, in particular in rural areas, and has capacity for growth. The sector is one of the few in Scotland that can boast that the more it expands the greater carbon benefit it provides.

The proposal to raise income from joint ventures and leasing of public forests could, at best, provide an important stimulus to the sector, and, at worst, reduce investment in wood processing businesses. Much depends on whether any income raised is spent on supporting new planting of forests and whether effective safeguards are put in place to ensure that the current security of supply provided by the Forestry Commission is retained effectively in any leasing proposal.

If security of supply was ensured and income raised recycled into new planting then there would be no cost to private sector businesses, and indeed the opposite would be the case as the stimulus would deliver greater activity.

If security of supply was not ensured and income raised was not recycled into forestry then there would be a negative impact on wood processing businesses and a likely reduction in investment.

There may be a cost to the Forestry Commission, but this would depend on whether it retained any income from joint ventures or whether leasing income was realised annually and a portion retained by the FC. Present financial information provided is very brief (Forestry Commission Scotland Annual Report and Accounts) and this makes any interpretation of business performance on the national Forest Estate difficult for any outside organisation. Greater transparency and more detailed management cost information would be helpful, and necessary if the further very significant

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<sup>62</sup> cebr report for the Forestry Commission and ConFor (2006)

sums of money which might be generated through the Bill's forestry provisions are to accrue in the accounts of FCS / FES.

8. *Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?*

A. It is understood that the forestry proposals would be delivered through secondary legislation and further detail on leasing and joint ventures would be prepared. At this point an understanding of the impacts would be better known.

### Other information

The forestry related proposals contain insufficient information on which to determine their impact on Scotland's forestry and wood-using businesses. ConFor would wish to reiterate the central message from its response to the consultation, that:

- there is benefit in delivering increased new planting;
- this could be delivered by a variety of mechanisms and requires improvements to the Scottish Rural Development Programme;
- ConFor is keen to utilise both its and its membership's expertise in developing a way forward that addresses legitimate concerns raised.

In terms of delivering new planting we would note that good information is available on where and how best to establish new forests to maximise carbon sequestration while securing other economic and environmental benefits. Current sustainable management standards provide a firm basis for Scotland to really begin to achieve a target of 25% forest cover.

ConFor recognises the benefit of delivering this within the context of a broad land-use policy. However, there is land currently available and planting a very small part of this now while developing a policy to guide future activity is vital to help secure jobs in the sector at a time of economic downturn.

Internationally agreed climate change targets focus on 2050. If Scotland planted 15,000 hectares a year with 9,000 ha being productive softwood forests then it would deliver the Government's target of 25% forest cover by 2050 and provide significant, additional carbon benefits - up to 33.5 MtC.

**TABLE:** Estimated carbon sequestration for additional productive and broadleaf forest under new planting regimes of 10,000 ha/yr and 15,000 ha/yr from 2010 to 2050

Planting regime over period 2010-2050	Productive softwoods		Broadleaves		Total	Total
	New planting (ha/yr)	Carbon sequestration (MtC)	New planting (ha/yr)	Carbon sequestration (MtC)	New planting (ha/yr)	Est. carbon sequestration to 2050 (MtC)*

inc.						
10,000 ha/yr	6000	15.5	4000	6.9	10000	22.4
15,000 ha/yr	9000	23.2	6000	10.3	15000	33.5

**NB** On a sustainably managed basis, at 10,000 ha/yr, the total additional forest would continue to sequester 1.1MtC/yr after 2050, and 1.6MtC/yr on a 15,000 ha/yr planting regime.

Such a planting programme would secure significant jobs and investment benefits. For productive softwood forests this is estimated at around 180 new jobs in planting and up to 900 for harvesting, transport and wood processing. Current investment in the sector is running at £100m a year and this would increase significantly.

### ***Increased use of Scottish wood***

Wood products are low energy materials that can save significant amounts of carbon when substituted for other building materials. Research shows that average savings of 0.8tCO<sub>2</sub>e can be achieved by replacing 1m<sup>3</sup> of concrete/bloc/bricks with 1m<sup>3</sup> of sawn timber<sup>63</sup>. Long-term wood products also provide a benefit through their potential storage capacity, estimated at 0.9tCO<sub>2</sub> in 1m<sup>3</sup> of wood<sup>64</sup>.

ConFor calculates that over the period to 2050 the additional productive forest area achieved from planting 9,000 ha/yr of productive softwoods could provide, based on current proportions, an additional 33.5M m<sup>3</sup> timber available to the construction market. This then gives the potential for substitution of materials delivering emissions savings of 27mtCO<sub>2</sub>. This would be a tremendous resource for Scotland.

Wood can also be used to generate renewable energy. ConFor has campaigned for this to focus on wood that currently has no market, and to promote its use locally and in generating heat. It has also noted that carbon and jobs benefits are higher in solid wood products, not least because these can be used and re-used, and then be made available to generate energy at the end of their useful life. There is a danger that current and evolving public policy could provide such large incentives to burn wood that jobs are lost and the carbon emissions potential of wood is not fully realised.

### ***Scottish broadleaves and softwoods***

ConFor represents people who own and work with broadleaf woods. We support efforts to manage broadleaf woods sustainably and to develop markets for hardwoods. It is important, however, when talking about climate change mitigation, jobs and investment to recognise the scale and potential of Scotland's diverse forest and wood-using businesses.

<sup>63</sup> Reid H et al (2004). *Using wood products to mitigate climate change: a review of evidence and key issues for sustainable development*. January 2004. IIED/ECCM.

<sup>64</sup> Dr A Fruhwald, Hamburg University in CEI-Bois (2006) *Tackle Climate Change: Use Wood*



Including Scots Pine, Scotland produces over 6 million tonnes of softwood each year, while hardwood production, including non-native species, is just over 400,000 tonnes for the whole of the UK with the majority of this estimated to be in England.

Scotland is internationally competitive in growing softwoods and producing wood products that have a large market and where there is scope for significant growth. The businesses in the sector are mainly Scottish owned or headquartered.

The sector is unusual in that it combines successful, modern manufacturing with land management that is governed by environmental standards that are second to none.

The sector suffers from an image hang-over from the planting of last century, driven by the FC which did not deliver the multi-purpose forests that are being established today. Those single-species, forest blocks are now being restructured to improve their biodiversity and visual impact. Using lessons learnt from the past there is scope now for a modern forestry and wood-using sector that all Scotland can be proud of.

Unfortunately Scotland's broadleaf woods are largely unmanaged and provide limited amounts of timber for wood fuel and for small businesses that produce furniture, flooring, etc. The potential for use in construction is limited by the lack of quality trees and the established, highly competitive operations on mainland Europe that dominate the hardwood market. This will not change in the near future as hardwoods take up to 150 years to grow (against 40 for softwoods).

There is scope for development of the broadleaved resource and of hardwood markets, but by far the largest opportunity for sustainable growth and climate change mitigation sits with the softwood resource, and public policy and its delivery must reflect that.

**Jamie Farquhar**

**National Manager for Scotland  
ConFor**

**February 2009**

## SUBMISSION FROM DUNDEE CITY COUNCIL

### Consultation

1. *Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?*

Comment: Dundee City Council responded to the Scottish Government consultation on 'Proposals for a Scottish Climate Change Bill' in April 2008. No comments were made on financial assumptions.

2. *Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?*

Comment: N/A

3. *Did you have sufficient time to contribute to the consultation exercise for the Bill?*

Comment: Yes, although limited knowledge curtails detailed comments.

### Costs

4. *If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.*

Comment: The Bill has financial implications for local authorities but there is no basis for disagreeing with the figures in the Memorandum or identifying the likely impact on Dundee City Council.

5. *Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?*

Comment: Local authorities are currently struggling to balance budgets with the level of Scottish Government funding available and any further statutory responsibilities will inevitably lead to savings requirements in other budgets unless further Scottish Government funding is made available.

6. *Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

Comment: The Council has no basis for disagreeing with the estimates and timescales included in the Memorandum.

### Wider Issues

7. *If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?*

Comment: The Council has no basis for disputing whether the costs of a wider policy initiative are accurate or not.

8. *Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?*

Comment: It is to be assumed that there will be future costs through subordinate legislation but it is not possible for Dundee City Council to quantify these costs.

## SUBMISSION FROM EAST AYRSHIRE COUNCIL

### Consultation

1. *Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?*

Yes – financial assumptions were made in relation to carbon budgeting rather than monetary units.

2. *Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?*

Not applicable.

3. *Did you have sufficient time to contribute to the consultation exercise for the Bill?*

Yes

### Costs

4. *If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.*

It is difficult to comment fully as the memorandum itself states that costs are not fully available due to uncertainty surrounding the exact amount of annual targets, who will be responsible for enforcement, and a lack of evidence to accurately identify what the costs associated with the terms of the bill are likely to be. For example under the provisions relating to “*improving the energy performance of existing non-domestic buildings*” the estimated costs to local authorities range from £3.4m to £37m depending on how the menu of provisions contained within the Bill is assembled within secondary legislation. Such secondary legislation will be accompanied by a costed regulatory impact assessment. It is not until this information is available that local authorities will be fully able to comment on whether any

financial implications are reflected and whether the costs associated with the Bill can be met or made self-financing through the levy of penalty charges.

5. *Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?*

As per comment under question 4.

6. *Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

Yes - the memorandum does reflect the margins of uncertainty associated with the estimates and the timescales over which costs would be expected to arise.

### **Wider Issues**

7. *If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?*

In terms of the Council's ability to meet the financial costs with regards to mitigation and adaptation measures encompassed within the Bill, it is necessary to determine whether there are any resource implications arising. These can only be costed once service departments have established actions to fulfil these obligations.

The Council would contest the accuracy of the costings contained within section 219. By assuming that a full time employee works 2,000 hours per annum, the memorandum fails to account for the employees statutory and annual leave. Further, once on-costs are subtracted from the average salary, the take home wage is unlikely to be commensurate with employees level of responsibility.

8. *Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?*

Given the scope and range of activities contained within the Bill it likely that there will be future associated costs. Again, until these measures are specified it is not possible to accurately quantify potential costs.

## SUBMISSION FROM EAST LOTHIAN COUNCIL

### Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

*East Lothian Council sent a consultation response. Officers from the Council were involved in some of the consultation workshop events. There were no specific comments made on the financial assumptions.*

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

*N/A*

3. Did you have sufficient time to contribute to the consultation exercise for the Bill?

*Yes within the limited knowledge available to the Council on a very complex topic.*

### Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

*Clearly the bill has financial implications for the Council. The substantive matter in the Bill is setting the 2050, 2030 emission reduction targets and providing the framework for annual targets. Other than stating a broad brush approach of 1-2% GDP expenditure (across the Scottish Economy, including local authorities) to meet climate change the financial memorandum is not particularly helpful to local authorities.*

*East Lothian Council does not know what its costs will be in meeting the proposed emissions reductions. We are working through the Carbon Trust Carbon Management Programme which will assist that process for the Council's own emissions in the short term, but longer term is an unknown. The memorandum itself makes frequent reference to the uncertainties of predicting costs for example:*

*"It is not possible to accurately predict when technologies will be introduced or the rates of reductions that will occur from changing behaviours and shifting demand. Overall with all these factors in play, it is impossible to accurately predict what will happen and when. That is why it is not possible to predict cost profiles during the period of change in the years out to 2050. (para 147)"*

*Council's require clearer guidance from government than this.*

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

*The Council cannot say it can meet these costs. Clearly some costs will be met through existing budgets, but significant investment will be required in energy efficiency measures, renewable energy development, waste management etc to deliver the bill objectives. This will either require a re-alignment of Council budgets to the potential detriment of other Council Services, or increased public expenditure and associated tax increase.*

*In addition there is uncertainty about the implications of the Carbon Reduction Commitment for Councils – as well as having to find money to invest, some Council's may also be penalised.*

*A significant issue for local authorities is that many carbon reduction projects eg renewable energy investment, have financial pay back periods several years beyond current Council budget and election cycles, which means that Councils will find it very difficult to approve these longer term projects which will have to compete with the annual pressures of paying for existing public services within the already tight public finance settlement. This situation is not going to get any easier within the current economic downturn and uncertainties about future public finance settlements. Investment in Climate change mitigation (and adaptation) is as much about political and societal choices as financial ones.*

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

*While there is clearly an imperative to act, and the cost of not acting now will be considerably higher in the future (Stern), there remains considerable uncertainty about estimated costs and timescales for action as identified in the memorandum (see also comment 4 above), other than identify that uncertainty the memorandum is not particularly helpful to Councils in framing financial implications.*

### **Wider Issues**

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

*It is not clear what wider policy initiative is being referred to. If it is assumed that this refers to the sections in the Bill about waste management, energy efficiency etc then there will be implications for Councils and local businesses in particular. It is difficult to comment on the costs of the proposals in the financial memorandum ahead of the detailed secondary legislation required to introduce the measures.*

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

*There are more than likely to be other unidentified costs, but what they are is an unknown at the moment, particularly in terms of broader societal consequences of climate change impact and response.*

David Evans  
Environment  
East Lothian Council

## SUBMISSION FROM FIFE COUNCIL

### Consultation

1. *Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?*

Fife Council responded to the Government Consultation in April 08, but did not highlight financial implications. We are currently compiling a response to the Transport, Infrastructure and Climate Change Committee's Call for Views (deadline 27 February), and will highlight financial implications.

2. *Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?*

N/A

3. *Did you have sufficient time to contribute to the consultation exercise for the Bill?*

The deadline of 2 February for comments on the Financial Memorandum necessitates brief input, as our understanding of financial implications will be further informed through the compilation of input to the policy Call for Views by 27 February.

### Costs

4. *If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.*

No, costs that appear to be omitted include:

- The Bill refers to requirements for secondary legislation and regulations throughout, all of which will have cost implications.

- The Financial Memorandum seems to focus on costs incurred by the Scottish Government, for instance referring to the analysis of reports, to the exclusion of the costs associated with the scrutiny, measurement and reporting incurred by those made responsible for compiling reports. Fife Council urges the consideration of full costs associated with the Bill, and not rely on market changes or efficiencies savings making it possible for public bodies (or others) to cover the costs incurred in execution, monitoring and compilation of the reports to be analysed by the Scottish Government.
- The Financial Memorandum contains numerous references to areas of costs which are not possible to predict. While Fife Council appreciates the difficulties in cost projections in the face of changing markets and behaviours, and unproven technologies, we encourage an attempt to include fuller costings, and a realistic view of technologies such as Carbon Capture and Storage, which will incur considerable costs in advance of any financial savings achieved.
- Inconsistent levels of cost estimates are used across chapters. For example the apparent omission of transportation costs related to carbon emissions reduction, use of standardised costs in energy, and then very detailed (yet not full) costs related to waste. Fife Council requests that such inconsistencies be addressed to provide clarity and consistency across all areas.
- Fife Council also questions the priorities that the Financial Memorandum could be seen to suggest. Again referring to the waste costs, table 8 on page 51 suggests £3.5m for the enforcement of carrier bag charges, while many large retailers are already implementing such schemes voluntarily. Moreover, the emissions reductions to be achieved by such efforts, would not necessarily merit the level of investment proposed, considering the assertion made in paragraph 146 that “the Scottish Government intends to use the cost information... ie 1-2% of GDP in 2050”.
- Implementation costs are excluded from the Financial Memorandum. In meeting the requirements for mitigation, adaptation, monitoring, scrutiny and reporting related to the Climate Change Bill, local authorities face substantial costs, and it is unlikely that any gain from efficiencies will be achieved at a time, or sufficient level to compensate for such costs even if in some cases whole life costs are reduced. The Scottish Government could consider spelling out clearly that tackling climate change cannot be achieved at no cost, even though the cost of inaction will be substantially higher.
- Fife Council is concerned that some costs quoted may underestimate the true costs that would be incurred by Scotland. For example, the waste reduction and recycling costs in paragraph 210 appear to be based on very limited experience of a single office complex in Edinburgh that is unlikely to be representative of the facilities to which this provision may apply. Significantly more work is required to provide credible cost estimates in this area.



5. *Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?*

The memorandum does not provide sufficient information to assist Fife Council in estimating the costs that it may incur. Accordingly we ask that the Scottish Government provides more detailed and robust estimates to enable the Council to form an objective view on this.

6. *Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

While the Financial Memorandum does make numerous references to areas of costs that cannot be predicted, it excludes consideration of costs incurred should named technologies not meet the targets yet to be set. For example, referring to carbon capture and storage in paragraph 140 in relation to the decarbonisation of the power sector, assumes that once the technology is developed, trials are undertaken and a monitoring is reviewed, that this will be successful. While Fife Council would support the trial and monitoring of carbon capture and storage once required technology is developed, and support the implementation of such technology once its value is proven, we advocate a more cautious approach to such assumptions.

Similarly, the implementation of efforts to reduce carbon emissions and achieve efficiency savings in related energy costs would require upfront investment. The Financial Memorandum currently appears to omit such costs as would be applied across energy, waste and transport to mitigate climate change. Therefore Fife Council encourages the Scottish Government to revise the assumption of finance 'freed' by efficiency savings.

Fife Council highlights the Stern Report's identification of the cost of inaction, and the necessity of accepting the need for actual investment. While we welcome a range of methodologies to meet the financial costs associated with the Climate Change Bill, Fife Council encourages full and transparent consideration of alternative methods of financing the Climate Change Bill. For example, while it may be financially desirable to promote self-financing carbon reduction schemes, such as the proposed leasing of forestry, other associated costs and impacts may make the financial bottom line less acceptable.

## **Wider Issues**

7. *If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?*

As mentioned above, Fife Council does not believe that the costs which will be incurred by Scotland's public bodies, businesses, and citizens in the efforts to meet the requirements of the Climate Change Bill are fully reflected in the Financial Memorandum. The Scottish Government has not yet issued guidance

on climate change adaptation, and it is anticipated this will include a new set of roles and reporting for local authorities, all incurring costs and unlikely to lead to efficiencies savings at least in the short to medium term.

8. *Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?*

Fife Council believe there may be considerable costs associated with the subordinate legislation and future guidance related to the Climate Change Bill. However based on the information currently available, we are unable to quantify such costs and would rely on the Scottish Government's continued efforts with COSLA to redress this.

Sustainability Team  
Environment and Development Services  
Fife Council

## SUBMISSION FROM GLASGOW CITY COUNCIL

### **Consultation**

*Question 1 - Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?*

Glasgow City Council (GCC) took part in the consultation for a Scottish Climate Change Bill responding in April 2008 but did not make any comments relating to possible financial implications. It should be noted that the Bill should contain enabling powers to allow Local Authorities to take specific action on Climate Change.

*Question 2 - Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?*

Not applicable

*Question 3 - Did you have sufficient time to contribute to the consultation exercise for the Bill?*

Yes, The City Council's officers attended Scottish Government and SSN's workshops prior to submitting a response. There was however limited time to respond to these questions on the financial memorandum. Given the lack of detail in the Memorandum it would have been useful if guidance through workshops or briefing sessions had been provided.

### **Costs**

*Question 4 - If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.*

The Bill will definitely have financial implications for GCC. Although the Financial Memorandum attempts to provide the likely costs to Local Authorities these are generic estimates and while it is appreciated that this in itself is a difficult exercise, these do not enable an authority the size of Glasgow to accurately compile the increased level of spending and resources that will be required.

Two examples of this relate to the requirement for enhanced Energy Performance Certificates and the possible introduction of a charge for carrier bags. A number of the other estimates detailed in the memorandum such as those of deposit and return schemes and waste management plans lack detail to afford GCC the ability to assess the likely cost of widespread introduction of these initiatives. This includes those actions envisaged as cost neutral.

The implication of the predicted impact on GDP is also of concern to Glasgow. Given the contribution the City makes to the Scottish GDP any reduction is likely to have a disproportionate consequence for Glasgow. This needs to be taken into account in considering financial implications.

*Question 5 - Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?*

Like all Scottish Local Authorities, the Council is currently facing a significant overspend. The implications of the current economic climate will make it extremely difficult to introduce City wide measures of the kind specified in the Bill and the financial memorandum without additional funding.

The costs associated with the forthcoming Carbon Reduction Commitment are currently being calculated on the basis of incomplete information. Without funding support the range of measures and estimated costs detailed the memorandum will exert a further severe budget pressure. If these measures are to be implemented then central government funding will be required if cuts to essential services are to be avoided.

*Question 6 - Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

The Financial Memorandum notes the uncertainty associated with the 2050, 2030 and annual targets. This is reflected in the lack of precise financial detail in how the targets will be achieved. Glasgow City Council will have difficulty in utilising the current information to establish the likely costs of such a process

For example, for an authority the size of Glasgow with well in excess of 1,000 properties the memorandum, although providing the indicative expenditure of different scenarios, does not allow the Council to calculate the likely cost of an extension of the current Energy Performance of Buildings requirement.

Furthermore, although it was prudent to provide a range of possible costs, such as £3.5 million for the introduction of carrier bags charges, at this early stage it is difficult to calculate the burden of this overall cost to Glasgow, the second largest retail city in the UK.

## **Wider Issues**

*Question 7 - If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?*

Additional information would be required as to the nature or direction of the policy initiative referred to before a response to this question could be provided. It was assumed that the Bill would be the umbrella policy vehicle (enabling legislation) under which other policies would be introduced. Additional policy and regulation is likely to be required and, as such, result in additional costs.

*Question 8 - Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?*

GCC are of the opinion that there will be unavoidable future costs associated with the Bill but also the potential for cost saving if introduced in an effective manner, reflecting the main financial observation contained in the Stern Report. Although attempts must be made to quantify these costs, we suggest that this will be an extensive exercise both for the Scottish Government and local authorities

## **SUBMISSION FROM HIGHLAND COUNCIL**

### **Consultation**

1. *Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?*

The Highland Council did provide a consultation response to the Bill. Reference was made in the consultation response for the need to take account of economic and social impacts when considering areas including international credits and setting budget periods to develop infrastructure. No direct commentary on financial assumptions was made in the response.

2. *Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?*

Not applicable.

3. *Did you have sufficient time to contribute to the consultation exercise for the Bill?*

The Highland Council considered the consultation period designated for the Bill to be appropriate.

## Costs

4. *If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.*

The Financial Memorandum is largely drafted on the basis of estimated costs on a macro-economic basis. As the Memorandum acknowledges, how these costs will impact on individual organisations, and the profile over years, cannot be accurately predicted at this time.

While there will clearly be financial implications, at this time the Highland Council is not in a position where at this stage it could easily estimate the financial implications of the Bill. One aspect that will be critical for the implementation of the Bill is recognition of the local factors that will have a significant bearing on relative costs of addressing the Bill. In Highland, the geography, climatic conditions and transient population will all have a bearing on costs relative to other Councils, for example in comparison to urban-based authorities.

5. *Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?*

The financial costs of the Bill will be challenging for all organisations, and as highlighted in the previous question, Highland's unique geography and other local factors may result in even greater challenges and cost. Financial support from Central Government, whether direct financial support or through incentivisation, will be critical. While investment should lead to reduced cost, or avoided cost, payback periods can be considerable and therefore the front-loaded investment necessary will be challenging when other competing priorities and service needs also have to be met.

6. *Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

Yes, the Memorandum is clear on the uncertainty that relates to the estimated costs.

## Wider Issues

7. *If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?*

The Financial Memorandum acknowledges that the likely cost and resource implications of the Bill for local authorities are presently difficult to estimate as they will be dependent on secondary legislation. Both the Bill and Memorandum outline potential areas of impact for local government including imposition of duties, improving energy performance, waste

reduction and recycling. Costs for the Highland Council are likely to be significant in reduction of greenhouse gases through its role in climate change as a manager of its own estate and practices; as an employer; as a service provider; as a community leader and in partnership with other statutory, voluntary and private sector organisations.

Additional key areas of impact include implementation of the Council's renewable energy strategy; promotion of higher design standards internally and externally, supporting healthier and environmental transport options, how the Council procures its goods and services and can influence the procurement practices of others and adherence to the Carbon Reduction Commitment (CRC). The projected costs associated with the CRC scheme in particular will have clear implications for the targets and delivery of the Council's Carbon Management Strategy. Based on current figures the Council will have to purchase approximately £500 000 of allowances for each of the first fixed price years of the scheme. Further implications associated with the CRC include the risks associated with failing to meet targets in the form of financial penalties and the requirement to purchase extra allowances and the removal of fixed price allowances after year 3 of the scheme to coincide with the introduction of the open market auctioning process.

8. *Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?*

There is a considerable amount of uncertainty around costs. The memorandum acknowledges that how the costs will impact on individual organisations cannot currently be accurately predicted. It is likely that further costs may apply. It is not possible to take a view on these costs at this time.

#### SUBMISSION FROM THE SCOTTISH RETAIL CONSORTIUM

Further to your letter of 15 January 2009 requesting that the SRC complete the Committee's questionnaire in relation to the scrutiny of the Climate Change (Scotland) Bill, we are happy to provide comments as detailed below. Our comments are limited to the provisions of the Bill that were consulted on as part of the Scottish Government 'Consultation Paper on Potential Legislative Measures to Implement Zero Waste' (July 2008).

#### QUESTIONNAIRE

##### **BACKGROUND:**

The Scottish Retail Consortium (SRC) is the lead trade association representing the whole range of retailers in Scotland, from the large multiples and department stores through to independents, selling a wide selection of products through centre of town, out of town, rural and virtual stores.

Retailers are making huge strides in reducing the environmental impact of their operations. The retail sector has, for example, committed to sending less than 50 per cent of waste to landfill by 2013. Retailers recognise their part in achieving a zero waste society but cannot accomplish this in isolation. It is crucially important that Government and customers play their part as well.

**Consultation:**

1. *Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?*

*The SRC took part in the consultation exercise and commented on the financial assumptions ('Costs and Benefits') made in relation to the 'Potential Legislative Measures to Implement Zero Waste' (July 2008).*

In general, the SRC welcomed the positive nature of the consultation, the aspirational quality of the ideas as well as the aim to address the fundamental issue of how the nation regards its waste and resources, and the ambition to achieve a zero waste society.

However we believe that some of the assumptions upon which proposals have been based are flawed, especially in relation to costs to the sector and environmental impact.

2. *Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?*

See above response.

3. *Did you have sufficient time to contribute to the consultation exercise?*

Yes, however we had a number of concerns on the approach taken by the consultation as follows:

- a. Packaging amounts to only 1.5% of total waste to landfill yet the majority of the zero waste consultation proposals focus on packaging.
- b. Packaging regulations already exist. If they are not working they need to be addressed rather than introducing new legislation.
- c. The proposals seem driven by weight rather than net environmental impact of materials and associated supply chains. For example the impact of minimizing packaging without incorporating food waste into the equation.
- d. The consultation fails to assess and address the greatest waste streams in Scotland.

- e. The consultation does not feature, as a major proposal, the need for societal education (led by Government) on waste.
- f. The impact assessments, as they were presented in their partial state, do not reflect the impact of the proposed measures on the retail sector.

**Costs:**

4. *If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.*

The provisions of the Bill as they relate to waste (Chapter 4, Waste Reduction and Recycling) will have substantial impact on retailers, large and small.

The impact assessments (and associated costs) as set out in the consultation contained very limited information on which to comment. Furthermore, the 'Costs and Benefits' section did not adequately reflect the impact of the proposed measures on the retail sector.

For example, the assumption was made that if targets on retailers in relation to packaging reduction and information were laid down in regulations, there would be no costs to retailers in relation to this proposal and in fact there could be cost savings to retailers. We strongly disagree with this assumption. The 'Costs and Benefits' analysis also states that the introduction of waste prevention plans and specifying recycle would either represent a cost saving to business or would be of no significant cost. Once again we strongly oppose the assumptions upon which these judgements have been made.

5. *Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?*

If all the provisions of the Bill relating to waste reduction and recycling were brought forward, there would be a very serious impact on the operational costs for all retailers in Scotland, irrespective of size or location.

6. *Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

No. See above response.

**Wider Issues:**

7. *If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?*

See above responses.



8. *Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?*

There will undoubtedly be further costs associated with the Bill, however will limited scheme data it is extremely hard to quantify what these costs are likely to be.

Fiona Moriarty  
Director  
Scottish Retail Consortium

## SUBMISSION FROM SEPA

### Consultation

1. *Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?*

SEPA provided a full response to the consultation which is available on our website<sup>65</sup> but did not comment directly on the Financial Memorandum.

2. *Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?*

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3. *Did you have sufficient time to contribute to the consultation exercise?*

The 12 week consultation process provided ample opportunity for SEPA to consider the Bill. SEPA organised several internal seminars to discuss the Bill and its implications; SEPA's response was also considered by the SEPA Board in April 2008.

### Costs

4. *If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.*

5. *Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?*

The Bill has the potential to have significant financial implications across many, if not all, of SEPA's business activities. It is not yet precisely clear what additional responsibilities SEPA will have, however some of the estimated costs in the Memorandum do not concur with SEPA's own experiences and

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<sup>65</sup> See [http://www.sepa.org.uk/about\\_us/consultations/sepa\\_responses.aspx](http://www.sepa.org.uk/about_us/consultations/sepa_responses.aspx)

estimates. With that in mind SEPA welcomes the commitment to a fully costed RIA for any new duties. Examining the constituent parts of the Bill suggests the following cost implications.

**Cost of meeting SEPA’s own targets and introducing lower carbon technologies**

Many of the technological improvements necessary to head towards a lower carbon infrastructure will bring costs – sometimes significant costs for SEPA (and for other public or private sector bodies). There appears to be nothing extant in the financial memo on invest-to-save or funding for the promotion of reduced carbon emissions programmes for public sector bodies. This may discourage organisations to take necessary, timeous action.

As an example, SEPA is participating in the local authority carbon management programme for 5 years from 2006-2007 to 2011-2012 and has published a 25% reduction target for CO2. To achieve this target it is necessary to invest heavily in lower carbon technologies e.g. more efficient boilers and plant as well as retro-fitting e.g. insulation on older buildings. SEPA’s strategic implementation plan (SIP) (see table 1), intends to invest £790k over five years to reduce CO2 emissions by 537 tonnes annually by 2012. This investment has to come from within existing budgets and is expected to generate savings of c.£62k per year.

There are also costs associated with calculating Energy Performance Certificates (EPC) for non-domestic buildings. These certificates have to be produced by third parties using specialist software. In addition the buildings with lower scores have to be improved over time. The Memorandum only says (at 186 p36) that the Bill will clarify the role of who pays and goes on to suggest seven different future scenarios for EPCs.

**Table 1- SEPA’s Strategic Implementation Plan**

*Short listed actions and emission reduction opportunities*

<b>SEPA Carbon Reduction Opportunity</b>	<b>Detailed Description</b>	<b>Financial Cost</b>	<b>Carbon Saving (per annum) KgCO2</b>	<b>Date to be implemented</b>	<b>Responsible Owner</b>
1. Improve insulation within 11 owned SEPA Premises	By replacing roof insulation and cavity wall insulation in the SEPA owned premises heat loss can be drastically reduced.	£19,000	14,190	Dec 2008	Head of Procurement, Facilities and Estates

<b>SEPA Carbon Reduction Opportunity</b>	<b>Detailed Description</b>	<b>Financial Cost</b>	<b>Carbon Saving (per annum) KgCO2</b>	<b>Date to be implemented</b>	<b>Responsible Owner</b>
2. Swap out all existing fluorescent lights and replace with efficient T5 lamps	During annual maintenance of luminaries retrofit existing light fittings to accept T5 energy efficient lamps and replace.	£150,000	77,400	Oct 2009	Head of Procurement, Facilities and Estates
3. Install voltage regulators across the campus to reduce power consumption	Further to a detailed site survey we have identified a voltage regulator that will meet the requirements of our estate and systems, not impact operational performance and reduce power.	£175,000	154,800	Dec 2009	Head of Procurement, Facilities and Estates
4. Install Building Management System (BMS)	By installing a BMS system we can minute by minute obtain a view of our electrical, gas and water consumption and use this data to manage the estate efficiently.	£173,000	47,700	Dec 2010	Head of Procurement, Facilities and Estates
5. Replace Gas Boilers at Riccarton	As part of our analysis of the gas usage it was identified that almost 44% of total gas used was at our Riccarton Office and laboratory. By replacing the existing boilers with new, more fuel efficient boilers a 25% fuel	£27,500	38,000	Nov 2007	Head of Procurement, Facilities and Estates

<b>SEPA Carbon Reduction Opportunity</b>	<b>Detailed Description</b>	<b>Financial Cost</b>	<b>Carbon Saving (per annum) KgCO2</b>	<b>Date to be implemented</b>	<b>Responsible Owner</b>
	saving is anticipated.				
6. Decreasing UK Mainland flights by 50%	A 50% reduction in UK mainland flights for 2007-2008 compared to figures for 2006-2007, and maintaining UK mainland flights at that level going forward.	£000	22,060	May 2007	SEPA Transport Group, Chaired by Dave Gorman Head of Environmental Strategy
7. Reduce lease cars CO2 ceiling	Reduce the lease car ceiling for new lease cars to less than 150gCO2/Km.	£000	14,574	Dec 2012	SEPA Transport Group,
8. Increase the use of video-conferencing	Substitute the travel to meetings by increasing the use of videoconference by 20% per year.	£000	10,000	By end 2008	IEPEG
9. Replace the proposed heating system in the new Aberdeen office and Laboratory with a biomass equivalent heating system	SEPA is constructing a new office and laboratory in Aberdeen that is scheduled for completion in May 2009. By replacing the proposed combination of gas boilers significant reductions in CO2 can be achieved.	£250,000	158,000	May 2009	SEPA New Aberdeen Building
10. Implement Transport Initiatives	SEPA are currently investigating all modes of transport with a view of reducing	Not Known	To be agreed	2008 – 2013	SEPA Transport Group

<b>SEPA Carbon Reduction Opportunity</b>	<b>Detailed Description</b>	<b>Financial Cost</b>	<b>Carbon Saving (per annum) KgCO2</b>	<b>Date to be implemented</b>	<b>Responsible Owner</b>
	CO2 emissions.				
<b>TOTAL</b>		<b>£794,500</b>	<b>536,724</b>		

### **Potential Advisory Role**

The Bill makes provision for additional Scottish advisory functions if required. Clearly at this stage it is difficult to comment on the scale of additional charges that might result for such a future decision.

It is also not clear which existing body might be deemed suitable for advisory functions to be given to, though an obvious candidate may be SEPA. SEPA has not had any formal discussions with the Scottish Government on this point, but if asked to carry out such a function, it would expect the costs to be substantial, requiring expertise in climate change science and environmental technology, economic assessment and modelling, and understanding of social impacts.

### **Carbon Accounting**

SEPA warmly welcomes the establishment of the carbon accounting scheme for tracking carbon units and maintaining a database. The costs given on page 28 in the Memorandum, although perhaps a little low, do appear to be of the right order of magnitude.

However SEPA believes that a more fundamental point is the need to establish a more detailed, faster and more accurate picture of emissions of climate change gases within Scotland. SEPA believes that this will need to involve both increased physical monitoring and assessment of some gases (e.g. nitrous oxide) and an increased capacity to assemble, verify and publish data. SEPA has not assessed these costs in any detail, but considers that they could be considerable.

### **Waste regulation**

The cost of the waste provisions cannot be fully anticipated because it is not yet known whether the voluntary agreements will be sufficient thus rendering implementation of the provisions unnecessary. For the same reason, the Scottish Government has not estimated enforcement costs. However, should enforcement be necessary, the Government anticipates that enforcement will be carried out by existing public bodies.

As a first cut SEPA believes the costs presented in table 8 on page 51 are a reasonable set of assumptions.

Scottish Ministers will be enabled to make regulations to require businesses and public bodies to provide information to SEPA about the waste that they produce.

The cost to government and local authorities of providing this information is considered to be marginal. However, there may be additional costs for SEPA should enforcement be required and costs to other bodies, individuals and businesses will depend on the detail of the regulations. The Policy Memorandum states that “it will be difficult to move to a zero waste society without much better information”. In addition, the Government and SEPA “currently lack reliable data” to assess compliance with elements of Article 11 of the Revised Waste Framework Directive.

Offices could be required to have facilities to collect paper etc. Section 55 empowers local authorities to issue notices requiring organisers of temporary public events to provide recycling facilities. Both sections require the waste collected to be, as far as practicable, recycled. There will be costs involved for providing the receptacles and for ensuring that the waste is collected and recycled. However, the Financial Memorandum states that costs will “benefit society through the more efficient use of resources and a reduction in waste disposed of by landfill”. Again, should legislation be required there will be enforcement costs for SEPA.

Please note that the staffing costs used in table 8 do not reflect those of SEPA.

6. *Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

In general, on the specific policy measures discussed, SEPA believes that the Memorandum reflects the likely range of uncertainty associated with the proposals.

However, based on SEPA’s experience of full cost recovery, it would appear that many of the adopted numbers could lead to a modest underestimate of the costs. For example, for enforcement, SEPA would use a more senior member of staff than that allowed for at £15/hr.

## **Wider Issues**

7. *If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?*

There will clearly be implementation costs arising from existing and new policy initiatives required to implement the Bill’s targets. These will arise for the Scottish Government, public bodies, businesses, private organisations and individuals. SEPA is aware of some planned initiatives, but understands that the Scottish Government intends to publish a Strategic Overview in due course, setting out policy costs in more detail. SEPA is also aware of published material that sets out some of these costs in more detail.<sup>66</sup>

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<sup>66</sup> <http://www.scotland.gov.uk/Publications/2008/11/19142102/0>  
[http://www.hm-treasury.gov.uk/sternreview\\_index.htm](http://www.hm-treasury.gov.uk/sternreview_index.htm)  
<http://www.theccc.org.uk/reports/>

It is important to bear in mind that in addition to direct and policy costs on society, there would be costs arising from not taking action to address climate change. These costs are set out in the reports mentioned above. In addition, SEPA believes that there are clear benefits to Scottish society from taking early action to address climate change- protecting the environment, reducing the costs of adaptation, maintaining biodiversity and ecosystem services, and business benefits from reducing waste and energy use, and seizing opportunities in the green technology and climate change mitigation sector.

8. *Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?*

SEPA believes that there are likely to be additional costs depending on its role. The uncertainty of the role and the activities necessary to achieve that role make accurate costing problematic. The fully costed RIA would provide an accurate indication of the most likely cost and SEPA welcomes the Scottish Government's commitment to using this to quantify and inform funding of any addition to SEPA's duties.

## SUBMISSION FROM THE UK COMMITTEE ON CLIMATE CHANGE

### **Consultation**

1. *Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?*

The Committee on Climate Change did not take part in the consultation exercise for the Bill; it was operating in shadow form at the time of the consultation.

2. *Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?*

Not applicable.

3. *Did you have sufficient time to contribute to the consultation exercise?*

Not applicable.

### **Costs**

4. *If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.*

The Financial Memorandum recognises that in order for the Committee on Climate Change to fulfil the advisory functions 'additional funding may be required if the Committee are commissioned to provide advice and the cost of that task is particularly expensive'. This is likely to be the case, though the costs to the Committee on Climate Change and the timing of any funding required have not yet been established.

5. *Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?*

The Financial Memorandum identifies that the Scottish Government may be required to supply additional funding to cover the financial costs to the Committee on Climate Change associated with providing advice and analysis relating to the Scottish targets.

6. *Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

Future contributions are likely to be in line with Scotland's contribution in 2008-09, exclusive of any additional funding required to support the delivery of the advisory functions in the Climate Change (Scotland) Bill.

### **Wider Issues**

7. *If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?*

No comment.

8. *Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?*

No comment.



***Part 2 - In written evidence, the UKCCC suggested that it would be likely that additional funding would be required for Scottish-commissioned research and advice. How likely is it that the Scottish Government's annual contribution of £275k to the UKCCC will be exceeded in future years?***

The Scottish Government's annual contribution to the funding for the UK Committee on Climate Change is expected to vary from year to year. For example, the costings of £275k cover work under the provisions of the UK Climate Change Act and include an element of initial start-up expenditure which is not expected to recur in future years. For information, the Committee is currently reviewing its funding requirements for 2009-10 with the UK administrations as its work programme develops.

As noted in the Financial Memorandum to the Bill, additional funding may be required for the Committee in respect of the Scottish Bill if the Committee is requested to provide advice and the cost of providing that advice is particularly expensive, for example, because the Committee requires to recruit more staff or commission external research in order to develop the advice. Analysis related to the annual Scottish targets and trajectory can be anticipated to give rise to additional work for the Committee and additional expenditure is therefore expected. If this work requires, for example, an additional analyst and perhaps some additional research to build on the analysis work already undertaken by the Committee, this could be estimated to be in the region of up to £100k. The Committee is currently considering the resource implications of work in support of the Scottish Bill.

***Evidence received by the Transport, Infrastructure and Climate Change Committee suggested that the cost of establishing a Scottish committee would be less than the FM suggests, i.e. £2.5m p.a. How does the Scottish Government respond to this?***

The Scottish Government believes that establishing a Scottish Committee would require considerable funding. The £2.5m estimate for the potential annual costs of a Scottish Climate Change Committee is based on the following assumptions:

- ◆ A Scottish Climate Change Committee could be expected to have six members (the same number as the UK Committee on Climate Change) – additional members would be anticipated to increase costs beyond those provided in the Financial Memorandum.
- ◆ A Scottish Climate Change Committee could be anticipated to manage with a slightly smaller secretariat – 20 persons instead of 25.
- ◆ The nature of the advice required and the range of expertise necessary suggests it would be difficult to save costs by adopting a significantly scaled down operation for Scotland.
- ◆ The UK CCC conducts a wide range of climate change analysis which would need to be replicated for Scottish purposes. The Scottish Government estimate

allows for some scope for efficiencies from an information sharing arrangement and is based on the following considerations:

- The UK CCC has detailed sectoral expertise to address specific economic questions, commission and peer review detailed econometric modelling frameworks and synthesise this work into an economy wide analysis.
  - The UK CCC has already built up significant understanding while operating in shadow format and in preparing their initial report, published in December 2008.
  - A Scottish Committee secretariat would need to replicate this understanding and further develop models and frameworks to address Scottish specific issues without direct input from the UK CCC.
  - The range of sectoral issues is significant and would include energy and power generation, transport including international aviation and shipping, the technology path to the 2050 target, business opportunities, climate change impacts, competitiveness issues, demand side responses, social research and development of modelling and methodologies.
  - It would be important also to consider the international dimension including likely future climate change agreements, market developments (financial and carbon), international aviation and shipping negotiations and technology transfer scenarios.
- ◆ The scale of fees generally paid to Scottish NDPB members is lower than the current rate for the Committee on Climate Change therefore some efficiencies can be anticipated in terms of remuneration for members of a Scottish Committee.
  - ◆ Accommodation costs could be reduced by locating a Scottish Committee on the government estate.

The Scottish Government has concluded that utilising the expertise of the UK Committee on Climate Change is likely to be the most cost effective option for obtaining expert advice on climate change for the Scottish Ministers, but would reconsider the arrangement if it should be demonstrated otherwise.

While we acknowledge that our estimates are not precise sums, we remain convinced that they indicate the scale of the cost difference between contributing to the UK Committee and establishing a Scottish Committee.

***Part 5 - Considerable costs will be associated with subordinate legislation under the Bill, which will have significant financial impacts on public bodies, local authorities and businesses. How does the Scottish Government intend to monitor the costs arising from the large number of future regulations?***

The two subject areas in Part 5 which could have significant financial impacts on public bodies, local authorities and businesses are considered to be the waste provisions and the non domestic energy efficiency provisions. In terms of the waste provisions, costs will arise only if subordinate legislation is actually enacted under the powers in the Bill, and then the nature of those costs, and the bodies on whom they will fall, will depend on the regulations themselves. As is always the

case with regulations, the financial issues they raise, including monitoring would be addressed in a Regulatory Impact Assessment (RIA) specific to those regulations.

In respect of the non domestic building energy efficiency provisions, the costs associated with subordinate legislation will also be addressed in a detailed RIA specific to the regulations. A rigorous review (in the form of a Review RIA) will be carried out within 10 years of the introduction of the regulations and will consequently be able to provide an accurate assessment of the impact.

It may be helpful to take this opportunity to clarify that the one-off costs for the Scottish Government for the non domestic building energy efficiency provisions include staff costs to develop secondary legislation, impact assessments and guidance, media campaigns to create public awareness, training and research and vary depending on the scope of the secondary legislation. There are no one-off costs envisaged for local authorities as enforcement is intended to be self financing based on penalty charges.

The average annual costs for Scottish Government, local authorities and other bodies, individuals and businesses are identified in respect of implementation of the policy - i.e. commissioning of building surveys, calculating energy and carbon performance of buildings, formulating action plans and carrying out building work. The wide variation in the annual costs relates to the type and size of buildings covered, whether operational ratings are included, the trigger points for assessments, the lifespan of the certificates and whether implementation of the recommendations is discretionary or mandatory.

Philip Wright  
Deputy Director  
Climate Change Division

SUPPLEMENTARY SUBMISSION FROM THE SCOTTISH GOVERNMENT,  
DATED 25 FEBRUARY 2009

**Advisory body – Can the Scottish Government clarify its earlier comment on deriving efficiencies?**

My earlier letter referred to the estimates of the potential costs of operating a Scottish Climate Change Committee allowing for 'some scope for efficiencies from an information sharing arrangement'. The UK Committee on Climate Change (UK CCC) built up significant understanding while operating in shadow form to December 2008 and continues to develop this now that it has constituted statutorily. If a separate Scottish Committee on Climate Change were to be established in the future we envisage that arrangements may be made whereby the Scottish Committee could draw on the UK CCC's knowledge of data and research sources, modelling methodologies and analytical output. The precise arrangements for information sharing would, of course, have to be agreed with the UK Committee and the other sponsor administrations at the appropriate time.

The extent to which information sharing would aid a Scottish Committee would also depend on the nature of the issue as well as the structure and approach of a Scottish Committee. It is therefore not possible to place precise estimates on the extent of efficiencies. For example, a Scottish Committee could be helpfully informed by any analysis undertaken by the UK CCC on what is an appropriate global climate objective. Beyond specifics, it can be expected that information sharing would also be useful more broadly.

**Forestry – Can the Scottish Government confirm whether the options review on forestry will include financial information on joint ventures?**

The options review on forestry will include financial information on both joint ventures and the leasing of forest land, but with more detail on the latter issue

**Energy Efficiency – can the Scottish Government confirm if local authorities will be given enforcement duties in respect of the non-domestic building energy efficiency provisions?**

In terms of Section 50 (3) of the Bill, no decision has been taken yet as to whether enforcement will be carried out by local authorities or “such other person or body”.

Philip Wright  
Deputy Director  
Climate Change Division

**SUPPLEMENTARY SUBMISSION FROM THE FEDERATION OF SMALL BUSINESSES**

Thank you for allowing the FSB in Scotland the opportunity to present our concerns about the Financial Memorandum of the Climate Change Bill to the committee. As discussed at the evidence session, we are pleased to provide some additional written evidence. I hope you find these comments helpful.

As outlined at the committee meeting, the FSB in Scotland is primarily concerned about the nature of the secondary legislation enabled by the bill. Issues relating to waste, recycling and energy efficiency are clearly of interest to a large number of our 20,000 members.

We of course appreciate the benefits of using secondary legislation, however this should be of a supporting nature; the intention of the legislation having been set out in the primary legislation. We believe that the measures currently outlined are extremely wide-reaching and the scope of government action unclear. This means it is very difficult to ascertain the potential impact of these measures. With some of the proposals having severe cost and practicality implications (e.g. Energy Performance Certificate options range from £6.7m pa to £64.7m pa) for both business and public bodies, we do not think it is appropriate for parliament to be asked to vote to allow ministers such a wide range of legislative powers without more detailed intentions and costings.

In addition to our concern about the nature of the legislation, please find below comments on the Financial Memorandum.

### **1. Impact Assessment**

The development of the Regulatory Impact Assessment (RIA) alongside the Financial Memorandum would have been helpful. The partial RIA was completed at the time of the government's consultation, however it would be a useful tool to aid scrutiny and development of the legislation. We would also like to see some mention of the use of the Business Impact Assessment (BIA) as recommended by the Regulatory Review Group. Where differences appear in information in both the Financial Memorandum and RIA, it is unclear which is the most up-to-date. References to costs which, in the absence of any detail, vaguely conclude 'benefits are likely to outweigh costs' are simply unhelpful in a Financial Memorandum.

### **2. Assessing Costs**

Costs to business are assessed under the 'agencies, other bodies' section of the Financial Memorandum. Since SEPA is a key agency, much of this section focuses on costs to SEPA and there is not enough focus on costs to business. For example, the summary cost table relating to waste data returns lists £250,000 under the 'other bodies' section, but this only relates to costs to SEPA. Using more case studies would be a helpful way to illustrate the impact of proposals. While we appreciate the intention and understand it is representative of a large office complex, Victoria Quay is probably not representative of most business premises in Scotland and is therefore not the ideal example with which to illustrate costs of providing recycling facilities to staff.

We do appreciate the difficulties involved in estimating cumulative costs, however this is key to understanding the impact on business. Where a number of different regimes are mentioned (and currently there is potential for at least six different sets of paperwork, monitoring and inspection with no mention of cost recovery through fees), it would make sense to look at the potential to streamline regimes thereby increasing efficiency and simplifying compliance. If we are to achieve better regulation, discussion of these ideas at an early stage is important e.g. if waste plans and energy efficiency plans are both required for business premises, why not have one combined plan? If there is to be improved waste data returns from business, can the existing regime be removed to prevent duplication? The differentiation of roles between SEPA and local authorities has clearly yet to be decided – here too there are opportunities to ensure duplication and overlap does not occur.

There is also little reference to the difference between policy and administrative costs in the Financial Memorandum. In assessing costs, it is important to understand where there are opportunities to reduce administrative costs, as outlined above, and where there are unavoidable policy compliance costs.

### **3. Infrastructure & Resources**

As discussed at committee, we see no reference in the Financial Memorandum to the inevitable cost implications to local authorities (and to private waste industry who require certainty of government intentions if they are to invest) of providing the necessary infrastructure to support additional recycling. In the 2007 mapping exercise into local authority provision of recycling services to SMEs, carried out by SEPA, lack of resources was frequently cited as the main reason for not improving services to small businesses. At that time there were still four local authorities offering no recycling services to business. This clearly presents difficulties if we are looking at legislation which will place duties to recycle on businesses. In addition, a threat to the financing of existing kerbside recycling schemes has been highlighted by many in relation to the introduction of a deposit and return scheme – this cost implication should be reflected in the Financial Memorandum.

Andy Willox OBE  
Scottish Policy Convener



## **Subordinate Legislation Committee**

### **Climate Change (Scotland) Bill**

The Committee reports to the lead committee as follows—

#### **Introduction**

80. At its meetings on 27 January<sup>67</sup> and 24 February 2009<sup>68</sup> the Subordinate Legislation Committee considered the delegated powers provisions in the Climate Change (Scotland) Bill at Stage 1. The Committee submits this report to the Transport, Infrastructure and Climate Change Committee as the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

81. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (DPM).<sup>69</sup>

82. The Committee's correspondence with the Scottish Government is reproduced in the Annex.

#### **Delegated Powers Provisions**

83. The Committee considered each of the delegated powers provisions in the Bill.

84. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in the following sections: 9, 11, 15, 17, 20, Schedule 1, paragraphs 2(2), 6(1), 7(5), 8(2) and 9(3), sections 23, 24, , 35, 38, 39, 40(2), 42(1) and (2), 43, 44(1), 50, 52(3), 53(4), 54(3), 55(1), (2), (3) and (4), 56(4) and (5), 57(3), 58, 59 and 67.

#### **Section 4 - Setting annual targets**

85. Section 4 imposes a requirement on the Scottish Ministers to set annual targets for the maximum amount of the net Scottish emissions account, by order. Subsection (2) states for which years the targets must be set. The Scottish Ministers intend to set targets in batches; the first batch will be for 13 years (2010-2022), with subsequent targets set in batches of 5 years until the last batch, which

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<sup>67</sup> [Official Report 27 January 2009](#)

<sup>68</sup> [Official Report 24 February 2009](#)

<sup>69</sup> [Delegated Powers Memorandum](#)

will be 3 years in length (2048-2050). The dates in advance, by which each batch of targets must be set are also given. The annual targets must be set in accordance with provisions in section 3.

86. The Committee queried (given that there was no explanation of this in the DPM) whether there should be any requirements for consultation on the face of the Bill, on setting the annual targets by order, with specified bodies or persons who may have interest in the proposals.

87. The response from the Scottish Government noted (amongst other matters, as set out in the Annex to this Report) that annual targets shall be set for the whole of Scotland, and so far as there are no targets for specific industries or sectors, that does not indicate that specific persons or bodies should be prescribed to be consulted on an order before it is made. The Government shall also require to take into account the advice of the relevant advisory body, prior to setting the annual targets by order.

88. Following this further explanation given by the Scottish Government, the Committee concluded that there was a sufficient explanation of why there are no further consultation requirements prescribed on the face of the Bill.

**89. The Committee was therefore content with the delegated power in section 4, and that it is subject to affirmative procedure.**

### **Section 6 - Modifying annual targets**

90. Section 6 allows the Scottish Ministers to modify certain parts of sections 3 and 4 by order. Subsection (1) (c) enables the Scottish Ministers to modify any of the dates set out in section 4 (the dates of the batches of annual targets, and/or the advance date by which the target must be set) and subsection (1)(d) allows modification of the criteria to which Ministers must have regard when setting the annual targets. Subsection (4) sets out that the Scottish Ministers may only exercise these powers if they consider it appropriate to do so.

91. The DPM offered no explanation as to why this flexibility to change these matters is needed, and the approach contrasts with sub-section (2) and (3), where Ministers require to show it is no longer necessary for the annual targets to be set by reference to the 3% reduction, or require to show there have been significant changes to the basis on which the annual target was set. The Committee therefore asked for further explanation.

92. The Committee considers that the Government's response on section 6 offers a proper explanation; that it has considered how section 6(4) might possibly have been restricted by reference, for example, to changes reflecting changes in the UK, European or international position/criteria, but it was considered this would not be appropriate.

93. The response also highlighted that Parliament shall be asked to approve any changes by affirmative procedure, and that a sufficient degree of flexibility is required because the annual targets require to be set up to 2050.



94. **The Committee, being satisfied with the response in relation to section 6, is content with the delegated powers in that section, and that they are subject to affirmative procedure.**

## **Section 12 - The net Scottish emissions account**

95. Section 12(2) enables the Scottish Ministers to make provision by regulations about how and in what circumstances carbon units are credited to and debited from the net Scottish emissions account, and the manner in which this is to be done.

96. Section 64(7)(a) of the Bill proposes that the first regulations under section 12(2) shall be by affirmative procedure, but the second or subsequent regulations shall be by negative procedure. However, affirmative procedure is retained where the regulations shall make provision altering the amount by which a carbon unit credited or debited to the net emissions account for a period either reduces or increases the account for that period. The DPM explains that this is because of the significant effect this could have on the account.

97. The DPM also explained that the initial regulations will set out how and in what circumstances carbon units are credited to and debited from the net emissions account, which will be a key component of the operation of that account. Affirmative resolution procedure was therefore considered appropriate for the initial regulations.

98. The Committee notified the Scottish Government that it does not generally favour the use of the lesser degree of scrutiny of negative procedure for second or subsequent regulations, as is provided for in section 64(7)(a) in relation to section 12(2), while the first set of regulations are subject to affirmative procedure. The Committee sought further explanation on this matter from the Scottish Government, on why this is appropriate for this particular Bill.

99. The Committee considered that the Scottish Government's response gave persuasive argument for the specific reasons why the procedures for regulations under sections 12 and 18 of the Bill were chosen. The Committee considered that there is sufficient explanation that the choice of procedure is appropriate for these particular sections of this Bill. In particular, the Committee noted that it appears from the Government response that further regulations after the first regulations under these sections are likely to be highly technical in subject matter, and any changes that increase or decrease the net Scottish emissions account shall be by affirmative procedure.

**100. The Committee was content with the delegated powers in section 12, and that they are subject to affirmative procedure on the first occasion, but the second and subsequent Regulations will be subject to negative resolution, other than regulations making provision to alter the amount by which a carbon unit credited or debited to the net Scottish emissions account for a period reduces or increases the account for that period. (This is provided for in section 64(7)(a)).**

101. **The Committee also reports that generally it does not favour the use of affirmative procedure for a first set of regulations and negative procedure for second and subsequent regulations. However, in the instance of section 12 of this Bill, it was satisfied that the Scottish Government has provided sufficient reasons why this choice of procedure appears to be suitable.**

#### **Section 14 - Scottish share of emissions from international aviation and international shipping**

102. International aviation and international shipping emissions are generally not directly emitted in a specific country. Section 14(1) and (2) allow the Scottish Ministers to specify by order how certain emissions from international aviation and shipping are to be attributable as “Scottish emissions”. Section 14(3) requires the Scottish Ministers to seek advice from the relevant body defined in section 5(5) prior to making an order. Section 14(4) requires the Scottish Ministers to publish a statement if the advice of the relevant body is not followed.

103. The DPM explained in justification for this delegated power that, as international aviation and international shipping emissions are generally not directly emitted in a specific country, it is necessary to specify how certain amounts of these emissions will be allocated to the net Scottish emissions account. This allocation may also need to change over time, particularly if a European or international agreement makes such a change necessary in the future. There is no current international agreement on how to allocate these emissions to States.

104. Given the significance of this power within the Bill, the DPM contained no explanation in relation to appropriate consultation before making an order under section 14, or why it was considered appropriate that there should be no particular prescribed consultation requirements on the face of the Bill. The Committee therefore asked for further explanation on this aspect.

105. The Committee accepted the further explanation offered by the Scottish Government, as to why there are no specific requirements for Scottish Ministers to consult with specified persons or bodies on the terms of an order under section 14, within the Bill.

**106. The Committee therefore reports that it is content with the delegated power in section 14, and that it is subject to affirmative procedure.**

#### **Section 18 - Carbon units and carbon accounting**

107. Section 18(1) allows the Scottish Ministers to create a scheme for the purpose of monitoring the use of carbon units, including registering them and keeping track of them. The scheme may establish and maintain accounts in which carbon units may be held, and between which they can be transferred. Section 18(2) allows existing schemes, which might be established in future by Ministers, to be adapted for the purposes set out in subsection (1).

108. The DPM explains that it may be necessary (in future) to create a scheme to monitor the use of carbon units. “The trading of units across borders can be

complicated and it is not yet known whether such a scheme is necessary. However, if it does become necessary, these provisions allow for such a scheme to be created.”

109. The Committee notified the Scottish Government that it does not generally favour the use of the lesser degree of scrutiny of negative procedure for second or subsequent regulations, as provided for in section 64(7)(b) in relation to section 18(1), while the first regulations shall be subject to affirmative procedure. The Committee sought further explanation on this matter from the Scottish Government. (The issue here is similar to that in relation to section 12 of the Bill).

110. The Committee considered that the Scottish Government’s response gave persuasive argument for the specific reasons why the procedures for regulations under sections 12 and 18 of the Bill were chosen. The Committee considered that there is sufficient explanation that the choice of procedures is appropriate for these particular sections of this Bill. In particular, the Committee noted that it appears from the Government response that further regulations after the first regulations under these sections are likely to be highly technical in subject matter. Also, any changes which increase or decrease the net Scottish emissions account, or which specify a new type of carbon unit which may have an effect that account, shall be by affirmative procedure.

**111. The Committee was content with the delegated powers in section 18, and that they are subject to affirmative procedure on the first occasion, but the second and subsequent Regulations will be subject to negative resolution, other than regulations making provision specifying a carbon unit of a kind not previously specified in regulations which shall be subject to affirmative procedure (as provided for in section 64(7)(b)).**

**The Committee also reports that generally it does not favour the use of affirmative procedure for a first set of regulations and negative procedure for second and subsequent regulations. However, in the instance of section 18 of this Bill, the Scottish Government has provided sufficient reasons why this choice of procedures appears to be suitable.**

## **Section 19 – Meaning of advisory body**

### **Section 20 and Schedule 1- Scottish Committee on Climate Change**

112. Section 19(1) enables the Scottish Ministers to designate by order, a body or person to carry out the advisory functions as set out in the Bill. In the absence of an order made under section 19(1), the Scottish Ministers will seek advice from the UK Committee on Climate Change established by the UK Climate Change Act 2008 (as set out in section 5(5) of this Bill). An order under section 19 shall be subject to affirmative resolution procedure. Such an order may in future specify the Scottish Committee on Climate Change as the advisory body.

113. By section 20, the Scottish Ministers may by order establish the Scottish Committee.

114. Schedule 1 of the Bill makes further provision for the constitution and membership of the Scottish Committee on Climate Change. By paragraph 2(3) of Schedule 1, the members of that Committee shall be appointed by the Scottish Ministers.

115. **The Committee considers the delegated powers in sections 19, 20 and Schedule 1 to be acceptable. The Committee draws to the attention of the lead and secondary committees for the Bill (in relation to the effect of the delegated powers contained in sections 19, 20 and Schedule 1) that the Explanatory Notes with the Bill (paragraph 33) and the Policy Memorandum (paragraph 31) indicate that Ministers will require to seek expert, independent advice from the advisory body, but the Bill provides –**

- (a) in section 19(1) and (5), that a designated advisory body may be any public body as Ministers consider appropriate, which may be a person or body with functions of a public nature (not necessarily independent of the Scottish Ministers or Government), and**
- (b) in Schedule 1, paragraph 2, that the members of the Scottish Committee on Climate Change shall be appointed by the Scottish Ministers.**

116. **The Committee acknowledges, however, that in relation to those statements in the Policy Memorandum and Explanatory Notes, “independent” is capable of having different meanings and does not necessarily refer to a body which is wholly independent of the Scottish Ministers.**

#### **Section 26 – Guidance to advisory body**

#### **Section 27 – Power to give directions to the advisory body**

117. Section 26 provides that the advisory body (to the Scottish Ministers) must have regard to any guidance given by the Scottish Ministers to it in relation to the exercise of its functions under the Act. However, Ministers may not give guidance as to the content of any advice or report. This includes power to vary or revoke the guidance.

118. Section 27 provides that the Scottish Ministers may, if they consider it appropriate, give the advisory body directions as to the exercise of its functions under the Act. However, Ministers may not give directions as to the content of any advice or report. This includes the power to vary or revoke the directions. Unlike guidance, directions issued in relation to the functions of the advisory body shall be binding on the body.

119. **The Committee considers that the delegated powers contained in sections 26 and 27 are acceptable to be in the form of guidance and directions (respectively) issued by the Scottish Ministers, and those powers would not be more appropriately expressed in the form of subordinate legislation. The remit of the Committee in regard to these sections is to so**

**consider whether the powers would be more appropriate to be expressed in that form.**

**120. The Committee draws to the attention of the lead and secondary committees for the Bill the delegated powers conferred on the Scottish Ministers in sections 26 and 27 to issue directions and guidance to the advisory body given that the Explanatory Notes (at paragraph 33) and the Policy Memorandum (at paragraph 31) indicate that the advisory body shall provide independent advice to the Scottish Ministers.**

### **Section 36 - Duties of public bodies relating to climate change**

121. Section 36 empowers the Scottish Ministers to impose 'climate change duties' by order, on public bodies. A public body, as defined in sections 19(5) and 65, is a person or body with functions of a public nature. 'Climate change' is not defined in the Bill. 'Climate change duties' are neither listed nor defined in section 36. Section 36(3) provides that an order under this section may, in particular, impose climate change duties on all public bodies, public bodies of a particular description, or individual public bodies. Different climate change duties may be imposed on different public bodies or descriptions of public body. Section 36(4) provides that before laying a statutory instrument containing an order before the Scottish Parliament, the Scottish Ministers must consult, in so far as reasonably practicable, with such associations of local authorities and such other persons as the Scottish Ministers consider appropriate. Section 36(6) requires the Scottish Ministers to co-operate with a relevant public body to help that body comply with its climate change duties.

122. Given the width of these powers and the lack of definition with respect to public bodies and climate change duties, the Committee asked the Scottish Government about the meaning and scope of 'public bodies' and 'climate change duties', and whether consideration had been given to the type of 'public bodies' which could be subject to climate change duties. It was apparent from the Scottish Government response that Ministers did give consideration to the types of bodies to be subject to the duties, but 'felt that it was not appropriate to list the bodies to which the duties might be applied'. A public body as defined in the Bill is a person or body with functions of a public nature. 'Functions of a public nature' are not defined. The definition of 'public body' is therefore ambiguous and potentially very wide. This is in effect acknowledged in the third paragraph of the Scottish Government response, in which it is stated that 'It is not possible to know exactly which public bodies may need to become subject to statutory climate change duties at various points over the course of the forty years which the framework is designed to cover.' In the response, the Scottish Government stated that it was never the intention to define 'climate change duties' more specifically elsewhere in the Bill. The response commented on the need for flexibility to be able to respond to or in anticipation of circumstances which cannot be foreseen at the present time.

123. The Committee considered that it would be possible to provide a list of bodies in the Bill so that Parliament (in approving the Bill) could assess whether these are the bodies to which the powers should apply. A power to add bodies to

the list or modify the list subject to affirmative procedure would allow Parliament to remain in control of the definition of 'public bodies

**124. The Committee reports to the lead committee that the power under section 36(1) to impose climate change duties on public bodies is extremely wide in its scope, in particular as neither the public bodies which may be subject to climate change duties nor climate change duties themselves are adequately and clearly defined.**

**125. The Committee also recommends that this could be mitigated to some extent by provision of a list of public bodies to whom the power is to apply along with a power to add to the list subject to affirmative procedure. This would be in line with the approach adopted to other regimes regulating public bodies such as freedom of information.**

### **Section 37 – Guidance to relevant public bodies**

126. Section 37(1) provides that 'relevant public bodies' are required to have regard to any guidance given to them by the Scottish Ministers in relation to climate change duties. A 'relevant public body' is a body which has climate change duties by virtue of section 36(1). Before issuing guidance the Scottish Ministers have a duty to consult the same bodies as those specified in section 36(5) with respect to the imposition of climate change duties. Guidance issued under this section has to be published by Scottish Ministers.

127. The guidance which the Scottish Ministers can issue and which public bodies will have to have regard to will not be subject to any form of parliamentary procedure or scrutiny. Section 37 does not give any indication of, nor does it provide any limitation on, the nature or scope of the guidance which the Scottish Ministers can give.

128. The Committee therefore asked the Scottish Government for more information as to the function and likely content of such guidance.

129. The response from the Scottish Government stated that guidance will indicate how specific climate change duties should be discharged and that it is intended to assist in developing consistency of approach across those public bodies to which climate duties apply.

**130. The Committee considered that the response did not aid its consideration of this power. The Committee concluded that it would be appropriate for the Parliament to have a role in scrutinising the guidance produced under section 37 because of its potential impact, and recommends that guidance under this section should be laid before Parliament for a period prior to implementation, and any resolutions of the Parliament made in respect of the draft guidance during that period taken into account.**

### **Section 46 - Variation of permitted times for making muirburn**

131. Section 46 inserts a new section 23A into the Hill Farming Act 1946 ("the 1946 Act"). Section 23 of that Act currently prohibits muirburn between certain

dates. Subsection (1) of new section 23A of the 1946 Act provides the Scottish Ministers with an order-making power to specify different dates before which, and after which, it is lawful to make muirburn in any year. Subsection (3) stipulates that the Scottish Ministers may make an order under subsection (1) only if they consider it necessary or expedient to do so in relation to climate change. The effect of this power is therefore to allow the Scottish Ministers to change the dates between which muirburn may be conducted so as to have regard to the impact of this activity on climate change. The section does not contain a requirement for consultation of affected landowners or others prior to the making of an order.

132. The committee asked the Government why it does not consider that provision for consultation is necessary or appropriate in order to take into account the impact on landowners that any changes might cause.

133. The Scottish Government acknowledges that it would be appropriate to consult with parties likely to be affected by changes to the times at which muirburn may be made. They point to their perceived difficulties in identifying a specific body or specific bodies whom they might be obliged to consult. However, they do refer to what is stated to be their standard practice of consulting on a non-statutory basis with potentially interested parties and consider that this would be appropriate and reasonable in the circumstances.

**134. The Committee was content with the response in respect that it may be taken to confirm that informal consultation with potentially interested parties will take place in advance of any instrument.**

#### **Section 47 - Power to modify functions of Forestry Commissioners**

135. The Forestry Commissioners were established by the Forestry Act 1967. Section 47 confers on the Scottish Ministers the power to modify the functions of the Forestry Commissioners in or as regards Scotland. The Committee was concerned about the potential scope of the proposed power to modify the functions of the Forestry Commissioners in or as regards Scotland. Section 47(2) imposes limitations on the circumstances in which Scottish Ministers may exercise the power to modify under section 47(1) but the section does not impose any restrictions or limitations on the nature, scope or extent of any modification of the Forestry Commissioners' functions. The power could have the potential to alter, quite radically, the Forestry Commissioner's functions, either by the addition of new functions or by the removal of existing functions.

136. The Committee asked the Scottish Government if consideration had been given to the imposition of a restriction on the power. The Scottish Government response did not address the committee's concerns. The response refers to the limitation on the *circumstances* in which the power may be exercised, namely to comply with Scottish Ministers duties under sections 1, 2 and 3 of the Bill (namely the 2050 target, the interim target and annual targets) or otherwise in relation to climate change. However, it was the Committee's view that the limitation on the *circumstances* in which the power may be exercised does not place any limitation on the nature, scope or extent of any modification of the Forestry Commissioners' functions which may arise in consequence of the exercise of that power beyond that it must be for a climate change purpose. It is the absence of limitations on

what may be done in consequence of the exercise of the power which was of concern, not the circumstances in which the power may be exercised, which circumstances are subject to limitations.

137. Section 47(3) gives examples of what an order may in particular enable the Forestry Commissioners to do. They indicate how wide-ranging the consequences and impact of the exercise of the power may be. The question is whether the climate change purpose should be allowed to overrule any other considerations as to what should properly be the functions of the Forestry Commissioners.

**138. The Committee draws to the attention of the lead committee that the power under section 47(1) to modify the functions of the Forestry Commissioners in or as regards Scotland is, in the opinion of the Committee, very wide in its scope as there is no limitation within the power on what may be done in exercise of the power beyond that it must deliver a climate change purpose.**

**Section 52(1), (2) and (4) - Waste prevention and management plans**

**Section 53(1), (2), (3) and (5) - Information on waste**

**Section 54(1), (2), (4) and (5) - Recyclable waste: facilities for deposit etc.**

**Section 56(1), (2), (3) and (6) - Procurement of recyclate - regulations**

Section 52 empowers the Scottish Ministers, by regulations, to place a duty on specified persons to prepare waste prevention and management plans. Section 53 enables the Scottish Ministers, by regulations, to require specified persons to provide information to SEPA about the waste that they produce. Section 54 enables the Scottish Ministers to make regulations which may require receptacles to be provided by persons of the kinds specified for a broad range of types of waste. Section 56 gives the Scottish Ministers powers to require specified persons to ensure that particular things procured or constructed by or on behalf of them contain or include a certain proportion of recyclate, which is waste that has been recycled.

139. The Committee's concerns with respect to these 4 sections related to the lack of specification in the provisions with respect to the kinds or classes of persons who would be (or whom it was anticipated would be) subject to duties under the various sets of regulations. In particular, the regulations could apply to domestic activities or individuals in the absence of any express restriction.

140. In its response to questions posed by legal advisers on these sections, the Scottish Government state that it is not possible at present to be specific as to the classes of persons on whom duties may fall. They explain their reasons for this response. No firm proposals have as yet been drawn up. The Scottish Government have admitted that they are not yet clear how these powers will be used. It is not clear what restrictions if any will be applied to the exercise of these powers. There is nothing on the face of these powers to restrict their application and in particular to exclude non-commercial activity.

141. The Committee took the view that whether or not duties could be applied to domestic activities is a policy matter to be decided by the lead committee and



Parliament, but that if the lead committee or Parliament considers that the powers should have no application to non-commercial activity then this should be made express on the face of the Bill.

**142. The Committee therefore reports to the lead committee and to Parliament that these powers are expressed in very broad terms and that there is nothing on the face of the Bill to restrict their application to purely commercial activity.**

#### **Section 57(1), (2) and (4) – Targets for reduction of packaging etc.**

143. Section 57 enables the Scottish Ministers, by regulations, to set targets to reduce the amount of packaging used and to require specified persons to comply with those targets. Targets may also be set for the reduction of greenhouse gas emissions produced by packaging.

144. Given the lack of information offered in the DPM in relation to the scope or extent of these powers, the committee sought clarity with respect to the scope of the powers and whether the powers were drawn no more widely than required.

145. In its response, the Scottish Government point out that producers of packaging are already subject to a producer responsibility regime and that in terms of waste in general producer responsibility is a requirement of community law. This is why retailers and not producers were specifically mentioned in the Delegated Powers Memorandum.

146. Section 57 places no limits on the persons who may be subject to regulations under this section. The Committee was concerned about the potential scope of the application of these regulations and to the fact that there are no restrictions within the provisions themselves on the persons who may be subject to duties under the regulations. In particular the committee was concerned that duties imposed by regulations may be extended to non-commercial applications.

147. The Committee took the view that whether or not duties could be applied to domestic activities is a policy matter to be decided by the lead committee and Parliament but that if the lead committee or Parliament considers that the powers should have no application to non-commercial activity then this should be made express on the face of the Bill.

**148. The Committee reports that Parliament should be made aware that these powers are expressed in very broad terms and that there is nothing on the face of the Bill to restrict their application to commercial activity.**

#### **Section 64 – Subordinate legislation**

149. This section contains the general subordinate legislation provisions, including the specification of the affirmative or negative procedures applying to the order or regulation-making powers in the Act.

150. The power to modify enactments in section 64(3) is framed at its widest. There is no express limitation placed on that power, with reference to the provisions or purposes of the Bill. This is a “Henry VIII power” which does not

contain a limit on the purposes of the power and which can be attached to any other power to make subordinate legislation under the Act. The Committee considers however that it should be implied within section 64(3) as drafted that any modification shall be for the purposes of the provisions of the Act, at least. However, this is still a very wide proposed power to modify enactments.

151. Generally, the Committee would take as a starting point that such a “Henry VIII” power, framed in this way, is unacceptable, unless sufficient justification is provided for the width of the power required, which should be in exceptional circumstances. Accordingly, the Committee requested further explanation, to establish why this power may be justifiable for this particular Bill.

152. The response from the Government explains that this is a wide-ranging Bill, and “it is difficult to know in advance which powers might need to modify enactments. That is why section 64(3) is expressed as applying generally”. The response also highlights that certain powers proposed in the Bill are potentially wide in effect, for example the powers in section 36 and 47 in relation to the imposition of duties on public authorities in relation to climate change, and the power to modify the functions of the Forestry Commissioners in or as regards Scotland. The modification of, for example, the Forestry Act 1967 would be the “main method by which the power would be used, rather than being merely ancillary.”

153. In essence therefore, the response from the Government indicates that it considers that such a wide power to modify enactments (by way of affirmative procedure regulations or orders in future) is required for this particular Bill, given the potential width, or uncertain future effects, of some of the other delegated powers proposed in the Bill, and so that a general power to modify for the purposes of this particular Bill is required. The Committee accepted this explanation as sufficient, while noting that the effect of this power to modify enactments (including this Act) may be potentially very wide in effect. The Committee also noted that modifications of enactments by future subordinate legislation under the Bill shall require to be affirmed by Parliament.

**154. Accordingly, the Committee considered that in the instance of this particular Bill, the proposed general power contained in section 64(3), which enables orders or regulations to modify any enactment (including the Act) by affirmative procedure is acceptable.**

## Response from Scottish Government

### Climate Change (Scotland) Bill at stage 1

1. Thank you for your letter of 28 January 2009 to Paul Johnston regarding the Subordinate Legislation Committee's consideration of the Climate Change (Scotland) Bill at Stage 1.

For ease of reference I have set out each of the points raised, followed by the Scottish Government response.

#### Section 4 - Setting annual targets

#### 2. The Committee asked the Scottish Government—

**in relation to sections 4 and 6, on what basis it has considered that there should be no requirements on the face of the Bill to the effect that Ministers shall consult on the terms of an order under those sections (setting or modifying annual targets) with specified persons or bodies who may have particular interest in the proposals?**

#### 3. Scottish Government response—

i. When setting annual targets (section 4) and modifying them (section 6), Ministers must first seek the advice of the relevant body (sections 5 and 7 respectively). Section 5(5) provides that the relevant body is the UK Committee on Climate Change or a person or body designated under section 19(1), in practice an existing body or a Scottish Committee on Climate Change.

ii. The Scottish Government has committed to utilising the UK Committee on Climate Change in the short to medium term before reviewing the situation. The UK Committee comprises leading experts on the subject of climate change. Paragraph 1(3) of Schedule 1 to the UK Climate Change Act 2008 sets out the areas of experience and knowledge that the national authorities, which include the Scottish Ministers, must have regard to securing for the Committee as a whole when appointing its members. This includes an understanding of the differences in circumstances between England, Wales, Scotland and Northern Ireland.

iii. If Ministers decide to lay an instrument which makes provision different from that recommended by the Committee, section 5(3) of the Bill requires that they publish a statement explaining why. This is intended to enhance transparency and scrutiny.

iv. The annual targets in the Climate Change (Scotland) Bill apply to the entire Scottish economy. The Bill contains no targets for individual sectors of the economy in order to allow sufficient flexibility for policies to be put in place to reduce emissions in the most cost effective ways possible, without disproportionately disadvantaging any particular industry in Scotland. This is

reinforced by the fact that the duty to ensure that the net Scottish emissions account is reduced in line with the annual and longer-term targets in the Bill is placed upon the Scottish Ministers alone.

v. These factors, combined with the provisions requiring the advice of the relevant body, means that it is not felt necessary to require additional consultation on the proposed levels of the annual targets, or on proposed modification of these levels, both of which will be set by orders subject to affirmative resolution.

## **Section 6 - Modifying annual targets**

### **4. The Committee asked the Scottish Government—**

**(a) to explain and justify why it is considered, in relation to the power in section 6(4), that this may be exercised in any circumstances where the Scottish Ministers consider it appropriate to do so; and**

**(b) whether more defined circumstances in which it would be appropriate to exercise the power (in a similar manner to section 6(2) and (3)) could be prescribed, for instance where it becomes necessary for the achievement of targets?**

### **5. Scottish Government response—**

i. The power in section 6(1)(c) enables the Scottish Ministers to amend the dates for which batches of annual targets must be set. The power in section 6(1)(d) enables the Scottish Ministers to amend the criteria which Ministers must have regard to when setting annual targets. Section 6(4) stipulates that Scottish Ministers may make orders under sections 6(1)(c) and (d) only if they consider it appropriate to do so. Consideration was given to whether it would be desirable to limit the exercise of these powers by reference to particular conditions which must be met but this was rejected because of the factors outlined below.

ii. The dates set out in section 4(2) mirror the dates for which carbon budgets will be set by the UK Government under the Climate Change Act 2008. This recognises that total emissions reductions in Scotland depend in part upon policies which are reserved and therefore that the batches of annual targets should take account of the levels at which UK carbon budgets are set. It also provides greater certainty for the many organisations which operate both in Scotland and other parts of the UK. It is necessary for Scottish Ministers to be able to amend the annual target dates should the Secretary of State ever exercise the power in section 23(1) of the UK Act to change the length or timing of the UK carbon budgets.

iii. Consideration was given to drafting this section so that the power could only be exercised in order to keep Scottish annual target batch dates in line with the UK carbon budgets or other relevant European or other international agreements. However, it was felt that this was unnecessarily restrictive given the differences between the Scottish annual target model and other emissions reduction models in place elsewhere. Any amendments made under the section

6(1)(c) provision would be subject to affirmative resolution and therefore open to considerable Parliamentary scrutiny.

iv. The target setting criteria in section 4(4) represent the areas and issues which the Scottish Ministers believe are relevant and appropriate to have regard to when setting annual targets. The framework established by the Climate Change (Scotland) Bill is designed to last until at least 2050. It may become appropriate to amend these criteria at some point in the coming four decades. Given this lengthy timescale, it is felt that there needs to be considerable flexibility to adapt these criteria to best fit current thinking and therefore it would not be desirable to attempt to try to restrict the use of the section 6(1)(d) power in a specific way. Once again, any such amendment will be subject to the level of Parliamentary scrutiny afforded by affirmative resolution procedure.

v. With regard to the Committee's suggestion that the exercise of the power in section 6(4) be restricted so that it is used only, for example, where it becomes necessary for the achievement of targets, we consider that this would be difficult to achieve satisfactorily. It would be difficult to argue that changing the dates for which batches of targets are set affects the ability to achieve those targets because it is the level at which any particular target is set which is the key factor in whether or not it is achievable. Similarly, it would be difficult to draw a direct link between changing the target setting criteria and the achievability of targets themselves.

vi. Finally, it is worth noting the duty in section 7 of the Bill which requires that Ministers seek the advice of the relevant body before making an order under section 6. If the order makes provision different from that recommended by the relevant body, Ministers must publish a statement explaining why. This provides another safeguard as to the use of the section 6 powers.

## **Section 12 - The net Scottish emissions account**

**6. The Committee notified the Scottish Government that it does not favour the use of the lesser degree of scrutiny of negative procedure for second or subsequent regulations, as provided for in section 64(7)(a) in relation to section 12(2), rather than affirmative procedure.**

**7. The Committee asked the Scottish Government—**

**(a) whether it could re-consider if all regulations under section 12(2) could be by affirmative procedure, and**

**(b) if it does not take this view, if it could fully explain to the Committee what types of “technical” provisions would be subject to second and subsequent negative procedure regulations under section 12(2) (but would not be provisions that would attract affirmative procedure under section 64(7)(a)); could a description of these provisions be put in the Bill; and why it is considered appropriate those provisions should be subject to negative procedure, while the other provisions should be subject to affirmative procedure?**

## **8. Scottish Government response—**

i. The Scottish Government does not take the view that affirmative resolution is necessary for all regulations made under section 12(2). The first regulations made under this section will be used to establish the circumstances in which carbon units will be credited to or debited from the net Scottish emissions account and the manner in which this is to be done. This first set of regulations will be subject to affirmative resolution, as will any amendment to them or to subsequent regulations which would have a fundamental impact on the operation of the net Scottish emissions account by altering the amount by which carbon units increase or decrease that account.

ii. It is envisioned that second and subsequent regulations which would attract negative procedure would be instruments designed to align emissions trading schemes operating in Scotland, such as the EU Emissions Trading Scheme (EU ETS), with the net Scottish emissions account. These regulations are likely to be very technical and detailed in nature but would be unlikely to change the fundamental operation of the net Scottish emissions account.

iii. For example, in Phase II of the EU ETS (up to and including the year 2012) nearly all emissions allowances are allocated to industry free of charge. Participants only have to pay for extra allowances necessary to offset emissions over and above their allocation. However, in Phase III of the EU ETS (2013-2020), auctioning will become the default method of distributing allowances, rather than free allocation. In sectors of industry not subject to specific exemptions, 20% of allowances to be distributed will be auctioned in 2013, gradually increasing to 70% in 2020. Additionally the electricity generation sector in most Member States will not receive any free allowances from 2013 onwards. The proportion they would have received will also be auctioned. Work is underway within the Scottish Government to develop section 12 regulations covering the operation of the EU ETS up to and including 2012. However, although the principles of Phase III of the EU ETS are known, there are currently a great number of uncertainties about how it will actually operate in practice. It is almost certain that the first set of section 12 regulations, put in place to enable the net Scottish emissions account to operate appropriately in 2010-2012, will need to be amended to take account of the changes to the EU ETS from 2013. The aim of these amendments will simply be to enable the EU ETS allowances used by installations in Scotland to continue to be properly accounted for. The amended regulations will not change the amounts by which individual EU ETS allowances increase or decrease the net Scottish emissions account. The Scottish Government therefore considers that negative resolution is appropriate in such circumstances. This follows the approach taken in the equivalent sections of the UK Climate Change Act (sections 27 and 28).

## **Section 14 - Scottish share of emissions from international aviation and international shipping**

### **9. The Committee asked the Scottish Government—**

**in relation to section 14, on what basis it has considered that there should be no requirements on the face of the Bill to the effect that Ministers shall consult on the terms of an order with specified persons or bodies who may have particular interest in these proposals?**

**10. Scottish Government response—**

i. Emissions from domestic aviation and domestic shipping are considered to have been emitted from sources in Scotland and therefore fall within the scope of the Bill's targets by virtue of section 13(a). An order made under section 14(1) of the Bill would designate a share of emissions from international aviation and international shipping as being attributable to Scotland. The effect of such an order would be to include these emissions within those which count towards the reduction targets set in the Bill. This does not amount to specific targets for either the aviation or the shipping industries because the Bill's targets apply to Scotland's emissions taken as a whole, not to individual sectors. This, combined with the requirement in section 14(3) that Scottish Ministers request advice from the relevant body (the expert Committee on Climate Change or Scottish equivalent), and the related requirement to publish a statement setting out any reasons for not following that advice should that be the case, meant that it was not felt necessary to require consultation on the terms on any order made under section 14(1).

**Section 18 - Carbon units and carbon accounting**

**11. The Committee notified the Scottish Government that it does not favour the use of the lesser degree of scrutiny of negative procedure for second or subsequent regulations, as provided for in section 64(7)(b) in relation to section 18(1), rather than affirmative procedure.**

**12. The Committee asked the Scottish Government—**

- (a) whether it could re-consider if all regulations under section 18 could be by affirmative procedure, and**
- (b) if it does not take this view, if it could fully explain and justify to the Committee why it is considered appropriate that the first use of the regulation-making power under section 18 together with any regulations making provision specifying a carbon unit of a kind not previously specified) should be subject to affirmative procedure, whereas all other second or subsequent regulations under section 18 should be subject to negative procedure?**

**13. Scottish Government response—**

i. The Scottish Government does not take the view that affirmative resolution is necessary for all regulations made under section 18. Once a scheme is established under section 18(1) for registering or otherwise keeping track of carbon units, including the establishment and maintenance of accounts for holding such units, and the designation or establishment of a person or body to administer

the scheme, it is considered that any further regulations made under section 18(1) would be used simply to vary the operation of this scheme.

ii. For example, a second or subsequent set of section 18(1) regulations might be necessary at some point in the future to create an additional account within which carbon units may be held because of changes to the way in which carbon units are traded at a UK or international level. This is considered to be an administrative procedure. Similarly, it may become necessary to change the level of the charges that users of the scheme are required to pay, to cover the reasonable operating costs of the scheme. Changes of these types would not fundamentally alter the carbon accounting scheme established in the first set of regulations made under section 18(1) and negative resolution is therefore considered sufficient for second and subsequent regulations which seek to make such amendments.

iii. By comparison, specifying a new type of carbon unit would have a significant effect because of the direct relevance to the net Scottish emissions account. Regulations making such a specification would therefore be subject to affirmative resolution.

iv. This follows the approach taken in the equivalent sections of the UK Climate Change Act (sections 26 and 28).

## **Section 36 - Duties of public bodies relating to climate change**

### **14. The Committee asked the Scottish Government—**

- 1. Whether consideration was given to the type of ‘public bodies’ which could be subject to climate change duties and, if so, whether ‘public bodies’ for purposes of this section could be better defined;**
- 2. Whether consideration was given to providing a definition of ‘climate change duties’ which did not refer back to section 36(1) and, if so, whether ‘climate change duties’ for purposes of this section could be more specifically defined; and**
- 3. Given that climate change duties are not precisely defined and given that any order under section 36 could potentially affect a very wide range and large number of public bodies, whether consideration was given to providing for a broader range of persons whom the Scottish Ministers are obliged to consult under section 36(4) and (5)?**

### **15. Scottish Government response—**

i. In response to part (a) of the question, section 19(5) of the Bill provides that the term ‘public body’ means any body with a function of a public nature. This definition applies to section 36 by virtue of section 65 of the Bill. When drafting the Bill, consideration was given to the lists of public bodies in both the Freedom of Information (Scotland) Act 2002 and the Public Appointments and Public Bodies etc. (Scotland) Act 2003. However, given that the policy intention is only to use



the powers in section 36 when it is considered necessary in the future (about which more detail is given below) it was not felt appropriate to list the bodies to which the duties might be applied. It was considered more appropriate to use the general term 'public bodies'.

ii. Apart from the set of specific provisions in Part 5, the Climate Change (Scotland) Bill is principally designed to set long-term statutory emissions reduction targets for Scotland and to establish the framework of annual targets, reporting and scrutiny to drive the policies for delivering the emissions reductions necessary for meeting these targets. The public sector can act as an exemplar by reducing its own emissions in line with the Bill's targets. The Scottish Ministers wish to work in partnership with public bodies to achieve this but recognise that as emissions reductions become more difficult and more expensive to achieve it may become necessary to place duties on certain public bodies to take specific action. If this does become necessary, section 36(6) of the Bill specifically requires Scottish Ministers to co-operate with relevant public bodies to help them comply with their climate change duties.

iii. It is not possible to know exactly which public bodies may need to become subject to statutory climate change duties at various points over the course of the forty years that the Bill's framework is designed to cover. If the Bill were to include a list of the public bodies relevant to section 36 it would be highly likely that bodies would need to be included in the list for the sake of completeness but upon which climate change duties may never need to be applied. This approach could also limit the Bill in terms of future application to any new bodies which are created between now and 2050. It was therefore considered appropriate to retain flexibility as to which public bodies climate change duties might be applied to.

iv. Section 36(5) of the Bill contains the safeguard that Scottish Ministers must consult with associations of local authorities or other persons (it is intended that this should be the representative bodies for the part of the public sector in question or, if there are none, the specific public bodies themselves) before laying a draft of a statutory instrument containing an order under section 36(1). Scrutiny is further strengthened by the requirement that such orders be subject to affirmative resolution.

v. In response to part (b) of the question, it was never the intention to define 'climate change duties' more specifically elsewhere in the Bill. Given the complex nature of climate change and the long-term nature of the emissions reduction framework established by the Bill, it was felt that this power should be flexible enough to be used in reaction to or anticipation of circumstances which cannot be foreseen at the present time.

vi. It is intended that the term 'climate change duties' be sufficiently broad to encompass measures designed to mitigate specific public bodies' contribution to climate change, ways in which the bodies may adapt to the effects of climate change, or ways in which they may carry out their functions with regard to the objectives of mitigation and adaptation.

vii. In response to part (c) of the question, the Scottish Ministers are required to consult with associations of local authorities or other persons as the Scottish Ministers consider appropriate. As explained above, the term ‘other persons’ is intended to cover representative bodies for the part of the public sector in question (other than local authorities) should they exist, or, if they do not, the specific public bodies themselves. However, because the specific public bodies to which duties might be applied are not listed in the Bill in order to retain the flexibility sought for this power, it was not considered appropriate to set out a more specific or broader list of persons whom the Scottish Ministers would be obliged to consult.

### **Section 37 – Guidance to relevant public bodies**

**16. The Committee asked the Scottish Government for more information as to the function and likely content of this guidance.**

**17. Scottish Government response—**

i. Guidance issued under section 37(1) will indicate how specific climate change duties should be discharged. This is intended to assist in developing consistency of approach across those public bodies to which specific section 36 duties apply. For example, and for illustrative purposes only, a duty might be applied requiring certain public bodies to take account of greenhouse emissions in new procurement contracts. Associated guidance issued under section 37 might set out examples of best practice as to how this might be achieved.

### **Section 46 - Variation of permitted times for making muirburn**

**18. The Committee asked the Scottish Government—**

**whether or not it considers it would be appropriate to consult the hill farming community, landowners and others who may be affected on the dates which may be appropriate for muirburn, in advance of making an instrument.**

**19. Scottish Government response—**

i. The Scottish Government agrees that it would be appropriate to consult with parties likely to be affected by any proposed change to the times at which muirburn may be made. However, the Scottish Government considers that the introduction by section 46 of the Bill of provision in a new section 23A of the Hill Farming Act 1946 to create a statutory duty to consult would be impractical. Unlike sections 36(4) and 37(2) of the Bill, which require the Scottish Ministers to consult with, among other persons, associations of local authorities prior to placing climate change duties on public bodies and giving guidance about those duties, there is no one organised body or group of individuals that specifically or particularly represent the interests of those who are involved in the practice of making muirburn. In addition, the Scottish Government is not aware of any existing statutory body or agency with any particular role or statutory function in relation to muirburn.

ii. Muirburn may be made by any person, both a landowner or a tenant, anywhere in Scotland. The Scottish Government considers that in the absence of any organised persons or bodies representing those who may make muirburn, its standard practice of consulting on a non-statutory basis with potentially interested parties is appropriate and reasonable in the circumstances. Such a means of consultation will help to ensure that the views of those generally with an interest in muirburn are obtained and taken into account, as opposed to obtaining views from persons or groups whose remit or experience does not in particular concern the activity of muirburn.

## **Section 47 - Power to modify functions of Forestry Commissioners**

### **20. The Committee asked the Scottish Government—**

**Given that the proposed power under section 47(1) to modify, by order, the functions of the Forestry Commissioners in or as regards Scotland does not contain any limitation with respect to the nature, scope or extent of any such modification, has the Scottish Government given consideration to the imposition of a restriction, within the power, on the nature, scope and extent of any modification which may be made; and, whether or not any such consideration has been given, does the Scottish Government not consider that such a limitation would be both feasible and appropriate?**

### **21. Scottish Government response—**

i. The Scottish Government considers that the power in draft section 47(1) to modify the functions of the Forestry Commissioners in or as regards Scotland is limited by section 47(2) to the effect that the Scottish Ministers may only make such an order where they consider it necessary or expedient to do so in order to comply with their duty under sections 1, 2 or 3(1)(b) to meet the targets set out in those provisions, or otherwise in relation to climate change.

ii. Any modifications to the functions of the Forestry Commissioners in or as regards Scotland contained in an order under section 47(1) may therefore only be made for purposes demonstrably related to the mitigation of the effects of climate change. The Scottish Government's position is that consideration has been given to limiting the power in section 47(1), and that it is both feasible and appropriate that the power should be limited in such a way that it requires to relate to climate change purposes.

iii. The Committee will also have noted that, in terms of section 64(4), an order to be made under section 47(1) will be subject to affirmative resolution procedure, thereby ensuring that any such order will require to be debated and approved by the Parliament before it can be made.

## **Section 52(1), (2) and (4) - Waste prevention and management plans**

### **22. The Committee asked the Scottish Government—**

- (a) What kinds or classes of persons does the Scottish Government intend or anticipate will be subject to duties under the regulations? In particular is there any intention to apply the power to domestic activities or individuals?**
- (b) Would it not be possible for the Scottish Government to specify, in the section, the classes of persons to be subject to the regulations and, if so, why has this not been done?**

**Section 53(1), (2), (3) and (5) - Information on waste**

**23. The Committee asked the Scottish Government—**

- (a) What kinds or classes of persons does the Scottish Government intend or anticipate will be subject to duties under the regulations? In particular is there any intention to apply the power to domestic activities or individuals?**
- (b) Would it not be possible for the Scottish Government to specify, in the section, the classes of persons to be subject to the regulations and, if so, why has this not been done?**

**Section 54(1), (2), (4) and (5) - Recyclable waste: facilities for deposit etc.**

**24. The Committee asked the Scottish Government—**

- (a) What kinds or classes of persons does the Scottish Government intend or anticipate will be subject to duties under the regulations? In particular is there any intention to apply the power to domestic activities or individuals?**
- (b) Would it not be possible for the Scottish Government to specify, in the section, the classes of persons to be subject to the regulations and, if so, why has this not been done?**

**Section 56(1), (2), (3) and (6) - Procurement of recycle - regulations**

**25. The Committee asked the Scottish Government—**

- (a) What kinds or classes of persons does the Scottish Government intend or anticipate will be subject to duties under the regulations? In particular is there any intention to apply the power to domestic activities or individuals?**
- (b) Would it not be possible for the Scottish Government to specify, in the section, the classes of persons to be subject to the regulations and, if so, why has this not been done?**

## **Scottish Government response—**

i. In respect of sections 52, 53, 54, and 56 the Committee asks about the classes of persons on whom the Scottish Government believes duties under eventual regulations may fall. It is not at present possible to be specific, since in none of these cases has the Scottish Government yet drawn up firm proposals for regulation. In addition to policy considerations (which might, for example, mean exemptions for small businesses or particular sectors), actual regulations, which are not foreseen in the current economic circumstances, will have to be drawn up according to the economic, market and environmental position at the time. There is, however, no intention to apply regulations made in terms of any of these sections to private individuals acting in a non-business capacity.

## **Section 57(1), (2) and (4) – Targets for reduction of packaging etc.**

**26. The Committee asked the Scottish Government to fully explain and justify (given that no such explanation is given in the Delegated Powers Memorandum) why—**

- (a) unlike the approach taken in Part 1 of the Bill, the Government requires to take the powers in section 57(1) and (2), in so far as they propose that any targets without limit (set by any method) may be set for the reduction of packaging or the reduction of emissions produced by packaging, or requirements on persons to comply with those targets;**
- (b) given that the Memorandum refers to the possibility of targets being imposed on retailers, the Government requires to impose those targets or requirements on any types of persons (individuals or legal persons) who might be specified in the Regulations, and**
- (c) On what basis it has considered that there should be no requirements on the face of the Bill to the effect that Ministers shall consult on the terms of the regulations with specified persons or bodies that may have particular interest in the proposals?**

## **27. Scottish Government response—**

i. With regard to part (a) of the question, concerning the power in section 57(1) to set targets, the Bill requires that this power be exercised through regulations. A different approach from that taken in Part 1 is required since producers of packaging are already subject to a producer responsibility regime. In Scotland, this is set out in the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (SI 2007/871). These, in turn, implement the requirement in Article 7 of the Packaging and Packaging Waste Directive (94/62/EC) that return, collection and recovery systems be established. The Scottish Government does not consider it appropriate to transfer responsibilities to itself for meeting packaging targets when a statutory scheme placing considerable responsibilities on producers is already in place.

ii. Furthermore, in terms of waste in general, producer responsibility is a requirement of Community law - see, for example, Article 8 of the recently revised Waste Framework Directive (2008/98/EC). The power to set targets in respect of packaging is obviously less far-reaching in its effects on life in Scotland than the targets in Part 1 may potentially be. It is not limited because very different targets may be appropriate for different forms of packaging on different kinds of product - and indeed the appropriate targets will vary widely according to the state of the market.

iii. Part (b) of the Committee's question on Section 57 asks why the Bill refers to the imposition of targets on persons other than retailers. A great deal of the packaging in circulation does not pass through the hands of retailers, so requirements to reduce these forms of packaging would need to be set for other categories of person. Even where packaging does pass through the hands of retailers, it may well be appropriate to place reduction requirements on producers instead. (As indicated above, these persons are the object of existing producer responsibility legislation in any case.) This does not mean that the Delegated Powers Memorandum's reference to retailers was necessarily wrong. Measures to reduce the amount of packaging reaching consumers in particular, for example, would be likely to be addressed at retailers.

iv. Part (c) of the Committee's question on Section 57 concerns the lack of a specific provision on consultation. The Scottish Government's usual practice is to consult with interested parties when making secondary legislation. It seemed, therefore, unnecessary to require this on the face of the Bill.

## **Section 64 – Subordinate legislation**

### **28. The Committee asked the Scottish Government—**

**Why (in contrast for example to the approach taken in sections 74 and 75 of the Judiciary and Courts (Scotland) Act 2008)—**

**(a) it is considered that section 64(3) requires to contain a power for orders or regulations to modify any enactment (including the Act) by affirmative procedure (a “Henry VIII power”), without any reference to the purposes of such modification, for example, for the purposes of making consequential, incidental, transitional, transitory, or savings provisions; and**

**(b) if the Government could re-consider whether the power to make supplementary, incidental or consequential provision could be limited to the purposes of giving full effect to, any provision of the Act, and the power to make transitory, transitional or saving provisions could be limited to being in connection with the coming into force of any provision of the Act?**

### **29. Scottish Government response—**

i. With regard to part (a) of the question, the Scottish Government considers that it is necessary for the power in section 64(3) to be available for use in wider circumstances than those prescribed in section 64(2)(b) for making consequential, incidental, transitional, transitory, or savings provision.

ii. For example, the power in section 47 enables the Scottish Ministers to modify the functions of the Forestry Commissioners in or as regards Scotland. It is likely that doing so will necessitate the modification of enactments, because the existing functions of the Forestry Commission are mainly set out in the Forestry Act 1967. The modification of that Act would be the main method by which the power would be used, rather than being merely ancillary. Section 36(1) provides a similar case because it might be necessary to modify enactments applying to local authorities, for example, to reflect the new climate change duties.

iii. This is a wide-ranging Bill and it is difficult to know in advance which powers might need to modify enactments. That is why section 64(3) is expressed as applying generally.

iv. Turning to part (b) of the question, the Scottish Government considers that dividing the section 64(3) powers in the way described would result in some of the ancillary powers being subject to the 'full effect' test and others subject to the 'in connection with the coming into force' test. As previously stated, it is difficult in advance to know which of the ancillary powers will be needed in practice. The Bill contains such a wide range of different powers that a particular set of subordinate legislation in a particular subject area might, for example, need to 'mix and match' a consequential provision with a saving. It was not felt that having to use different tests in this manner would add to the level of scrutiny which will have to be applied.

v. The Judiciary and Courts (Scotland) Act 2008, contains separate standalone "ancillary" and "transitional provision etc." powers in sections 74 and 75, but it also contains a full list of incidental etc. powers within section 71. Section 64(2) (b) of the Climate Change (Scotland) Bill takes a similar approach to section 71(2) (a) in that Act.

I hope this information is helpful to the Committee.