



Law Society
of Scotland

Consultation response

Incineration in the Waste Hierarchy

February 2022



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Environmental Law Sub-committee welcomes the opportunity to respond to Scottish Government's consultation on *Incineration in the waste hierarchy review: call for evidence*¹. We have the following comments to put forward for consideration.

Consultation questions

Q1. What is your name?

Law Society of Scotland

Q2. What is your email address?

AlisonMcNab@lawscot.org.uk

Q3. Which category in the following list best describes you?

vi. Professional body, trade organisation or governing body

Q4. If you are replying on behalf of a business or representative organisation, please provide the name of the organisation/sector you represent, where your business is located, and an approximate size/number of staff (where applicable).

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Q5. If you are an organisation, please be aware that your response may be published with your organisation's name. If you are responding as an individual, please indicate

¹ <https://consult.gov.scot/environment-forestry/incineration-review-call-for-evidence/>

if you give permission for your response to be published, without your name or email address, as part of the review. If there are elements of your response which would wish to remain confidential, please make this absolutely clear within your answer. You can make this clear by writing ‘confidential’ at the start of your response.

N/A

Q6. Does the Review Team have permission to contact you about your response?

Yes, we are happy to be contacted about our response.

Q7 How much capacity do you think we need to build given the current waste produced, managed and disposed of in Scotland, as well as Scotland’s waste and recycling targets? What evidence do you have to support this?

We consider that there are a number of inaccuracies within the capacity gap analysis presented by the Scottish Government which has over-estimated existing waste treatment capacity and under-estimated the likely pipeline capacity. These arise from:

- Over-estimation of treatment capacity at existing Energy from Waste (EfW) sites as the analysis relies on permitted capacity rather than what happens on an operational basis;
- Inclusion of some Mechanical Biological Treatment (MBT) plants which are a pre-treatment for EfW and reduce the amount of waste that moves forward to EfW;
- Insufficient consideration of the efficiency of existing EfW;
- The figures relating to waste which is exported from Scotland and therefore does not need to be dealt with in Scotland appears to be an over-estimate of what is happening in practice;
- We are aware of two sites that have planning permission and finance in place and are likely to be operational by 2025 but have not been included in the analysis.

Fundamentally, the capacity analysis presented in the call for evidence is simply a snap-shot in time and we consider that it would be more useful to have an analysis with longer reach, going beyond the 2025 timeframe. This would allow older plant which may reach the end of its life not long after the landfill ban comes into place, new plant that will be operational in the years not long after the ban and the impact of recycling measures coming into play to be taken account of fully.

We consider that the analysis falsely suggests that Scotland has sufficient residual waste treatment capacity to meet its waste policy objectives (albeit at a later date beyond 2025), at a time when options outside Scotland are likely to become increasingly constrained due to cost implications.

Q8 It is suggested that the development of incineration capacity could lead to a ‘lock-in’ effect which will prevent waste from moving further up the hierarchy to be reused or recycled. What evidence do you have about these valid concerns? How do we prevent this lock-in effect, if it is a real risk?

We are not aware of evidence which indicates a direct relationship between the availability of EfW capacity and recycling rates. There are many factors which influence recycling performance in different areas and that does not necessary accord with whether there is local EfW infrastructure.

Q9 Are you aware of any evidence or data that could be used to improve the capacity analysis?

No comment.

Q10 What treatment options for residual waste should Scotland consider?

We consider that there are three realistic options for the treatment of Scotland's residual waste: EfW, landfill or MBT/refuse derived fuel (RDF) export. We suggest that there are technical reasons for all of those to be part of the mix for the treatment or disposal of residual waste. Fundamentally, there will be some types of waste that still require to be landfilled even after the landfill ban is put in place.

Q11 What emerging technologies are there for small scale residual waste treatment to support remote and island communities?

No comment.

Q12 What data can you share with the Review on the costs of operating any options for managing residual waste in Scotland, especially costs based on real experience?

No comment.

Q13 What data can you share with the Review on the wider costs associated with options for managing residual waste in Scotland, especially where those costs have materialised?

No comment.

Q14 Do you have any evidence that the Review should consider in comparing the carbon impacts of options for residual waste treatment? E.g. compositional analyses of waste streams, case studies, or reports on carbon impact.

No comment.

Q15 What other aspects should the Review consider when assessing the environmental impacts of residual waste treatment options?

There are a number of links between the management and treatment of waste and the wider environmental and energy policy position and related targets. Those targets need to be considered when the impacts of waste treatment are being reviewed and decided upon.

Q16 Do you have any evidence that the Review should consider in comparing the other (non-climate) environmental risks of options for residual waste treatment in Scotland?

No comment.

Q17 Do you have evidence or experience of the community impacts (positive and negative) of different residual waste treatment options, e.g. landfilling compared to incineration, that you could share?

No comment.

Q18 Do you have evidence (reports, studies, data) that could help to inform consideration of the public health implications of different treatment options?

No comment.

Q19 What are the main considerations in deciding where capacity should be located, and in what form?

No comment.

Q20 Do you have evidence to support consideration of options to decarbonise the current residual waste treatment infrastructure in Scotland?

No comment.

Q21 Do you have evidence of the main barriers and drivers of decarbonisation of this infrastructure?

No comment.

For further information, please contact:

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