



Law Society
of Scotland

Consultation response

Delivering Scotland's circular economy: a
consultation on proposals for a Circular Economy Bill

August 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 the Scottish Government's consultation on *Delivering Scotland's circular economy: a consultation on proposals for a Circular Economy Bill*¹. We have the following comments to put forward for consideration.

General remarks

We welcome the proposals for legislation to develop Scotland's circular economy to help facilitate the development of an economy which reduces the demand for raw materials, designs products to last, while encouraging reuse, repair and recycle. We note that this consultation builds on measures included in the Scottish Government's 2019 consultation on *Developing Scotland's Circular Economy* and introduces a range of new proposals, including strategic interventions, which is welcomed.

We responded to the 2019 consultation² and continue to support our position as laid out in our response. In particular, we noted that while a strong focus on individual policies (for example, in relation to use of takeaway cups by individuals) were transitional measures, this focus does not represent the overall concept of the circular economy which requires to address issues of demand and design. We noted that alternative business models may also be able to play a role in achieving a circular economy and suggested that consideration should be given to how funds that are raised by the measures set out in the earlier consultation will be used to further support a circular economy.

¹ <https://consult.gov.scot/environment-forestry/scotlands-circular-economy-legislation/>

² <https://www.lawscot.org.uk/media/368103/19-12-19-env-consultation-circular-economy-proposals.pdf>

Consultation questions

1. Do you agree there should be a duty on Scottish Ministers to publish a Circular Economy Strategy every 5 years?

A) Yes

2. Do you have any further thoughts on a statutory duty to produce a Circular Economy Strategy?

We agree that this will strengthen the strategic approach to a circular economy, providing an opportunity to review and refresh national objectives.

3. Do you think we should take enabling powers to set statutory targets in relation to the circular economy?

C) Neither agree nor disagree

4. Do you have any comments in relation to proposals to set statutory targets?

We consider that statutory targets can help focus attention and efforts, and therefore could be a useful tool to achieve greater ambition. However, it is important that any such targets would be both realistic and ambitious. Any aspirations, whether statutory targets or not, must be followed through with suitable resources and effort in order to drive action.

In addition, it is not clear what form such targets would take. Would they align with EU targets? We note that Zero Waste Scotland research notes a lack of consistent approach and highlights that consumption-based targets are rare. A monitoring framework, such as the materials flows accounts concept, could be useful in identifying which sectors and resources need further focus and support.

If enabling powers are to be taken to set statutory targets, we suggest that these be subject to a consultation requirement so as to ensure targets are set with relevant input from those who will be affected.

5. Should a dedicated Circular Economy public body be established?

B) No

6. Please provide evidence to support your answer to question 5?

We note that there are already multiple public bodies with remits engaged in this area, including Zero Waste Scotland, SEPA, local authorities, and Scottish Enterprise. We consider that the functions which would be covered by a dedicated Circular Economy body could be appropriately covered by expanding the remit and resources of an existing public body. Creating another body may further divide responsibilities and is likely to bring additional cost when compared to expanding the remit and resources of an existing body.

It is important that there is clear leadership, responsibility and oversight for issues associated with the circular economy. We therefore suggest that a decision be taken as to which existing body is to lead in this area and ensure that the relevant body has suitable convening powers and accountability to undertake its work, adjusting the powers and duties of other bodies as required.

7. If a Circular Economy public body were to be established, what statutory functions should it fulfil?

We suggest the following functions be covered:

- Provision of expert advice – including technical, regulatory and financial
- Research function - including collaboration and co-ordination of academia, business and public sector; support of innovation hubs, industry cluster co-ordination or commissioning
- Education and standard setting

8. Do you agree that the Scottish Government should have powers to ban the destruction of unsold durable goods?

A) Yes

9. Do you have any comments in relation to proposals to ban the destruction of unsold durable goods?

This would align with EU measures to ban the destruction of unsold durable goods. If the waste hierarchy is to be applied, and measures taken in terms of the existing Duty of Care legislation, consideration may have to be given as to whether such goods are waste, or at what point they would become waste and therefore subject to the duty of care requirements.

10. Are there particular product categories that you think should be prioritised?

We consider it would be appropriate to prioritise categories of product with a high raw material or energy input, for example where rare minerals/similar have been used in production or where there is likely to be high product turnover due to trends rather than functionality of the product itself. This may include clothes and electrical items.

11. Are there product categories that should be excluded from such a ban?

We suggest that any items which are inherently unsafe or unstable which cannot readily be made safe for storage, repurposing or recycling should be excluded.

We suggest that research on second tier effects and unintended consequences/incentives which may have arisen from such bans elsewhere (for example, in France) should be undertaken before implementation of any such ban. With this in mind, a phased product or sectoral approach may be appropriate.

12. The previous consultation showed broad support for the proposal that Scottish Ministers should have the power to set charges for environmentally harmful items, for example single-use disposable beverage cups. Is there any new context or evidence that should be taken into account in relation to this proposal?

In our response to the 2019 consultation, we highlighted the need for clarity around how ‘environmentally harmful items’ will be defined and how the charge will be levied. We also question what the charge would be used for. We note that consideration should be given to the economic impact of these measures at a time of increased tax burdens and ‘cost of living’ impacts on household disposable income.

13. Do you have any further comments on how a charge on environmentally harmful items should be implemented?

We have no further comments.

14. The previous consultation showed broad support for the proposal that Scottish Ministers should have the power to require mandatory public reporting of unwanted surplus stock and waste. Is there any new context or evidence that should be taken into account in relation this proposal?

We have no new context or evidence to produce however, we suggest that careful consideration is given to the purpose and benefits of reporting as against the administrative burdens of doing so. It is important that any such reporting is focussed on driving greater action to create a circular economy.

15. The previous consultation showed broad support for the proposal that food waste should be a priority for regulations. Is there any new context or evidence that should be taken into account in relation this proposal?

We note that there appears to have been a growth in recent years of the following factors which may merit consideration:

- the increase in the number of food banks and charitable providers who would be able to accept food, as well as the increased number of people having to rely on them
- steps taken by producers/retailers to reduce food waste including the reduced pack sizes, reduction of bulk-buy offers, removal of non-essential “best before” dates on products, sale of ‘wonky’ fruit and vegetable products, near expiry date discounts, and retailer and charity/foodbank collaborations on unsold products.

16. Are there other waste streams that should be prioritised?

We suggest that technological devices including handheld electronics, plastic waste and clothing might be prioritised.

17. The previous consultation showed broad 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. Is there any new context or evidence that should be taken into account in relation to the proposal?

Matters for consideration include:

- the collapse in global recycling markets and refusal of some destination countries to accept waste exports
- changes in supply of clothing, such as reported in press coverage of impacts on the second hand clothes market due to oversupply of 'fast-fashion' products
- technological advances to allow reuse and reprocessing of plastic waste – this may present opportunities to reduce or eliminate export emissions and capture residual value in Scotland.

18. The previous consultation showed broad support for the principle that there should be greater consistency in household recycling collections. Is there any new context or evidence that should be taken into account?

In our response to the 2019 consultation, we supported greater consistency – there does not seem to have been progress in achieving this consistency to date, even in terms of contents and colour coding of bins. We recognise that consistency may be most swiftly achieved if market driven.

We note that the introduction of the Deposit Return Scheme may be relevant as a means of providing another route for the recycling of appropriate bottles.

19. The previous consultation showed broad support for the principle of moving away from the current voluntary approach to Scotland's Household Recycling Charter towards a more mandated approach, whereby implementation of the Charter and its supporting Code of Practice becomes a statutory obligation. Is there any new context or evidence that should be taken into account?

We have no comments.

20. Do you agree that Scottish Ministers should have the power to introduce statutory recycling targets for local authorities?

C) Neither agree nor disagree

In our response to the 2019 consultation, we noted that a greater evidence base was required to explore the issues regarding household recycling fully. We consider that this remains the case and would help to assess whether statutory recycling targets would be beneficial.

21.If you agree with Q.20, do you agree that Scottish Ministers should have the power to introduce and set financial incentives for local authorities to meet these targets, or penalties should these targets not be met?

C) Neither agree nor disagree

Not applicable as we have selected option C above.

22.Please explain your answer

We consider that if Scottish Ministers are to have the power to introduce statutory recycling targets, then we broadly consider it would be appropriate for there to be incentives as well as penalties in order to ensure that the targets would be effective. However, there is a risk that some authorities will be disproportionately affected by this with budget effectively being moved from providing a service to paying penalties and therefore we suggest careful consideration is required as to how these might be set.

23.The previous consultation showed broad agreement that householders' existing obligations are not sufficient. Is there any new context or evidence that should be taken into account?

We consider that the appropriate focus should be on improving performance. Given the differences in motivation and compliance among the public, for example, generational, economic and geographic variations, a legal obligation may be hard to enforce. We consider that widespread public education and awareness measures may be the most effective means of improving recycling. In particular, we note that the public will have to become aware of the deposit return scheme as it comes into effect.

24.Do you agree with the principle that local authorities should have more powers to enforce recycling requirements?

C) Neither Agree nor Disagree

25.Please add any additional comments.

We suggest that this requires careful consideration.

While we recognise that problems arise from failures on the part of householders in managing their waste, it is important to recognise that this can be due to a lack of awareness particularly given the inconsistency between local authorities as to recycling arrangements and/or lack of suitable infrastructure/resources. We consider that greater co-ordination of local authorities arrangements for recycling would be of assistance in this regard.

We recognise that for some, cultural and behaviour change will likely be required to improve compliance with recycling requirements. Consideration should be given as to how enforcement may be actively encouraged other than by way of penalties, for example, by awareness raising public campaigns and opportunities for engagement with communities and businesses, perhaps with associated incentives.

Consideration would be required as to whether or not the imposing of statutory notices would be an effective or proportionate tool, whether with a criminal sanction for non-compliance or not. This can be a particularly challenging matter where communal facilities are in use as householders who are complying with the relevant requirements may be adversely impacted by those who are not.

Consideration might also be given as to whether change could be driven by amendments to Building Regulations to allow for recycling arrangements to be appropriately accommodated within building design.

26. Are there further powers, if any, for Scottish Ministers, and/or local authorities, that should be considered in order to incentivise positive household behaviours, to support waste reduction and increased recycling in Scotland?

Smaller bins and less frequent bin collections are important measures mentioned in the consultation paper but we note that these are already in place in a number of areas.

27. Are there any other legislative measures that you consider Scottish Government should take to strengthen recycling and reuse at a household level, helping accelerate the rate and quality of household recycling in Scotland?

We have no comments.

28. Please add any additional comments.

In our response to the 2019 consultation, we highlighted a need for more data to explore the issues in relation to household recycling fully and to inform effective policy in this area. We suggest that a greater evidence base should be formed to inform the effective policy required for effect behavioural change.

29. Do you agree with the principle of Scottish Ministers, and local authorities if appropriate, taking on the necessary powers to explore and trial commercial waste zoning approaches in Scotland?

A) Yes

30. Please add any additional comments.

We agree with this in principle. From what is set out in the consultation, we consider that this would be worth exploring and trialling in terms of providing a more efficient way of dealing with this waste stream and saving costs. We suggest that views of businesses and commercial organisations will need to be considered.

31. The previous consultation showed broad support for the proposal that Scottish Ministers should have the powers to introduce a new fixed penalty regime for littering from vehicles. Is there any new context or evidence that needs to be taken into account?

We note that the levels of such penalties would need to be aligned in terms of those applying to local authorities and SEPA. We consider that the outcome of the Scottish Government's consultation on a National Litter and Flytipping Strategy will be relevant³ and we refer to our comments in response⁴ to that consultation.

32. The previous consultation showed broad support for the principle that the registered keeper of a vehicle bears primary responsibility for offences such as littering from or in relation to their vehicle (for example by passengers or people using that vehicle at that time). Is there any new context or evidence that needs to be taken into account?

We have nothing further to add to our comments made in response to the 2019 consultation.

33. The previous consultation showed broad support for the principle that enforcement authorities should be given powers to seize vehicles linked to waste crime. Is there any new context or evidence that should be taken into account?

We have nothing further to add to our comments made in response to the 2019 consultation.

34. Taking into account the accompanying EQIA, are there any additional likely impacts the proposals contained in this consultation may have on particular groups of people, with reference to the 'protected characteristics' listed above?

We have no comments.

35. Taking into account the accompanying BRIA, do you think that the proposals contained in this consultation are likely to increase or reduce the costs and burdens placed on any business or sector?

We have no comments.

36. Taking into account the accompanying CRWIA, do you think that the proposals contained in this consultation are likely to have an impact on children's rights and wellbeing?

We have no comments.

³ <https://consult.gov.scot/environment-forestry/national-litter-and-flytipping-strategy/>

⁴ <https://www.lawscot.org.uk/media/372577/22-03-31-env-consultation-national-litter-and-flytipping-strategy.pdf>

37. Taking into account the accompanying ICIA, do you think that the proposals contained in this consultation are likely to influence an island community significantly differently from its effect on other communities in Scotland?

We have no specific comments beyond noting that there could be impact on island communities in terms of the challenges already faced in dealing with island waste.

38. Taking into account the accompanying Fairer Scotland Assessment summary template, do you think that the proposals contained in this consultation are likely to have an impact in relation to the Fairer Scotland Duty?

We have no comments.

39. Do you think that the proposals contained in this consultation are likely to have an impact on the environment?

We agree that there should be no impact from the Bill itself on the environment and note that future legislation is to be subject to more robust and detailed SEA Impact assessment.

40. Do you have any other comments that you would like to make, relevant to the subject of this consultation, that you have not covered in your answers to other questions?

We have no further comments.

For further information, please contact:

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