



Law Society  
of Scotland

# Consultation Response

## Circular Economy (Scotland) Bill: Call for Views

1 September 2023



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Environmental Law sub-committee welcomes the opportunity to consider and respond to the Scottish Parliament call for views on the Circular Economy (Scotland) Bill.<sup>1</sup> The sub-committee has the following comments to put forward for consideration.

## General Comments

We greatly welcome the introduction of the Bill to develop Scotland's circular economy and 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 responded to the previous consultations on the proposals prior to the introduction of the Bill, being *Delivering Scotland's circular economy: a consultation on proposals for a Circular Economy Bill* (August 2022)<sup>2</sup> and *Developing Scotland's Circular Economy* (December 2019)<sup>3</sup>. We continue to support our position as laid out in the responses.

We have included specific comments to the questions in the call for views below. As a general observation, we would welcome discussion of the environmental principles which will become binding on the Scottish Government under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

As noted below, we would also welcome greater clarity and consideration on the operation of the UK Internal Market Act 2020 (noting that the Policy Memorandum is silent on this point), which will have a massive impact on how many proposals can operate. We consider this to be a notable omission from the relevant papers on the Bill.

In respect of enforcement or penalties under the Bill, we consider that any new provisions should take advantage of or be directly aligned with other existing ones for imposing penalties, so that we do not see a fragmentation with lots of broadly similar schemes but with minor differences in detail which can cause confusion and uncertainty.

<sup>1</sup> <https://yourviews.parliament.scot/nzet/circular-economy-bill/>

<sup>2</sup> <https://www.lawscot.org.uk/media/373401/22-08-22-env-consultation-on-proposals-for-a-circular-economy-bill.pdf>

<sup>3</sup> <https://www.lawscot.org.uk/media/368103/19-12-19-env-consultation-circular-economy-proposals.pdf>

## Circular Economy Strategy

### 1. Is a statutory requirement needed for 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.

### 2. Is there anything else you would like to say about a circular economy strategy? (Section 1 – 5)

We note the provisions of section 1(5). We consider that if the biodiversity crisis is to be given equal weight with the climate crisis, there could be explicit mention of the Biodiversity Strategy as a policy expressly to be taken into account here.

### 3. How should circular economy strategies be aligned with climate change plans and other environmental targets (including biodiversity goals)?

We have no comments to make.

## Circular Economy Targets

### 1. Are statutory circular economy targets needed?

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. In addition, it is not clear what form such targets would take. We note that a monitoring framework, such as the materials flows accounts concept, could be useful in identifying which sectors and resources need further focus and support.

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

We welcome the requirement for Scottish Ministers to consult affected persons and the general public before introducing targets under section 6(1).

We would highlight that experience of climate targets shows their value in identifying progress, but also that they offer no guarantee that the target will be met. The reporting obligations, including on “catch-up” plans, are an appropriate way of checking on and driving compliance, but the limitations must be recognised.

## **Restrictions on the disposal of unsold consumer good**

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

We welcome these provisions. We note more widely here the omission of discussion of the UK Internal Market Act 2020, which we consider to be particularly significant in relation to these provisions.

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

In respect of the categories of products which may be excluded or prioritised when formulating any regulations pursuant to powers inserted at section 8(2) of the Bill, 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.

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.

We also note that consideration will be required as to capacity constraints of third sector/charities to receive the relevant products (if this is ultimately intended under the proposals).

## **Charges for single-use items**

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

We note that the detail of any regime made under such regulations is not yet known, and would welcome further information on the relevant definitions and how the charge will be levied. We similarly note the omission of discussion of the UK Internal Market Act 2020, which we consider is also particularly significant in relation to these provisions.

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

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.

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

We have no comments to make.

## Household waste

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

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 financial incentives. This can be a particular 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.

As general comment applicable to sections 10, 11 and 14, we question whether it is necessary to enact specific new provisions for fixed penalties rather than including the offences within existing provisions. We consider that it would be preferable to use the established schemes consistently across different areas, rather than having a proliferation of distinct schemes which over time may get out of step.

### **2. Is there anything else you would like to say about household waste and enforcement of household waste requirements? (Sections 10 & 11)**

It is important that there is clarity and certainty in the law in order that individuals can guide their conduct appropriately. Any changes to the policy and legislative framework on this matter would require an appropriate awareness-raising campaign so as to make individuals aware of the revised requirements, particularly in relation to who is an "authorised person" under the proposals.

### **3. Is further action needed, either within or outwith the Bill, to tackle flytipping effectively? If so, what action is needed?**

We have no comments to make.

## Household waste recycling – Code of Practice and local targets

### **1. Should the Code of Practice on household waste recycling (currently a voluntary code) be put on a statutory footing?**

We consider that any proposed change should be underpinned by a robust evidence base.

## **2. Is there anything else you would like to say about a Code of practice on household waste recycling? (Section 12)**

As currently drafted, section 44ZZA(1) of the Environmental Protection Act 1990 (as inserted by section 12(2) of the Bill) provides that the code of practice will set out the Scottish Ministers' expectations of local authorities. We suggest that it would also be appropriate for an express requirement to be included for local authorities to have regard to the code of practice.

## **3. Should Scottish Ministers have powers to set targets for local authorities relating to household waste recycling?**

We similarly consider that any change here should be supported by a robust evidence base. 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.

## **4. Is there anything else you would like to say about targets for local authorities relating to household waste recycling? (Section 13)**

We have no comments to make.

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

We have no comments to make.

## **Littering from vehicles**

### **1. Should civil penalties for littering from vehicles be introduced?**

We agree that there should be better enforcement of section 87 of the Environmental Protection Act 1990. We note the policy considerations in the related documents published alongside the Bill highlighting the gap in enforcement where a person who has littered from a vehicle cannot be identified.

The issuing of civil penalty charges is certainly a method to support compliance with the legislation. However, we consider this approach also needs to be linked to raising awareness of the importance of not littering from vehicles as well as the costs of removal. This should be carried out in tandem with any strengthening of the penalty regime as proposed.

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

We note that the Bill provides powers for the Scottish Ministers to make provision for a number of aspects by regulations. One of these relate to exemptions from liability (section 88C(5)(j) of the Environmental

Protection Act 1990, as inserted by the Bill). We consider there to be a number of relevant scenarios which merit consideration, for example hired-vehicles, taxis, and private hire vehicles. We also note that there may be merit in considering the position in relation to automated vehicles in order to help futureproof the provisions.

## **Enforcement powers in respect of certain environmental offences**

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

We generally support this proposal.

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

We have no comments to make.

## **Reporting on waste and surpluses**

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

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.

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

We have no comments to make.

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

We have no comments to make.

## **Net zero**

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

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

We have no comments to make.



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

We have no comments to make.

### **General/aspects not in the Bill**

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

We have no comments to make.

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

We have no comments to make.

### **Resources and Waste Common Framework**

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

- a) a mixture of devolved and reserved powers in relation to tackling consumption and areas such as product standards*
- b) existing UK-wide schemes such as developments with Extended Producer Responsibility*
- c) how circular economy and waste policy is influenced by the UK Internal Market Act 2020 and relevant Common Frameworks.*

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

We would welcome greater clarity and consideration on the operation of the UK Internal Market Act (noting that the Policy Memorandum is silent on this point), which will have a massive impact on how many proposals can operate. We consider this to be a notable omission from the relevant papers on the Bill.



**For further information, please contact:**

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