

Circular Economy (Scotland) Bill

Business and Regulatory Impact Assessment (BRIA)

May 2022



Scottish Government
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Title of Proposal: Circular Economy Bill

1. This document is the Business and Regulatory Impact Assessment (BRIA) for the proposed Circular Economy Bill.

Purpose and Intended Effect

Background

2. In September 2019, the Scottish Government committed to a Circular Economy Bill which would advance Scotland's ambitions for the circular economy through measures aimed to encourage the reuse of products and reduce waste generation. Due to the ongoing Coronavirus pandemic, the implementation of the bill was postponed in 2020. The Scottish Government committed to bring forward a revised Circular Economy Bill during the current parliamentary period.
3. The term 'circular economy' was first coined in Pearce and Turner's study "Sustainable Economic Development", which emphasised the interlinkages between the economy and the environment, whereby the conventional economic paradigm, based on utilitarian cost-benefit analysis, is modified to allow for the concept of intergenerational equity¹. A circular economy is, in essence, a divergence from the traditional "take, make, waste" linear economy with open-ended cycles of production, to a closed loop where waste is minimised or transformed back into inputs, and value is created and held within the economic system for as long as possible. The overall objective of a circular economy is to reduce the economic production-consumption system's raw material and energy throughput and costs². In addition to this overall objective is a more general desire to achieve a better balance and harmony between economy, environment, and society³.
4. A circular economy is based on three principles which are driven by the desire for better design, according to the Ellen MacArthur Foundation⁴. First, is the elimination of waste and pollution through thinking about waste and pollution as flaws in the design of products rather than inevitable by-products of production. This change in thinking can lead to waste and pollution not being created in the first place. Second, is to circulate products and materials which already exist in the system. Products can be better designed to be reused,

¹ [Turner, R.K., 1990. The Ethical Foundations of Sustainable Economic Development. Int. Inst. Environ. Dev.](#)

² [Korhonen, J., Honkasalo, A., Seppala, J. \(2018\) "Circular economy: The concept and its limitations". Ecological economics. 143. 37-46.](#)

³ [Ghisellini, P., Cialani, C., & Ulgiati, S. \(2016\). "A review on circular economy: the expected transition to a balanced interplay of environmental and economic systems." Journal of Cleaner Production, 114, 11-32.](#)

⁴ <https://ellenmacarthurfoundation.org/topics/circular-economy-introduction/overview>

repaired, or remanufactured. Through this, products should be able to be kept in circulation, so they do not end up in landfill. Third, is to regenerate nature by returning nutrients to soil and other ecosystem, so we can enhance natural resources. This is based on the principle that there is no concept of waste in nature.

5. The aim of a circular economy is to reduce the demand for raw materials in products; to encourage reuse, repair, and remanufacture by designing and selling products and materials to last as long as possible; and to recycle waste and energy to maximise the value of any waste that is generated.
6. The 2021/22 Programme for Government published by the Scottish Government, titled *A Fairer, Greener Scotland*⁵, makes a commitment to ‘a circular economy for a zero waste nation’. A key driving force of this commitment will be to bring forward a Circular Economy Bill later in the current parliamentary session. The bill will aim to help facilitate the development of a Scottish economy which reduces demand for raw materials; designs products to last as long as possible; and encourages reuse, repair, and recycling.
7. Prior to the commitments of the current Programme for Government, the Scottish Government published *Making Things Last: A Circular Economy Strategy for Scotland*⁶ in 2016. The strategy integrated key elements of the *Zero Waste Plan*⁷ from 2010, and *Safeguarding Scotland’s Resources*⁸ from 2013. The strategy splits Scotland’s zero waste and resource efficiency agenda across the themes of:
 - Environment – cutting waste and carbon emissions and reducing reliance of scarce resources;
 - Economy – improving productivity, opening up new markets and improving resilience; and;
 - Communities – more, lower cost options to access the goods we need with opportunities for social enterprise.

Objectives

8. The objectives of the Circular Economy Bill can be summarised as:
 - Reduction in material use from consumption
 - Reducing carbon and resource footprint

⁵ <https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/documents/>

⁶ <https://www.gov.scot/publications/making-things-last-circular-economy-strategy-scotland/>

⁷ <https://www.gov.scot/publications/scotlands-zero-waste-plan/>

⁸ <https://www.gov.scot/publications/safeguarding-scotlands-resources-blueprint-more-resource-efficient-circular-economy/>

- Maximising economic opportunities
 - Reducing waste
 - Increasing recycling rates and quality of recycle
 - Reducing litter
9. Work concerning building the circular economy in Scotland directly relates to *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, in particular, contributes to the Environment and Economy outcomes under the National Performance Framework (NPF). Progress on the NPF is measured through the carbon footprint and waste generated indicators⁹.
10. On 31 October 2019 the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 received Royal Assent. Building on the Climate Change (Scotland) Act 2009, the 2019 Act sets a new target for net-zero emissions of all greenhouse gases by 2045. The act also sets new interim reduction targets of all greenhouse gases in 2020 (56%), 2030 (75%) and 2040 (90%). Implementing the policies proposed for the circular economy bill will contribute to delivering the net-zero emissions target.
11. In May 2018 the European Commission approved the Circular Economy Package legislation which aims to move economies towards adopting more circular approaches. In March 2020 the European Commission adopted the Circular Economy Action Plan¹⁰. The action plan includes a balanced mix of voluntary initiatives and regulatory actions targeting production, consumption, waste management and secondary raw materials. It also identifies five priority sectors: plastics, food waste, biomass and bio-based products, critical raw materials, and construction and demolition.

Rationale for Intervention

12. The proposed content and rationale for the Bill is summarised in table 1 below.

⁹ <https://nationalperformance.gov.scot/>

¹⁰ https://ec.europa.eu/environment/strategy/circular-economy-action-plan_en

Table 1: Description of circular economy bill proposals and rationale for intervention

Proposal	Description	Rationale
<p>Proposal 1: Circular Economy Strategy</p>	<p>Duty on Scottish Government to publish or refresh a circular economy strategy at a given timescale (e.g. every five years), including:</p> <ul style="list-style-type: none"> • Development of an indicator suite and/or targets to reduce consumption of materials • A requirement to be placed either on businesses or at the sector/material level to measure and then reduce material use in production of goods 	<p>Strengthens a strategic approach by placing a duty on Scottish Ministers to publish or refresh a Circular Economy Strategy every 5 years, which would bring together policies beyond legislation and give a clear indication of priority sectors and direction of travel for businesses and wider stakeholders. This will provide valuable information such as improving the knowledge of particular consumption challenges and allowing better informed decisions by businesses and consumers. It will encourage resource intensive industries to reduce their resource use in a systematic way.</p>
<p>Proposal 2: Statutory targets – consumption reduction, reuse and recycling</p>	<p>Powers to introduce statutory targets to tackle consumption reduction as well as other aspects of the circular economy, including reuse.</p>	<p>Setting targets will create a focus for action and maintain alignment with the direction of EU policy</p>
<p>Proposal 3: Establishment of a circular economy public body</p>	<p>Powers to establish a dedicated circular economy body committed to the circular economy agenda and to working with the Scottish Government to realise national and international ambitions for the circular economy.</p>	<p>Exploring the possibility of a new circular economy body to deliver circular economy policies within established frameworks of governance and accountability</p>

<p>Proposal 4: Measures to ban the destruction of unsold durable goods</p>	<p>Powers to introduce measures to ban the destruction of unsold durable goods. This could be a new requirement placed on businesses, or could be added to businesses' waste duty of care.</p>	<p>Signal to businesses to plan more carefully when buying stock, to ensure they are not penalised for environmentally irresponsible stockpiling of goods during busy times and throwing away stock during quiet times. Aim is to reduce the volume of business waste going to landfill and incineration.</p>
<p>Proposal 5: Environmental charging for single use items.</p>	<p>Powers to introduce charges on items that are harmful to the environment and that can be replaced with sustainable alternatives (for example, single-use disposable cups).</p>	<p>Existing charges, such as single-use carrier bags, demonstrate that charges can result in substantial reductions in item use. Research from the Expert Panel on Environmental Charging and Other Measures (EPECOM) showed a 20p charge on single-use coffee cups would be sufficient to change the behaviour of 49% of the population.¹¹</p>
<p>Proposal 6: Mandatory reporting of waste and surplus</p>	<p>Powers to make reporting of unwanted surplus stock and waste of specified materials mandatory for businesses.</p>	<p>More comprehensive publicly available data may allow for more effective pressure on businesses to reduce waste.</p>
<p>Proposal 7: Strengthening the approach to household recycling collection services</p>	<p>Powers to place further requirements on local authorities regarding household collection services in order to increase rates and quality of household recycling including statutory guidance and mandating Scotland's Household Recycling Charter.</p>	<p>These powers are intended to increase the rate and quality of household recycling. This will also increase the economic value that can be gained from materials</p>

¹¹ [Report of the expert panel on environmental charging and other measures: recommendations on single-use disposable beverage cups, EPECOM, 2019](#)

<p>Proposal 8: The role of targets to support recycling performance</p>	<p>Powers to enable Scottish Ministers to set recycling targets (including recycling, preparation for reuse and composting) for local authorities, with the potential to introduce financial incentives or penalties should the targets not be met.</p>	<p>Currently recycling performance varies significantly between local authorities. Recognising that that service providers must have the tools available to meet the required standard, in line with high performing nations and regions, this measure will seek to drive up performance across local authorities.</p>
<p>Proposal 9: The Duty of Care for householders</p>	<p>Powers to increase obligations on householders to meet recycling requirements.</p>	<p>Improved recycling behaviours by householders will reduce the environmental damage of materials being sent to landfill or incineration and increase the value that can be obtained from recycled materials.</p>
<p>Proposal 10: Incentivising waste reduction and recycling (households)</p>	<p>Powers to enable Scottish Ministers (and/or local authorities) to incentivise waste reduction and recycling (households)</p>	<p>Analysis of high performing recycling systems around the world¹² suggests that the highest performing systems combine stretching local targets, comprehensive collections, steps to disincentivise or reduce residual waste production and collection, and other incentives such as extended producer responsibility schemes. Evidence suggests householders should be encouraged to minimise residual waste to support recycling rate improvements.</p>

¹² [Eunomia report, Review of High Performing Recycling Systems, 2021](#)

<p>Proposal 11: Business recycling collection zoning</p>	<p>Powers to allow local authorities to create zoning areas for commercial waste collections.</p>	<p>Rationalised commercial collections will reduce vehicle movements and result in reduced environmental impacts (e.g. noise, pollution, emissions) from commercial waste collections. Evidence suggests that businesses could save up to 40% by collaborating on service procurement alongside container and collection optimisation¹³</p>
<p>Proposal 12: New penalty for littering from vehicles</p>	<p>Powers to make littering from a vehicle an offence for the registered car owner. This would be a new enabling power that will allow a fixed penalty notice to be issued to the registered keeper of a vehicle when a littering offence has been committed from that vehicle.</p>	<p>Making it easier to issue fines for littering from vehicles should act as a greater deterrent against littering offences.</p>
<p>Proposal 13: Seizure of vehicles</p>	<p>Powers to seize vehicles linked to waste crime.</p>	<p>Strengthening powers to disrupt waste crime operations by the seizure of implicated vehicles.</p>

¹³ [Extended Producer Responsibility for Packaging consultation \(2021\)](#)

Consultation within Government

13. This consultation paper has been developed by the Scottish Government. A wide range of directorates within the Scottish Government, agencies and non-departmental public bodies have been consulted during the development of the bill, including:
- Economic Development Directorate
 - Environment and Forestry Directorate
 - Rural and Environmental Science and Analytical Services Division
 - Scottish

Public Consultation

Environment Protection Agency

- Zero Waste Scotland These proposals will be subject to a public consultation running from 30 May 2022 to 22 August 2022.

Business

14. Businesses and business groups will be included as part of the public consultation. Full impact assessments will be produced if and when associated strategies or regulations are being developed

Option 1: No policy change – business as usual

15. Business as usual is the baseline against which the costs and benefits of the implementation of the new Circular Economy Bill will be assessed.
16. This baseline accounts for policies and regulation that are expected to come into force and that will impact on the proposed policy options covered in the Circular Economy Bill. Included are: the biodegradable municipal waste landfill ban (2025), the Deposit Return Scheme for Scotland (2023) and the reformed packaging producer responsibility system (2024).
17. Under this scenario, it is assumed that the current trajectory of a circular economy in Scotland would remain unchanged. The costs associated with managing the waste created by a linear economy would continue to be borne by public bodies, businesses, and wider society.
18. Many of the negative environmental externalities associated with the linear economy will continue to remain undervalued.

Costs and Benefits (no policy change)

19. No additional financial costs or burdens will be placed on local authorities and enforcement bodies in Scotland. The cost of waste and its environmental externalities will continue to be borne by public bodies, businesses, and communities.

20. Detailed analysis of the costs and benefits associated with the specific interventions will be presented in separate impact assessments, if and when associated strategies or regulations are being developed.

Option 2: Implementation of Circular Economy Bill Provisions

21. The proposals within the Circular Economy Bill are focused on enabling powers to make future regulations. At the point when detail of the regulations or related provisions are being developed, full impact assessments would be required to be undertaken. Provisions under consideration are set out above.
22. Through the Equalities Impact Assessment process, we will work with different groups across society to consider impacts on medical, health and wellbeing, as well as independent living.¹⁴

Sectors and Groups affected

23. The following sectors and groups would be directly or indirectly impacted by the Circular Economy Bill proposals:
- Local Authorities
 - Households
 - Scottish Environment Protection Agency
 - Manufacturers, distributors and retailers
 - Online marketplaces
 - Consumers
 - Third Sector
 - Waste Management Sector
24. At this stage it is not apparent to what extent different sectors and groups would be impacted. The results from the public consultation process will be used to inform our understanding in this area and a detailed analysis of how these groups are impacted by the specific interventions presented in separate impact assessments will be undertaken if and when associated strategies and regulations are being developed.

Costs and Benefits (Implementation of Circular Economy Bill Proposals)

25. Society may benefit from a reduction in the volume of waste generated through preventative measures, such as an overall reduction in consumption of resources, and from a more effective and efficient waste management processes. This should improve local environments and neighbourhoods and reduce the negative environmental impacts of waste entering the terrestrial and marine environments.

¹⁴ <https://www.gov.scot/publications/literature-review-impact-assessment-governments/pages/2/>

26. Costs associated with the introduction of the proposed measures may include additional enforcement costs for public bodies, administrative costs for businesses and any changes as a result of the proposed review of current household waste and recycling charging, such as garden waste collections.
27. Detailed analysis of the costs and benefits associated with the specific interventions will be presented in separate impact assessments if and when associated strategies and regulations are being developed.

Scottish Firms Impact Test

28. Stakeholders from all affected businesses will be consulted on if and when associated strategies or regulations are being developed in the future.
29. Where appropriate, up to 12 businesses of varying size will be consulted and the results published in the appropriate impact assessment. This process will help to establish:
 - Any anticipated impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world.
 - The number of businesses and the sectors likely to be impacted by the change.
 - The likely cost or benefit to business.
30. The approach for engagement will consist of:
 - (1) Questionnaires for completion by key business stakeholders
 - (2) Telephone interviews and email correspondence with selected representative organisations and associations

Competition Assessment

31. This section assesses the potential impacts of the preferred option on competition among producers, wholesalers, retailers and importers in the Scottish market.
32. The assessment will follow the Competition and Market Authority guidelines¹⁵ which outline how to determine any competition impact. These guidelines recommend considering four key questions in order to assess whether a proposed policy would have an impact on competition.
33. The assessment will be undertaken if and when associated strategies or regulations are being developed in the future.

Consumer Assessment

34. The Scottish Government definition of a consumer is "anyone who buys goods or digital content or uses goods or services either in the private or public sector, now or in the future".
35. The assessment will be undertaken if and when associated strategies or regulations are being developed in the future
36. Scottish Government specifies specific questions when determining the impact of proposed legislation on consumers, for example 'Does the policy affect the quality, availability or price of any goods or services in a market?', and 'Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?'

Test Run of Business Forms

37. This assessment will be undertaken if and when associated strategies or regulations are being developed in the future.

Digital Impact Test

38. Changes to policy, regulation or legislation can often have unintended consequences, should government fail to consider advances in technology and the impact this may have on future delivery. This digital impact test is a consideration of whether the changes being made can still be applied effectively should business/government processes change – such as services moving online.

¹⁵ <https://www.gov.uk/topic/competition/markets>

39. The assessment will be undertaken if and when associated strategies or regulations are being developed in the future.

Legal Aid Impact Test

40. The Access to Justice Team at Scottish Government will be consulted if and when associated strategies or regulations are being developed in the future

Enforcement, Sanctions and Monitoring

41. Enforcement, sanctions and monitoring systemsn will be put in place where appropriate
42. The detail of this will be set out if and when associated strategies or regulations are being developed in the future

Implementation and Delivery Plan

43. The Scottish Government will set out a timetable for implementation and will work closely with key stakeholders to ensure that the strategic objectives are met

Declaration and Publication

44. I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:



Date: 23/05/2022

Minister's name Lorna Slate

Minister's title Minister for Green Skills, Circular Economy and Biodiversity

Scottish Government Contact point:

Gareth Heavisides

Circular Economy Division

Scottish Government



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Any enquiries regarding this publication should be sent to us at

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Edinburgh
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