

Annex B

From: [redacted}@Circularityscotland.com>

Sent: Thursday, February 23, 2023 9:34 AM

To: Director of Environment & Forestry <director.enfor@gov.scot>; [redacted]

<[redacted]@gov.scot>

Subject: RE: Biffa contract query - Herald

To set out the background to the operations tender process

- Extensive tender process carried out over a period of c12 months.
- We sought as many competent bidders as possible, many declined the opportunity given the scale of investment required, capability and coverage.
- The final five bidders who presented to us in October 2021 submitted comprehensive packages including evidence to support their bids, each amounted to several hundred pages.
- The process involved extensive due diligence including assessment of
 - Demonstration of World Class Compliance to Legislation
 - Employment
 - Environmental
 - Health & Safety
 - Corporate Governance
 - Processes and procedures
 - Performance against targets
 - Summary of non-compliance events
 - Testaments from employees
 - Testaments from customers
 - External recognition and awards
 - Fit against the corporate partnership framework
 - Quality of the proposal
 - Environmental benefits & impacts
 - Demonstration of world class compliance to legislation
 - Cultural fit with CSL
 - Community engagement
 - Proposed contractual framework
 - Operating and implementation costs
 - Implementation plan
 - Risks and opportunities
- Biffa were selected as they scored highly on all measures, were capable of covering all aspects of the scope [redacted]
- At the time of the contract being awarded Biffa were a UK Listed company.
- Our team and Biffa are jointly engaged with local authorities, many existing waste and logistics operators and retailers. We are seeking to use existing infrastructure as much as possible.
- Any companies which wish to participate in the DRS activities should contact the DRS enquires team at Biffa and this will be discussed with Circularity Scotland.

[Redacted]
[Redacted]
T: [Redacted].
Website: <https://circularityscotland.com/>
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From: [Redacted]@gov.scot <[Redacted].@gov.scot>
Sent: Thursday, February 23, 2023 8:18 AM
To: [Redacted].< [Redacted].@gov.scot>; [Redacted] <[Redacted].@Circularityscotland.com>; [Redacted].< [Redacted].@gov.scot>; [Redacted].@citypress.co.uk
Cc: [Redacted].@gov.scot; [Redacted].@gov.scot; [Redacted] [Redacted].@Circularityscotland.com>; [Redacted].< [Redacted].@Circularityscotland.com>
Subject: RE: Biffa contract query - Herald

Thanks [Redacted].

Just to add to this, it would be useful to know:

- Tender process – any specific procurement principles used to support a fair, inclusive, robust process (e.g. fair work, sustainability) etc.
- Whether any existing plans for local partnership working on any aspect
- Who other providers should speak to if concerns

Katriona

From: [Redacted].< [Redacted].@gov.scot>
Sent: 23 February 2023 08:08
To: [Redacted] <[Redacted].@Circularityscotland.com>; [Redacted].< [Redacted].@gov.scot>; [Redacted].@citypress.co.uk
Cc: [Redacted].< [Redacted].@gov.scot>; [Redacted].< [Redacted].@gov.scot>; [Redacted]. [Redacted].< [Redacted].@Circularityscotland.com>; Carmichael K (Katriona) <[Redacted].@gov.scot>
Subject: RE: Biffa contract query - Herald

Hi [Redacted] and [Redacted].

We've been asked for a stronger line on the Biffa contract for FMQs. Can you share some with us by 09:30? Doesn't necessarily have to be the final press lines, we just need factual bullet points.

Thanks,

[Redacted].

From: [Redacted] <[Redacted].@Circularityscotland.com>

Sent: 22 February 2023 16:47

To: [Redacted].< [Redacted].@gov.scot>; [Redacted].@citypress.co.uk

Cc: [Redacted].< [Redacted].@gov.scot>; [Redacted].< [Redacted].@gov.scot>; [Redacted].< [Redacted].@gov.scot>; [Redacted].< [Redacted].@gov.scot>; [Redacted].<

[Redacted].@Circularityscotland.com>

Subject: RE: Biffa contract query - Herald

Thanks [Redacted].

Will do.

[Redacted].

From: [Redacted].@gov.scot <[Redacted].@gov.scot>

Sent: Wednesday, February 22, 2023 4:41 PM

To: [Redacted]. [Redacted].; [Redacted].< [Redacted].@Circularityscotland.com>

Cc: [Redacted].< [Redacted].@gov.scot>; [Redacted].@gov.scot; [Redacted].@gov.scot

Subject: Biffa contract query - Herald

Hi both,

Understand you've got this one too.

Would be grateful if you could share your lines once drafted.

We have generally made clear that contracts are a matter for CSL. However, this has also been raised in parliament by opposition MSPs, so I think it makes sense for us to have a response too.

Best,

[Redacted].

[Redacted]. | **Communications: News (Net Zero and Energy)**

Senior Media Manager

Scottish Government, St Andrew's House

e: [Redacted].

m: [Redacted].

From: [Redacted].< [Redacted].@scotsman.com>

Sent: 22 February 2023 14:42

To: [Redacted].< [Redacted].@gov.scot>

Subject: Press Enquiry re DRS

Hi [Redacted].,

[Redacted]. at The Scotsman and Scotland on Sunday here, good chatting a moment ago. As mentioned, I'd be grateful if the SG could provide a response for a story I'm writing concerning the upcoming deposit return scheme (DRS).

Given one of the key drivers behind DRS is its huge potential to help the environment by reducing waste and driving emissions, the focus of my article is on the environmental track record of those companies involved in the scheme's delivery. There are two strands to the story, which fundamentally asks questions about what, if any, consideration was given to these issues by the scheme's administrator, Circularity Scotland, and/or the Scottish Government..

Firstly, it addresses environmental issues surrounding Biffa, which was awarded a decade-long contract by Circularity Scotland last July, entrusting the firm with collecting billions of drinks containers and managing a network of bulking and counting centres across the country. My story points out that over the past four years, Biffa has been convicted twice in UK courts and fined £1.85 million for exporting poorly sorted and contaminated waste to Asian countries. It has been served with five enforcement actions by the Environment Agency over the same period.

My story also references Biffa's latest sustainability report, which shows that while the company has committed to having net zero emissions across its operations by no later than 2050, its total scope 1 emissions increased by 1,402 tCO₂e to 507,630 tCO₂e between 2021 and 2022. Once its total scope 3 emissions are taken into account, which includes indirect emissions and those that occur in its value chain, the emissions increased from 484,568 tCO₂ in 2021 to 622,120 tCO₂e last year.

My story also addresses similar issues at Biffa's owners, a US private equity firm called Energy Capital Partners (ECP). It points out that ECP placed sixth in the latest annual Greenhouse 100 polluters index, an academic study which pinpoints those firms responsible for the highest greenhouse gas emissions in the US, and notes that ECP was also identified as by far the largest private equity investor in US fossil fuel power plants in a 2022 study by Americans for Financial Reform.

[Redacted]., professor of economics and public policy at the University of Massachusetts, and one of the co-authors of the Greenhouse 100 study, told me that ECP was a "significant contributor to greenhouse gas emissions and hazards from industrial water pollution." [Redacted].research manager at Americans for Financial Reform, said ECP was part of a private equity industry trend of acquiring "polluting assets" other firms, particularly public companies and utilities, don't want to hold any more due to public, investor, and regulatory pressure.

The story also cites ECP's own data, published in its latest environmental, social and governance report, which shows that its financed emissions from power generation facilities stands at more than 53 million tonnes of CO₂ equivalent (MtCO₂e) a year, which is more than the total annual emissions across the country of Scotland.

It also notes that one of ECP's firms, Gopher Resource, was fined more than £260,000 by the US Occupational Safety and Health Administration in September 2021 for exposing workers to unsafe levels of lead exposure, despite being warned of the need for action since the previous March.

I have passed the above information to politicians and environmental campaigners in Scotland, who have questioned whether Biffa, and by association, ECP, are best placed to have such a central role in the DRS.

[Redacted]. [Redacted]. for the Scottish Liberal Democrats, told me: "As a green initiative designed to encourage better environmental practices, the public could be forgiven for expecting the partners involved in delivery to have a good environmental track record. Not so, it appears, from these figures."

[Redacted]., a former director of Friends of the Earth Scotland and WWF Scotland told me: "Scotland's deposit return scheme is an important step forward but It is deeply disappointing that the firm actually handling all the cans and bottles is far from green. A company that has been fined hundreds of thousands for trying to dump contaminated waste in poor countries, and whose parent company is a big climate polluter, cannot be the right people to be delivering a key environmental scheme."

For your information, I have contacted [Redacted]. at CityPress, who is handling the PR for Circularity Scotland, but in light of the above, and the national importance of the DRS, I'd appreciate it if the government could address the below questions:

(i) Did the Scottish Government make any representations to Circularity Scotland that the environmental track record of Biffa should have been considered before it was awarded the logistics contract for the DRS, and given Biffa has been convicted not once, but twice, for exporting contaminated household waste marked for recycling, what confidence can the government have that it will properly process materials collected under the DRS?

(ii) Given Energy Capital Partners had already made a series of unsolicited and indicative takeover proposals to Biffa in June 2022 - the month before the logistics contract was announced - did the Scottish Government make any representations to Circularity Scotland that the environmental track record of ECP should be considered during the decision to award Biffa the logistics contract?

(iii) How does the Scottish Government respond to the criticisms put forward by Dr [Redacted]., a prominent environmentalist, and indeed, a vocal supporter of DRS?

I hope the above is clear and apologies for the lack of brevity, but I wanted to be as thorough as possible - that said, please don't hesitate to get in touch if you need any clarification on the above points. My deadline is 5pm tomorrow (Thursday 23 February).

Many thanks,
[Redacted].

[Redacted].Investigations Correspondent

The Scotsman & Scotland on Sunday

Direct / WhatsApp / Telegram: [Redacted].

Encrypted email: [Redacted].

Twitter: [Redacted].

[Redacted].View my online portfolio at [Redacted].

From: [Redacted] <[Redacted].@Circularityscotland.com>

Sent: Tue 14/02/2023 08:50

To: [Redacted].<[Redacted].@gov.scot>

Subject: FW: IWG Request for Backhaul Transparency - updated response

[Redacted].,

For you to share please as appropriate.

Simon

[Redacted]

[Redacted]

T: [Redacted].

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From: [Redacted]

Sent: 10 February 2023 17:17

To: [Redacted].@brc.org.uk

Cc: [Redacted] <[Redacted].@Circularityscotland.com>

Subject: FW: IWG Request for Backhaul Transparency - updated response

Dear [Redacted],

Thanks for your email, I note that your members are asking for transparency on backhaul fees and will address the points that you have raised:-

- the priority initially will be to manage bin sizes and work with Biffa to agree required collection frequency. The key is for retailers large and small to sign up as RPO's as quickly as possible from 1st March to allow Biffa to plan their collection schedules in detail with routes and understand what frequency can

be achieved. It would also be prudent to identify space within backyard areas to store an appropriate number of bins at a time, given retailers are also producers it would be prudent to support cost control by managing collection frequency.

- The solution is not predicated on a backhaul model. A backhaul model however would provide retailers with much greater flexibility in the collections process from their stores, including frequency and timing of collection visits. [redacted] Backhaul on a retailer's own fleet would support the elimination of any vehicle clashes at the back of store, [redacted] day and not to a defined time. It would also support labour and store planning to minimise cost exposure by knowing the timings of returning vehicles to clear the waste.
- [Redacted]
- [Redacted]
- [Redacted]
- The scheme administrator does indeed need to control costs and will be doing so managing the efficiency and operating costs [redacted]
- Consumables are going through a different route and the costs are in line with the RHF.
- The onerous tracking requirements you refer to have been amended to support retailer engagement in backhaul to which we have had positive response.
- [Redacted]
- [Redacted]
- [Redacted]

As we have stated we are happy to work with retail to get any concerns dealt with and deliver a successful go live on 16th August.

[Redacted]

[Redacted]

T: [Redacted].

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From: [Redacted] <[Redacted].@brc.org.uk>

Sent: 12 December 2022 17:04

To: [Redacted] <[Redacted].@Circularityscotland.com>

Subject: IWG Request for Backhaul Transparency

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear [Redacted],

IWG Request for Backhaul Transparency

At the most recent IWG meeting Members agreed to take a collective view that CSL should provide a clear fee framework for backhaul. Below are the key reasons Members would like to see this. May I note this is the view of these Members, and does not necessarily represent the view of the Scottish Retail Consortium:

- Clarity over collections is essential to allow basic planning for the scheme. Many retailers believe they will need multiple collections per day based on anticipated volumes to avoid having to store unreasonable number of containers. We understand the current model is limited to daily collections – clarity is needed urgently on these issues. [Redacted].
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- Many European countries scheme administrators have defined standard backhauling fees. Ultimately the Scheme Administrator needs to control all costs, including all backhaul costs, and this is a straightforward mechanism which allows that. These fees can depend on material, process, and distance (Lithuania, Finland, Netherlands). CSL may wish to consider whether a consultancy is needed to calculate the appropriate fee structure for the Scottish scheme. ; possibly worth considering engaging a consultancy (PWC) to calculate fee structure.
- Whatever model is presented will also need to provide for the transportation consumables (bags, de-card boxes, etc.). [Redacted]
- [Redacted]
- [Redacted]
- As a final related point, all the businesses in question will also be liable for the producer fee, and consequently would wish to understand the proportion of logistics cost in the producer fee and how it has been calculated. Again, this is an opportunity for further transparency which is clearly in the interests of both Members and the scheme.

Members would be happy to meet at CSL/Biffa's convenience to discuss this further. The SRC is happy to assist with the logistics of any meeting if that is appropriate. However, as all the businesses this would affect are also Members of CSL it may be more appropriate for you to host your own meeting with the relevant businesses.

Thanks

E



[Redacted]

Deputy Head
Scottish Retail Consortium

M: [Redacted].

A: Box 112, 12 Southbridge, Edinburgh, EH1 1DD

www.brc.org.uk/src/

registered office: 100 Avebury Boulevard, Central
Milton Keynes, MK9 1FH

From: [Redacted].< [Redacted]. @gov.scot>
Sent: Tue 14/02/2023 20:45
To: [Redacted]< [Redacted]. @Circularityscotland.com>
Cc: [Redacted] < [Redacted]. @Circularityscotland.com>; [Redacted] < [Redacted]. @Circularityscotland.com>
Subject: RE: SRC Outstanding Operational Issues

Thanks [Redacted]. That was my assumption, especially since the majority of positions read 'to be discussed between CSL and retailers'.

[Redacted].

From: [Redacted] < [Redacted]. @Circularityscotland.com>
Sent: 14 February 2023 20:42
To: [Redacted].< [Redacted]. @gov.scot>
Cc: [Redacted] < [Redacted]. @Circularityscotland.com>; [Redacted] < [Redacted]. @Circularityscotland.com>
Subject: Fwd: SRC Outstanding Operational Issues

Thanks [Redacted]. There is little of value in this document for us. Across the majority of these items we are dealing individually with retailers, each with a range of different positions, which further undermine the value of this document. Once [Redacted] is back we will review the merit (ie not wasting our time) of dealing with the SRC/ BRC and these topics.

Best wishes,
[Redacted]

Sent from Outlook for Android

From: [Redacted]. @gov.scot < [Redacted]. @gov.scot>
Sent: Tuesday, February 14, 2023 8:26:53 PM
To: [Redacted] < [Redacted]. @Circularityscotland.com>

Cc: [Redacted] <[Redacted].@Circularityscotland.com>
Subject: FW: SRC Outstanding Operational Issues

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FYI

From: [Redacted] <[Redacted].@brc.org.uk>
Sent: 14 February 2023 16:53
To: [Redacted].<[Redacted].@gov.scot>
Subject: Re: SRC Outstanding Operational Issues

On the areas of uncertainty, , it feels there needs to be a CSL/Retail session (probably at a technical level) and we can hopefully get a lot of things green. Very happy for SRC to be excluded from that if it keeps the peace ...

From: [Redacted].@gov.scot <[Redacted].@gov.scot>
Sent: 14 February 2023 16:45
To: [Redacted] <[Redacted].@brc.org.uk>
Subject: RE: SRC Outstanding Operational Issues

Thanks [Redacted]. I had a look over. I think key points for me

- Feels like clearer on many points, some big things moved on in last two weeks.
- Plenty of points where we have 'possibly resolved' but may need further questions ironed out
- Some points not yet resolved and need urgent resolution.

Is that fair? Speak tomorrow

From: [Redacted].<[Redacted].@gov.scot>
Sent: Wed 01/02/2023 09:19
To: [Redacted].<[Redacted].@zerowastescotland.org.uk>; [Redacted].@Circularityscotland.com
Cc: [Redacted].<[Redacted].@gov.scot>; [Redacted].<[Redacted].@gov.scot>; [Redacted].<[Redacted].@gov.scot>
Subject: RE: DRS Exemption criteria - Proximity

Thanks all,

Content from my perspective.

To confirm an important point, well articulated by [redacted] (highlighted points). The decision to grant an exemption rests with Scottish Ministers, and they can take into account other relevant information in making a decision. Since the DRS Regulations do not set any specific criteria in how either env. health or proximity should be defined, we cannot definitively say to any retailer that they either **will** be eligible, or **will not** be eligible [redacted]

This assessment criteria has been created to ensure that ZWS have a clear framework in order to assess applications and make recommendations to Scottish Ministers. [Redacted]

[Redacted].
I hope that all makes sense!

[Redacted].
From: [Redacted].< [Redacted].@zerowastescotland.org.uk>
Sent: 31 January 2023 17:27
To: [Redacted].@Circularityscotland.com
Cc: [Redacted].< [Redacted].@gov.scot>; [Redacted].< [Redacted].@gov.scot>; [Redacted].< [Redacted].@gov.scot>; [Redacted].< [Redacted].@gov.scot>
Subject: DRS Exemption criteria - Proximity

Hi [Redacted],

I've completed the updates to the Proximity exemption criteria so thought I'd send this over now. I will be working on the Environmental Health criteria this week and hope to have it completed by end of day Friday so will send when done.

I just wanted to reiterate that Scottish Government have agreed to the sharing of this criteria as they can see the value in giving retailers additional support and potentially reducing the volume of inappropriate applications [Redacted] The information is to be used to answer retailer queries through the application process but **not to advertise the path to being granted an exemption to act as a return point**. This includes giving any **guarantees on the outcome of an exemption application as final decision sits with Scottish Government**.

If you or your team have any queries just ask.

Best regards,

[Redacted]. | DRS Exemptions Service Manager | Zero Waste Scotland
Direct Line [Redacted].**Reception** [Redacted].
Email [Redacted].@zerowastescotland.org.uk

From: [Redacted] <[Redacted] @gov.scot>
Sent: Wed 01/02/2023 10:46
To: [Redacted] <[Redacted] @Circularityscotland.com>
Subject: RE: Number of producers / scheme articles

Thanks [Redacted], I've had a question come back on this, possibly easier to answer?

Of the top 50 producers that you / David often refer to, how many are based in Scotland? From email below it looks like 4 – is that correct?

Thanks
[Redacted]

From: [Redacted]<[Redacted] @Circularityscotland.com>
Sent: 23 January 2023 15:58
To: [Redacted] [Redacted]: RE: Number of producers / scheme articles

Hi [Redacted]

Apologies if a 4pm response is outside the 'quick' window. We don't have any Scotland/outside Scotland for either producers or scheme articles. [Redacted]

Best wishes
[Redacted]

From: [Redacted] @gov.scot <[Redacted] @gov.scot>
Sent: 23 January 2023 08:43
To: [Redacted] <[Redacted] @Circularityscotland.com>
Subject: Number of producers / scheme articles

Hi [Redacted],

Quick question that would be very helpful if you have a quick answer. Does CSL have a (very rough will do) estimation of the number of (1) producers, and (2) scheme articles in Scotland based within vs outside Scotland selling into Scotland?

Thanks,

**[Redacted] Head of Deposit Return Scheme Unit, Circular Economy Division,
Environment & Forestry | Scottish Government**

M[Redacted] | A: 3GS Victoria Quay Edinburgh EH6 6QQ

From: [Redacted] <[Redacted] @gov.scot>
Sent: Fri 03/02/2023 13:02
To: [Redacted] <[Redacted] @Circularityscotland.com>

Cc: [Redacted] <[Redacted] @Circularityscotland.com>
Subject: RE: regs change

Thanks [Redacted] (via [Redacted]).

This covers my understanding of the issue, I will take away and consider. Do you know what SEPA's position is – I seem to remember that there was some ambiguity in the Regs about whether sales under bond had been 'placed on the Scottish market', but that SEPA had taken the view that they were.

Thanks

[Redacted]

From: [Redacted]<[Redacted] @Circularityscotland.com>

Sent: 03 February 2023 12:41

To: [Redacted] <[Redacted] @Circularityscotland.com>; [Redacted] <[Redacted] @gov.scot>

Subject: RE: regs change

Hi [Redacted]

See a suggestion from [Redacted] below. I suggest you contact him direct to discuss the detail.

Best wishes

[Redacted]

From: [Redacted] <[Redacted] @Circularityscotland.com>

Sent: 02 February 2023 20:09

To: [Redacted] <[Redacted] @Circularityscotland.com>

Subject: regs change

Hi [Redacted],

I know we now have the meeting on bonds coming up but I've been giving it some thought and want to ensure we don't miss the regulatory change opportunity.

On balance I think that sales under bond to an excise warehouse should be exempt from deposits and the deposit chain starts when the product is released for home use (in Scotland) at the same time as the excise duty crystallises.

- Intent of DRS – product in bond can never be consumed
- Product may be held under bond for export – means we currently need a way of rebating deposits
- We would need to create a liability on the person releasing from bond to be registered and pay the deposit or notify a/the registered producer (if still trading). Currentlt this person requires to be registered under WOWGR but this may change so couldn't be relied on.

Just wanted to mention it as a possibility so we don't miss the opportunity to flag it up in the reg change group if not already there.

Cheers

[Redacted]

Tel. [Redacted]

Website: <https://circularityscotland.com/>

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