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**ENVIRONMENTAL**  
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Edward Mountain MSP  
Convener  
Net Zero, Energy and Transport Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

By email

[netzero.committee@Parliament.Scot](mailto:netzero.committee@Parliament.Scot)

22 August 2023

Dear Mr Mountain,

### **Circular Economy (Scotland) Bill – Committee call for views**

1. Environmental Standards Scotland (ESS) welcomes the opportunity to respond to the Committee's call for views on the Circular Economy (Scotland) Bill.
2. ESS is a non-ministerial office directly accountable to the Scottish Parliament. Since 1 October 2021, it has been part of the system of environmental governance in Scotland following the UK's exit from the European Union. Its remit is to:
  - ensure public authorities, including the Scottish Government, public bodies and local authorities, comply with environmental law
  - monitor and take action to improve the effectiveness of environmental law and its implementation.

**Environmental Standards Scotland Enquiries**

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3. ESS' Strategic Plan 2022-2025 sets out a range of analytical priorities which we have identified as being the focus for work over the next three years. One of the areas within this list of priority areas is considering progress against waste and recycling targets and the development of the circular economy. This is an area where we have recently begun work. As the Policy Memorandum accompanying the Bill states, the content of this Bill and any further associated regulations are likely to fall into the scope of ESS' statutory functions (para.131).
4. ESS recognises the importance of establishing a circular economy, and the need for legislative change to drive its development. To maximise delivery of a circular economy for Scotland, we welcome measures that drive promotion of (and further embed) the waste hierarchy, particularly the principles of prevention and reuse.

### **Circular Economy targets**

5. We note the ambition to move towards a more comprehensive and wide-ranging suite of indicators to measure progress towards a circular economy. It is important that existing targets and measures integrate with any future metrics which are developed. We recognise the need to take a more holistic view. However, it is important not to abandon well-established metrics as these provide continuity of monitoring and an indication of the direction of travel, as well as useful background context.
6. Specifically on waste and recycling targets, Section 13(2) of the Bill states that there will be no new statutory targets for local authorities before 1 April 2030. The Scottish Government should set out how existing targets to 2025 are going to be promoted, monitored and reported on, and what arrangements are going to be in place for the period beyond 2025. Trends in rates of recycling and the increasing reliance on incineration as an alternative to landfill need to be monitored closely, particularly with the 2025 ban on biodegradable municipal waste going to landfill imminently approaching (which includes household waste). A clear interim plan for existing targets and further detail about the 2025-2030 period (prior to the earliest possible date for new local authority targets) is important to ensure that progress continues to be made before any new targets are put in place.

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## Householder Duty of Care

7. Section 10 of the Bill proposes extending criminal offence provisions to householders who breach duty of care obligations and introduces the ability to use fixed monetary penalties. At this stage, it is unclear how these measures will be enforced by enforcing authorities. We would encourage consideration be given to the practicalities and resourcing of enforcement. Offence provisions and penalties should be applied by enforcing authorities in a proportionate, effective, timely and consistent manner. To ensure that enforcing authorities have a clear framework under which compliance can be measured and that expectations on households are clear, a review and if necessary, an update, of the [Duty of Care Code of Practice](#) would be pragmatic.
8. There are a number of upcoming legislative changes that have the potential to interact with the proposed householder duty of care offence provision. This includes the UK-wide Digital Waste Tracking system and any potential regulatory changes that may be enacted through the Integrated Authorisation Framework (for instance, changes to the regulation of waste carriers, brokers and professional collectors and transporters of waste). Offence provisions and requirements across all proposed legislative changes should be complementary and deliver a clear and coherent regulatory framework. We would look for assurance that an effective and well-functioning regulatory and enforcement system is delivered across these legislative changes.

## Household Waste Requirements

9. Enforcement measures alone are unlikely to drive the significant behavioural change needed to attain high quality recyclate. We encourage the development of a programme of awareness raising and education, in conjunction with civil sanctions, to reduce household recyclate contamination rates.
10. ESS recognises the importance and value that a wider suite of enforcement powers affords enforcing authorities. However, it is important that offence thresholds set out in the Bill are commensurate with attainment of the intended policy outcomes. It is unclear if the offence threshold (Section 46ZA(1)(b)) under which either a written warning or civil penalty charge for a breach of a section 46 requirement can be issued is set at the correct level to reduce contamination of household recyclate.

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## **Wider context**

11. ESS recognises the complexity of the legislative landscape that influences the development of a circular economy in Scotland. The measures delivered through this Bill (and subsequent regulations) must complement and integrate with wider legislative developments at both a UK and European level (see Annex 1). In light of the degree of change in this area, careful monitoring and (where necessary) implementation of further measures not currently proposed under the Bill will be necessary to ensure Scotland maintains alignment with wider developments and is able to establish a circular economy in Scotland.

Yours sincerely,

Mark Roberts  
Chief Executive

## Annex 1 – Wider Legislative Developments

Policy Development	Jurisdiction	Status
<b>Integrated Authorisation Framework</b> ( <i>Environmental Authorisation (Scotland) Regulations 2018</i> ).	Scotland	Enacted – integration of waste, water and industrial emission (PPC) frameworks pending – no date specified.
<b>Deposit Return Scheme</b> ( <i>The Deposit Return Scheme for Scotland Regulations 2020</i> )	Scotland	Enacted – implementation delayed until at least Oct 2025
<b>Mandatory Digital Waste Tracking</b>	UK	Proposed – implementation planned 2023 to 2024.
<b>Extended Producer Responsibility for Packaging</b>	UK	Enacted – staged implementation of requirements from 2023 onwards.
<b>New Regulation on Waste Shipments</b>	EU	Council negotiations underway (May 2023)
<b>Ecodesign for Sustainable Products Regulation</b>	EU	Proposed (Mar 2022)
<b>Revision of Packaging and Packaging Waste Directives</b>	EU	Proposed (Nov 2022)
<b>Batteries and Waste Batteries Regulation</b>	EU	Adopted (Jul 2023)
<b>Critical Raw Materials Act</b>	EU	Proposed (Mar 2023)
<b>Vehicle Design and End of Life Vehicle Regulation</b>	EU	Proposed (Jul 2023)
<b>Waste Framework Directive Revision (specifically focusing on textiles and food)</b>	EU	Proposed (Jul 2023)
<b>Waste Electrical and Electronic Equipment Directive</b>	EU	Currently under evaluation – consultation open to Sep 23.

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