

Environment, Climate Change and Land Reform Committee

Environment Bill LCM

The Committee received written comments from the following stakeholders—

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The UK Chemical Industries Association (CIA) welcomes the opportunity to provide input to the Environment Bill Committee. CIA is the trade association representing and advising chemical and pharmaceutical businesses across the UK. As a significant contributor to the UK economy¹ (£19.2billion of Gross Value Added on a turnover of £55.5billion), the chemical industry is at the heart of UK manufacturing, underpinning key sectors such as food and drink, medicines, aerospace, automotive and water treatment.

Executive summary

CIA believes the Bill should promote sustainable growth, investment and prosperity alongside holistic environmental considerations.

The concept of ‘net costs’ should be included in the Bill for producer responsibility, alongside provisions that ensure cost efficiency, effectiveness and savings as common themes throughout the Bill. Further, the potential for economic opportunity whilst also delivering on environmental objectives should have greater emphasis. Examples of these opportunities are resource efficiency, productivity and industrial symbiosis.

CIA considers the current protection measures in the Bill would maintain the high levels of environmental protection in regulating chemicals as foreseen under the REACH regulations. However, we urge the committee to consider additional scenarios which may justify possible amendments to the UK REACH Statutory Instrument. Such amendments may result in the implementation and workability challenges as well as the outcomes of the ongoing negotiations between the UK and European Union (EU).

In minimising the disruption and challenges posed by the current UK REACH approach we advocate remaining closely connected with the European Chemicals Agency (ECHA) through a cooperation agreement and a shared database. This can be achieved in a UK/EU trade agreement and the UK Governments approach provides an opportunity for this to happen. By doing so this would protect industry’s existing compliance commitments, enable the UK to build on the progress made to date in regulating chemicals and support future environmental ambitions.

Proposals for the Environment Bill:

i) Objectives of the Bill and OEP should incorporate aspects of growth, investment and prosperity alongside environmental considerations. This could be achieved through complimenting amendment NC1 as outlined below, or by adding to the amendment NC6. The Climate Change Act includes consideration of competitiveness, as well as requiring such knowledge in the Climate Change Committee. To achieve sustainable outcomes, the environment and the economy, alongside our society, should be addressed together.

(PAGE 44 of amendments as at 20 March)

“Jessica Morden Alex Sobel

NC1

To move the following Clause—

“The environmental objective

(1) The environmental objective is to achieve and maintain a healthy natural environment.

(2) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures

arising from this Act must be enforced, allowed and followed for the purpose of contributing to achievement of the environmental objective, **whilst considering overall environmental impacts and business competitiveness.**”

Member’s explanatory statement

This new clause is intended to aid coherence in the Bill by tying together separate parts under a

unifying aim. It strengthens links between the target setting framework and the delivery

mechanisms to focus delivery on targets.”

CIA proposal 1: add the above text in red to the overarching objective of the Bill to ensure that growth and costs, including environmental costs, are properly considered. The Climate Change Act supports precedent for direct consideration of business competitiveness: Provision 10, paragraph 2(c); Schedule 1, paragraph 3(a); and Schedule 8, paragraph 3(5).

ii) Disclosures on resource efficiency information are often commercially sensitive and so protections should be in place to avoid this. Provisions of the Bill need to acknowledge this point.

(PAGE 30 of tracked change Bill 6 March):

“Resource efficiency

50 Resource efficiency information

(1) In Schedule 76—

(a) Part 1 confers power on the relevant national authority to make regulations about the provision of resource efficiency information;

(b) Part 2 confers power on the relevant national authority to make regulations about the enforcement of regulations made under Part 1.”

CIA proposal 2: after paragraph (5) in provision 50, add in a new paragraph: “(6) Requesting information from organisations that is commercially sensitive or confidential for other reasons should be avoided as far as possible. Should requesting such information be unavoidable, appropriate protections on disclosure must be in place.

iii) On resource efficiency, the potential for also producing economic benefits do not seem addressed – the emphasis of the current Bill appears to be on costs, including the avoidance of disproportionate costs. For example, resource efficiency and industrial symbiosis can bring about both economic and environmental benefits. These ‘win-wins’ for the economy and the environment should be included in the Bill.

(PAGE 160 of the tracked changes Bill)

“(d) those benefits are significant as against the likely costs resulting from the imposition of the producer responsibility obligations;

(e) the burdens imposed on businesses by the regulations are the minimum necessary to secure those benefits;”

CIA proposal: the above considerations should be implemented in all relevant aspects of the Bill, not just those provisions related to producer responsibility. Further, powers under the Bill should also seek to unlock economic opportunities e.g. arising from increased resource efficiency.

iv) The concept of ‘net costs’ as outlined in the 2019 “Consultation on reforming the UK packaging producer responsibility system” should be included in the Environment Bill, alongside provisions that ensure cost efficiency, effectiveness and savings.

(PAGE 30 of the tracked changes Bill)

49 Producer responsibility for disposal costs

(1) Schedule 6 5 confers power on the relevant national authority to make regulations

requiring the payment of sums in respect of the net costs of disposing of products and materials.

(2) In this section and that Schedule “relevant national authority” means—

(a) in relation to England, the Secretary of State;

(b) in relation to Wales, the Welsh Ministers or the Secretary of State;

(c) in relation to Scotland, the Scottish Ministers or the Secretary of State;

(d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland or the Secretary of State.

CIA proposal: the disposal costs of products and materials should ‘net off’ any income gained e.g. through local authorities and other organisations selling on recovered or recycled materials. This concept is included in the 2019 consultation on reforming the UK packaging producer responsibility system. Additionally, where provisions create costs for businesses, secondary legislation should seek to minimise the costs, increase the costs effectiveness and efficiency. This is particularly relevant for the costs created under producer responsibility schemes as outlined in Schedule 6.

Comments on the Bill relating to the regulating chemicals – the REACH regulations (Clause 125 and Schedule 19).

Background

The rules for supplying chemicals in the EU are set by Registration, Evaluation, Authorisation and Restriction of chemicals (REACH) and Classification, Labelling and Packaging (CLP) Regulations. Both are aimed at ensuring there is a high level of protection of human health and the environment with industry responsible for demonstrating that chemicals placed on the EU market can be used safely throughout the supply chain. Both regulations directly apply in the

Member States of the European Union to which UK industry and regulators have made a significant contribution to. REACH is the key regulation that the chemical sector must comply with in order to manufacture, import and trade chemicals within the European Union. Known to be one of the largest and most complex regulations produced by the European Union companies have been continuing to work hard and invest in its implementation since it entered into force in 2007. Considering the close integration of UK supply chains with the EU¹ (50% of chemical industry exports destined for the EU and 76% of imports coming from the EU), there are significant implications for the regulatory framework in which the UK chemical sector will operate within as the current transition period comes to an end and the UK looks to implement its own UK REACH regime.

REACH related provisions in the Environment Bill

The Bill gives the Secretary of State for Environment powers to amend UK REACH and the REACH Enforcement Regulations 2008. Such amendments can only be made through further regulations and Schedule 19 of the Bill in particular states amendments can only be made if they are consistent with Article 1 of the REACH regulations. In addition, the Secretary of State for Environment also needs to before beginning consultation on any amending regulations, publish an explanation outlining justifications in line with Article 1 of the REACH regulations. Article 1 of REACH itself outlines the primary objectives of the legislation which are to ensure a high level of protection of human health and the environment, promotion of alternative methods for assessment of hazards of substances, as well as while enhancing competitiveness and innovation. Therefore, CIA consider that the current protection measures in the Bill would maintain the high levels of environmental protection in regulating chemicals as foreseen under the REACH regulations. Furthermore, we believe the committee may also want to consider scenarios whereby UK REACH may need amending in the future and therefore we would urge the committee to consider these in scrutinising the Bill. These include but are not limited to:

1. **Changes to UK REACH to support implementation and to reflect future policy decision** - A number of changes have already been made to EU REACH regulations since its implementation. Similarly, as UK REACH is implemented and progress is reviewed, future measures, for example to improve workability may be necessary.
2. **Correct deficiencies to UK REACH.** Changes have already been made to the UK REACH Statutory Instrument in order to correct deficiencies to the legal text. To date the REACH Statutory Instrument has already been amended twice and certain provisions are to be kept under review by Defra.
3. **Changes to reflect outcomes of ongoing trade negotiations with the EU.** Whilst recognising that the UK REACH Statutory Instrument provides immediate provisions to regulate chemicals in the UK, significant issues remain outstanding (see below). Such issues will require further consideration and addressing based on the outcomes of the ongoing negotiations. For example,

further changes may be needed relating to workability, implementation or governance purposes.

Challenges in implementing a standalone UK REACH regime

A standalone UK REACH regime poses major challenges to businesses not just in the chemicals sector but to entire manufacturing supply chains, impacting any businesses who is manufacturing or importing chemicals to the UK, from aerospace, medicines to water treatment. The major challenges to the current UK REACH approach include:

1. Duplicating a decade worth of compliance work with costs expected to exceed £1 billion on top of the half billion already spent by the UK chemicals industry. The proposed UK REACH regime will require every chemical manufactured and imported in the UK to be registered again within a significant short timeframe (two years) – a costly and complex process that took ten years to complete under EU REACH.
2. Furthermore, the data collected in duplicating the registration process under UK REACH will result in the UK regulating chemicals from a smaller subset of data on chemicals. The chemicals database administered by ECHA according to the United Nations is known to be the largest and most comprehensive database on chemicals. Over 10,000 of the chemical registrations and underlying data has been submitted by the UK, accounting for over 5,000 substances making UK companies the second highest contributor to the database. This collective effort should not be dismissed in retaining high levels of protection in the UK.
3. Adding to the data challenge, under the current UK REACH approach businesses will need permission to use and submit existing data on chemicals subject to commercial negotiations. Whilst companies may be able to gain permission to use these study summaries in resubmitting data under UK REACH, this will in many cases be at a significant cost and, in some cases, a commercial advantage – for EU-based companies not to share data with UK firms. This could force businesses to duplicate testing, including animal studies where data already exists or accepting incomplete datasets, severely compromising the validity of the entire data collection exercise and undermining one of the fundamental principles of REACH.
4. Finally, in implementing certain aspects of UK REACH (e.g. evaluation, authorisation) processes are yet to be established. With the possibility of the statutory instrument coming into force by the end of 2020 businesses require legal certainty in order to operate and place products on the UK market.

Approach to regulating chemicals in the UK whilst maintaining high levels of environmental protection, minimising disruption and cost to business

The current approach to regulate chemicals following UK's exit from the EU has raised significant concerns for the chemicals industry across Europe². Whilst the UK's REACH Statutory Instrument and its subsequent amendments address to some extent the inoperability's in transposing the EU regulation into UK law, major concerns remain regarding the implementation of the future UK

legislation. CIA believes a UK REACH that requires duplicating submission of costly data must be avoided. Instead we advocate remaining closely connected with the European Chemicals Agency (ECHA) through a cooperation agreement and a shared database can be achieved in a UK/EU trade agreement which would protect industry's existing compliance commitments enabling the UK to build on the progress made to date in regulating chemicals and support UK's future environmental ambitions.

We are very grateful for the opportunity to input into the Committee's scrutiny of the Bill and have responded to each of your questions below.

1. What are your views on the chemicals' provisions in the Bill, in particular on the 'protected provisions' identified in the REACH Schedule?

On 12th March 2020, I gave oral evidence to the Environment Bill Committee at the UK Parliament, alongside Nishma Patel, Policy Director at the Chemical Industries Association and Bud Hudspith, Health & Safety at UNITE the union. The issues raised in this session are covered in our blog our blog.¹ Our written evidence can also be found on the Bill Committee's webpage.²

Schedule 19 of the Environment Bill provides the secretary of state with wide-ranging powers to amend REACH (as transposed into UK law) and the REACH Enforcement Regulations³ although there are a number of areas that are 'protected'. It is unclear why some aspects of EU-REACH (that have been cut and pasted into UK law) are not protected.

In my evidence, I highlighted a lack of rationale as to why some articles are protected and others are not and questioned why Articles 33 and 34 of REACH are not protected, which require companies to provide information about "Substances of Very High Concern" (SVHC) to industrial users of that product and in response to requests from consumers.

The Defra Minister, Rebecca Pow MP, recently responded to this point, and others relating to the UK regime for regulating chemicals after the end of the transition period, in her reply to a letter from the Chair of the Environmental Audit Committee.⁴ She said that the "23 protected provisions have been carefully selected to preserve the "what" of the aims and principles of REACH, but to avoid freezing the detailed "how" it operates".

However, it is difficult to apply this rationale to Articles 33 and 34 as they enshrine important principles of REACH, including the right of consumers to know about hazardous chemicals in products they are using every day. Article 33 also provides a mechanism by which market pressure can help to drive 'a race to the top', away from hazardous chemicals and their replacement with safer alternatives, helping to create new business opportunities and markets in safer and less harmful chemicals.

A number of amendments have been tabled by UK Members of Parliament; the full list (as at 20 March) is available here.⁵ CHEM Trust particularly supports the following:

- Matthew Offord MP's New Clause 11 – which makes it an objective of UK-EU trade negotiations for the UK to remain within REACH;

¹ <https://chemtrust.org/environment-bill-reach/>

² <https://publications.parliament.uk/pa/cm5801/cmpublic/Environment/memo/EB12.htm>

³ <http://www.legislation.gov.uk/uksi/2008/2852/contents/made>

⁴ <https://committees.parliament.uk/publications/1277/documents/11202/default/>

⁵ https://publications.parliament.uk/pa/bills/cbill/58-01/0009/amend/environment_rm_pbc_0320.pdf

- Amendment 176 – which protects Articles 32-34 from easy amendment, on consumers’ right to know about the most hazardous chemicals in everyday products;
- Amendment 175 – aims to improve the consultation process for amending REACH.

2. Were you consulted by the Scottish or UK Government (or statutory agencies) about what these ‘protected provisions’ should be?

CHEM Trust was not consulted about what these protected provisions should be.

3. Do you have any views or concerns about the readiness of a UK REACH regime for the end of the transition period (currently the end of 2020), for example in light of the current health pandemic?

In April, I called for an extension to the transition period,⁶ to ensure our attention is not diverted from addressing the coronavirus crisis and to allow enough time to get our future relationship with the EU right and negotiate a close partnership with the EU on chemicals. A close partnership with the EU on chemicals is vital for ensuring the UK retains the high environmental, safety and health standards the UK currently enjoys within REACH and would also avoid the costs and disruption of a second regulatory system on industry and manufacturing.

If the UK presses ahead with the transition period terminating at the end of this year, it is much more likely the UK will exit with no trade deal. This would mean that Northern Ireland will remain in REACH, while the rest of the country moves into the new UK-REACH regime.

The framework for a UK REACH independent regulatory regime was set out via delegated legislation last year in case of ‘no-deal’ but is now the de facto regime – unless the UK negotiates an agreement with the EU on chemicals. We are deeply concerned about a number of features of a future UK REACH regime that will be weaker than the current protective framework of EU-REACH and will result in divergence from the EU. Further details at <https://chemtrust.org/brexit>. Our analysis is that without action, the environment and human health will be left less protected from problem chemicals post-Brexit.

Our concerns include:

1. The lack of a useable database

One of the key deficiencies of a future UK system is the lack of access to the European Chemical Agency’s (ECHA) database. Without access, the UK will have to depend on much more limited information including a database that will essentially be empty for the first two years, until companies have delivered the UK’s required safety data on their chemicals. Even after this phase-in period

⁶ <https://chemtrust.org/echa-models/>

the UK database will have far less information in it than the EU's. This lack of data will make it hard for the UK to implement restrictions and authorisations on chemicals and to defend them from court challenges.

2. The lack of mechanisms in the future regulator to ensure stakeholder representation, public participation and transparent decision-making.

3. Regulatory capacity - including experience and expertise of personnel in the Health & Safety Executive (HSE). One particular issue is the lack of public health expertise within HSE.

4. Areas in which the future system is likely to be further weakened if the UK does not remain within REACH as part of the UK's future relationship with the EU:

- a. There are signs in the letter that Defra may extend timeframes, and potentially other requirements under UK-REACH, to reduce the costs and burdens on industry from complying with a parallel regulatory regime.
- b. As an effect of another trade agreement, for example with the US.
- c. There are signs in the Minister's letter that the UK may take a different, less protective approach to regulating chemicals than the EU's more precautionary approach.
- d. Under powers in Schedule 19 of the Environment Bill.

In terms of the UK's readiness, we are still waiting on information about how a future UK system will work and do not see how vital information about that, from a Common Framework on Chemicals to the UK Chemicals Strategy, can be delayed until a significant period into a new regime due to start on 1st January. These delays have been caused by the re-deployment of civil servants formerly working on Brexit, which suggests there is simply not enough capacity to plan the major structural changes needed to implement a successful departure from the EU, as well as deal with unprecedented pressures caused by the virus.

In the Minister's letter to the EAC, she said "We will have a strong and effective regulator in place to operate UK REACH, building on existing expertise in the Health and Safety Executive (HSE) and the Environment Agency (EA)". However, it is unclear how the functions of the European Chemical Agency will be devolved and delegated to these and devolved agencies and future policy processes. CHEM Trust has serious concerns about the capacity, resources available to, experience and expertise of personnel in those regulators to replicate the functions of the European Chemicals Agency in such a complex field.

ECHA has over 600 staff and a budget topping €100m – and has still not been able to check every substance after more than a decade's work. It is not clear how much funding is being provided to develop capacity ready for day 1 of the new regime, how many full-time members of staff it is recruiting, when and for what roles, and what their training will involve. It must also be noted that HSE will also need to do this alongside very considerable new responsibilities for making workplaces safe during the coronavirus pandemic and for establishing a new building safety regulator in the wake of the Grenfell Tower disaster.

4. What is your current position on UK preparedness for the end of the transition period in terms of the readiness of UK REACH, and whether there is still a possibility for the UK to remain part of (or linked to) EU REACH post EU exit?

Our position on UK preparedness for the end of transition is addressed above.

The Government has confirmed it wishes to have the ability to divert from EU laws and rules and has said it is not seeking associate membership of the European Chemicals Agency (ECHA) and participation in EU REACH.

Nonetheless, we continue to advocate for a close partnership with the EU on chemical regulation, that would ideally involve negotiating associate membership of the European Chemicals Agency, but other options are also available.⁷ A future UK-REACH regime will be costly to set up and run and will trigger considerable costs and burdens for UK businesses (both chemicals businesses and downstream users of industrial chemicals, encompassing most manufacturing) and result in a less protective framework. However, a close partnership with the EU on chemical regulation would avoid the costs and disruption of a second system, and retain the high environmental, safety and health standards the UK currently enjoys.

On the basis of current plans, without a mechanism, or even a commitment, to align with EU restrictions and authorisations, the UK regime will inevitably diverge from the EU. This could result in the UK becoming the new “dirty man of Europe” and a dumping ground for hazardous chemicals banned or restricted in the EU.

For example, there are a number of problem chemicals on which the EU is moving towards a restriction that provide a good test of the UK’s future approach and areas on which we are likely to diverge from the EU in the medium term. An example is Per and Polyfluoroalkyl Substances (PFAS), used in non-stick pans, waterproof fabrics, food packaging and cosmetics, which have been linked to cancers, thyroid disease, obesity and reproductive problems. The EU is now officially starting a process to restrict these chemicals, (<https://echa.europa.eu/de/-/five-european-states-call-for-evidence-on-broad-pfas-restriction>). When the Government has been asked if it would commit to phasing out PFAS now, it has deferred a decision to the Chemicals Strategy ([here](#)), which is now not due until 2022.

Furthermore, as you will know from submissions from industry and from the CBI, the chemicals sector is among the industries with the least to gain from any deviation from EU rules, as the sector is so tightly regulated and the UK is so dependent on the EU as a market. It is deeply regrettable that the Government has dropped the interest of the last Government to remain within EU REACH. REACH sets the de facto global standard and remaining aligned to it is vital not only for accessing the single market, but for Global Britain,

⁷ <https://chemtrust.org/echa-models/>

expanding our exports and global trading relationships. I understand that the position of the Scottish Government has also favoured chemicals regulatory alignment, which is very welcome.

5. Have you been consulted on the development of a common framework on chemicals?

CHEM Trust has not been consulted on the development of a common framework on chemicals. It is highly regrettable it has been pushed back to 2021. As highlighted above, it cannot be the case that we do not get to see or scrutinise this or the Chemicals Strategy until some time into a new UK REACH regime. The aim of the Strategy for example (first announced in the Government's 25 Year Plan for the Environment) was to set out "our approach as we leave the EU".

We would expect the Government to consult shortly on the terms of reference for the delegation of powers from ECHA to the HSE and the EA, including with regard to public participation, stakeholder engagement and transparency, and how the regulators will work with other agencies. The Minister's letter shared some more information about the new regulatory structure, notably its plans for regular and occasional observers from stakeholder organisations and for establishing a pool of independent scientific advisers for "the opinion-forming processes". However, this information is still only a snapshot of how the future regulator will operate after the transition period – much more information is needed on future policy processes (of restrictions and authorisations), who will be making decisions and how they will be made, and how this will be done transparently.

6. Do you have any views at this stage on what a common framework on chemicals will need to cover in light of provisions in the Bill?

On 4th June 2019, the solicitors Leigh Day issued a Judicial Review Pre-Action Protocol Letter on behalf of CHEM Trust, which argued that the proposed post-Brexit rules for chemicals and pesticides set out in the REACH regulations were not a proper reflection of the EU laws they were supposed to be copying and would weaken the protections of hazardous chemicals post-Brexit. Part of the evidence for this claim was the way in which the future UK REACH system does not replicate ECHA's committee structure which allows for stakeholder participation, replacing it only with an obligation for HSE to obtain external advice. Further information about the legal challenge, <https://chemtrust.org/uk-government-reply-chemicals-brexite/>

In its legal challenge, CHEM Trust argued that representatives from the devolved administrations should be involved in its decision-making in the same way that member states are represented in ECHA, on its management board and its committees. We also argued for the need to replicate the decision-making structure of ECHA as much as possible, to ensure equivalent levels of stakeholder participation and transparency.

Firstly, we argued that in the same way that Article 79(1) of the EU REACH Regulations requires ECHA's Management Board to be composed of one representative from each Member State and a maximum of six representatives appointed by the Commission, equivalent provisions should be made for the devolved agencies. In its response to CHEM Trust's legal action, the Government stated that the existing HSE Board and Management Board would take over the functions of ECHA's Management Board, but it is difficult to see how this existing structure is adequate without reform (and appointment of members with chemicals expertise), if it is to perform such an extensive new role.

Secondly, ECHA has a management committee and numerous technical committees, and stakeholders from industry and NGOs and trade unions are permitted to participate in these meetings (with no vote). Its committees include: the committee on socioeconomic risk; the committee on socioeconomic impact and risk assessment; and the member state committee, which would resolve differences of opinion. This ensures that the best information is available for these discussions and the work of ECHA can be challenged, helping to avoid mistakes and to ensure that decisions are made more independently and transparently.

It was very disappointing that the Government replaced this structure with its layers of oversight, with a duty on the Health and Safety Executive to seek advice from one or more competent people. There is currently no role for committees in the substance evaluation process; only an informal, ad hoc arrangement for asking the opinion of the Hazardous Substances Advisory Committee (HSAC) and/or the Committee on Toxicity (CoT). The system that will replace it is considerably more closed and vulnerable to mistakes being made and will not be as well informed by the various stakeholders.

CHEM Trust has also been calling for a role for public health agencies. The current structure for the implementation of chemicals regulation in the UK is led by the Health and Safety Executive (HSE), with environmental aspects dealt with by the environment agencies, but with no clear home for the protection of public health from hazardous chemicals. In its report on toxic chemicals in everyday life, the EAC recommended that the *"UK's public health bodies should be given responsibility for monitoring, researching the impact of chemicals on public health, and recommending restrictions and other controls on groups of problematic chemicals"*. Without such an allocation of responsibility to the UK's public health bodies, together with adequate funding and staffing for research and policy development, public health will not be properly protected.

In addition to the need to embed the role of devolved administrations in the operational side of the common framework on chemicals, there is a broader and more fundamental issue about whether a devolved administration should be able to diverge from UK REACH, for example by choosing to align with EU REACH. We appreciate there are issues for the functioning of the UK's internal market, but if the Scotland Government is more committed to alignment with EU environmental law and to EU REACH, the international gold standard for chemicals, there is a strong argument for enabling it to do so.

7. Do you have any views or concerns about how UK trade agreements might impact on the ability of the Scottish Government to fully exercise devolved functions in the area of chemicals regulation post EU exit?

The UK is currently in the midst of trade negotiations with the US and planning to start trade talks with other countries soon. CHEM Trust is deeply concerned that if the UK does not remain aligned to EU REACH, trade deals with countries with weaker systems for regulating chemicals (which includes almost all non-European countries including the US) could result in a weakening of our chemical protection standards and the import of products containing problem chemicals banned in the EU. The United States has long singled out the EU's REACH chemicals regulatory system as a non-tariff barrier to trade that hinders exports of US products. Further details at <https://chemtrust.org/how-a-us-uk-trade-deal-threatens-our-protection-from-hazardous-chemicals/>.

There is currently almost no opportunity for devolved administrations, MPs or the British public to scrutinise or influence trade deals. This lack of transparency makes it much easier for the Government to trade away our chemical protection standards behind closed doors. The devolved administrations have no formal role in negotiating or approving trade (or other) treaties and to the extent they are involved, it is at the UK Government's discretion. We appreciate and share the concerns expressed by the Scottish and Welsh Governments that a UK Government-led trade policy could lead to new international obligations that restrict policy flexibility in devolved areas.

Thank you for your letter of 28 May 2020 seeking the Law Society of Scotland's views on matters relating to the UK Environment Bill and the associated Scottish Government legislative consent memorandum. We are pleased to provide the following comments.

1. What are your views on how environmental law is defined in the Bill (including exceptions) including any specific implications for Scotland?

The definition of environmental law is set out in clause 43 of the Bill. It is defined as "any legislative provision to the extent that it...is mainly concerned with environmental protection" and is not an excluded matter. Certain exclusions are set out on the face of the Bill including in clause 43(3), which states that the reference to "legislative provision" does not include devolved legislative provision (except for the purposes of clause 19 on statements about Bills containing new environmental law), that is either legislative provision contained in, or in an instrument made under, an Act of the Scottish Parliament, or legislative provision which if contained in an Act of the Scottish Parliament, would be within its legislative competence.

We note that matters where UK Ministers act in a devolved area with the consent of the Scottish Ministers would appear to be excluded from this definition of environmental law. At present, it is not clear whether any Scottish environmental governance body's remit will include matters where UK Ministers act in devolved areas. If any such body's remit does not include these matters, it appears that a lacuna in environmental governance will exist for such matters. Similarly it is not clear how areas of executive devolution, for instance in energy consenting under The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 and the environmental assessment which goes alongside it, will be treated, given these are areas which are not within the legislative competence of the Scottish Parliament.

2. What are the implications of provisions on environmental principles in Scotland?

The provisions in the Bill concerning environmental principles (clauses 16 – 18) extend to England and Wales and apply to England only. In the circumstances, we note a question around the application of environmental principles to reserved functions of UK Ministers concerning Scotland. It is not yet clear whether any such matters will be sought to be covered by the anticipated Legal Continuity Bill in Scotland.

While the extent to which consistency in the determination and application of environment principles is sought is a political matter, coherence in the manner in which principles are applied may be of benefit in ensuring that international environmental obligations are met and avoiding 'environmental regulatory tourism'. Such coherence may also be of assistance in relation to UK-wide discussions and forums, for example, the Joint Nature Conservation Committee (JNCC), the REACH regime, and agreement of the Joint Fisheries Statement (under the Fisheries Bill).

3. What are your views on provisions regarding how the Office of Environmental Protection (OEP) is expected to cooperate or interact with any future environmental governance body in Scotland?

We consider that it is important that the OEP works closely with any future environmental governance body in Scotland. Environmental matters do not respect geographical boundaries and therefore, co-operation between the OEP and governance bodies in devolved administrations is crucial to ensure strong oversight and governance.

Clause 40(1) of the Bill provides for a restriction on the OEP in relation to disclosure of information and an exception for a disclosure “made to a devolved environmental governance body for purposes connected with the exercise of a devolved environmental governance function” is provided in clause 40(2)(f). We welcome this exclusion but consider that there would be merit in either a wider power for or an obligation on the OEP to share information with and work with relevant bodies in devolved administrations where necessary. For example, this might include provisions for joint investigations to be undertaken between the OEP and one or more environmental governance bodies in the devolved administrations where appropriate.

4. Do you consider that the remit of the OEP is clear in relation to reserved and devolved areas?

As referred to above, the definition of ‘environmental law’ in clause 43 makes clear that matters within devolved legislative competence are exempt from the remit of the OEP. As we note above, matters where UK Ministers act in a devolved area with the consent of the Scottish Ministers would appear to be excluded from the remit of the OEP and if such matters are not covered by any Scottish environmental governance body, it appears that such matters will not be within the scope of environmental oversight.

We consider that there is a lack of clarity around the remit of the OEP in connection with the reserved functions of UK Ministers, as relevant to Scotland. For example, it appears that the OEP’s remit could be triggered in areas where there is a complicated mix of reserved and devolved issues, such as chemicals regulation, although perhaps only in relation to certain aspects, and perhaps also in relation to other aspects of environmental law concerning Scotland, for example some aspects of product labelling and product standards which are reserved matters. It may also be triggered in relation to areas that have been executively devolved to Scottish Ministers, as noted in answer to question 1 above.

We note the provisions of clause 43(5) which provides that the Secretary of State may “by regulations provide that a legislative provision specified in the regulations is, or is not, within the definition of “environmental law””. A consultation requirement relative to such regulations is set out in clause 43(6), although this does not specifically include a requirement to consult Scottish Ministers. While this power will enable the Secretary of State to deal with matters where there is dubiety, for example, if a situation arises during the

course of the OEP's work, we would welcome clarification in relation to the reserved matters which are considered to be within the scope of the OEP prior to its establishment.

We consider that it is crucial that individuals and businesses have a clear understanding of the scope and remit of the OEP and any bodies in the devolved administrations. We suggest that provision be included within the UK Environment Bill for any complaints passed to an 'incorrect' body to be passed directly to the relevant body.

5. Do you have any views about how UK trade agreements might impact on the ability of the Scottish Government to fully exercise devolved functions post EU exit – in particular that could relate to the areas of regulation in the Bill?

International relations and regulation of international trade is reserved to the UK Government and Parliament. The Scottish Parliament and the Scottish Government (as with the other devolved legislative authorities) have no formal role in negotiations or approval of EU agreements. However, in our response to the consultation on the *Future of UK Trade Policy*, we highlighted the importance of extending a whole of governance approach to trade negotiations. We would urge further consideration of how trade negotiations will be handled where they intersect with the powers of the Scottish Parliament and other devolved legislatures where any proposed trade agreement will affect an area of devolved competence.

In relation to the Trade Bill in session 2017-19 the then Secretary of State for International Trade stated that he is "happy to recommit that we will not normally use the powers in the Bill to amend legislation in devolved areas without consent from the relevant devolved Ministers.' This matter is likely to be revisited in the current Trade Bill debates.

6. The Bill confers significant new powers on UK Ministers to make subordinate legislation for Scotland in devolved areas of environmental law (clauses 47, 48, 50, 81, 84 and 125). What do you consider are the implications, including any broader consequences for the devolution settlement, of this extension of UK Government powers within devolved competence?

Clauses 47 and 48

Clauses 47(2)(c) and 48(2)(c) give the Secretary of State power to make regulations in relation to matters which are devolved in Scotland but clauses 47(3) and 48(3) mean that the Secretary of State can only do so with the consent of the Scottish Ministers.

We have concerns about the provisions in the Bill which give Scottish Ministers the power to consent to the Secretary of State making regulations about devolved matters without reference to the Scottish Parliament.

If the power is exercised by the Secretary of State even with the consent of the Scottish Ministers, the Scottish Parliament is not able to approve or to scrutinise the regulations. The answer may be to adopt from the EU Withdrawal processes involving a protocol between the Scottish Government and the

Parliament. This protocol provided that when UK Government wished to make (with Scottish Ministers' consent) a Statutory Instrument with UK effect, the Scottish Ministers would ask the Parliament to consider a recommendation from them that it consents to the UK Government lodging the SI in the UK Parliament.

The relevant information is available on the Parliament's website⁸. The process detailed in the protocol⁹ is that 'the Scottish Government writes to a Scottish Parliament committee. The Committee then decides if it agrees the Scottish Government can give its consent for the UK Government to make this instrument apply to Scotland'.

We take the view that if such a process were adopted for the Environment Bill that would meet need for the Parliament to be involved in the consent procedure.

Clauses 50, 81 and 84

Similar points arise in relation to clauses 50, 81 and 84 as in relation to clauses 47 and 48. The only difference is that clause 50(3)(b) expressly restricts the power of Scottish Ministers to make regulations to only make regulations which are within their devolved competence.

Clause 125

We have no comments on paragraph 2(1) and (7)(b) which empowers the Scottish Ministers to amend the REACH Enforcement Regulations but only within devolved competence.

However, paragraph 4 requires the Secretary of State to consider any request made by Scottish Ministers for the Secretary of State to make regulations under Schedule 19.

Is it envisaged that the Scottish Ministers could request the Secretary of State to make regulations which go beyond the extent of their devolved powers? If so, should the provision not make it clear that they should have the power to make such a request? If that is not the policy intention and the matters are within devolved competence, it is not clear why Scottish Ministers could not make the regulations themselves. We appreciate that this may relate to reasons around the establishment of common frameworks.

7. Do you have any other views about the Bill you would like to raise?

We issued a briefing¹⁰ to MPs in advance of the Bill's Second Reading in the House of Commons and provided written and oral evidence¹¹ on the Bill to the Public Bill Committee at Westminster in March 2020. Our briefing and evidence may be of interest to the Committee.

⁸ <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/109741.aspx>

⁹ http://www.parliament.scot/S5_Delegated_Powers/20180911CabSec.pdf

¹⁰ <https://www.lawscof.org.uk/media/368403/20-02-05-environment-bill-second-reading-briefing-final.pdf>

¹¹ Our written evidence has not yet been published by the Public Bill Committee. Our oral evidence can be access here: [https://hansard.parliament.uk/Commons/2020-03-12/debates/c19a44d3-d1e5-4d38-804b-bdb39c27e6d1/EnvironmentBill\(FourthSitting\)](https://hansard.parliament.uk/Commons/2020-03-12/debates/c19a44d3-d1e5-4d38-804b-bdb39c27e6d1/EnvironmentBill(FourthSitting))

General and COVID-19 implications

1. The Bill confers new powers on UK Ministers to make subordinate legislation for Scotland in devolved areas of environmental law (clauses 47, 48, 50, 81, 84 and 125). Does LINK have any views about how this approach could impact on how stakeholders such as environmental NGOs participate in the development and scrutiny of environmental regulation?

Resource and capacity constraints mean that LINK does not generally comment on subordinate legislation made at the UK level or closely monitor proceedings at Westminster. If new regulations for Scotland were proposed by the Secretary of State, we would draw on relationships with our sister body Wildlife and Countryside LINK as well as the Greener UK network of which we are members. There could be some initial challenges to expand our work to cover UK proceedings but every effort would be made. LINK has on occasion presented evidence at Westminster committees and we would engage with the Scottish Affairs Committee if they were looking into a specific area of interest. Several of our member organisations would also be able to draw on work by their colleagues monitoring environmental issues at a UK level. As any regulations made under the provisions of the UK Environment Bill ('the Bill') would involve consultation with, and the consent of, Scottish Ministers, we would hope that the Scottish Government would engage Scottish stakeholders in those discussions.

Since the Bill was first introduced in 2019, LINK has been conscious of uncertainty over which aspects of environmental law in Scotland are devolved or reserved. LINK has not been able to review and therefore comment on whether the impact of the Bill on the devolution settlement or any other constitutional arrangement is positive or negative on the environment; our focus is to ensure the legislation works to achieve the best outcome for the environment.

For the clauses cited, the Bill confers new powers on Scottish Ministers to take action in areas such as resource efficiency and water quality. If the Bill is passed, the Scottish Government would have the powers to deliver gains for the environment in a number of areas, for example by introducing Extended Producer Responsibility schemes to decrease waste. LINK believes the advantage should be taken to use these powers quickly and take a lead within the UK.

The Committee's question highlights that the UK Bill would also confer new powers in these areas on UK Ministers. However, we note that the consent of Scottish Ministers is required before any regulations would be introduced by the Secretary of State.¹² It is vitally important that the UK and Scottish administrations are able to have effective and transparent communication and

¹² <https://publications.parliament.uk/pa/bills/cbill/58-01/0009/20009.pdf> See clauses 47(3), 48(3), 50(4), 81(5), and 125(10)(b).

that consent is sought with sufficient time for scrutiny and changes to be made. Effective communication is needed both at ministerial level and at agency level.

The Bill sets up a new independent non-departmental public body, the Office for Environmental Protection (OEP), which will cover England and Northern Ireland (and any reserved matters covered by the Bill), and we understand proposals for an equivalent Scottish watchdog have been developed. We urge the Scottish Government to bring these forward as soon as possible as a priority.¹³ It is essential these two bodies (as well as the counterpart in Wales) have wide-ranging and effective duties to cooperate with each other. Recognising the challenges with our legislative timetable and the time required to fully set up any new public body (including agreeing budgets, appointments, offices etc.) we are deeply concerned about the number of issues that may be waiting for the establishment of the new watchdog. At the very least to ensure any backlog is minimised, interim arrangements for the receiving and logging of potential environmental issues would help the new body.

2. As above, the Bill sets a framework of delegated powers which enable certain areas of regulation e.g. producer responsibility to be taken forward through UK-wide regulations with the consent of Scottish Ministers. What are your views on whether these areas of regulation should be taken forward on a UK-wide basis or not? What are the environmental risks and benefits to consider including in relation to different policy areas?

It makes sense for measures that relate to the UK internal market, such as producer responsibility and resource efficiency standards, to be taken forward on a UK-wide basis so that producers have a single set of regulations to conform to and potential efficiencies in scheme administration could be made. The environmental risk is that such measures may not be as ambitious as ones drawn up by the Scottish Government; but, given there has to be agreement from Scottish Ministers, this risk can be minimised. In general, this approach gives additional opportunities to further environmental legislation, as it can be taken forward at the Scottish or UK level and, as such, it offers potential benefits to achieving environmental outcomes. For example, given the shelving of the Scottish Circular Economy Bill, we suggest using the powers under the Bill to bring forward environmental charging - please see answer to Question 7 below.

In general, we do not see risks associated with the conferring of powers to UK ministers for the policy areas in this Bill, given that powers are also given to Scottish Government to act unilaterally, and Scottish Ministers' consent is needed for any measures affecting Scotland taken by UK Ministers.

We would like to emphasise that, even in matters that relate to the UK internal market, devolved nations have imposed different regulations in the past, such as plastic bag charges, differing business rates and the forthcoming deposit return scheme; and, although there are advantages to devolved nations

¹³ <https://www.fightforscotlandsnature.scot/news/campaigners-welcome-new-scottish-environment-strategy/>

working together, Scotland will have increased opportunity to press forward with some of its circular economy aspirations, regardless of progress in other parts of the UK.

3. What are your views on how environmental law is defined in the Bill (including exceptions) including any specific implications for Scotland?

Environmental law is defined in Clause 43 as any legislative provision which is 'mainly concerned with environmental protection.' LINK agrees with Greener UK¹⁴ that the term 'mainly concerned' is ambiguous and although we welcome the explanatory notes¹⁵ providing some clarity as to its meaning and the helpful link to the definition of the 'natural environment' in clause 41, we are still concerned that it is likely to be interpreted too narrowly. Indeed, in discussions with officials as to the nature and extent of 'reserved environmental law', we have already experienced such narrow interpretation. A preferable model would be one based on the definition of environmental information in The Environmental Information (Scotland) Regulations 2004¹⁶ - this is based on accepted international definitions set out in EU Directive 2003/4 and the Aarhus Convention.

Clause 19 require UK ministers to publish a statement alongside any future bill which contains environmental law provisions stating the minister's view the provisions will not have the effect of reducing environmental protection provided by any existing law. We share the concerns of Greener UK that this could be mistaken for a legal commitment not to regress from current environmental standards, which it is not.¹⁷ Restricting these clauses only to bills which contain environmental law provisions further excludes other legislation and policy that could have significant environmental impacts.

4. Does LINK have any views at this stage on how implementation of the Act may be impacted by the current health pandemic? For example, should subsequent use of certain delegated powers or areas of implementation be prioritised, and are any areas of the Bill particularly relevant to a 'green recovery'?

The current pandemic has disrupted parliamentary scrutiny and reduced civil society's capacity to engage with the Bill.

There are several areas of the Bill that are particularly important to a green recovery:

¹⁴ [https://greeneruk.org/sites/default/files/download/2020-02/Greener UK and Link briefing for second reading of the Environment Bill February 2020.pdf](https://greeneruk.org/sites/default/files/download/2020-02/Greener%20UK%20and%20Link%20briefing%20for%20second%20reading%20of%20the%20Environment%20Bill%20February%202020.pdf) (page 12 on clauses 41, 42 and 43)

¹⁵ See: <https://publications.parliament.uk/pa/bills/cbill/58-01/0009/en/20009en.pdf>

¹⁶ <http://www.legislation.gov.uk/ssi/2004/520/regulation/2/made>

¹⁷ See p.6 of the Greener UK and Wildlife & Countryside LINK briefing: [https://greeneruk.org/sites/default/files/download/2020-02/Greener UK and Link briefing for second reading of the Environment Bill February 2020.pdf](https://greeneruk.org/sites/default/files/download/2020-02/Greener%20UK%20and%20Link%20briefing%20for%20second%20reading%20of%20the%20Environment%20Bill%20February%202020.pdf)

- **Circular Economy:** a more circular economy should be embedded in the green recovery, as it is pivotal to meeting climate change obligations and also makes for a more resilient economy. Legislation to set our economy on a more circular trajectory should be progressed. Moving forward with Extended Producer Responsibility (EPR) reforms and new EPR schemes (sections 47 and 48) and introducing measures under the sections 49 and 50 (resource efficiency) are really important in incentivising and regulating for eco-design. Furthermore, delay to the Scottish Circular Economy Bill opens up an opportunity to progress single use charging in Scotland via this UK Bill, should the Scottish Government consent to inclusion of Scotland in clause 52 (see our response to Q7 below). In general many of the measures in Part 3 will help guide our economy to one that is greener. As such, moving ahead with these measures, in parallel with other aspects of a recovery plan, is important to help shape the nature of our economy going forward.

- **Environmental standards:** the pandemic has highlighted the value of nature to people's health and wellbeing, and the need for robust, ongoing government action and funding to address the climate and nature emergencies. It highlights the need for parallel Scottish legislation to address these matters.

Scottish Environment LINK has been campaigning for a Scottish Environment Act to embed key EU environmental principles in Scots law, establish a new environmental watchdog and set targets for nature recovery.¹⁸ While LINK understands the Scottish Government has developed legislative proposals for the first two of these points, no bill has yet been introduced and one must be brought forward as soon as possible to secure environmental protections before the end of the transition period. Additionally, the lack of progress on developing targets for nature recovery risks Scotland falling behind other parts of the UK.

5. How might UK trade agreements impact on the ability of the Scottish Government to fully exercise devolved functions post EU exit – in particular that could relate to the areas of regulation in the Bill?

UK trade agreements will have an impact on the UK internal market. Regulations and standards followed in the UK internal market have a direct bearing on our natural environment, food, agriculture, fisheries and chemicals regulation and may be affected by trade agreements. LINK members believe a properly functioning UK internal market must maintain environmental standards. The undermining of vital environmental protections for short term 'competitive advantage', both within the internal market and internationally, must be avoided and countries that choose to maintain high environmental standards should not be put at a competitive disadvantage within the UK internal market.

To date, the internal market has operated under three different devolution settlements and alongside devolved administrations of different political leadership in Scotland, Wales and Northern Ireland. Even prior to devolution,

¹⁸ For more detail please see: https://www.scotlink.org/files/documents/LINK-Parliamentary-Briefing-Scottish-Environment-Act_July-2019.pdf

the internal market operated with different planning, environmental and other policies implemented by the Scottish, Welsh and NI Offices respectively. In principle, based on these experiences, it should be possible to incorporate a certain degree of flexibility within the UK internal market. However, we recognise that an international trade deal may place new constraints on the internal market. Such constraints may not necessarily be negative - for example a requirement to act to secure higher environmental standards would constrain some activity to the benefit of the environment - but LINK recognises that with delays to the UK Trade Bill this picture remains unclear.

LINK believes the Scottish Parliament should seek a role in scrutinising any proposed international agreement that has the effect of constraining (either positively or negatively) its exercise of devolved powers, and seek the right to comment on international agreements before they are finalised.

6. Do you have any views on how common frameworks could or should be developed to govern any areas of UK-wide regulation progressed under the Bill in devolved areas (including any views on the timing of how common frameworks are developed in relation to associated legislation such as the Environment Bill)?

Common frameworks should be mutually developed and agreed between the UK and devolved governments to ensure (at least) minimum common environmental standards and cross-border cooperation on shared environmental challenges. Such frameworks should include a clear statement setting out a jointly agreed overall aspiration for the environment. Standards should allow for flexibility to local circumstances but be clear on the minimum standards agreed whilst not constraining any of the four countries from implementing and delivering higher standards in areas of devolved competence where they should choose to do so.

It is LINK's view that a collaborative and joint approach, which respects the devolution settlements in the UK, is needed to ensure that robust environmental standards are protected and enhanced. Ambitious common environmental standards would ensure that there is no drive towards environmentally damaging competitive deregulation in any part of the UK. The process of developing these should be based on robust evidence and data and provide an opportunity for meaningful stakeholder engagement.

As it would be critical to understand how any common framework would interact with any international trade agreements, the frameworks must be set out in good time in advance of agreements being finalised.

7. Are there any matters which are not dealt with by this Bill which LINK would want to see included?

Given the delay to the Circular Economy Bill, the chance to confer powers to introduce charges on single-use materials in Scotland should not be passed up. Clause 52 currently confers powers to other areas of the UK to make regulations for charges for single use plastic and an amendment has been

tabled to widen this to all single-use materials.¹⁹ LINK has urged the Scottish Government to request this clause be made applicable to Scottish Ministers as, should the amendment be passed, Scottish Ministers would have some of the powers that had been intended to be included in the Circular Economy Bill. Conferring powers through the UK Environment Act would allow Scotland to move ahead earlier towards a circular Scotland. **LINK recommends approval of the LCM includes a request that clause 52 be applied to Scotland if amendment 182 is passed, such that clause 52 is broadened to all single-use items.**

Likewise, if Section 51, Deposit Schemes, were to be extended to Scotland, it would give Scottish Ministers the option to introduce deposit return schemes to additional areas in the future, moving beyond drinks containers. The need for powers to introduce deposit schemes for additional product groups was raised by LINK in response to the Scottish Government's consultation on the Circular Economy Bill proposals.²⁰

Environmental governance and principles provisions

While the above sub-heading refers to “governance and principles”, the two questions (8 & 9) refer only to governance. Therefore, before addressing those, LINK would observe that, in relation to the EU environmental principles, we still face uncertainty about how they will be applied in Scotland, Wales and Northern Ireland in relation to reserved matters; this is a gap in the UK Bill. The Scottish Parliament should ask both the UK and Scottish Government what plans they have to address this gap to ensure that, insofar as there is “reserved environmental law & policy”, it is subject to the application of the EU principles. To do this, either the UK Bill needs amending or the Scottish Government needs to address the issue in the forthcoming Continuity Bill.

In addition, the clauses relating to the principles, insofar as they apply to England and Northern Ireland, are weak and do not replicate the current status nor remit of the principles as they currently operate in EU law.²¹ These weaknesses must not be replicated in the Scottish provisions in the forthcoming Continuity Bill, if the Scottish Government is to fulfil its commitment to “maintain EU standards”.

8. What are your views on provisions on how the Office of Environmental Protection is expected to cooperate or interact with any future environmental governance body in Scotland?

The OEP and any future Scottish environmental watchdog must be able to cooperate and liaise. For example, if a citizen wanted to raise an issue and got

¹⁹ Amendment 182, Alan Whitehead

²⁰ More information available here: <https://www.scotlink.org/wp-content/uploads/2019/12/LINK-CE-consultation-response-Dec-2019-1.pdf>

²¹ For more detail, see Greener UK comments on clauses 16-18: [https://greeneruk.org/sites/default/files/download/2020-02/Greener UK and Link briefing for second reading of the Environment Bill February 2020.pdf](https://greeneruk.org/sites/default/files/download/2020-02/Greener%20UK%20and%20Link%20briefing%20for%20second%20reading%20of%20the%20Environment%20Bill%20February%202020.pdf)

in touch with the wrong watchdog (or if the matter related to a reserved area of law), a Scottish watchdog should be able to pass that complaint on to the OEP and vice versa. An agreement between the two bodies setting out ways of working is needed.

The provisions relating to environmental principles and the OEP primarily relate to England and Northern Ireland. The role of the OEP also extends to reserved functions of UK ministers in Scotland and Wales. This approach appears to be consistent with the devolution settlements. However, it does raise some matters that require clarification.

The UK Government should be asked:

- To provide clarification, with examples, of the reserved functions of UK ministers that would be subject to oversight by the OEP.
- To indicate why the reserved functions of UK ministers in Northern Ireland are rightly subject to the environmental principles (Schedule 2, Paragraph 8(2)) but that this is not the case in regard to the reserved functions of UK ministers in Scotland (clauses 130(1) and 18(3)(c), taken together). Have ministers agreed that such functions would be addressed by any similar legislation passed by the Scottish Parliament?
- In relation to the application of these principles across the UK, can ministers outline their plans to ensure a coherent approach, and when stakeholders will be able to comment on those proposals?

9. Do you consider that the remit of the OEP is clear in relation to reserved and devolved areas?

No. This, however, is not due to the remit of the OEP, but to the weaknesses in the definition of environmental law (see Q3 above) which mean that stakeholders and others (including officials of both Governments) have difficulties determining and agreeing on the nature and extent of “reserved environmental law”.

Waste

10. How do provisions in the Bill support Scotland’s transition to a circular Economy?

Measures under sections 47, 48 (Extended Producer Responsibility), 49, 50 (resource efficiency information and standards), 55 (electronic waste tracking), 59 (transfrontier shipment of waste) and 61 (charging schemes) will potentially support Scotland’s transition to a circular economy. The new powers to introduce EPR schemes and resource efficiency requirements on products are particularly important as they will enable Scottish Ministers to regulate and incentivise eco-design of products.

11. To what extent do provisions in the Bill on waste align with EU developments under the EU Circular Economy Plan, given the Scottish

Government's ambition to continue to maintain or exceed EU environmental standards?

With regard to the parts of the Bill that apply to Scotland:

- Sections 48 and 49 align with the requirements for the introduction of minimum requirements for EPR in the EU Circular Economy Package (adopted 2018).
- Measures under sections 47, 48, 49, 50, 59 align with the EU Circular Economy Action Plan (adopted in 2020) sections on 'waste prevention', 'sustainable product policy', 'empowering consumers and the right to repair' and 'waste shipment regulations'.

It should be noted that there are other parts of the Bill which do not relate to Scotland, that align with the EU Circular Economy Package - for example, those on separate collection of waste and waste reduction targets. LINK has an internal paper which notes Scottish progress against the measures in the EU Circular Economy Package which we can make available to the Committee if interested.

Water quality

12. Do you have any views on the water provisions in the Bill and how they might impact on management of the Solway Tweed River Basin District?

LINK has no detailed views on these provisions. As noted in response to Q1, any regulations made under these provisions would involve consultation with and the consent of Scottish Ministers. We would hope in such instances the Scottish Government would engage stakeholders in discussion and scrutiny of regulations.

Chemicals

13. Do you agree with which parts of the REACH Regulation are defined as 'protected provisions' in the REACH Schedule - do these provide assurances that a UK-wide chemicals regulation system will provide high levels of environmental protection in Scotland?

LINK has no expertise on these matters. However, we would direct the Committee's attention to work in this area undertaken by our fellow European Environmental Bureau (EEB) member, the CHEM Trust: <https://chemtrust.org/brexit/>

14. Does LINK have any views or concerns about the readiness of a UK REACH regime for the end of the transition period (end of 2020), for example in light of the pandemic?

If the UK does not remain within REACH as part of a future UK-EU trade deal, a UK REACH administered by a new chemicals agency will come into effect at

the end of the transition period. The CHEM Trust has noted that a framework for this new regime was set out in 2019 in the context that the UK leaves the EU without a deal. This regime would not provide the same level of protection for our health and the environment from harmful chemicals, given pressures on the capacity of existing UK institutions working in this area, sparse UK-only databases, limited time for stakeholder engagement and reduced data sharing with other countries.

Other

15. Do you have any views you would like to share with the Committee on aspects of the Bill that do not apply in Scotland – including the approach to setting environmental targets?

We welcome and strongly encourage the setting of environmental targets. Halting and reversing the loss of nature and enhancing the environment cannot be achieved over the short time frame of a political cycle. Putting targets into law gives them certainty and clarity that benefits everyone and drives long term investment in environmental improvements. However, targets alone will not drive improvement without a strong accountability framework for their achievement. We believe the regime set out in the Bill is weak and there is much that might be improved.

As recent reports have shown, there is no let-up in the decline in nature.²² The need to take action has never been more urgent. As well as being legally binding, targets must also be enforceable and ambitious. They must not be used to weaken or undermine existing targets and new targets must at least match the level of ambition in existing targets, while supporting the ratcheting up of ambition in future iterations.

Despite its weaknesses, we are pleased to see a regime set out that will result in the setting, monitoring and reporting of environmental targets in England. However, in Scotland, the Scottish Government has yet to make any proposals in relation to these issues.²³ To address the nature emergency, we need to stop and reverse the loss of our natural environment. Experience shows that legally binding targets provide a clear direction for government and stakeholders such as businesses and other operators. We need to deliver on the vision set out in the Scottish Government's Environment Strategy to restore nature in Scotland by 2045 through our own target regime.

This response represents the collective view of LINK's [Governance Group](#). Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 35 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

²² State of Nature 2019 Scotland Report, <https://www.nature.scot/sites/default/files/2019-10/State-of-nature-Report-2019-Scotland-full-report.pdf>

²³ <https://www.fightforscotlandsnature.scot/news/campaigners-welcome-new-scottish-environment-strategy/>

Environmental governance and principles

1. Regarding the governance provisions in the Bill, is SEPA clear about which of its functions would fall under the remit of the Office of Environmental Protection? Can you provide the Committee with a list of those functions?

SEPA's understanding is that the environment is a devolved matter under the Scotland Act 1998 and the OEP has no jurisdiction over devolved legislative provisions. The vast majority of what SEPA regulates is therefore excluded from the scrutiny of the OEP.

2. Does SEPA have any views or concerns about the remit and enforcement powers of the OEP and how it is established under the Bill?

Given the limited applicability of the OEP to SEPA's regulatory activity SEPA hasn't formed a view about the remit and enforcement powers of the OEP. It will be important that the OEP develops an effective working relationships with any new Scottish environmental governance body to deal with issues that have cross border impacts or are of common interest.

Waste provisions

3. The Bill enables UK-wide Regulations on producer responsibility and resource efficiency to be introduced with the consent of Scottish Ministers. What are your views on the implications – including any benefits or risks – of regulating these areas on a UK-wide basis?

Producer Responsibility

Waste regulation, including producer responsibility, is a devolved area of policy. This Bill will enable Scottish Ministers to make regulations for Scotland and require that UK Ministers wishing to make UK-wide regulations obtain the consent of Scottish Ministers. Without understanding how Scottish Government thinking will develop at the secondary legislation stage, it is not possible to comment on the implications, benefits or risks.

However, SEPA is comfortable with the proposals in the Bill insofar as they go, as these are similar to devolved producer responsibility regimes currently operating successfully on a UK wide basis. Examples include The Waste Electrical and Electronic Equipment Regulations and The Waste Batteries and Accumulators Regulations.

Resource Efficiency

As per the response above, SEPA needs to see how the resource efficiency provisions are developed at the secondary legislation stage to understand the implications, benefits and risks.

4. What are the key opportunities and priorities for developing producer responsibility and resource efficiency standards in Scotland in terms of developing Scotland's circular economy – are there any key distinct Scottish considerations or circumstances that differ from other parts of the UK?

At this stage in the legislative process, SEPA thinks that is a question better directed to Scottish Government as a policy consideration.

5. What role does SEPA expect to have in supporting the development of any regulatory approaches under the waste provisions in the Bill, including in a scenario where UK-wide Regulations are developed?

SEPA is already playing an active role at Scottish and UK levels in the development of the Electronic Waste Tracking System and reform of Extended Producer Responsibility (EPR). For example, with respect to waste tracking, SEPA is leading a number of aspects of the project and has representation at all projects levels. SEPA is also providing support as required to aid Scottish Government's input to the Bill with respect to producer responsibility.

SEPA is able to provide a unique operational perspective and we value opportunities to engage at the very earliest stages. As such we take advantage of all opportunities to work with Scottish and UK stakeholders.

6. Can SEPA provide an update to the Committee on any work it has been undertaking on the development of electronic waste tracking, including any outputs so far, and what the key issues are in Scotland that any electronic waste tracking should seek to address?

Electronic waste tracking will transform our knowledge of waste and resource flows across Scotland, the UK and beyond and support a significant step change in our regulation of waste, including duty of care. SEPA developed the concept in 2014 and early partnerships with the other UK environment agencies that have now led to this being a UK project. During the period 2016-2018 SEPA coordinated a number of research projects on behalf of the four agencies that have provided valuable information for the current project.

SEPA is now working closely with Defra and the other UK governments and environment agencies on the waste tracking project as an active member of both the core project team and the project board. As the lead for the Industry Adoption work stream SEPA has, on behalf of the project, recruited over 600 UK businesses to a virtual user panel, providing a pool of users to take part in research and usability testing of the software, as well as producing the [monthly newsletter](#) on behalf of the project.

SEPA has contributed to all of the project outputs over the past two years and has ensured that businesses, local authorities and regulators in Scotland are well represented in all aspects of the project activities.

The key issues that electronic waste tracking should seek to address in Scotland are as follows:

- Support SEPA's Regulatory Strategy by:
 - monitoring compliance with the Duty of Care
 - enabling timely tracking of hazardous waste
 - tracking international shipments of green list waste
 - facilitating better data analysis to identify waste crime
 - providing data to support the development and monitoring of sector plans

- Provide data to monitor waste generation and management including recycling rates, food waste reduction targets, flytipping, landfill tax and the ban on biodegradable municipal waste to landfill
- Support monitoring of Scotland's deposit return scheme
- Enable the identification and tracking of materials to facilitate the more efficient use of resources in the circular economy, supporting the objectives of SEPA's Waste to Resources Framework and Scottish Government's circular economy strategy Making Things Last
- Provide timely information to inform key policy decisions and investment decisions relating to waste and resource infrastructure

7. Although there is no power in the Bill for UK-wide regulations on electronic waste tracking to be made by UK Minister with the consent of devolved administrations, the Committee understands that a co-ordinated UK programme could be taken forward through parallel measures i.e. Regulations made by the different administrations. What are the implications (including any benefits or drawbacks) of taking forward electronic waste tracking on a UK-wide basis as opposed to developing a separate Scottish system?

SEPA recognises that waste regulation is a devolved matter and Scottish Government has supported the project since inception.

SEPA is strongly in favour of UK-wide electronic waste tracking as it will provide us with a full picture of how Scottish waste is managed.

A lot of Scottish waste is transported south to England and Wales, particularly for recycling and export to the rest of the world, but at the moment we have very little information on where it has gone or how it has been managed once it leaves Scotland. With a UK-wide system Scottish waste producers will have access to this information, allowing them to take responsibility for their waste and helping them comply with the Duty of Care. SEPA will also have access to UK-wide information to monitor compliance, understand waste flows and enable us to work closely with the other UK agencies on waste crime cases.

8. Has SEPA engaged with or consulted the resource management industry in relation to the possibility of electronic waste tracking, and if so what has been the outcome of that engagement?

In 2016, as part of the research SEPA carried out with the other UK agencies, we engaged with the hazardous waste industry through a series of workshops to explore ideas for waste tracking and gather information to help us understand the needs of the industry and how an electronic system could work. The attendees in Scotland and the other nations were very supportive of the concept and appreciated the early opportunity to provide feedback.

Since 2018 the UK project has been carrying out regular user research with waste producers, waste management businesses, local authorities and regulators through surveys, workshops, site visits and face to face interviews, a proportion of which have taken place in Scotland. Many of the hazardous waste businesses that engaged with us in 2016 continue to engage with us through our user panel. In total the panel includes around 175 waste

management businesses that have a presence in Scotland and 16 Scottish local authorities. They are able to provide regular input to the project and help to shape how waste tracking will work.

9. Does SEPA have a view at this stage on which waste streams in Scotland should be subject to electronic waste tracking?

SEPA's view is that all waste streams should be subject to electronic waste tracking. This includes all movements of non-hazardous waste, hazardous waste and imports and exports of green list waste. Only by tracking the movement of all wastes will we have a complete picture of how Scottish waste is managed, fill data gaps and provide a deterrent to criminals.

If the movements of all waste are captured this will allow us to track and report on local authority waste, packaging, flytipping and other cross-cutting categories.

SEPA supports the idea of a phase approach to roll out, with one or two of the key waste streams being rolled out ahead of others. An exercise is currently underway to determine the priority waste streams, at both the Scotland and UK level.

10. How does SEPA anticipate that its functions could change as a result of this Bill, including any enforcement functions it could fulfil in respect of provisions on producer responsibility, resource efficiency and electronic waste tracking?

We await Scottish Government proposals at the secondary legislation stage to see how SEPA's functions might change.

11. How are the powers introduced in clause 61 of the Bill on charging schemes likely to impact on SEPA – have you considered how any of your arrangements for charging schemes may change as a result of this Bill?

The Bill includes a number of charging provisions for waste functions. It is too early for SEPA to have assessed these provisions in any detail.

Air quality provisions

12. Does SEPA have any views or concerns about air quality provisions in the Bill? Are there any implications for SEPA's functions in this area?

No, there are no implications for SEPA's functions as the air quality provisions mostly apply to England only with the exception of the Air Quality Strategy. Air quality is devolved, and the UK air quality strategy has been to a large extent superseded by the Cleaner Air for Scotland strategy. However it is considered appropriate to maintain a joint UK strategy to take account of certain reserved matters that are relevant to air quality, such as vehicle and fuel standards, and also to address transboundary air quality issues. The Scottish Government is content that this approach respects devolved competence.

Water provisions

13. Does SEPA have any views on Clause 81 of the Bill which empowers the UK Secretary of State to, by regulations, amend water quality standards under specified legislation (including Regulations which cover

the Solway Tweed River Basin District with Scottish Ministers consent)? What role do you expect SEPA will play in providing any technical advice in this area?

Our priority is ensuring that appropriate protection is afforded to the Scottish environment. Clause 81 provides a route through which water quality standards can be updated to reflect any improved understanding of the impacts of substances on the environment.

We would expect SEPA to continue to be closely involved in the provision of technical advice. Currently we develop standards through the UK Technical Advisory Group, which allows us to be more efficient in how we develop standards (i.e. sharing the work), and ensures a degree of consistency - although the ultimate policy decisions between administrations may differ, the underlying science is developed collaboratively. This is a great strength, and has reduced the degree of external challenge to standards.

14. Is SEPA in discussion with the Scottish Government about the legal and practical mechanisms for how EU water quality standards in Scotland will be amended in future e.g. to reflect scientific evidence or to keep pace with EU law? Is there sufficient technical capacity and expertise available to SEPA to fulfil advisory functions in this area, and are there concerns about loss of access to EU-based networks in that regard?

We have been involved in the early discussion on legal and practical mechanisms for any future amendment of standards. We anticipate that Scottish Government and SEPA will continue to work closely together as the relationship with the EU evolves.

Without the access to EU (and UK) networks, SEPA's ability to fulfil our advisory functions would be compromised. SEPA has experienced staff but greatly benefits from the wider resources, support and input of other regulators within these networks.

15. Clause 84 of the Bill confers a power on the UK Secretary of State (with Scottish Ministers' consent) to change the assignment of functions between SEPA and the Environment Agency in respect of the Solway Tweed River Basin District. Has SEPA been consulted about these provisions by the Scottish Government, UK Government and/or Environment Agency? How could SEPA's functions be impacted by these provisions?

We have been consulted on the powers and been fully involved in discussions on Clause 84. We welcome the mechanism to change the assignment of functions which offers to simplify and streamline how we work.

16. What are the benefits or drawbacks of how governance in relation to the Solway Tweed River Basin District currently operates? How important is it that effective cross-border working is maintained under any future arrangements and are safeguards needed to ensure that cooperation?

The current cross-border regulations require the EA and SEPA to act jointly for the whole of the Solway Tweed river basin district. Effective cross-border

working is important, but the current level of joint working is too onerous and should be reduced to acting jointly for shared cross-border water bodies and coordination for shared catchments. Safeguards to ensure this level of cross-border working would be sufficient to protect the interests of businesses and other stakeholders in future.

Chemicals provisions

17. What is SEPA's view on the chemicals provisions in the Bill, in particular on the 'protected provisions' in the REACH Schedule - do these provide sufficient protections to ensure that a future UK REACH will provide high levels of protection for human health and the environment?

The chemicals provisions of the Bill and protected provisions relate to the overall aims of UK REACH which are to protect human health and the environment. Article 1 of the REACH Regulation is one of the protected provisions, and Article 1(1) states "The purpose of this Regulation is to ensure a high level of protection of human health and the environment". Human health and the environment are areas of devolved competence and any future changes to UK REACH relating to human health and the environment would therefore require the consent of Scottish Ministers. Scottish Ministers have clearly stated their commitment to maintaining standards and maintaining a high level of protection for human health and the environment.

As all Annexes to EU REACH are 'protected provisions' that cannot be altered, appropriate safeguards against back-sliding from existing controls are in place. However the 'protected provisions' cannot ensure any new restrictions or authorisations of substances are included in UK REACH, even if the EU adds that substance (e.g. to Annex XIV on those substances that can be used only under an authorisation from the Agency (ECHA under EU REACH, the HSE under UK REACH)), therefore the Bill provides for maintenance of the protection for human health and the environment, but does not inherently provide for improvements that may become appropriate due to increases in knowledge about the harm a substance can cause. There is nothing to stop such appropriate amendment being made, but equally nothing to ensure the highest level of protection expands with scientific knowledge.

18. Was SEPA consulted by the Scottish or UK Government on what these 'protected provisions' should be from an environmental perspective?

SEPA has had regular discourse with the Scottish Government regarding the development of the Environment Bill.

19. Does SEPA have any views about the readiness of a UK REACH for the end of the transition period (end of 2020), in particular in light of the current pandemic?

All of the agencies including SEPA have experience from EU REACH and so we are not starting our work in the area from the beginning. However we think it will be a challenge to have UK REACH ready for the end of the transition period, especially in light of the current pandemic. Whilst we have experienced staff, SEPA will not have the same level of support previously available within EU REACH, where we benefitted from the wider support and input of the 28 Member State regulators. Previously, the advice of all 28 Member States

regulators was brought together to determine a registration or restriction/authorisation nomination, and it is anticipated the resources of the four environmental regulators will be challenged to do this to the same effectiveness. The UK Government have stated that IT systems will have Day 1 readiness but will not have full functionality and we accept that UK REACH will continue to develop and evolve from Day 1.

Thank you for your request to answer questions on the UK Environment Bill and the Scottish Government's Legislative Consent Memorandum on behalf of the Chemical Sciences Scotland (CSS) Industry Leadership Group.

Unfortunately, I am not in a position to provide you with a view from this group since CSS is currently dormant and has not had a meeting for over 12 months. However, I understand that members may be interested in comments from me in a personal capacity as I have provided evidence to the committee in the past.

I would comment as follows to the questions posed in your letter:

1. *What are your views on the chemicals provisions in the Bill, in particular on the 'protected provisions' identified in the REACH Schedule?*

Provisions for the regulation of chemicals are addressed in one of sections of Part 8 of the Bill and its associated Schedule "AMENDMENT OF REACH LEGISLATION". This includes a list of protected provisions that cannot be amended (under this Schedule). The protected provisions in the Bill transpose 22 of the 141 Articles of the EU's REACH Regulation. In my view this does a good job of establishing the high-level principles of REACH but leaves the interpretation of the principles and how they are applied through fundamental processes and procedures open to change in future. This would include issues such as how chemical substances are assessed (Art.14) and how risk reduction measures are applied to them together with procedures for authorisation and control of substances (Arts:60-67). Over time this may lead to divergence between the UK and EU in our chemicals regulations and potential barriers in trading between the two.

2. *Were you consulted by the Scottish or UK Government (or statutory agencies) about what these 'protected provisions' should be?*

Neither Chemical Sciences Scotland or myself have been consulted by the Scottish or UK Government about protected provisions. It may be that the Chemical Industries Association, who have member companies in Scotland have been consulted.

3. *Do you have any views or concerns about the readiness of a UK REACH regime for the end of the transition period (currently the end of 2020), for example in light of the current health pandemic?*

The current public health pandemic has inevitably diverted resources from the task of preparing a UK REACH regime and this is likely to continue for a lengthy period going forward. The prospect of a staying with the current transition period despite the pandemic is likely to cause disruption to the chemicals sector particularly the many small to medium sized chemical companies in Scotland who are already challenged by public health crises.

4. *What is your current position on UK preparedness for the end of the transition period in terms of the readiness of UK REACH, and whether there is*

still a possibility for the UK to remain part of (or linked to) EU REACH post EU exit?

Whilst I am encouraged by the UK Government's recent proposal to agree a memorandum of understanding with the European Chemicals Agency (ECHA) I remain concerned about the readiness of the UK REACH regime to manage a separation from the current European Chemicals Agency IT management system and critically the current common database of chemicals and registered substances. The UK has made a major contribution to building that database and access to this information is critical to our chemical companies in Scotland. If the UK is outside REACH post-Brexit this would require companies in both the EU and the UK to duplicate pre-existing registration duties for a UK-REACH.

Allowing the UK to remain within and bound by REACH and participating in the ECHA is the best solution, as long as the UK accepts the conditions set by the EU. This solution makes sense irrespective of the outcome of broader discussions on the UK's position with regard to the EU single market. This would help to maintain high standards of protection of our people and the environment, and provide continuity and consistency for companies. The Scottish Chemicals sector has lobbied the UK government through the CIA for this outcome but it remains unclear what influence this is having and whether remaining part of EU REACH is a realistic possibility.

5. Have you been consulted on the development of a common framework on chemicals?

Neither Chemical Sciences Scotland or myself have been consulted by the Scottish or UK Governments about a common framework on chemicals

6. Do you have any views at this stage on what a common framework on chemicals will need to cover in light of provisions in the Bill?

I wish to see a deep, close and comprehensive alignment in the standards for the regulation of chemicals between the EU and the UK both now and as time goes forward. So, the common framework for chemicals should address all the issues left open to change and divergence in standards between the two jurisdictions i.e., all those issues not covered by the "protected provisions" for the amendment of UK REACH legislation in the proposed Bill.

The Chemicals sector is Scotland's second largest export earner¹. The EU is the Scotland's largest market for the export of chemicals representing 86% of our exports overseas and

59% of exports when including export to the rest of the UK. A common framework for chemicals would help protect this vitally important income stream.

7. Do you have any views or concerns about how UK trade agreements might impact on the ability of the Scottish Government to fully exercise devolved functions in the area of chemicals regulation post EU exit?

The impact that future UK trade agreements will have on the chemical sector in the UK is unknown as yet. 60% of UK chemical exports go to the European Union and 75% of imports and raw materials come from the European Union. Given the dependence that both Scotland and the UK have on chemical trading with the EU I feel that our interests are closely aligned. We must work together.

Thank you for your letter/email dated 28 May 2020. I would like to take this opportunity to respond to the questions raised by the Committee with regards to the Environment Bill and hope that these will assist in its consideration.

1. The Bill enables UK-wide Regulations on producer responsibility and resource efficiency to be introduced with the consent of Scottish Ministers. What are your views on the implications – including any benefits or risks – of regulating these areas on a UK-wide basis?

The approach proposed in the Bill is consistent with the Environment Protection Act; all existing operational producer responsibility schemes operate across the UK.

The biggest associated benefit is that the larger size of the market involved provides a proportionately greater impact from successful schemes, and at the same time, a UK-wide approach removes any cross-border complications.

The associated risks are:

- that there can be delays in action and implementation which might otherwise be taken forward more quickly in Scotland;
- the level of Circular Economy ambition between nations in the UK can vary and this can mean UK schemes are less ambitious than desired from a Scottish perspective, or focused on waste management/recycling solutions as opposed to circular economy based solutions for the whole supply chain of a product.

2. How do the waste provisions in the Bill which apply to Scotland reflect policy goals in the Scottish Government's 2016 Circular Economy Strategy 'Making Things Last'?

Overall the provisions in the Bill reflect the goals in the Making Things Last. That strategy highlighted that a key focus for Extended Producer Responsibility (EPR) should be on making tyres, furniture and mattresses subject to producer responsibility, over and above the existing products. The Bill also proposes new powers for deposit return systems as was outlined as an action in Making Things Last; Scotland has already passed into law a Scottish DRS for plastic and glass bottles and metal cans.

We would note, however, that thinking as well as practice has moved on since Making Things Last was published in 2016.

For example, while we support the introduction of powers to enforce EPR, we consider that there is a case for the development of a single framework for producer responsibility. Such an approach would avoid duplication or inconsistencies between schemes covering different materials, making it simpler to manage for businesses who are involved in more than one product type and also making it easier to add new products and materials to the producer responsibility regime in future years.

Further, there was no specific action outlined in Making Things Last in terms of Ecodesign. However, the Ecodesign for Energy-Related Products and Energy Information amendment compliments the call in Making Things Last to incentivise design for longevity, reuse and easy repair, particularly as it enables resource efficiency standards to be set for non-energy-related products. Zero Waste Scotland believe that introducing powers to require the provision of specified information about the resource efficiency of specified products (Schedule 6 - Section 49) would be a significant enabler for a circular economy. However, such powers should in most part be exercised at the UK level to reduce the risk of market distortion and consumer understanding.

3. What are the key opportunities and priorities for developing producer responsibility and resource efficiency standards in Scotland in terms of developing Scotland's circular economy – are there any key distinct Scottish considerations or circumstances that differ from other parts of the UK?

The key opportunity for Scotland is to consider producer responsibility as a mechanism to encourage circular economy approaches over the medium and longer terms, rather than focusing on short term “end of pipe” measures such as increasing capture rates for recycling. This would maximise the positive environmental impacts of schemes and allow planning to take advantage of the social and economic opportunities created by these interventions.

We would suggest scheme design options should be assessed against the following five objectives:

- Objective 1: Maximise the Circular Economy impact
- Objective 2: Reduce negative environmental impacts
- Objective 3: Increased awareness to encourage behaviour change and maximise impacts
- Objective 4: Support a just transition to a low carbon economy
- Objective 5: Support efficient and effective scheme delivery

There are key industries, such as fishing/aquaculture and oil and gas, which are proportionately much more important to the Scottish economy than to the UK as a whole. However, there are also significant commonalities in our resource and material use which could be exploited if Scotland's ambition was matched by the other nations.

Scotland's unique geography also requires careful consideration when designing schemes that work for everyone, and this issue can be diluted in the design of UK wide schemes.

4. The Committee understands that the Scottish Government-appointed Expert Panel on Environmental Charging and Other Measures discussed priorities for extended producer responsibility (EPR) with Zero Waste Scotland and SEPA in 2018. Products identified as priorities for EPR were: tyres, mattresses, furniture, carpets, plasterboard, clothing and textiles. Are these still the priority areas to address and do the provisions in the Bill enable these areas to be tackled?

These priority products were identified because there was, and continues to be, clear market failures at end of life for these products resulting in significant environmental harm caused by illegal disposal (e.g. tyres and mattresses) or the continued loss of material to landfill (e.g. textiles).

Looking at EPR from a circular economy perspective and looking to address environmental damage caused by material use rather than at end of life could broaden the list of priorities; for example, the materials that current evidence suggests have the highest carbon impact are cement, steel, aluminium, plastics, food and textiles. Moves towards a more circular economy in the use of these materials would have the greatest impact on our carbon footprint as a nation.

Our current priority is to work with other UK nations to review the four existing EPR schemes on packaging, waste electrical and electronic equipment, batteries and end of life vehicles. These reviews are being led by Defra and the powers in the Environment Bill are aligned to delivering them.

5. What role does Zero Waste Scotland expect to have in supporting the development of any regulatory approaches under the waste provisions in the Bill, including in a scenario where UK-wide Regulations are developed?

Zero Waste Scotland provides expert advice on circular economy to support the Scottish Government on UK-wide issues on a case by case basis. At present, we are providing such support in relation to the ongoing development of Extended Producer Responsibility in the Packaging sector and in relation to batteries and Waste Electrical and Electronic Equipment (WEEE).

6. Do you consider that the waste provisions in the Bill meet revised EU waste standards introduced via the Circular Economy Package – or enable those to be met in future through the use of delegated powers in the Bill?

Harmonizing waste collection

To improve waste collection, the Bill stipulates a consistent set of materials that must generally be collected individually separated from all households and businesses, including food waste. These proposals do not apply to Scotland, as these powers are devolved, but are consistent with the approach already taken through the Charter and Code of Practice¹ agreed between the Scottish Government and CoSLA in 2015.

The Bill approach aligns with the EU CE Package which highlights that high-quality recycling relies on effective separate collection of waste. To help citizens, businesses and public authorities better separate waste, actions proposed by the Commission include common bin colours, harmonised symbols for key waste types, product labels, information campaigns and economic instruments. The CE package also seeks standardisation and the use of quality management systems to assure the quality of the collected waste destined for use in products, and in particular as food contact material.

Illegal Shipment of Waste

The Bill proposes to help prevent waste crime by; modernising the regulatory framework; deter waste crime by ensuring regulators can take effective enforcement action; and detect waste crime by allowing for electronic waste tracking.

<https://www.zerowastescotland.org.uk/content/charter-household-recycling>

This aligns with the CE Package recognition of the need to deal with increasing waste crime. However, the CE Package has a specific focus on illegal shipment of waste. This issue is not explicitly mentioned within the Bill and it is not clear as to whether the enforcement powers that the Bill would offer could cover the enforcement of exported waste, although our understanding is that the UK approach is already aligned with the CE Package requirements.

The CE Package will take action to ensure that the EU does not export its waste challenges to third countries. Specifically, a review will be held with the aim of restricting exports of waste that have harmful environmental and health impacts in third countries or can be treated domestically within the EU by focusing on countries of destination, problematic waste streams, types of waste operations that are source of concern, and enforcement to counteract illegal shipments.

Chemicals

While the Withdrawal Agreement commits the UK to continued compliance with REACH2 as it stands on the day of departure from the EU, the CE Package proposes a number of refinements to further improve management of chemicals. It is not clear whether these additional measures will be adopted by the UK or not as part of this approach.

Waste Reduction Targets

Powers to introduce waste reduction targets for specific streams have not been explicitly outlined in the Bill, but our understanding is that they already exist at UK level. It is important, however, to emphasise that these powers could potentially interact with targets set through EPR schemes.

The EU CE package will revise EU legislation on batteries, packaging, end-of-life vehicles, and hazardous substances in electronic equipment with a view to preventing waste, increasing recycled content, promoting safer and cleaner waste streams, and ensuring high-quality recycling. In addition, the Commission will put forward waste reduction targets for specific streams as part of a broader set of measures on waste prevention in the context of a review of Directive 2008/98/EC.

7. In evidence to the UK Parliament Public Bill Committee on the Bill, some environmental groups welcomed the clauses on producer responsibility, but raised concerns that the focus is still on end of life and disposal costs, which does not necessarily move up the 'waste hierarchy' to address sustainability issues at production stage. Do Zero Waste Scotland consider that the Bill enables regulatory approaches to move up the waste hierarchy sufficiently?

Zero Waste Scotland agree that producer responsibility should focus on addressing all loops of the Circular Economy and not just end of life and disposal costs, and should aim to maximise environmental, social and economic benefits in doing so.

We are working with the other UK nations to embed this approach into upcoming reviews of existing schemes and, where Scotland takes the lead in development of new schemes, our approach will reflect the principles above.

8. Given that Scotland has an earlier net zero statutory climate target than in England – does this have implications for how any regulatory approaches on waste are taken forward on a UK-wide basis under the Bill?

<https://echa.europa.eu/regulations/reach/understanding-reach>

As waste management is devolved, Scotland can in theory take whatever actions are required to reduce emissions. In practice, however, Scottish Government ambitions, as discussed above, are to reduce the generation of waste in the first place rather than to manage it at end of life, through moves towards a more circular economy.

In our view, EPR will be a critical tool in achieving progress towards this aim; from that perspective, our answer to question 1 is relevant here too – approaches which cover the whole of the UK market are preferable, but there may be circumstances in which Scotland would wish to implement a Scotland only scheme or move more quickly or ambitiously.

It is worth noting that this may not be an abstract concern for the longer term. In addition to having an earlier net zero target for 2045, Scotland has an ambitious interim target of a 75% cut by 2030.³ While there are clear challenges in relation to operational climate change emissions from heating and transport which currently dominate the debate, it is to be hoped that the expansion of renewable electricity capacity will help provide the means to decarbonise those sectors. As that happens, remaining emissions will increasingly be associated with patterns of consumption and materials use, and hence we anticipate more action will be needed in relation to the wider circular economy as a result.

A final point on this is that the Paris agreement, and therefore both UK and Scottish Government approaches, all refer to territorial emissions. There is increasing recognition that true net zero should be based on consumption emissions, including emissions associated with goods used in Scotland, but which are produced elsewhere. The Scottish Government already measures consumption emissions⁴, although these emissions are not (yet) the main focus of policy.

9. Has Zero Waste Scotland been involved in any discussions with the Scottish Government about waste common frameworks and how they could be used to set the ambitions or parameters for how delegated powers in this Bill are used – or do you expect to be involved in those discussions?

We have responded to early stage Scottish Government questions, but those are necessarily speculative at this stage. As above, we will continue to support the Scottish Government on request throughout the Bill process.

10. What are the implications of the common framework being progressed after the primary legislation has been passed? Will a waste Common Framework need to be in place in advance of Regulations being taken forward using delegated powers in the Bill?

We are aware that a common framework for waste management across all four UK nations is being developed, but have not been involved in the process and are therefore unable to comment.

<https://www.gov.scot/policies/climate-change/reducing-emissions/>

<https://www.gov.scot/news/scotlands-carbon-footprint-1998-2016/>

11. Does Zero Waste Scotland have any concerns about the exceptions in the Bill for what kinds of products can be subject to resource efficiency regulations, in particular the exception for energy related products?

The Bill states that the Ecodesign for Energy-Related Products and Energy Information amendment allows for regulation to address both energy and resource efficiency.

While welcoming these headline aims, it is not immediately clear whether these requirements apply only to the performance of a product in use, for example the electricity and water used by a washing machine, or also extend, as is clearly stated in the Bill for non-energy products, to the manufacture of the product itself. The latter would be more in line with the spirit of the Bill overall.

12. Regarding the environmental governance provisions in the Bill – are there any scenarios under which you consider that Zero Waste Scotland could be subject to the oversight and enforcement remit of the Office of Environmental Protection?

We do not, at present, consider there are any such circumstances. Firstly, the Bill makes clear that any public authorities, such as SNH or SEPA, implementing devolved functions under environmental law in Scotland, Wales and Northern Ireland will not be covered by the remit of the Office of Environmental Protection (OEP) in respect of devolved matters. Secondly, Zero Waste Scotland does not, at present, have any regulatory functions, and the focus of the OEP is on compliance with environmental law – however, we expand on this point below.

13. Do you have any other views on the waste, or other provisions of the Bill you would like to share with the Committee?

The main issue we would highlight is the need for clarity on the scope of work of the OEP. As set out at present, the OEP appears to have a remit akin to that of an Ombudsman, in assessing whether existing environmental laws have been followed.

This is clearly a valuable and necessary function. However, we would suggest that, given the high and increasing importance of environmental issues more generally, it is unlikely to be sufficient. In our view, it would be appropriate for

the OEP's remit to be extend – in an approach similar to that of the Committee on Climate Change – to assess the adequacy of existing laws and regulations in terms of meeting agreed targets.

ⁱ Scottish Export Statistics 2018, published 29 Jan 2020