

# Circular Economy (Scotland) Bill

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## Policy Memorandum

### Introduction

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Circular Economy (Scotland) Bill, introduced in the Scottish Parliament on 13 June 2023.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 31–EN);
  - a Financial Memorandum (SP Bill 31–FM);
  - a Delegated Powers Memorandum (SP Bill 31–DPM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP 31–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### Policy objectives of the Bill

4. The Scottish Government recognises that sustainable consumption and production are essential for Scotland's transition to a low-carbon and green economy, which will meet Scotland's obligations to tackle the twin climate and nature emergencies. Material consumption and waste are primary drivers of nearly every environmental problem Scotland currently faces, from water scarcity to habitat and species loss. Estimates suggest around four fifths of Scotland's carbon footprint comes from the products and services we manufacture, use and throw away.<sup>1</sup> A circular economy gives us an alternative economic model that can benefit everyone within the limits of our planet. A circular economy:
  - cuts waste, carbon emissions and pressures on the natural environment;

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<sup>1</sup> [Everything we buy has a carbon cost | Zero Waste Scotland](#)

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- 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.

5. Circular economy and waste policy is a complex landscape, with Scottish, UK, European and global dimensions to consider. Many critical areas, such as VAT, product standards, product labelling and consumer protection, are reserved and would require action from UK Government. The system for production of our products and materials involves supply chains that span the globe. At that scale, Scotland is a relatively small market, and the Scottish Government needs to be mindful of the limited levers available to it.

6. Given this complexity, it is important to consider both legislative and non-legislative measures that will help achieve the Scottish Government's goals. The Circular Economy (Scotland) Bill introduces measures that require primary legislation to transition to a circular economy and modernise Scotland's waste and recycling services. This is complemented by the other legislative and non-legislative activities that the Scottish Government has already delivered or is taking forward, as set out in the Background section below.

7. Building a more circular economy requires all parts of Scottish society to play their part. This Bill addresses that by placing requirements on, or enabling further action by, central and local government, businesses and householders. The Bill will primarily deliver enabling powers that will set a framework for taking action into the future. Where the Scottish Government is choosing to introduce powers to make regulations, rather than placing specific provisions on the face of the Bill, its intention is to take the opportunity to use public consultation and co-design processes (particularly for recycling provisions) that will take views from all relevant parts of society to ensure that effective regulations are developed.

8. The Bill includes the following provisions, further details of which are provided in the 'Specific Provisions' section of this Policy Memorandum:

- Circular economy strategy: placing a duty on Scottish Ministers to publish or refresh a circular economy strategy at least every 5 years in order to direct national policy on the circular economy.
- Circular economy targets: developing statutory targets for the Scottish Ministers to provide a focus for action.
- Restrictions on the disposal of unsold consumer goods: providing powers to limit the disposal or destruction of unsold goods in order to reduce wasteful practice.
- Charges for single-use items: creating a power to set a minimum charge for certain throwaway items in order to drive waste reduction and greater use of

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reusable items (the intention is for this initially to be applied to single-use disposable beverage cups).

- Householder’s duty of care in relation to waste: making it a criminal offence for a householder to breach their existing duty of care under the Environmental Protection Act 1990, in relation to waste, and creating a new fixed penalty regime to enforce this duty.
- Household waste: requiring local authorities to comply with a code of practice on recycling and giving powers to Scottish Ministers to set recycling targets for local authorities.
- Littering from vehicles: establishing a new civil penalty regime that will make the keeper of a vehicle liable to pay a penalty charge in respect of a littering offence committed from that vehicle.
- Enforcement powers in respect of certain environmental offences: improving enforcement against fly-tipping and other waste crime through a power allowing the Scottish Environment Protection Agency (“SEPA”) and local authorities to seize vehicles involved in specified waste crime.
- Reporting on waste, surpluses, etc: obtaining information about where waste is occurring through a power to require information which would lead to public reporting of waste and surplus by businesses (the intention is for this initially to be applied to information about food).

## Background

9. In 2016, the Scottish Government published its first circular economy strategy, *Making Things Last*,<sup>2</sup> which set out the opportunities and priorities for maximising the value of materials and products in the system. The Scottish Government has also set various ambitious waste and recycling targets, including ending the landfilling of biodegradable municipal waste, reducing the percentage of all waste sent to landfill to 5%, and recycling 70% of all waste, by 2025. Scotland has made significant long-term progress towards reaching these ambitions. For example, the total amount of waste going to landfill in Scotland has dropped by nearly a third over the past decade (3 million tonnes or 30.2% of all waste managed was sent to landfill in 2021<sup>3</sup>), and over 56% of waste was recycled in 2021. However, progress has slowed in recent years and there is more to do to meet all targets in full.

10. The average individual in Scotland consumes 19.3 tonnes of materials every year. That is not sustainable - as set out in the Scottish Government’s *Environment Strategy*, if everyone worldwide lived as we do in Scotland we would need three planets to sustain ourselves. In short, the more materials are extracted and used, the more damage is done to the climate and to nature.

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<sup>2</sup> [Making Things Last: a circular economy strategy for Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/making-things-last/pages/introduction.aspx)

<sup>3</sup> [Waste data for Scotland | Scottish Environment Protection Agency \(SEPA\)](https://www.sepa.gov.uk/waste-data-for-scotland/)

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11. Transitioning from a linear to a circular economy will be a challenging task and to achieve this Scotland needs to change how it produces, consumes and manages Scotland's resources. The update to the Climate Change Plan<sup>4</sup> set out the vision that by 2045 Scotland's cultural, social and business norms will be driven by a focus on:

- Responsible Production, where a circular economy is embraced by the businesses and organisations that supply products, ensuring the maximum life and value from the natural resources used to make them.
- Responsible Consumption, where people and businesses demand products and services in ways which respect the limits of our natural resources. Unnecessary waste, in particular food waste, will be unacceptable in Scotland.
- Maximising Value from Waste and Energy, where the environmental and economic value of wasted resources and energy is harnessed efficiently.

12. As well as the Bill, the Scottish Government is taking forward a range of other activities in 2023 and 2024, within the powers available to it, that will help transition Scotland to a circular economy, recognising that many areas would require further action from the UK Government. At the same time as consulting on the Bill, it consulted on proposals for a Waste Route Map which will set out how it intends to deliver a system-wide, comprehensive vision for Scotland's circular economy. The final Route Map will be published later this year. The £70 million Recycling Improvement Fund is supporting local authorities to deliver modernised services for residents, and this financial support will contribute to a step change in Scotland's recycling performance. The Scottish Government, along with the other UK administrations, is working hard to implement Packaging Extended Producer Responsibility<sup>5</sup> from 2024 onwards. This will make producers fully responsible for the waste created by their packaging and ensure that more packaging is made recyclable or reusable.

13. In addition, using existing powers, the Scottish Government will identify areas where regulations under section 82A of the Climate Change (Scotland) Act 2009<sup>6</sup> could enhance circular economic opportunities in relation to the procurement of goods, works or services and bring forward appropriate regulations. Research to inform this has begun.

14. The summary below offers more details on the key policy areas addressed by the Bill. Each section below sets out what will change from the present situation and how stakeholder views have been considered, including the responses to the consultation.

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<sup>4</sup> [Securing a green recovery on a path to net zero: climate change plan 2018–2032 - update - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/2023-06-13-ccp-update/pages/2/)

<sup>5</sup> [EPR Consultation Government response template \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/consultations/epr-consultation)

<sup>6</sup> [Climate Change \(Scotland\) Act 2009 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2009/12)

## Alternative approaches

15. The Bill does not seek to cover activity that the Scottish Government anticipates can be dealt with through other legislative mechanisms, for example, through secondary regulations where the Scottish Ministers already have powers or where a joint approach through UK legislation has been agreed. Where measures have been included in the Bill, this is largely because existing voluntary approaches are not considered sufficient to achieve the goals; or there are gaps in existing legislation which need to be addressed in order to fulfil policy ambitions.

16. Further detail on alternative approaches for specific provisions are outlined in the “Policy Objectives: Specific Provisions” section of this Policy Memorandum.

## Consultation

17. The Scottish Government consulted<sup>7</sup> between 30 May and 22 August 2022, including a number of stakeholder events. The consultation received 1681 responses, of which 1333 were campaign responses through Friends of the Earth Scotland. Of the responses, 142 were from organisations including waste management sectors, environmental consultancies and public interest groups.

18. Respondents were asked to consider 13 policy proposals for inclusion in the Circular Economy Bill, by answering 40 questions - 8 closed questions, 32 open free text questions. These were grouped across four themes: strategic interventions; reduce and reuse; recycling; littering and improving enforcement.

19. A report on the analysis of the responses has been published.<sup>8</sup> While generally supportive of the proposals, there were significant differences in the level of support for specific provisions. Detailed consideration of the consultation responses on each proposal is provided in the policy objectives for each provision as set out below.

20. In addition, alongside the Circular Economy Bill consultation the Scottish Government consulted on proposals for a Waste Route Map: Delivering Scotland’s circular economy: A Route Map to 2025 and beyond.<sup>9</sup> Proposals were grouped into several change packages, which span action across the whole circular economy: promoting responsible consumption and production; reducing food waste; improving recycling from households and commercial businesses; embedding circular construction practices; minimising the impact of disposal of waste that cannot be reused or recycled; and cross-cutting themes, including strengthening data and evidence, sustainable procurement practices, and skills and training.

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<sup>7</sup> [Delivering Scotland’s circular economy: a consultation on proposals for a Circular Economy Bill - Scottish Government - Citizen Space](#)

<sup>8</sup> [Delivering Scotland’s circular economy: Proposed Circular Economy Bill - Consultation analysis - gov.scot \(www.gov.scot\)](#)

<sup>9</sup> [Delivering Scotland’s circular economy: A Route Map to 2025 and beyond - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

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21. To drive change in these areas, the Waste Route Map consultation set out a range of non-legislative and legislative priorities: the latter includes the legislative proposals in the Bill consultation, as well as others that can be accomplished by means of secondary legislation, or in conjunction with the UK government. The consultation invited views on the extent to which respondents agreed with the overall measures in each package and any further measures respondents would like to see. The consultation did not include questions on specific proposals for primary legislation, as these were the focus of the consultation on proposals for the Circular Economy Bill. Independent analysis of responses to the consultation is ongoing and findings will be published when available. The final Route Map will be published later in 2023.

22. The Scottish Government also previously consulted on “Developing Scotland’s circular economy: proposals for legislation” between 7 November 2019 and 19 December 2019.<sup>10</sup> An independent analysis of consultation responses was published in May 2020.<sup>11</sup> As a result of the COVID-19 pandemic, the Scottish Government decided not to introduce a Circular Economy Bill in 2020; however, the results of this earlier consultation informed the development of this Bill.

## Outcome of consultation and engagement

23. Overall, respondents to both the 2019 and 2022 consultations generally welcomed the Scottish Government’s proposals.

24. There were some concerns that the proposals could go further and respondents suggested additional actions that the Scottish Government could take in relation to each of the main areas of work in the consultation paper, not all of which would require primary legislation or are within devolved powers. The particular focus of the Friends of the Earth Scotland campaign, supported also by Scottish Environment LINK, was proposals to include new targets to reduce consumption of products and materials; the establishment of a new circular economy advisory committee; incentivising reuse and recycling by householders; and the development of sector level resource plans. More detail is included in the specific provisions section below.

## Policy objectives: Specific provisions

### Circular economy strategy

25. Currently, there is no requirement to prepare and publish a circular economy strategy for Scotland. Ministers may choose to do so, but they are not required to do so. Making Things Last: a circular economy strategy for Scotland<sup>12</sup> was published in 2016. This strategy integrated elements of the Zero Waste Plan (2010) and Safeguarding Scotland’s Resources (2013). It also set out a range of priority areas, namely:

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<sup>10</sup> [Circular Economy: Proposals for Legislation - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.gov.scot/publications/circular-economy-proposals-legislation-consultation/)

<sup>11</sup> <https://www.gov.scot/publications/developing-scotland-s-circular-economy-proposals-legislation-analysis-responses/>.

<sup>12</sup> [Making Things Last: a circular economy strategy for Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/making-things-last-a-circular-economy-strategy-for-scotland/)

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- Food and drink, and the broader bio-economy;
- Remanufacture;
- Construction and the built environment; and
- Energy infrastructure.

26. There are existing strategies which are relevant, such as the Climate Change Plan.<sup>13</sup> Section 35 of the Climate Change (Scotland) Act 2009 requires Scottish Ministers to lay a Climate Change Plan before Parliament setting out their proposals and policies for meeting annual emissions reduction targets every five years.

27. One of the outcomes in the Environment Strategy for Scotland: Vision and Outcomes is that “we use and re-use resources wisely and have ended the throwaway culture”.<sup>14</sup> Scotland’s circular economy and waste policies will play a key role in achieving this.

28. The Scottish Government believes there is merit in strengthening the existing strategic approach by placing a duty on Scottish Ministers to publish or refresh a circular economy strategy every 5 years. This would bring together both policies pursued through legislation, in particular those using the enabling powers sought in the Bill (such as household waste recycling and circular economy targets measures); and policies for which either existing legislation provides the powers, or which do not need legislation for implementation (such as support and guidance around procurement). In addition, it would give a clear indication of priority sectors and direction of travel for businesses and wider stakeholders. This strategy would support the delivery of the vision and outcomes in Scotland’s Environment Strategy,<sup>15</sup> and also link to the Biodiversity Strategy<sup>16</sup> and Waste Route Map.

29. The 2022 Bill consultation included questions on a circular economy strategy. The majority of responses (87%) agreed that a five-yearly circular economy strategy would allow Scotland to react and adapt to changing environmental issues and regulatory landscapes. It was felt there should be regular reporting and progress updates to ensure accountability. Some stated that a new strategy would need to align with existing legislation in Scotland, and it would also be beneficial to align with strategies from other parts of the UK. Some respondents felt there should be a focus on collaboration with businesses, and that sector-specific plans should be developed, as well as a longer-term strategy. It was noted that the strategy alone would not combat the environmental crisis, but that behaviour change across society and products’ life

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<sup>13</sup> [Securing a green recovery on a path to net zero: climate change plan 2018–2032 - update - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2022/01/13/securing-a-green-recovery-on-a-path-to-net-zero-climate-change-plan-2018-2032-update-2022-01-13/pages/13.aspx)

<sup>14</sup> [The Environment Strategy for Scotland: Vision and Outcomes \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2022/01/13/the-environment-strategy-for-scotland-vision-and-outcomes-2022-01-13/pages/13.aspx)

<sup>15</sup> The Scottish Government is developing the Environment Strategy in phases and so far has published i) the vision and outcomes: [The Environment Strategy for Scotland: vision and outcomes - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2022/01/13/the-environment-strategy-for-scotland-vision-and-outcomes-2022-01-13/pages/13.aspx); and ii) an initial monitoring framework: [Environment strategy: initial monitoring framework - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2022/01/13/environment-strategy-initial-monitoring-framework-2022-01-13/pages/13.aspx).

<sup>16</sup> [Biodiversity strategy to 2045: tackling the nature emergency - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2022/01/13/biodiversity-strategy-to-2045-tackling-the-nature-emergency-2022-01-13/pages/13.aspx)

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cycles was needed, while some felt that such a regular review of the strategy would lead to unnecessary administrative burden.

30. The main themes identified in the responses included comments on the need for robust monitoring and evaluation; collaboration across government departments, authorities and stakeholders; the need to ensure alignment with existing and future policies; and the potential for the development of a sustainable economy. Most respondents agreed that due to the fast-evolving nature of the environmental emergency, the strategy should be reviewed every five years, with some suggesting that even more regular reviews may be necessary. Some also believe that there should be a requirement to report on progress via the development of performance indicators and metrics.

31. Respondents also indicated that the strategy must address the full circular economy including circular design provisions including reserved areas: some respondents stated that the proposals seem too focused on waste management and not enough on manufacturing. It must also be ambitious enough to tackle resource use and complex materials. A reservation noted by some respondents was that a short-term strategy may risk an overdependence on 'quick wins', so a longer-term plan was needed to ensure its success.

32. A recent review of existing international circular economy strategies and action plans undertaken by Zero Waste Scotland ("ZWS") concluded that a statutory obligation for a circular economy strategy would likely be beneficial for a number of reasons: for example, it can provide a place to set out clear targets, prioritise key measures to adopt, and serve as a framework that other policies and strategies should be understood within. However, it would be beneficial to keep obligations for the strategy as broad as possible, with detail to follow as data and evaluation are gathered and released, as this would help Scotland keep pace with new developments.

33. In line with consultation responses, the Bill requires that the circular economy strategy must set out objectives for, plans towards, and details of how the Scottish Government will monitor the development of a circular economy (section 1(2)). It further sets out the elements of the economy that Scottish Ministers must have regard to in preparing the strategy, which includes a focus on the reduction of the consumption of materials in production and delivery of services; that things are kept in use for as long as possible with the maximum value extracted from them; and that they are recovered or regenerated at the end of life (section 1(3)). This could include reuse, remanufacture or recycling for products or materials or, in the case of regeneration, returning biological materials to the earth through sustainable farming practices, for example.

34. The Bill also sets out that Scottish Ministers, in considering any priorities for action in the strategy, must have regard to the development of a circular economy in relation to priority sectors and systems (section 1(4)). Those priority sectors and systems would be informed by research at the time of the production of the strategy. For



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example, the recently published Circularity Gap Report for Scotland<sup>17</sup> identifies sectors and systems such as the built environment, food and manufacturing as particular priorities. In line with the campaign responses from Friends of the Earth Scotland, the intention is that such content would be developed in collaboration with relevant sectors, with aims including minimising resource requirements and ensuring sustainable sourcing of materials.

35. To ensure that the circular economy strategy supports wider aims, the Bill requires that the strategy be consistent with the Climate Change Plan, the environmental policy strategy and other strategies or plans which the Scottish Ministers consider to be relevant (section 1(5)). This could include the National Strategy for Economic Transformation or Just Transition plans, for example.

36. Similarly, to ensure circular economy considerations are captured in other policy areas, the Scottish Ministers are required to have regard to the circular economy strategy when making policies, including proposals for legislation (section 1(6)).

37. The provisions also outline the process for consultation on a draft circular economy strategy including that this should include the wider public (section 2). It also requires that the final strategy should be laid before the Scottish Parliament (section 3).

38. In line with responses to the consultation, the provisions set out that the strategy should be kept under review and revised within 5 years. To ensure accountability, the provisions also set out that a report on progress with the strategy in the two and half years since its publication must be laid before the Scottish Parliament (section 4).

39. In terms of alternative approaches, there are many strategies and plans prepared by government which are not statutory. It would be possible for the Scottish Government to report on its overarching strategic approach to the circular economy without placing a legal requirement in legislation. Developing a circular economy requires sustained system change and so progressing on a non-statutory basis would risk the focus on such change being overtaken by other priorities of the day, or risk measures becoming outdated due to changes, for example, in technology and production methods without a requirement for initial assumptions to be revisited.

40. The commitment to place a legal duty on the Scottish Ministers to prepare and publish a circular economy strategy and report on progress was also welcomed by key stakeholders, with the majority agreeing that a five-yearly strategy would allow Scotland to react and adapt to changing environmental issues and regulatory landscapes. It would also be possible to specify detail such as priority sectors the strategy should focus on within the Bill, but this risks the focus in future strategies being outdated and not based on the latest research which would inform decisions about priority sectors. There could also be a statutory role for Parliament in considering the draft strategy rather than it just being laid; however, the process of commissioning, drafting, consulting and reporting on a circular economy strategy will introduce a high level of

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<sup>17</sup> [CGR Scotland \(circularity-gap.world\)](https://www.circularity-gap.world/scotland)

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rigour, transparency, scrutiny and parliamentary accountability to the work being undertaken by the Scottish Government to develop a circular economy.

## Circular economy targets

41. In its response to Scotland's Climate Assembly and Children's Parliament recommendations in December 2021, the Scottish Government outlined the need to reduce consumption and waste by embracing society-wide resource management and reuse practices.<sup>18</sup> Responses to the previous consultation on proposals for Circular Economy Bill legislation in 2019 also noted that there should be greater ambition in the field of consumption reduction targets.

42. In 2021, the European Parliament called on the European Commission to consider EU targets for 2030 to significantly reduce the EU material and consumption footprints and urged the European Commission to introduce a suite of indicators to measure resource consumption.<sup>19</sup> Subsequent research by ZWS has highlighted that there is currently no consistent approach to measuring consumption in other countries and consumption-based targets are rare.<sup>20</sup>

43. The 2022 Bill consultation showed support (86%) for the proposal that the Scottish Ministers should have powers to set statutory targets in relation to the circular economy. Overall, there was a recognition that voluntary waste-based and resource consumption targets had not been effective and focused too narrowly on recycling and there was a need for a robust framework of evidence-based targets. Responses showed support for targets to reduce consumption and increase reuse and recycling. Proportionality and resources for reporting were identified as issues by those who did not agree with the proposal.

44. The provisions in the Circular Economy Bill give the Scottish Ministers powers to set statutory circular economy targets through secondary regulations. The provisions set out a non-exhaustive list of the areas that targets may relate to, including reducing the use of materials, increasing reuse, increasing recycling and linking to priorities within the circular economy strategy. This will create a focus for action and maintain alignment with the direction of EU policy (section 6(3)).

45. Consultation responses indicated that targets should be science-based and relevant to identified outcomes. Accordingly, the provisions require that targets would need to be consulted upon before being laid in the Scottish Parliament. Developing a monitoring framework allows for more holistic tracking of Scotland's consumption levels and wider measures of circularity (e.g. reuse, recycling and disposal) whilst ensuring that the wider social, economic and environmental impacts (such as biodiversity and land use impacts) are taken into account. A monitoring framework would sit alongside the Environment Strategy Monitoring Framework<sup>21</sup> and allow the Scottish Government

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<sup>18</sup> [Scotland's Climate Assembly - recommendations for action: SG response - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/04/Scotland's_Climate_Assembly_-_recommendations_for_action_-_SG_response_-_gov.scot)

<sup>19</sup> [European Parliament resolution of 10 February 2021 on the New Circular Economy Action Plan](https://www.europarl.europa.eu/media/default.do?op=operation&do=getDocumentText&lang=en&document=102492)

<sup>20</sup> [Zero Waste Scotland research: Consumption reduction targets](https://www.zws.co.uk/research/zero-waste-scotland-research-consumption-reduction-targets)

<sup>21</sup> [Resources: We use and re-use resources wisely and have ended the throw-away culture \(data.gov.scot\)](https://data.gov.scot/resources/documents/2022/04/Resources_-_We_use_and_re-use_resources_wisely_and_have_ended_the_throw-away_culture)

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to inform policy choices and prioritise action on areas of consumption that are most damaging in terms of climate change or wider environmental impact, and to design specific targets to tackle these things.

46. Some consultation responses also emphasised the need for reporting on targets to increase accountability. The provisions require that regulations under this section set out the arrangements for both monitoring and reporting of progress, including any action being taken to meet targets that have not been met (section 7).

47. In terms of alternative approaches, targets can be specified without the need for legislation by means of policy, for example current waste and recycling targets are not statutory. However the Scottish Government believes that, given the transformative change that is required to move from a linear to a circular economy, making targets statutory provides a strong focus for action and certainty in direction of travel across policy.

48. Campaign responses to the Circular Economy Bill consultation argued that targets for carbon and material footprint should be included on the face of the Bill. However, the Scottish Government believes targets should be set on the basis of a developed monitoring and indicator framework that considers a range of circular economy measures. This should be underpinned by rigorous stakeholder engagement to ensure there are no unintended consequences of target setting. This is a developing field, particularly in relation to consumption reduction, with no firm consensus on methodologies and datasets; for example, the recently published Circularity Gap Report and the Material Flow Accounts<sup>22</sup> arrive at different, albeit similar, figures for Scotland's Material Footprint. The recently published report by the Scottish Science Advisory Council<sup>23</sup> noted that "Complex, interconnected, and circular material flows require a robust universal system of digital data recording with free and open sharing". The UK Government has taken a similar approach to setting resource efficiency targets through secondary regulations under powers in its Environment Act 2021.

## Restrictions on the disposal of unsold consumer goods

49. The disposal or destruction of unsold goods, such as clothing or electrical items, represents both wasteful practice and unsustainable behaviour. The EU Sustainable Product Policy Framework within the Circular Economy Action Plan identifies a range of potential legislative measures relating to the impact and design of sustainable products.<sup>24</sup> This included measures to ban the destruction of unsold durable goods, which was consulted on in March 2021.<sup>25</sup>

50. Existing duty of care legislation in Scotland (as referred to below) requires that waste producers must take all reasonable measures to apply the waste hierarchy when disposing of goods and must also ensure that the waste is managed in a manner that

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<sup>22</sup> [Material Flow Accounts \(MFA\) | Zero Waste Scotland](#)

<sup>23</sup> [SSAC Report - Towards a Circular Economy - Scotlands Bioresource Flows.pdf \(scottishscience.org.uk\)](#)

<sup>24</sup> [Circular Economy Action Plan](#)

<sup>25</sup> [Have your say \(europa.eu\)](#)

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promotes high quality recycling. France has already introduced a ban on companies destroying clothes, cosmetics, hygiene products, electrical items and other unsold or returned items. Rather than landfill or incinerate unsold goods, companies will now have to reuse, donate or recycle their unsold products. Applying a per capita basis to a French study commissioned by Agence de la Transition Ecologique<sup>26</sup> would give a high-level indication that approximately £300m of unsold goods are generated in Scotland each year, and that the amount of these destroyed via landfill and incineration have a total value of approximately £22m per year. The French legislation came into force from 2022 so there is no current analysis available of impact.

51. Responses to the 2022 Bill consultation showed support (86%) for the proposal that the Scottish Government should have powers to ban the destruction of unsold goods. This section provides powers to introduce such regulations (section 8). Any regulations could be focused on goods where there is the most significant environmental impact and be informed by improved data collection, for example from the UK-wide digital waste tracking project or from other Circular Economy Bill provisions, such as reporting on waste, surpluses, etc. Those not supporting the proposal identified burdens on business and uncertainty around which products would be targeted.

52. Any regulations made under this section would require: further research to better understand the flows of unsold consumer goods in Scotland and which areas regulations should be targeting; as well as stakeholder engagement and consultation, including detailed impact assessments. This would inform the definitions used within the regulations, plus details of any exemptions (for example, where products have been withdrawn for safety reasons) and of the enforcement of the regulations.

53. In terms of alternative approaches, section 34 of the Environmental Protection Act 1990 (as amended)<sup>27</sup> lays out a number of duties with respect to the management of waste by persons other than householders, who are subject to a more limited duty of care in relation to household waste. Waste must be managed correctly by storing it properly, only transferring it to the appropriate persons and ensuring that when it is transferred it is sufficiently well described to enable its safe recovery or disposal without harming the environment. This is known as the “duty of care”.

54. In 2011, the duty of care was amended such that any person who produces, keeps or manages waste must take “all such measures available to that person as are reasonable in the circumstances to apply the waste hierarchy” (the waste hierarchy is the ranking of waste management options according to what is best for the environment) as set out in Article 4 of the Waste Framework Directive.<sup>28</sup>

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<sup>26</sup> [15b3875\\_etude-impact.pdf \(assemblee-nationale.fr\)](#)

<sup>27</sup> [Environmental Protection Act 1990 \(legislation.gov.uk\)](#)

<sup>28</sup> [Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

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55. The overarching duty of care is described in more detail in the Duty Of Care: Code of Practice For Managing Controlled Waste.<sup>29</sup> Specific guidance on Applying the Waste Hierarchy<sup>30</sup> is also provided.

56. While section 34 requires that waste producers must take all reasonable measures to apply the waste hierarchy, it is a fairly broad framework and is difficult to apply in specific circumstances – especially at a sector or product / waste stream level. That is why Scottish Government has brought forward a range of specific, targeted measures to improve recycling and recovery. For example, in 2012, section 34 was amended to require food businesses to separate food waste for recycling. It could be argued that the waste hierarchy duty already required the separation of food waste, but the clear, targeted approach was much more effective. This is why, the Scottish Government seeks to take powers to make legislation which can prohibit or restrict the disposal of unsold consumer goods as an effective, targeted means of ending wasteful practice rather than relying on existing provisions. Imposing a blanket ban on the disposal of all types of unsold consumer goods on the face of the Bill would be likely to be disproportionate and difficult to enforce. Any prohibitions or restrictions which are introduced, by means of regulations, will need to have the flexibility to target specific product categories (for example restrictions in respect of textiles) and they would be informed by sector/product specific data.

## Charges for single-use items

57. The first priority in a more circular economy is to avoid unnecessary waste and use fewer resources. The Scottish Government therefore seeks powers to make regulations requiring suppliers of single-use items to charge a minimum amount for such items, with the policy aim of reducing the consumption of such items, and therefore reducing the environmental harm caused.

58. The impact of a carrier bag charge implemented in 2014 shows the effect a charge on a single-use product can have on consumer behaviour. ZWS conducted research into the impact of the carrier bag charge in the first year it was introduced, and found that 650 million fewer bags were being handed out annually.<sup>31</sup> No major concerns were raised about the charge itself during the course of the research interviews.

59. Responses to the 2022 consultation showed that there is relatively high support for this provision, with overall positive responses from individuals and organisations on introducing powers to enable such a charge. Reservations around this provision mainly surrounded the cost-of-living crisis – a number of respondents thought that imposing additional costs on consumers would disproportionately affect more vulnerable members of society and this has been highlighted in the associated Fairer Scotland Duty Assessment.

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<sup>29</sup> [Your Obligations as a Waste Producer - Duty of care: code of practice for managing controlled waste - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/duty-of-care/code-of-practice-for-managing-controlled-waste/pages/10-to-12.aspx)

<sup>30</sup> [Guidance on applying the waste hierarchy \(www.gov.scot\)](https://www.gov.scot/publications/guidance-on-applying-the-waste-hierarchy/pages/1-to-3.aspx)

<sup>31</sup> [Impact of Carrier Bag Charge after one year | Zero Waste Scotland](https://www.zerowaste.scot/impact-of-carrier-bag-charge-after-one-year/)

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60. The Scottish Government intends that an early use of the new powers would be to introduce a minimum charge on single-use disposable beverage cups. In recent years, there has been a significant increase in the use of single-use disposable beverage cups, with around 380 million single-use cups placed on the market in Scotland each year. The Expert Panel on Environmental Charging and Other Measures (EPECOM) recommended<sup>32</sup> implementing a charge on single-use disposable beverage cups to influence consumers to switch to re-usable alternatives. The Panel concluded that environmental charges, notably price-based interventions, have been shown to be effective at reducing single-use cup consumption.

61. The Bill allows that regulations may specify that the net proceeds raised by such charges should be applied to the advance of environmental protection or improvement or to any other purposes that may be reasonably regarded as analogous. This means proceeds would not return to the Scottish Administration. For the existing carrier bag charge, by voluntary arrangement with retailers, these proceeds are applied to a range of good causes.<sup>33</sup>

62. Retailers offering discounts for using re-usable alternatives was considered as an alternative to a charge for single-use disposable cups by EPECOM. They concluded that the evidence showed that charging for products has a stronger impact on behaviour change than offering a discount due to loss aversion theory (a theory that individuals show a higher sensitivity to potential losses than to gains).

63. Encouraging recycling of single-use products rather than moving to re-usable alternatives was also considered, for example, relying on the mandatory takeback element to be included in the planned Packaging Extended Producer Responsibility (“EPR”) reforms. Mandatory takeback plans require sellers of filled disposable paper cups to provide a separate collection point for these cups, thus increasing recycling rates significantly. It was judged that the two policy approaches, environmental charging and mandatory takeback, are complementary and jointly help achieve circular economy goals. Charging for single-use cups will reduce consumption of single-use cups, moving consumers to re-usable alternatives and mandatory takeback will help ensure that remaining single-use cups are recycled.

64. As far as the Scottish Government is aware there are currently no comparable nationwide single-use cup charges in operation although the Republic of Ireland is planning to introduce one in 2023.

65. Any regulations made under this section (section 9) would require further stakeholder engagement and consultation, including detailed impact assessments. This would inform the definitions used within the regulations, plus details of any exemptions and of the enforcement of the regulations. A regulation-making power allows other single-use items likely to have a harmful impact upon the environment, for which there may not yet be a sufficient evidence base, to be addressed in the future.

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<sup>32</sup> [Single-use disposable cups: EPECOM recommendations - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/06/Single-use_disposable_cups_-_EPECOM_recommendations_-_gov.scot)

<sup>33</sup> [Guidance on the 10p Carrier Bag Charge | Zero Waste Scotland](#)

## Household waste

66. Recycling helps to conserve Scotland's natural resources, keeps valuable materials flowing through Scotland's economy and reduces the amount of waste sent to landfill. As outlined in the recent Waste Route Map consultation,<sup>34</sup> the Scottish Government has five ambitious waste and recycling targets, that span the waste hierarchy to drive progress towards these goals. This includes targets to increase recycling of waste in Scotland from all sources to 70% by 2025, and reduce the amount of waste sent to landfill to 5% by 2025.

67. Between 2004 and 2011, Scotland's household recycling rate more than doubled.<sup>35</sup> However, in more recent years progress has slowed. Scotland's household recycling rate remained at around 45% for several years, and it fell back to 42% in 2020, in part due to the impacts of COVID-19. In 2021, the recycling rate showed some signs of recovery, standing at 42.7%.

68. Across Scotland, local authority household recycling rates vary significantly and in 2021 ranged from 16.9% to 58.1%. The local authorities with lower recycling rates tend to manage the largest national shares of household waste. The Scottish Government is, therefore, prioritising measures to embed best practice and drive local improvements to achieve consistently high recycling rates across Scotland.

69. Analysis of high performing recycling systems around the world suggests that no single policy or practice is sufficient on its own to produce household recycling rates of 65% and above.<sup>36</sup> The highest performing systems combine stretching local targets, comprehensive collections, steps to disincentivise or reduce residual waste production and collections, and other incentives to recycle such as EPR schemes. Through the 2022 consultation on proposals for a Waste Route Map, the Scottish Government proposed to conduct a review of current approaches to waste and recycling service charging to ensure that the right incentives are in place to support positive behaviours by householders to reduce waste and maximise use of recycling and reuse services. This review will investigate whether the current position incentivises waste reduction and recycling and whether current measures deliver the most value for local authorities, including the highest quality recycle.

70. The measures described below are intended to support the design and delivery of services that maximise recycling performance and achieve more consistent local services, making the right choices easier for householders, and to support and incentivise positive behaviours.

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<sup>34</sup> <https://www.gov.scot/publications/consultation-delivering-scotlands-circular-economy-route-map-2025-beyond/>

<sup>35</sup> Defined as waste recycled as a percentage of all household waste generated. Recycling figures are published on an annual basis by SEPA as part of its household waste official statistics release. The rates are calculated according to Scotland's national recycling rate methodology. Further details on the methodology used to produce the figures in this document are provided in the "Household waste quality report" on [SEPA's web site](#). Further information about differences between the national recycling measures of the four UK countries may be found in the [Recycling Explainer](#) published by Defra.

<sup>36</sup> [Eunomia report, Review of High Performing Recycling Systems, 2021](#)

## Householder's duty of care

71. Supporting high quality recycling is everybody's responsibility and it is important that all reasonable steps are taken to ensure that householders can play their full part, and that the right choices are as easy as possible to take.

72. Currently the Environmental Protection Act 1990 imposes a duty of care on anyone who produces, imports, keeps, stores, transports, treats or disposes of waste to take certain measures in relation to that waste and it is a criminal offence to breach this duty of care. Householders are subject to a more limited duty to take reasonable steps to secure that any transfer of waste is only to an authorised person or to a person for authorised transport purposes. At present it is not a criminal offence to breach this duty in Scotland. It is a criminal offence in England and Wales, as a result of legislation introduced in 2005.

73. In 2022, the Scottish Government consulted on proposals for a new National Litter and Fly-tipping Strategy, including measures to develop a more consistent and robust enforcement model. Evidence of who is responsible for fly-tipped waste items can be difficult to obtain, resulting in the majority of costs incurred for clearing fly-tipped waste being borne by local authorities and landowners. Taking effective enforcement action against individuals involved in fly-tipping is key to driving positive behaviour change, providing a deterrent to potential fly-tippers and discouraging repeat offenders.

74. Scotland currently has several different enforcement agencies responsible for investigating fly-tipping crimes. Local authorities handle the majority of fly-tipping reports, whereas SEPA and Police Scotland are more likely to be involved in tackling some of the more significant and chronic incidents. The enforcement tools available to tackle fly-tipping differ between agencies. All agencies have the power to enforce fly-tipping offences through the reporting of an offence under section 33 of the Environmental Protection Act 1990<sup>37</sup> to the Crown Office and Prosecution Service (COPFS). Local authorities and the police are also able to issue fixed penalty notices for fly-tipping under section 33A of the Environmental Protection Act 1990, and SEPA can issue fixed or variable monetary penalties in relation to fly-tipping. These enforcement mechanisms target persons who unlawfully deposit waste; however, where fly-tipped waste is successfully traced back to a waste producer, who disposed of waste in breach of the duty of care, only the police and SEPA have the power to enforce this, either by means of reporting a duty of care offence (section 34 of the Environmental Protection Act) to COPFS or by means of a fixed penalty. As outlined above, the duty of care offence does not currently apply to householders and so there is currently no means of enforcement in relation to householders who breach the duty of care.

75. An analysis of the National Litter and Fly-tipping Strategy consultation demonstrated strong support for a more robust fly-tipping enforcement regime, and this was also seen in responses to a 2022 Member's Bill consultation on fly-tipping<sup>38</sup> where there was strong support for the introduction of stricter liability on the generator of waste and for Scottish legislation to be consistent with the position in England and Wales.

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<sup>37</sup> [Environmental Protection Act 1990 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>38</sup> [Summary of consultation responses--for-publication.pdf \(parliament.scot\)](https://www.parliament.scot)



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More broadly, the Member's Bill proposals sought to deliver better data collection and reporting mechanisms, changes to the legal liability for waste removal, strict liability on the generator of the waste, and increasing and standardising sanctions.

76. This provision (section 10) will extend legal liability to householders as waste producers, ensure that householders are clearer about their duties in regards to household waste and deliver a more consistent approach to enforcing duty of care obligations. It will grant local authorities and other relevant bodies new powers to enforce breaches to householders' duty of care obligations by introducing the option of fixed penalty notices being given to householders who do not comply with existing obligations in relation to household waste, in addition to the possibility of criminal proceedings. The aim is to aid in the prevention of fly-tipping where an offence is traced back to a particular household, and raise awareness of householder responsibilities when disposing of waste.

77. As an alternative approach, consideration was given to promoting householder duty of care requirements without sanctions for a breach of this duty; however insight from a 2019 Review of Scotland's Litter Strategy highlighted the ongoing need to strengthen the deterrent effect of enforcement by reminding people that fly-tipping is a criminal offence which carries a consequence.<sup>39</sup> It is considered that awareness raising on its own would not effectively ensure that householders were aware of their duties or improve the enforcement of fly-tipping offences.

78. This provision will ensure that there is a stronger, more consistent enforcement model that is fit for purpose and acts as an effective deterrent for fly-tipping behaviour. It will also bring Scotland in line with England and Wales in terms of duty of care legislation.

79. In addition to this provision, the Scottish Government's forthcoming National Litter and Flytipping Strategy will set out action to improve data collection and enforcement, however, the Scottish Government does not believe it is appropriate to remove liability from occupiers of land. Existing legislation does not place immediate legal liability upon the occupier of the land but does provide a means of compelling the occupier to remove waste in circumstances where there is substantial evidence that the landowner bears some responsibility for the deposited waste.

## Household waste requirements

80. Currently large quantities of recyclable materials are still sent for disposal when they could be recycled, and rates of non-participation by householders in correctly separating recyclable waste are high. SEPA data show that just under a fifth of everything put out for recycling by householders is non-recyclable.<sup>40</sup> Contamination makes managing recycling collections more costly and, in extreme cases, can mean the whole load has to be taken for incineration or landfill.

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<sup>39</sup> <https://www.gov.scot/publications/five-years-review-scotlands-national-litter-strategy/>

<sup>40</sup> <https://www.sepa.org.uk/media/306565/materials-recovery-code-the-quality-of-recyclables-processed-at-mrfs-in-scotland.pdf>

81. Scotland's Household Recycling Charter<sup>41</sup> commits to encouraging households to participate in recycling and reuse services to ensure they are fully utilised. Where residents do not follow collection advice and policies, the Charter states that local authorities will ensure that their policies for communicating and taking corrective action are delivered consistently in line with the Code of Practice. In practice, this is limited to serving warning notices and working with households to address contamination. In the most serious cases, a recycling service can be withdrawn if contamination within a recycling container is not addressed.

82. There are currently limited powers for local authorities to ensure that households are properly using their recycling containers or to prevent recycling being placed in non-recyclable containers. Under section 46 of the Environmental Protection Act 1990, local authorities can issue notices to householders requiring that household waste be placed in the appropriate bin, for example, landfill, food waste or dry recycling. Failure to comply with a notice is a criminal offence in Scotland. In England, local authorities are able to issue written warnings and penalty charges to householders who have not complied with notices. In Wales, fixed penalty notices are available as an alternative to criminal prosecution for a section 46 offence. There is no provision currently for these alternative enforcement methods in Scotland.

83. There is currently no statutory basis for issuing fixed penalty notices, or civil penalties in relation to section 46 offences related to the use of recycling containers under the Environmental Protection Act 1990 as it applies to Scotland. The Scottish Government considers this to be a gap in local authorities' enforcement powers and inconsistent with the powers available to them to address other issues (e.g. litter and fly-tipping). By establishing a new fixed penalty notice procedure and concurrent civil penalty regime, local authorities would be able to issue written warnings and penalty charges for failures to comply with the requirements in section 46 of the Environmental Protection Act 1990,<sup>42</sup> and where the behaviour is more serious, issue fixed penalty notices to households under specified circumstances, and in accordance with guidance.

84. The provision (section 11) gives Scottish Ministers the power to issue guidance on the use of these powers, which might include guidance on reasonable enforcement steps local authorities must take, and scenarios for when penalty charges and/or fixed penalty notices may be issued, including circumstances under which such notices can or cannot be issued (for example, where penalty charges or fixed penalty notices for minor problems or other defined circumstances might not be appropriate). The overall aim of this policy is to provide local authorities with both a purely civil means of enforcement, which is anticipated to be the primary means of enforcement, and a fixed penalty notice procedure available for householders who persistently and deliberately do not comply with existing obligations in relation to household recycling, with the further option of criminal enforcement for more serious and persistent offending.

85. The previous consultation on the Bill in November 2019, highlighted general agreement that householders' existing obligations relating to recycling of their

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<sup>41</sup> <https://www.zerowastescotland.org.uk/resources/charter-household-recycling>

<sup>42</sup> [Environmental Protection Act 1990 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

household waste are not sufficient due to insufficient incentives to recycle. In the 2022 consultation, generally respondents indicated agreement with the view that householders' existing obligations are not sufficient, due to low participation rates and little incentive to recycle. 80% of those who answered the relevant question indicated that local authorities should have more powers in this space to ensure obligations are met.<sup>43</sup>

86. While generally respondents indicated that local authorities should have the power to issue fixed penalty notices and fines to ensure household obligations are met, some respondents indicated any change in householder responsibility would need to be combined with public awareness campaigns to support education on what can and cannot be recycled. Scottish Government agrees with this view, and considers that enforcement through the proposed regimes within this provision will not be sufficient on its own to deliver the cultural and behavioural shift needed. For example, better education and communications and standardisation of high quality services to enable this are all important elements and are being taken forward through other provisions in the Bill, and through non-legislative measures, as outlined in the consultation on proposals for a Waste Route Map.

87. In terms of an alternative approach, local authorities' current powers and resources are limited. Without the provisions outlined above, the alternative is for local authorities' approach to remain as it currently is. The Scottish Government views the proposed provisions as in line with the general response to the Bill consultation proposal and key to delivering on the vision for recycling set out in its Waste Route Map consultation, providing local authorities with the tools they need to support higher rates of householder participation. It was considered proportionate to align with the approach to enforcement in England and Wales. There is no evidence of a need to go further, as a similar enforcement regime has been available to local authorities in Wales during a period in which a combination of measures have contributed to an increase in household recycling rates.<sup>44</sup>

## Code of practice on household waste recycling

88. The voluntary Scottish Household Recycling Charter and its Code of Practice, developed in 2015 in partnership between the Convention of Scottish Local Authorities ("COSLA") and Scottish Government, has been a valuable platform to develop more consistency in the quality and quantity of recycling across Scotland, and has helped inform improvements to local recycling services. However, only around one-third of local authorities have fully aligned their services to reflect Code of Practice standards and, as noted, local authority household recycling rates vary significantly across Scotland.

89. The Scottish Government's policy intention is to move away from the voluntary approach to Scotland's Household Recycling Charter towards a mandated approach, by enabling the Scottish Ministers to place further requirements on local authorities

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<sup>43</sup> See [Delivering Scotland's circular economy: Proposed Circular Economy Bill - Consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>44</sup> [UK statistics on waste - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

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regarding household collection services. This will help make the right choices the easier choices for householders by supporting more consistent approaches to household recycling and ensuring householders are clearer about what they can recycle and how to do this.

90. As well as improving consistency of services, putting a new code on a statutory footing will also provide a clear strategic direction for recycling in Scotland and accelerate improvements to both the quality and quantity of recycling collected to help meet the Scottish Government's targets. The Scottish Government's consultation on proposals for a Waste Route Map proposed a service co-design process with households and operators, to design modern, efficient and affordable waste and recycling service standards. The Scottish Government sees these reforms, and particularly any move to mandatory systems of collection, as closely linked to forthcoming changes in Packaging EPR and its funding model.

91. The 2019 consultation on Bill proposals showed general support for the proposal that Scottish Ministers should have powers to place additional requirements on local authorities in order to increase rates and quality of household recycling, and this sentiment was also supported during the 2022 consultation. Standardisation of waste collections across Scotland was noted as a priority to reduce confusion and encourage greater participation. The majority of respondents also positively agreed that there was a need for greater consistency in household recycling collections. Comments on this matter mainly focused on a need to promote a behavioural and cultural shift. It was felt that greater consistency would make it easier for households to recycle. However, a key challenge observed was the need for additional funding to support local authorities in delivering high quality waste management services and some respondents were significantly against placing additional requirements on local authorities to increase rates and quality of recycling without adequate behaviour change strategies.

92. The provisions in the Circular Economy Bill (section 12) give the Scottish Ministers powers to develop a statutory code and set out the steps to be taken by local authorities regarding household recycling services for the provision of high-performance household waste services in different contexts. The future statutory code will be informed by findings and outputs from a proposed co-design process to understand opportunities for better service design, putting people at the heart of how services are designed and delivered, building on Scotland's Household Recycling Charter and its supporting Code of Practice.

93. Regarding the scope of such a statutory code, it is important that the code can address key areas already set out in the current Household Recycling Charter and its associated Code of Practice. The code should be able to address: the design of household waste and recycling and reuse services in order to establish consistent collection systems; policies for household waste and recycling and reuse services; the operation of household waste and recycling and reuse (e.g. commitments to households in respect of waste and recycling and reuse services); consistent definitions of materials (for example, paper, card, glass, plastics, metals and food) that can be competently recycled; how to communicate with and to support households on recycling and reuse matters; and guidance related to statutory targets (see next provision below). Local

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authorities would generally be expected to comply with the code when carrying out their functions as a waste disposal authority and waste collection authority.

94. The alternative would be to maintain the voluntary approach through the Charter and/or to update the existing voluntary Code of Practice. As outlined in the Waste Route Map consultation, the current Charter provides voluntary technical guidance, which focuses heavily on kerbside recycling and residual waste service provision. It has been in place since 2015 and 31 of 32 local authorities have signed up to the voluntary Charter and its supporting Code of Practice. However, only around one-third of local authorities have so far fully aligned their services to reflect Code of Practice standards. Persisting with a voluntary approach to these standards is therefore unlikely to deliver the pace or levels of improvements required to meet recycling targets.

95. In preparing the statutory code, the Scottish Ministers would carry out further stakeholder engagement and consultation, in particular with local authorities and SEPA, and would also undertake detailed impact assessments. A draft of the code will also be laid before the Scottish Parliament.

### Targets for waste collection authorities relating to household waste recycling

96. Analysis of high performing recycling systems around the world,<sup>45</sup> commissioned during the development of proposals for the Scottish Government's Waste Route Map, suggests that statutory targets are a feature of high-performing systems in other nations or regions, particularly where they are introduced alongside other key measures. In Wales - which has one of the highest household recycling rates in the world at 65% - a range of policies have been put in place to drive up performance. This includes establishing a national target which every local authority is expected to meet, with financial penalties that can be applied if an authority does not meet required performance targets.

97. The Circular Economy Bill (section 13) provides Scottish Ministers with powers to set recycling targets (e.g. recycling, preparation for reuse and composting) for local authorities to help drive further improvements in local recycling performance. The Bill also includes powers for Scottish Ministers to impose financial penalties on local authorities should these targets not be met.

98. The Scottish Government recognises that targets must be achievable and fair; local authorities are at different starting points, with varied geographies and demographics; and service providers must have the tools available to meet the required standard. The Scottish Government will, therefore, work with local government to set achievable, appropriate targets as part of the development of secondary regulations and consultation for new targets.

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<sup>45</sup> [Eunomia report, Review of High Performing Recycling Systems, 2021](#)

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99. The purpose of any targets would be to accelerate improvements in recycling and reuse rates at local authority level. Given the need to properly consider, develop and consult on the design of local authority targets, the provision will provide:

- Power for Scottish Ministers to set local authority targets on a regular basis for recycling performance, applying from 2030 onwards. Recognising that improvements to local recycling rates require infrastructure and service changes, this timescale provides reasonable preparation time for local authorities before targets are in place.
- Power for Scottish Ministers to enforce the targets, with a monitoring role for SEPA, and, where targets are not met, a power for Scottish Ministers to seek explanation from the local authority, and where appropriate an improvement plan, and also to set financial penalties.

100. The alternative approach would be to maintain the voluntary approach through the Charter. However, this is unlikely to deliver the pace or levels of improvements required to meet recycling targets, or wider climate change objectives.

101. The previous Circular Economy Bill consultation paper published in November 2019 considered the value of a move away from the voluntary approach to Scotland's Household Recycling Charter towards a mandatory approach. The vast majority of respondents (91%) responded favourably to this proposal. The 2022 consultation showed that, broadly, respondents were supportive of introducing powers for the Scottish Government to set and enforce recycling targets. 84% of respondents favoured giving Scottish Ministers powers to introduce statutory targets for local authorities, and 75% agreed that Scottish Ministers should have the power to introduce and set financial incentives for local authorities to meet these targets, or penalties should those targets not be reached.

102. While there was broad support, the Scottish Government recognises that further work must be done in partnership with local government to ensure any targets are both achievable and fair, particularly given the wide variation in current recycling rates. To this end, it was not viable to include more defined targets at this stage. The Scottish Government is committed to working with partners on this matter to understand direct effects on them and their operations. It was noted by some respondents to the 2022 consultation that local authorities should not be penalised for individual circumstances such as high levels of deprivation or geographical isolation, and this will be considered as part of target design through secondary regulations, consultation and further impact assessment.

## Littering from vehicles: civil penalties

103. The National Litter Strategy *Towards a litter-free Scotland* was published in 2014 and recognises the important role of enforcement alongside a focus on prevention in changing littering behaviours.<sup>46</sup> Although progress has been made on key fronts, there

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<sup>46</sup> [Towards a litter-free Scotland: a strategic approach to higher quality local environments - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/national-litter-strategy-2014/pages/10.aspx)

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are significant ongoing concerns about volume of litter, and specifically roadside litter. A new national litter and fly-tipping strategy is currently being developed, following consultation on Scottish Government's proposals in 2022. It is not considered necessary to make this a statutory strategy, equivalent to the circular economy strategy, given its narrower focus.

104. The 2014 National Litter Strategy made a commitment to look for a suitable opportunity to legislate to remove barriers to enforcement in relation to littering from vehicles. The scale of the problem is highlighted in a recent Keep Scotland Beautiful publication which highlights that 94% of roadsides are impacted by litter, with 50 tonnes abandoned on Scotland's roadsides each month.<sup>47</sup> Current legislation for littering offences requires the person leaving the litter to be identified before enforcement action can be taken. Feedback from litter authorities suggests that this is often difficult to ascertain when the littering offence occurs in relation to a vehicle, creating a gap in current enforcement and weakening the deterrent power of the fixed penalty notice. The new power will both increase the deterrent effect and the options available to enforcement officers in tackling roadside litter.

105. The vast majority of respondents to the consultation thought there should be a new fixed penalty regime introduced for littering from vehicles. Respondents also generally supported the proposal to allow the registered keeper of a vehicle to be held responsible for littering committed from that vehicle. However, a number of reservations were expressed regarding the challenge of effectively enforcing the regime, in practice, the ability to provide clear evidence that an offence had occurred and the potential expense of surveillance.

106. The provisions in the Circular Economy Bill (section 14) amend the Environmental Protection Act 1990 to allow for a vehicle's keeper to be made liable to pay a civil penalty charge when a littering offence has been committed from that vehicle. A civil penalty charge may be given by an authorised officer of a litter authority, which is defined as a local authority or the Loch Lomond and the Trossachs National Park Authority or other persons specified in regulations by the Scottish Ministers. The Bill provides Scottish Ministers with a power to make regulations to set out the specifics around the procedure and level of the charge, as well as about appeals and sums received by way of penalty charges. If the civil penalty charge were not to be paid, it can be recovered in the same way as a sum of money due under a civil court decree. There is no need for a court order.

107. A review of the 2014 National Litter Strategy highlighted a number of challenges in the existing enforcement process, including the ability to gather appropriate evidence, identify offenders and recover fines. This poses challenges in issuing fines and prosecuting offenders, and this proposal closes a gap in current enforcement legislation, brings Scotland in line with England and strengthens the deterrent power of a civil penalty charge imposed on keepers of vehicles.

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<sup>47</sup> [Roadside litter knows no boundaries \(keepsotlandbeautiful.org\)](https://www.keepsotlandbeautiful.org)

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108. The alternative approach would be to continue with existing enforcement provisions; however, consultation responses suggest that this would result in an ongoing perceived gap in current enforcement. This proposal delivers on the Scottish Government commitment outlined in the 2014 National Litter Strategy to look for a suitable opportunity to legislate to remove barriers to enforcement in littering from vehicles. This proposal will improve the enforcement of littering from vehicles by addressing current challenges to obtain appropriate evidence and will act as a stronger deterrent to littering behaviour.

## Enforcement powers in respect of certain environmental offences

### Powers to search and seize vehicles, etc

109. Waste crime is estimated to cost nearly £1 billion each year to the UK economy.<sup>48</sup> It is a direct threat to the principles and ambitions of a circular economy and for the Scottish Government's aspirations to become a resilient, resource efficient economy.

110. The Scottish Government is committed to ensuring that Scottish enforcement authorities (SEPA and local authorities) have the necessary powers to enforce legal requirements effectively and to deter or restrict those illegal activities that hinder and damage the rest of the waste industry in Scotland. There are currently gaps in the powers available in Scotland compared to those available in the rest of the UK and it is proposed to use this Bill to address that issue.

111. The current vehicle seizure powers in Scotland are under section 6 of the Control of Pollution (Amendment) Act 1989 ("the 1989 Act").<sup>49</sup> The current powers do not allow an authorised officer of SEPA to seize a vehicle, without firstly obtaining a warrant to do so, where there are reasonable grounds for believing a specified offence has been committed and that the vehicle was used in the commission of that offence. In contrast, environmental regulators in England and Wales have more flexible powers: for example, they can seize vehicles for a wider range of suspected offences and it is not necessary for them to obtain a warrant to seize a vehicle in relation to a specified waste crime, provided certain conditions are met.

112. As part of the previous consultation in November 2019, it was proposed that enforcement authorities in Scotland should be given powers to seize vehicles linked to waste crime. The vast majority of respondents (91%) were in favour of these powers being provided.

113. Given that high level of support, the recent consultation in 2022 associated to this Bill simply asked if there was any new context or evidence that should be taken into account. Overall, most common sentiments expressed were supportive, with some respondents considering that the ability to seize vehicles would act as a useful deterrent and should be one tool in the enforcement 'toolbox'. However, some concerns or

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<sup>48</sup> [ESA Cost of Waste Crime.pdf \(esauk.org\)](#)

<sup>49</sup> <http://www.legislation.gov.uk/ukpga/1989/14/section/6>



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reservations were expressed, for example that, for organised illegal waste carriers, the proposal may not act as a deterrent, especially if the vehicle in question has limited value or that current resource may not be sufficient to enforce the measure.

114. The provisions in the Circular Economy (Scotland) Bill (section 15) modify the powers in the Environment Act 1995 and the 1989 Act to allow relevant officials to search and seize vehicles in Scotland, to provide for an offence of obstructing an official in exercise of those powers and to set out how SEPA must deal with the seized property. The new powers will enable SEPA to have stronger enforcement powers in order to tackle waste crime and will also ensure that Scotland is not seen as a 'soft option' when restrictions are tighter elsewhere in the UK.

115. Scottish local authorities face similar issues with tackling waste crime. Therefore, the Scottish Government proposes to provide local authority officers through the Circular Economy (Scotland) Bill, with the same powers on seizure of vehicles being extended to SEPA officials.

116. The Scottish Government does not foresee large numbers of vehicles being seized as a result of these powers being given to SEPA and local authority officers. The fact that their vehicle could be seized will hopefully act as a sufficient deterrent to small scale offenders. It is envisaged that the powers would be used mainly in targeting those operators who breach environmental laws regularly and/or on a large scale.

117. The alternative option would be to maintain the existing provisions available to SEPA, which are limited in contrast to powers available to enforcement authorities in the rest of the UK.

## Offences in respect of which powers may be exercised

118. The Clean Neighbourhoods and Environment Act 2005 (which repealed section 6 of the 1989 Act for England and Wales only) enables enforcement authorities in England and Wales to seize vehicles for a wider range of suspected offences. The Bill (section 16) will enable Scottish enforcement authorities to use the new powers to seize vehicles if they reasonably believe that a vehicle has been, is being or is about to be used in the commission of the following offences:

- transporting controlled waste without registering under section 1 of the 1989 Act;
- unauthorised or harmful depositing, treatment or disposal, etc. of waste under section 33 of the Environmental Protection Act 1990;
- breaches in duty of care, as respects waste under section 34(1)(a), (aa), (b) and (c) and (2l) of the Environmental Protection Act 1990; and
- operating without a permit or breaching permit conditions under regulation 67(1)(a) or (b) of the Pollution Prevention and Control (Scotland) Regulations 2012.

## Reporting on waste, surpluses, etc.

119. There is an increased recognition that over consumption and over reliance on new materials in production processes is damaging to the environment and there is an ongoing need to focus on becoming a circular economy that better uses and reuses resources.

120. The Scottish Ministers are keen to encourage innovation to tackle wasteful practices and increase efficiencies. The Scottish Ministers believe that a key way to encourage changes in practices and more targeted action is to enable more effective monitoring and management of waste, by placing duties on businesses to report publicly on waste and surplus.

121. Food waste and surplus in particular is contributing substantially to greenhouse gas emissions. The Scottish Government has focused on this issue through the development of the Food Waste Reduction Action Plan (“FWRAP”), which sets out the measures required to achieve the Scottish Government’s target of reducing food waste by 33% by 2025.<sup>50</sup> While the Scottish Government is aware that a number of companies already report on food surplus / redistribution and the destination for waste stock (e.g. through WRAP’s UK-wide Courtauld Commitment),<sup>51</sup> this voluntary approach is unlikely to lead to action at the required scale to address the critical goal of reducing food waste by 33% by 2025 and 50% by 2030.

122. Responses to the 2022 consultation as to whether Scottish Ministers should have powers to require mandatory public reporting of unwanted surplus stock and waste were varied. Although a majority of the respondents to the 2022 consultation were in favour of the suggestion that food waste should be prioritised for regulation, respondents noted that such a proposal could prove to be burdensome for smaller organisations, who may lack the capacity to fulfil the reporting requirements set out by Scottish Ministers. Moreover, most responses in favour of this power were on a conditional basis and identified a number of criteria that should be fulfilled (such as prioritising items with the highest life-cycle impact, environmental & social costs, and re-use potential, incorporating robust data collection while ensuring public transparency).

123. Taking account of views expressed, the provisions in the Bill (section 17) give effect to Scottish Government’s policy intentions by broadening the Scottish Ministers’ powers in the Regulatory Reform (Scotland) Act 2014 in relation to making regulations for improving and protecting the environment. It allows regulations to be made to require persons to make publicly available information on anything stored or disposed of by them, or by someone else on their behalf, except in relation to their domestic activities. The regulations may provide for enforcement and for offences for failure to make the information publicly available, subject to the maximum penalties already set out in schedule 2 of the 2014 Act.

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<sup>50</sup> [Food waste reduction: action plan - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultation-papers/circular-economy-scotland-bill-2023/food-waste-reduction-action-plan/)

<sup>51</sup> [The Courtauld Commitment 2030 | WRAP](https://www.wrap.org.uk/courtauld-commitment-2030)

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124. Respondents to the 2019 consultation also strongly supported mandatory public reporting requirements being extended to include other types of waste and surplus in the future. Among those who supported the proposal, there was general agreement that textiles and clothing surplus / waste should be covered.

125. Other items frequently identified by respondents to the 2019 consultation for future mandatory reporting included: plastic, electronics and packaging and construction. More generally, there was a view in both the 2019 and 2022 consultations that mandatory reporting requirements should start with those sectors that have the highest life cycle environment and social costs, and those with the highest reuse potential. The Scottish Government will also take these suggestions into consideration when identifying which types of waste and surplus it might want to prioritise.

126. In terms of potential alternative approaches, public reporting can be delivered on a voluntary basis – however, the Scottish Government believes that mandatory reporting is required to support the delivery of its food waste reduction commitments and broader circular economy policy priorities. Mandatory public reporting is considered to be a key component to enable businesses to target, measure and act to reduce waste and surplus, to provide greater public transparency as well as informing potential circular business opportunities that can use waste as a resource. Another alternative approach would be to limit powers to reporting on food waste and surplus. However, the 2019 consultation highlighted strong support for mandatory public reporting requirements being extended to include other types of waste and surplus in the future; therefore, the broader power is being proposed to provide this flexibility without the need for further primary legislation.

127. Any regulations made under this section would require further stakeholder engagement and consultation, including detailed impact assessments, including on small businesses to ensure they are not unduly impacted. This would inform the definitions used within the regulations, plus details of any exemptions, for example for smaller businesses, and of the enforcement of the regulations.

## Other consultation proposals

### Circular economy public body

128. The Bill consultation included questions on whether a dedicated circular economy body should be established, asking for evidence to support this, and what its statutory functions should be. There was some split of opinions regarding this proposal, though the majority of respondents were overall supportive of the concept of a public body (60%, this excludes campaign responses). However, of all the closed questions in the consultation, this was the lowest score.

129. Some suggestions were made with regards to the possible functions of such a body, for example, monitoring of statutory targets, increasing public awareness of the circular economy, support for Scottish businesses and research and innovation. Some concerns were raised about the potential for duplication of work if a completely new

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body were operating in this space, for example, in addition to SEPA and ZWS (a private company limited by guarantee). There was also concern about unnecessary additional bureaucracy, administration and costs to taxpayers. Some stakeholders in discussions indicated that there was some value in putting ZWS on a firmer footing as a public body focused on delivery.

130. Organised campaign responses from Friends of the Earth Scotland argued for the establishment of a new circular economy committee to advise the Government on progress and how to meet the targets. It is the Scottish Government's understanding that this would be a completely new, smaller advisory committee, separate from ZWS and along the lines of the existing Climate Change Committee.

131. The Scottish Government has taken into account: the various views of stakeholders about creating a new statutory body; not duplicating existing provision and the existing functions and status of ZWS; as well as considering its own public body policy which sets a high bar on establishing new (particularly small) public bodies. It does not consider that there is a strong rationale for the alternative approach of creating a new body: most of the functions identified in the consultation are already undertaken by ZWS and Scotland already has an independent body, Environmental Standards Scotland ("ESS"), which was recently established to monitor the effectiveness of environmental law in Scotland and public authorities' compliance with it. Legislation governing ESS specifies environmental law as being a provision that is mainly concerned with environmental protection, and our assumption is that any Scottish Government obligations, such as strategy or targets, set in this Bill would be likely to fall within the scope of ESS's work.

132. However, the Scottish Government does believe that there is merit in transitioning ZWS formally into a public body. This would allow for governance arrangements consistent with other public bodies to be put in place, without having an impact on ZWS's delivery capacity or areas of expertise. ZWS would formally comply with key public sector legislation and the Scottish Public Finance Manual, with the CEO formally accountable to the Scottish Parliament for ZWS's activities. At the same time, public body status would allow more opportunity to work towards shared services and efficiencies alongside other public bodies.

133. Recognising that ZWS already works very closely with Government, the Scottish Government requested that the Office for National Statistics ("ONS") consider the classification status of ZWS. On 28 April 2023, ONS announced that it was classifying ZWS as a public sector organisation.<sup>52</sup> As a result, the Scottish Government will be working closely with ZWS in the coming months to ensure the organisation's legal status and governance arrangements reflect the ONS classification. Any required changes will be implemented as part of a considered and collaborative transition. As part of this process, the Scottish Government intends to introduce amendments at Stage 2 to confer on ZWS the relevant powers and duties which apply to other public bodies (e.g. bringing them within the scope of the Freedom of Information (Scotland) Act 2002).

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<sup>52</sup> [ONS announcement about ZWS classification, 28 April 2023.](#)

## Business recycling collection zoning

134. The Circular Economy Bill consultation asked for views about creating an enabling power for Scottish Ministers to give local authorities the ability to create, revoke and enforce mandatory business recycling zones within their boundaries. Business collection zoning involves contractors competing to undertake all commercial waste collection in a particular 'zone', which potentially provides opportunities for greater collaboration, cost savings, service standardisation, reducing traffic, etc.

135. 66% of respondents supported the proposal in the Bill consultation; however, some stakeholders raised significant concerns regarding likely impact, in particular on small and medium sized enterprises in Scotland. A further review of commercial zoning models across the world, completed since the initial consultation, has indicated that there is some potential for both mandatory and voluntary models to deliver improvements in recycling rates, greenhouse gas emission reduction and wider benefits. However, the research did not indicate that mandatory approaches to zoning were more successful than voluntary approaches at increasing recycling. As it stands there is nothing to prevent Scottish Government and/or local authorities supporting the setup of voluntary schemes within the current legislative framework. Without strong evidence to indicate that voluntary approaches would not achieve recycling improvements or that mandatory approaches would be more successful, and given stakeholder feedback, the Scottish Government does not consider there to be sufficient evidence to pursue mandatory zoning as the preferred approach at this stage. Research also highlighted a range of issues that require further consideration, including implementation, costs, planning and contracting for services. As a result, the Scottish Government intends to work with stakeholders to further consider the issue, including the potential to pursue alternative, voluntary approaches, in order to drive further improvements in commercial recycling as part of our Waste Route Map. The Scottish Government intends to work with stakeholders to further consider the issue, including the potential to pursue alternative, voluntary approaches, in order to drive further improvements in commercial recycling as part of our Waste Route Map.

## Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

### Equal opportunities

136. The public sector equality duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities.

137. At this time the evidence does not indicate that any positive or negative impacts have been identified from the introduction of primary legislation as part of the Circular Economy Bill.

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138. However, there is the potential for secondary legislation to have impacts on disabled people and potentially with regard to age, race and disability. These include in relation to proposals for charging for single-use items, the development of measures to improve recycling from households and proposals relating to litter and fly-tipping. These will be considered during the design of proposals for secondary legislation. These include:

- the ability to understand and pay fines may differ in relation to fixed penalty notices (age, disability and race);
- the potential higher impact of a loss of a vehicle if less able to access other forms of transport for provisions relating to the seizure of vehicles (disability);
- accessibility of recycling for enforcement/fines for household recycling (disability, age); and
- accessibility, affordability and suitability of alternative items in relation to charging for single-use items (disability, age).

139. Further details are provided in the Equality Impact Assessment which has been completed and published to coincide with the introduction of the Bill.<sup>53</sup>

## Human rights

140. The Scottish Government considers that the Bill does not give rise to any human rights concerns and complies with the European Convention on Human Rights (“ECHR”).

141. The duty to prepare a circular economy strategy and the powers to set circular economy targets, to introduce charges for single-use items, to impose restrictions on disposal of unsold consumer goods, to prepare a code of practice on household recycling, to set recycling targets for local authorities and to impose public reporting duties for waste and surplus are not considered to have any direct effect on human rights. When the powers are exercised, further consideration would be given to whether the use of the power would engage human rights issues to ensure that any provisions made are ECHR compliant.

142. In relation to the power to introduce fixed penalty notices for householders’ breach of the waste duty of care, the power to introduce fixed penalty notices or civil penalty charges for householders who breach recycling requirements, and the power to introduce penalty charges for the registered keeper of a vehicle for littering from that vehicle, rights under article 6 (determination of civil rights and obligations or of a criminal charge) of the ECHR may be engaged in relation to the enforcement process and any regulations made under these powers will require to be article 6 compliant.

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<sup>53</sup> [Publications - gov.scot \(www.gov.scot\) – search “Circular Economy Bill \(Scotland\) Equalities Impact Assessment \(EQIA\)”](https://www.gov.scot/publications/eia/2023/01/circular-economy-bill-scotland-equalities-impact-assessment-eqia/)

143. In relation to the new offence of breaching the householders' duty of care, the Scottish Government consider this to be article 6 compliant as there are no evidential burdens placed upon the householder. In relation to the power to seize vehicles involved in specified waste crime, the Scottish Government has considered the requirement to provide personal details to authorised local authority or SEPA officers or a constable to be compliant with article 6 as provision is made to ensure that no answer given by a person in relation to such a requirement is admissible in evidence against that person in any proceedings except where the proceedings relate to the obstruction or non-cooperation with an official acting under that section.

144. In relation to the power to search and seize vehicles involved in waste crime, the Scottish Government has considered article 8 (right to respect for private and family life, home and correspondence) of the ECHR and consider these provisions to be article 8 compliant. These provisions pursue the legitimate aim of protecting the environment by giving authorised local authority and SEPA officers powers of search and seizure in relation to vehicles being used, or about to be used in the commission of waste crime. The Scottish Government is satisfied that the provisions are proportionate and necessary in a democratic society.

145. In relation to the power to search and seize vehicles involved in specified waste crime, the Scottish Government has considered Article 1 of Protocol No. 1 (right to enjoyment of one's possessions). Any interference with the right under Article 1 of Protocol No. 1 must be justified by showing that it is "in the public interest and subject to the conditions provided for by law and by the general principles of international law", avoiding arbitrariness, and maintaining a "fair balance" between the general interest of the community and the need to protect the fundamental rights of the individual. The requirement to strike a fair balance as between the demands of the general interest and the requirements of the protection of the individual's fundamental rights necessitates that there must be a reasonable relationship of proportionality between the means employed and the aim pursued. The Scottish Government considers that the tests are met in respect of this policy and that it is compliant with Article 1 of Protocol 1.

## Island communities

146. An Islands Communities Impact Assessment has been completed and published to coincide with the introduction of the Bill.<sup>54</sup> Three issues were identified through the impact assessment. These were:

- The choice for consumers: concerns were raised that retailers may reduce their product range, either to avoid needing to charge for certain items, or to help manage waste or surpluses. There may also be price and availability issues for reusable items.
- Transport: changes to delivery or collection systems may be more difficult to implement or more expensive for island authorities or affected organisations

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<sup>54</sup> [Publications - gov.scot \(www.gov.scot\) – search "Circular Economy Bill \(Scotland\) Island Communities Impact Assessment \(ICIA\)"](https://www.gov.scot/publications/circular-economy-bill-scotland-island-communities-impact-assessment/icia/)

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due to the greater distances involved and use of ferries and the associated time and availability constraints.

- Storage: the ability to store and segregate waste may be hindered by lack of facilities and / or the increased amount of time it could take to remove items off island.

147. A number of comments in the 2022 consultation suggested that the Bill proposals could potentially benefit the islands, with local businesses potentially being well placed to take advantage of any future changes.

148. The Scottish Government understands the need to consider the implications for different parts of Scotland and this will be taken into account when developing regulations and guidance associated with provisions in the Bill.

## Local government

149. Many of Scotland's local authorities responded to the consultation and their representatives participated in consultation events. The most direct impact on local authorities is from the parts of the Bill relating to household recycling, including householder's duty of care, a code of practice on household waste recycling, and targets for waste collection authorities. These represent a package of new powers and responsibilities that will be underpinned by support and investment, such as the £70 million Recycling Improvement Fund,<sup>55</sup> a competitive fund which is enabling local authorities to modernise recycling infrastructure and further promote high quality recycling in their areas. Bids to the Fund are considered by a Board, which includes representation from Scottish Government, COSLA, SOLACE and SEPA. The Scottish Government is committed to working in partnership with COSLA and local authorities in the development of associated regulations, guidance and policy.

150. The financial implications for local authorities are set out in the Financial Memorandum. These represent both potential costs (e.g. for the transition to a mandatory code of practice or administration of penalty charge notices for littering from vehicles) and potential savings (e.g. as a result of reduced clean-up costs for littering or fly-tipping).

## Sustainable development

151. The work of the Scottish Government directly links to the UN Sustainable Development Goal 12: Ensure sustainable consumption and production patterns. Creating sustainable growth is a key part of the Scottish Government's Purpose and the circular economy particularly contributes to the Environment and Economy outcomes under the National Performance Framework. Progress is measured through the carbon footprint and waste generated indicators.

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<sup>55</sup> [Recycling Improvement Fund | Zero Waste Scotland](#)



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152. A Business and Regulatory Impact Assessment (BRIA) has been carried out and is published to coincide with the introduction of the Bill.<sup>56</sup> As the Bill's provisions are generally enabling, there are few direct, immediate financial implications for businesses or individuals. However, it is anticipated that the secondary legislation to bring the changes in force will bring some costs for businesses. As set out in the Financial Memorandum, the most significant costs are likely to be in relation to the mandatory public reporting on food waste and surplus and disposal of unsold consumer goods. In developing the regulations, it is the Scottish Government's intention to ensure that any requirements placed on business, and particularly small businesses, are proportionate.

153. A Strategic Environmental Assessment (SEA) pre-screening report has also been carried out. The relevant Consultation Authorities agreed with the Scottish Government's assessment that the Bill's provisions do not have any direct environmental impacts, given they are primarily enabling in nature. Given the need for further research and consultation on the majority of measures an SEA would be more meaningful at those stages and will be taken forward as part of that development. Respondents to the consultation generally thought that the proposals would have a positive impact on the environment. In particular, four fifths of Scotland's carbon footprint come from the products and services we manufacture, use and throw away. In addition, resource extraction and processing alone cause over 90% of global biodiversity loss and water stress.

154. It is recognised that, after the Bill has been passed, implementation will require the development of subordinate legislation, which will be of interest to businesses and wider stakeholder groups and which will need to be considered carefully for regulatory and environmental impacts. The Scottish Government is committed to continuing to engage with stakeholders on the detail of this work as it develops and to undertaking further BRIAs and/or SEAs if and when necessary.

## Crown Consent

155. It is the Scottish Government's view that the Bill as introduced requires Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign. The Scottish Government's view is that section 9 of the Bill impacts the personal property and interests of the Crown because the power which it contains to require suppliers of goods to charge for single-use items will apply to businesses owned by the Crown in a personal capacity. Crown consent was sought for the similar provision contained in section 88 of the Climate Change (Scotland) Act 2009.<sup>57</sup> The Scottish Government also considers that the new power created by section 8 of the Bill requires Crown consent.

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<sup>56</sup> [Publications - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/bria/circular-economy-bill-2023/) – search “Circular Economy Bill (Scotland) Business and Regulatory Impact Assessment (BRIA)”

<sup>57</sup> [Climate Change \(Scotland\) Act 2009 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2009/12/section/88)

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156. For the source of the requirement for Crown consent, see paragraph 7 of schedule 3 of the Scotland Act 1998,<sup>58</sup> and rule 9.11 of the Parliament's Standing Orders.<sup>59</sup> For further information about the considerations that go into determining whether Crown consent is required for a Bill see Erskine May,<sup>60</sup> the guide to procedure in the UK Parliament.

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<sup>58</sup> [Scotland Act 1998 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>59</sup> [Chapter 9 Public Bill Procedures | Scottish Parliament Website](#)

<sup>60</sup> [Erskine May - UK Parliament](#)



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# Circular Economy (Scotland) Bill

## Policy Memorandum

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