

Transport and Environment Committee

10.00am, Thursday, 17 August 2023

Circular Economy (Scotland) Bill - Draft Consultation Response

Executive/routine Wards Council Commitments	Routine All
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1. Recommendations

- 1.1 It is recommended that Committee approves the attached draft consultation response for submission to the Scottish Government on 18 August 2023.

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Circular Economy (Scotland) Bill - Draft Consultation Response

2. Executive Summary

- 2.1 This report seeks approval to submit the attached draft response to the Scottish Government's Consultation on the Circular Economy (Scotland) Bill.

3. Background

- 3.1 Following a [previous consultation](#) on a proposed Circular Economy (Scotland) Bill, the Scottish Government has now published [the Bill](#) (which is at Stage 1 of the parliamentary process) in advance of seeking parliamentary approval. Prior to approval, the Scottish Government is carrying out a [further consultation](#) from 30 June until 20 August 2023.

4. Main report

- 4.1 The purpose of the Bill is to take action to move Scotland from a traditional linear model of consumption (consume, use, dispose) to a more circular model where resource extraction is minimised, and where resources remain in circulation for longer as a result of repair, reuse and recycling.
- 4.2 As such, the Bill sets out actions across society and not all measures are directly relevant to local government with a number of measures targeted at businesses, and some at householders.
- 4.3 Some proposed actions from the original consultation are not being progressed at this time. These include proposals to introduce direct variable charging for household waste (to encourage waste prevention, and better use of recycling facilities), and the introduction of commercial waste collection zones (to improve the efficiency of commercial waste collections).
- 4.4 The measures which will impact local government are set out in Appendix 1. These include measures to allow the Scottish Government to set specific statutory recycling targets for Councils, revising and giving statutory status to the existing voluntary Code of Practice for Household Waste and Recycling, and changes to the

fly-tipping and littering legislation to enhance the ability of local authorities to take enforcement action.

- 4.5 Specifically with regard to household waste, the enhanced Duty of Care placed on householders aims to tackle issues of fly-tipping associated with the use of unlicensed waste contractors. The changes to the enforcement regime bring Scotland into line with England and Wales, and better enable local authorities to tackle recycling contamination.
- 4.6 The Council's draft response is set out in Appendix 2. It broadly supports the provisions of the draft Bill, but notes the particular challenges faced by urban and rural authorities. For example in Edinburgh, where approximately 50% of households receive communal bin collections, enforcement will remain more difficult. The decision over whether or not to use the provided recycling services correctly ultimately rests with the householder.
- 4.7 With regard to the setting of statutory recycling targets and fines for failure to achieve these, the response is supportive in principle but again notes these challenges and suggests more constructive approaches to fines.
- 4.8 The response notes the situation which Councillors have previously raised in relation to the resourcing of waste collections from managed student accommodation and asks that the Scottish Government review the legislation in relation to this.

5. Next Steps

- 5.1 Subject to Committee approval, the Council's response will be submitted on 18 August 2023.

6. Financial impact

- 6.1 There is currently no direct financial impact resulting from this report, although measures such as increased enforcement activity and fines for failure to meet recycling targets could have potential long-term implications which are not currently quantified.
- 6.2 The Circular Economy (Scotland) Bill Financial Memorandum was reviewed by officers in the Council's finance team, and although there will be future financial implications, these are currently unable to be assessed. Consequently, no specific comments need to be highlighted at this preliminary stage.

7. Stakeholder/Community Impact

- 7.1 This report is in relation to a consultation exercise by the Scottish Government and, as such, there is no requirement for the Council to engage with the community.

- 7.2 There are no direct health and safety, governance, compliance or regulatory implications resulting from this report, although there is the potential for the Council to acquire enhanced regulatory powers in relation to inappropriate or illegal disposal of household waste.
- 7.3 The purpose of the Bill on which the Scottish Government is consulting is to move towards an economic model which makes less and better use of finite resources, and which brings Scotland closer to a circular economy, reducing emissions of carbon and other pollutants. Some of the measures proposed also offer other potential benefits such as a reduction in fly-tipping and littering.

8. Background reading/external references

- 8.1 The Council's [response to the previous consultation](#) was published on our website.
- 8.2 The Scottish Government has [published the Bill](#) on its website.
- 8.3 The Scottish Government has [published its consultation](#) and papers on its website.

9. Appendices

- 9.1 Appendix 1 – Summary of main impacts on local government
- 9.2 Appendix 2 – Draft response to consultation

Appendix 1 Summary of main impacts on local government

To prevent fly-tipping	A new Duty of Care to prevent householders disposing of waste to unlicensed contractors, and powers to support local authorities enforce this, with the creation of a criminal offence
To reduce contamination of recycling	An enhanced regulatory regime with civil penalties to support local authorities to better enforce this, in line with England and Wales
Code of Practice	The current code of practice which local authorities comply with voluntarily will become statutory and also be revised and updated in consultation with local authorities
Statutory Recycling Targets	From 2030 statutory recycling targets will be introduced, with the potential for local authorities to be fined if these are not met
Littering from Vehicles	A new civil penalty regime to make the keeper of a vehicle responsible for littering offences from the vehicle
Waste Crime	Seizure of vehicles by SEPA or local authorities in carrying out their duties in relation to waste crime.

Appendix 2 Draft response to consultation

Call for Views text

Call for Views

Circular Economy (Scotland) Bill

The Net Zero, Energy and Transport Committee is seeking your views on the [Circular Economy \(Scotland\) Bill](#), which was introduced by the Scottish Government on Tuesday 13th June 2023. You can either—

- Share your detailed views on the specific provisions included in the Bill, by following the consultation link below; or
- Get involved in a broad discussion about circular economy and some of the general principles outlined in the Bill by following the link here.

Overview

What does the Bill do?

The Bill aims to ensure Scotland makes progress towards a circular economy, a concept which is defined in the Bill as—

- “cuts waste, carbon emissions and pressures on the natural environment;
- opens up new market opportunities, improves productivity, increases self-sufficiency and resilience by reducing reliance on international supply chains and global shocks;
- strengthens communities by providing local employment opportunities and lower cost options to access the goods Scotland needs”.

The Committee is keen to hear your views by answering the following questions on the Bill—

Circular economy strategy

1. Is a statutory requirement needed for a circular economy strategy?
[Yes. By putting the strategy and its maintenance into law, this serves to ensure that future ministers continue to prioritise and resource this area of activity.](#)
2. Is there anything else you would like to say about a circular economy strategy?
(Section 1 – 5)
[No](#)
3. How should circular economy strategies be aligned with climate change plans and other environmental targets (including biodiversity goals)?
[By definition, circular economy principles will help tackle climate change.](#)

Decarbonising our economies is only one aspect, we also need to rethink the way we make and consume products and this is where the circular economy is an essential building block.

However, the circular economy may in some instances conflict with national climate change objectives:

- The growth of local repair services to extend the lifetime of devices may increase national emissions, while decreasing indirect supply chain emissions occurring in other countries; and
- The reuse and repair of products may increase emissions but reduce our use and reliance on finite natural resources.

Therefore, a holistic approach is required to ensure circular economy principles always prevail.

Circular economy targets

4. Are statutory circular economy targets needed?

Yes, targets set out the expectations going forward across society and ensure that priority and resourcing is made available, provided these can be measured.

5. Is there anything else you would like to say about powers to introduce circular economy targets? (Sections 6 and 7)

No. The need to make different provision for different purposes or areas is acknowledged in the legislation.

Restrictions on the disposal of unsold consumer goods

6. Do you think there is a need for additional regulation restricting the disposal of unsold consumer goods?

Yes, this would be beneficial in principle. Disposal of unsold consumer goods makes no sense from an environmental, resource use, and waste management point of view. There should be regulations which ensure disposal of unsold consumer goods does not make financial sense. A good example is a French regulation adopted in 2016. The pioneering law on fighting food waste meant supermarkets were forbidden to destroy unsold food products and were compelled to donate it to charities instead. Similar regulations should apply to non-food products.

7. Is there anything else you would like to say about the disposal of unsold consumer goods? (Section 8)

The proposed legislation is inevitably broad in nature and does not currently specify how it would target specific categories of goods. As such specific measures would presumably be subject to further consultation to ensure their practicability and efficacy. It's also necessary to ensure that where there is a requirement to redistribute unsold goods that there is capacity to absorb and reuse them. This might require further work to support and expand these networks, which are often provided by the Third Sector and as such can be financially vulnerable.

Charges for single-use items

8. Should Scottish Ministers have powers to make regulations that require suppliers of goods to apply charges to single-use items?

Yes. This would help make reusable items more financially attractive and would reduce litter and waste management costs.

9. Is there anything else you would like to say about charges for the supply of single-use items? (Section 9)

As an organisation we've previously expressed concern that much of the activity in this space has focussed on single-use plastics, which fails to take account of the environmental impact of substitute materials or the impact of their continuing to be littered. What is actually required is behaviour change. In some cases, the implementation of charges is likely to help as it does make people think about their behaviour. However, to maximise effectiveness it would be beneficial to accompany this with other targeted measures to normalise the behaviours. Carrying reusable carrier bags, water bottles or coffee cups have become much more normalised than was previously the case, but this is not really true for other activities such as carrying picnic cutlery to avoid disposables. It's quite likely that some measures will ultimately be more successful than others in terms of public buy-in but the Scottish Government is encouraged to be open-minded in trying different approaches.

There is currently considerable concern around single use vapes. As well as the health concerns there are issues associated with littering and the hazards associated with disposal because the batteries can catch fire when crushed so these could be seen as a priority for action.

10. How do you think Scottish Ministers should use their powers to have the greatest impact in transitioning to a circular economy?

As above the Scottish Government is encouraged to take an open-minded approach the which items the legislation is used to target, not focus solely on plastics and combine any charges with behaviour change measures to support the normalisation of alternatives to disposables.

Household waste

11. Should it be a criminal offence for a householder to breach their duty of care in relation to waste under the Environmental Protection Act 1990 (e.g. to fail to ensure that waste is disposed of to an authorised person)?

Yes. This has become a particular issue in recent years resulting from the growth of online marketplaces. There is a need to both raise awareness, as many people will not be aware of the risk of people operating illegally, and to have a legislative back-stop to prevent people seeking to discharge their responsibilities.

Our enforcement staff have highlighted that there is already existing legislation to deal with household waste offences under section 33 of the Environmental Protection Act and have asked for clarification over whether it is proposed that enforcement should now only be taken under section.46.

12. Is there anything else you would like to say about household waste and enforcement of household waste requirements? (Sections 10 & 11)
We'd emphasise the need for the Scottish Government to carry out awareness raising activities to ensure that householders are aware of their responsibilities. The amount of £200 for the Fixed Penalty Notice may not be proportionate to the small amount of waste deposited by the householder but a written warning may not be sufficient and has been proven in many instances not to be seen as serious enforcement by the offender. In these circumstances, would it be acceptable to issue a littering FPN for the amount of £80?
13. Is further action needed, either within or outwith the Bill, to tackle flytipping effectively? If so, what action is needed?
Improved liaison with SEPA. Are resources available to SEPA that could also be utilised by or shared with local authorities to secure increased successful prosecutions? Increased authorisation would also be beneficial for local authority officers to access information from relevant databases such as valuation boards, Council Tax registers and Companies House to assist in identifying details of offenders. The National Littering and Fly-tipping Strategy is already being introduced and The Scottish Government has already implemented its Action Plan for 2030/23.

Household waste recycling – Code of Practice and local targets

14. Should the Code of Practice on household waste recycling (currently a voluntary code) be put on a statutory footing?
Yes
15. Is there anything else you would like to say about a Code of practice on household waste recycling? (Section 12)
At the current time, all local authorities are signatories to the existing Code of Practice but are not always able to implement all aspects of it either due to their local circumstances or due to funding restrictions.

All local authorities are subject to such funding constraints and have to carefully balance the competing pressures across different services within their communities. In our case, we are no longer able to offer a same day collection for all materials, as a direct result of the funding settlements from the Scottish Government. Moreover, in making the Code of Practice statutory, the Scottish Government must give due consideration to the particular practical barriers which might be faced by particularly rural or urban authorities.
16. Should Scottish Ministers have powers to set targets for local authorities relating to household waste recycling?
Yes, we do support this in principle.
17. Is there anything else you would like to say about targets for local authorities relating to household waste recycling? (Section 13)

While supporting this measure in principle we nevertheless have concerns in relation to how it will be applied in relation to specifically very urban authorities like Edinburgh or very rural authorities. A standardised system of targets defined by types of authority (e.g. urban, rural, mixed) is not likely to take full account of the characteristics of individual authorities as even within the urban group used by Audit Scotland, there are significant variations e.g. in types of housing stock, which will impact on recycling performance.

In our case approximately 50% of our households are flats who have a communal bin service, and 50% of those are sited on the street as a result of historic building designs. This will make enforcement particularly challenging as this relies on being able to identify the specific household which is typically not possible.

Moreover, the decision over how to use services rests ultimately with each household. The Council cannot fully control that and should not be fined for these individual decisions. Arguably if the local authority is providing a good quality, reliable service compliant with the Code of Practice it should be viewed as having discharged its responsibility. A more impactful way to achieve success would be to look at authorities which are failing to achieve their targets and consider what additional support could be provided. Given well documented pressure on local government finance we would encourage strong consideration be given to making financial support packages available to support improvement initiatives where these are needed.

Finally, the growth of third-party recycling services such as retail takeback and, from 2025, the implementation of the deposit return scheme means that the percentage of materials being captured through measurement of local authority recycling rates will reduce. Accordingly, the way these recycling rates are calculated needs to be reviewed. The Scottish Government could potentially look at other measures such as waste arisings per capita or carbon emissions per capita to give an alternative view.

18. Is further action needed, either within or outwith the Bill, to support local authorities to achieve higher household recycling rates? If so, what action is needed?

This is not straight-forward to answer because there are a number of legislative changes underway, including the deposit return scheme for specific drinks containers, and the extended producer responsibility scheme for packaging. These will impact on existing recycling performance in a number of ways, but they are not currently in place.

Paper and cardboard are the primary materials in mixed recycling bins, and with the growth of online deliveries, this is likely to stay the same (or increase). More could be done to ensure major retailers provide facilities for their collection, as some do voluntarily. The Government could also explore the development of [reusable packaging systems](#), as well as support to encourage provision and uptake of refill shops and refill systems within supermarkets to reduce other types of packaging waste.

However, funding is a specific challenge. The Scottish Government, either itself or in partnership with the UK Government, could be using Producer Responsibility Legislation to target other materials such as textiles and small WEEE which are not a huge part of the waste stream but do have a disproportionate environmental impact. The current collection systems for the latter, in particular, are complicated to use and inadequate for people who do not have cars.

These are not materials that people tend to have all the time, so we'd like to see perhaps a producer funded scheme whereby you could phone and request an uplift when you need one- if this was designed to be a collection when it's convenient for you, this could mean materials are not presented at the kerb, so don't get wet, and could potentially allow for greater reuse.

As noted elsewhere there are particular concerns around disposable vapes, and, while a ban or restrictions on sale might be preferred, a comprehensive retail recycling network should also be considered.

Littering from vehicles

19. Should civil penalties for littering from vehicles be introduced?

Yes. This Council already issue Fixed Penalty Notices for littering from vehicles although we are aware that the Scottish Government is looking to introduce amended legislation to bolster existing powers under this CE Bill, and support this.

20. Is there anything else you would like to say about civil penalties for littering from vehicles? (Section 14)

Littering from vehicles can be more costly to clean up as verges are often difficult to access safely. Fixed penalties could potentially be used to financially support clean ups.

Currently, the onus is on the registered keeper of the vehicle to provide details of the person responsible for throwing litter from the vehicle (if the offender is not the identified registered keeper of the vehicle). If they fail to provide this information, the FPN is issued to the registered keeper as being the person responsible for the vehicle. If they fail to pay the FPN a report cannot be sent to the Procurator Fiscal for consideration as it cannot be proven who the actual offender was. This results in no enforcement action ultimately being taken for the offence and demonstrates a waste of time and resource for local authority officers.

Enforcement powers in respect of certain environmental offences

21. Should enforcement authorities in Scotland be given powers to seize vehicles linked to waste crime?

Yes, for significant waste crime.

22. Is there anything else you would like to say about enforcement powers? (Sections 15 and 16)

It would assist Local Authority Officers if delegated powers were given that authorised a search of vehicles and the power to enter premises (not domestic dwellings).

Reporting on waste and surpluses

23. Should Scottish Ministers have powers to require persons to publish information on anything they store or dispose of (except in relation to domestic activities)?

Yes

24. Is there anything else you would like to say on reporting? (Section 17)

No

25. How should Scottish Ministers go about identifying which types of waste and surpluses should be subject to mandatory public reporting?

Net zero

The Scottish Government is committed to reaching an interim target of reducing greenhouse gas emissions by 75% (from a 1990 baseline) by 2030 and of making Scotland a “net-zero nation” in emissions by 2045.

26. Do you think the Bill will play a significant role in achieving these net zero targets? Please give your reasons.

The purposes of the Bill are primarily to reduce levels of consumption and to ensure that manufactured goods are less likely to become waste. In that sense the Bill would be expected to contribute.

At the local level the specific the impact of the Bill might be less as the management of waste constitutes a relatively small part of the Council’s carbon footprint (and this Council doesn’t operate a commercial waste service). Nevertheless, the Bill is still important as our council is responsible for managing the household waste of around 10% of Scotland’s entire population, and making better choices around household waste is one of the easier things an individual citizen can do to impact their personal carbon footprint.

In addition, by the time a product enters the waste stream, the majority of the environmental impact will have already taken place in sourcing the raw materials, manufacture, and so on. Moving away from a consumerist society will have ripple effects on other sources of emissions beyond waste management. If it can lead to a reduction at source (less food/products manufactured because less is wasted and products are kept for longer), then it can reduce emissions from industry and agriculture for example and serve to reduce global emissions.

27. There is a [Policy Memorandum](#) accompanying the Bill. This aims to set out the underlying reasons why the Scottish Government thinks the Bill is necessary. Did you find the discussion under “Sustainable Development” in the Policy Memorandum helpful or unhelpful in terms of understanding what impact the Bill would have in terms of reaching these net zero targets?

No comments

General/aspects not in the Bill

28. Are there any areas not addressed (for example on waste reduction and reuse) by the Bill that you believe should be included? If so, what are they?

The opportunity to encourage the development of producer led collection systems for textiles and small electricals, with reuse where possible has been highlighted above.

We've previously highlighted the opportunity to consider a deposit type system for bulky items like mattresses, whereby the price includes takeback of the old mattress (with an opt-out if you don't have a mattress to return).

There is scope to look at how Scotland can develop alternative models to owning goods, such as tool libraries, clothing rental, etc, and seek to grow and mainstream these.

It would be helpful if the Scottish Government could look again at the legislation surrounding managed student accommodation. These are currently classified as sui generis in planning terms, but as residential in terms of Valuation Boards and Council Tax, but no Council Tax would be payable as the residents are students.

Therefore waste and recycling arisings are treated as domestic waste when in reality these are run for profit by the accommodation providers and even operate as hotels at certain times of the year.

While their presence is of course important to ensure that students have somewhere to stay, the growth in this sector in recent years has presented local authorities with large student populations with a significant unfunded pressure. While we do accept that these premises are partly residential and can be seen to take pressure off the wider housing stock available to permanent residents, nevertheless the fact that nothing at all is paid directly to support local services by profit-making companies is problematic and needs to be reviewed.

29. Are there international examples of best practice in legislation supporting the transition to a circular economy?

Our response to the previous consultations noted that caution needs to be taken in comparing different nations, even within the UK, particularly in relation to recycling rates. This was referenced with regard to Wales who report higher recycling rates than the rest of the UK because they use a different metric to calculate it.

Resources and Waste Common Framework

The Committee is also seeking your views around how the Bill sits within a wider context of—

- a) a mixture of devolved and reserved powers in relation to tackling consumption and areas such as product standards;

- b) existing UK-wide schemes such as developments with Extended Producer Responsibility; and
- c) how circular economy and waste policy is influenced by the UK Internal Market Act 2020 and relevant Common Frameworks.

No comments

30. Do you have comments on how this wider framework should function to support Scotland's transition to a circular economy, in particular on the provisional Resources and Waste Common Framework?

Submitting your views to committees

Please review our privacy notice for submitting written evidence to Scottish Parliament committees. The Committee welcomes written views in English, Gaelic, Scots or any other language.

[Committees: Submitting your views to a committee](#)

The deadline for responses is 20 August