

Delivering Scotland's Circular Economy

**A Consultation on Proposals
for a Circular Economy Bill**

May 2022



Scottish Government
Riaghaltas na h-Alba
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Ministerial Foreword



As the Minister responsible for circular economy, I am delighted to present these complementary consultations on our proposals for a Route Map to deliver a circular economy in Scotland and on proposals for legislation in a Circular Economy Bill. A circular approach to our economy, where we move from a “take, make and dispose” model to one where we keep materials in use, is imperative if we are to tackle the climate and nature crises. My first eight months in this role have underlined the importance of this mission, and the commitment of all across Scotland - but also the challenges of making it a reality.

The Route Map sets out how we intend to deliver our system-wide, comprehensive vision for Scotland’s Circular Economy. It outlines the tangible actions the Scottish Government and others must take to accelerate progress, and the tools we will put in place to enable everyone to play their part. Our proposals for legislation will provide us with the powers we need to do so.

Around four fifths of Scotland’s carbon footprint comes from the products and services we manufacture, use and throw away. We also know that 90% of global biodiversity loss and water stress is caused by resource extraction and processing. I am clear this isn’t sustainable, and we must change. As our Environment Strategy sets out, if everyone lived as we do in Scotland we would need three planets to sustain ourselves.

Scotland has made strong progress in reducing emissions in the waste and resources sector over the past 20 years, and we have taken significant strides in our efforts to tackle Scotland’s throwaway culture and promote recycling. The Bill will increase the levers we have available to us and the Route Map sets out actions to accelerate progress within devolved competence, but some of the policy measures required to drive the transition to a fully circular economy are dependent upon UK Government action. We are working with the UK Government and other Devolved Administrations on some key measures, like reform of the packaging producer responsibility system, but it is vital the UK Government steps up to accelerate action.

However, to cut our emissions significantly and meet our ambitious waste and recycling targets, we must accelerate action across society to reduce the demand for raw material in products and encourage reuse and repairs through responsible production and consumption, and recycle waste and energy to maximise the value of any waste that is generated.

I know that a circular economy is not only about protecting our natural environment nor is it just about waste management and cutting our emissions. It holds huge opportunities for our economy, by improving productivity and opening up new markets, and for our communities by providing local employment and access to the goods we need. And a more circular economy is also more self-sufficient – it reduces our reliance on imported goods and materials, and provides increased economic resilience.

Delivering this vision requires radical action over the next decade, and I recognise that these changes must be delivered in a managed and fair way, working closely with communities. To move to a circular economy, we need to make the circular option the easy option. The change we want to see can only be achieved through a joint effort with everyone playing their part – government, businesses, and the people of Scotland.

These consultations are the start of a national conversation on how we deliver these ambitions. It requires us to be bold, brave and focused on delivering the actions needed.

I am determined that Scotland will lead the way, and I invite everyone to take part in this consultation. By reducing waste and delivering a circular economy, we will create a fairer, greener, stronger Scotland for everyone.

A handwritten signature in brown ink that reads "Lorna Slater". The signature is written in a cursive, flowing style.

Lorna Slater MSP

Minister for Green Skills, Circular Economy and Biodiversity

Contents

Ministerial Foreword	1
Responding to this consultation	4
Introduction	6
1) Strategic Interventions	11
Proposal 1: Circular economy strategy obligation	
Proposal 2: Statutory targets – consumption reduction, reuse and recycling	
Proposal 3: Establishment of circular economy public body	
2) Reduce and Reuse	18
Proposal 4: Measures to ban the destruction of unsold durable goods	
Proposal 5: Environmental charging for single-use items	
Proposal 6: Mandatory reporting of waste and surplus	
3) Recycle	26
Proposal 7: Strengthening approach to household recycling collection services	
Proposal 8: The role of targets to support recycling performance	
Proposal 9: The Duty of Care for households	
Proposal 10: Incentivising waste reduction and recycling (households)	
Proposal 11: Business recycling collection zoning	
4) Littering and Improving Enforcement	36
Proposal 12: New penalty for littering from vehicles	
Proposal 13: Seizure of vehicles	
Assessing Impact of Bill Proposals	41
Conclusion	45
Glossary of Terms	46
Respondent Information Form	47

Responding to this consultation

We are inviting responses to this consultation by 22 August 2022.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can view and respond to this consultation online at <https://consult.gov.scot/environment-forestry/scotlands-circular-economy-legislation/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 22 August 2022.

If you are unable to respond online, please complete the Respondent Information Form (see 'Handling your Response' below) to:

circulareconomy@gov.scot

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

circulareconomy@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision-making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review;
- inform the development of a particular policy;
- help decisions to be made between alternative policy proposals; and
- be used to finalise legislation before it is implemented.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Introduction

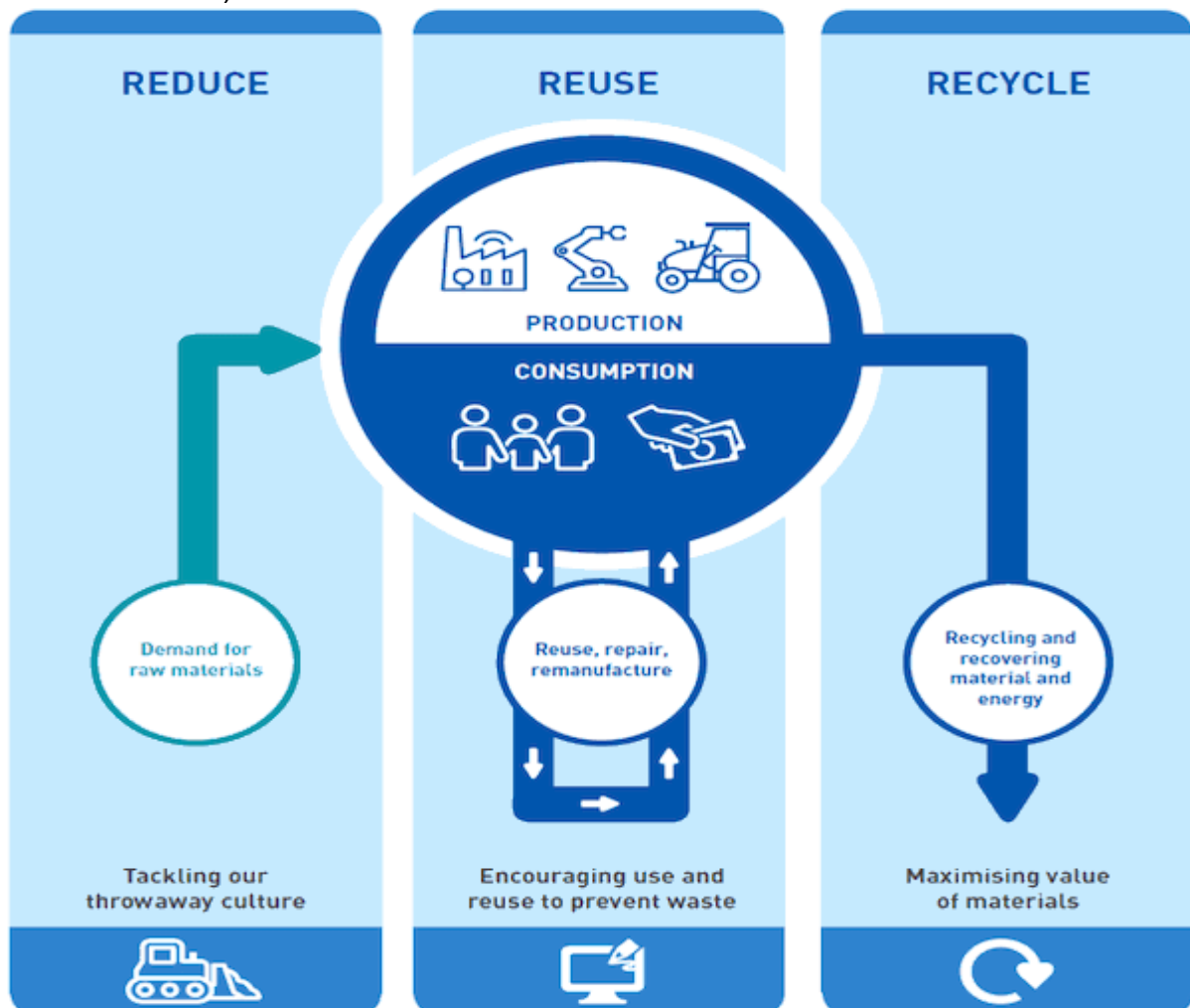
What is a circular economy?

Scotland's economy is mainly one in which we "take, make and dispose". We take resources from the ground, air and water; we make them into products and structures; then we dispose of them. This is a linear economy.

In a circular economy, resources are kept in use for as long as possible, the maximum value is extracted from them whilst in use and then products and materials are recovered and regenerated at the end of each product's viable life cycle.

One simple way to express the concept of a circular economy is that it is designed to **reduce** the demand for raw materials in products; to encourage **reuse**, repair and manufacture 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. The policy proposals for the Circular Economy Bill are set out in the following chapters under themes of 'Strategic Interventions; Reduce and Reuse; Recycle; and Littering and Improving Enforcement'.

Figure 1: a circular economy approach to production and consumption (source: Zero Waste Scotland)



Another way to describe this is the ‘waste hierarchy’, which describes the order of preferences for action to reduce and manage waste (figure 2). This sets out the optimal use for materials, starting with prevention (an alternative term for ‘reducing’ the use of materials), moving to reuse and then recycling, including energy and material recovery. It is only when we have exhausted all of the other alternatives that disposal through landfill should be used. A circular economy should always endeavour to keep materials in use as high up the waste hierarchy and for as long as possible.

Figure 2: the waste hierarchy (source: Scottish Government)



Why a circular economy?

Estimates suggest around four fifths of Scotland’s carbon footprint comes from the products and services we manufacture, use and throw away. Material consumption and waste are the primary drivers of nearly every environmental problem we currently face, from water scarcity to habitat and species loss¹.

The average Scot consumes 18.4 tonnes of materials every year – that’s the equivalent of 50kg per week on average².

¹ [Making Peace with Nature, United Nations Environment Programme \(2021\)](#)

² [Material Flow Accounts \(MFA\) | Zero Waste Scotland](#)

That isn't sustainable - as set out in our Environment Strategy³, if everyone lived as we do in Scotland we would need three planets to sustain ourselves.

In short, the more materials we extract and use, the more damage we do to the climate and to nature.

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.
- 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 we need.

Circular economy objectives

Transitioning from a linear to a circular economy will be a challenging task and to do so we need to change how we Produce, Consume and Manage Scotland's resources. The Climate Change Plan Update⁴ 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.

Our work 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.

³ [The Environment Strategy for Scotland: vision and outcomes - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/environment-strategy-2018-2032/pages/1-1-introduction.aspx)

⁴ [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/climate-change-plan-2018-2032-update/pages/1-1-introduction.aspx)

Route Map

Alongside this consultation on proposals for legislation, we are also consulting on a Route Map⁵ to achieve our waste and recycling targets.

Work to develop the Route Map has highlighted that we have made good long-term progress in all areas but that there is a significant challenge to meet these different targets. The Route Map identifies a range of potential interventions that could be taken forward and sets a clear direction for the next 5-10 years. This Bill consultation includes a number of legislative provisions that would help deliver some of the interventions explored in the Route Map.

Previous Circular Economy Bill Consultation

While we have already made important progress against the ambitions set out in 2016 circular economy strategy 'Making Things Last'⁶, we recognise that there is more to do. In 2019, we consulted on proposals for legislation, and published the analysis of responses in 2020⁷. Because of the pressures on Parliamentary time as a result of the Covid-19 pandemic, the Bill was not introduced during the last session of Parliament.

The Programme for Government 2021-22⁸ included a commitment to bring forward a Circular Economy Bill, later in this parliamentary session, to help facilitate the development of an economy which reduces demand for raw materials, designs products to last as long as possible and encourages reuse, repair and recycling.

This consultation builds on measures included in the previous consultation and introduces a range of new proposals.

Current and future activity

Circular economy and waste policy is a complex landscape, with Scottish, UK, European and global dimensions to consider. The system for production of our products and materials involves supply chains that span the globe.

We also need to recognise the interaction between reserved and devolved powers. For example, VAT and elements of product standards, product labelling and consumer protection are reserved and require joint approaches with UK administrations to take forward action where appropriate. Aligning with developing EU thinking is also vital given the impact of international supply chains.

Given this complexity, it is important to consider both legislative and non-legislative measures that will help us achieve our goals. Our intention is to use the Circular

⁵ <https://consult.gov.scot/environment-forestry/scotlands-circular-economy-routemap>

⁶ [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)

⁷ [Circular Economy: Proposals for Legislation - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.gov.scot/publications/circular-economy-proposals-for-legislation/pages/introduction.aspx)

⁸ [Programme for Government - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/programme-for-government-2021-22/pages/introduction.aspx)

Economy Bill to bring forward measures that require primary legislation, recognising that these are complemented by the other legislative and non-legislative activities.

An overview of ongoing and proposed activity is set out in Figure 3:

Figure 3: Existing and proposed new measures

2022	2023	2024	2025	BEYOND 2025
<p>Circular Economy Bill Consult on Circular Economy Bill proposals.</p> <p>Single Use Plastics Ban Introduction of our ban on some of the most environmentally damaging single-use plastic items.</p> <p>FWRAP Publish review and update of the Food Waste Reduction Action Plan</p> <p>Recycling Improvement Fund £70 million fund to improve local authority recycling collection infrastructure (ongoing to 2025).</p> <p>Textiles Challenge Fund Establishment of a £2m textiles innovation fund to tackle textile pollution and throw-away culture.</p> <p>Incineration Review Completion of independent review into the role of incineration within Scotland's waste hierarchy.</p> <p>UK Emissions Trading Scheme Consultation on UK Emissions Trading Scheme to gather evidence on inclusion of incineration within the scheme.</p> <p>Digital Waste Tracking Consultation on digital waste tracking.</p>	<p>Deposit Return Scheme Implementation of our Deposit Return Scheme (DRS) for single use drinks containers.</p> <p>Recycling Co-design Co-design of high quality, high performing household recycling and reuse services with service operators and citizens.</p> <p>Separate Collections - Garden Waste Separate collections of Bio-waste (e.g. garden waste), in line with EU requirements.</p> <p>Consult on Extending Bio Ban Consultation to consider extending the ban on landfilling biodegradable municipal waste in 2025 to include biodegradable non-municipal waste.</p>	<p>Extended Producer Responsibility Implementation of Extended Producer Responsibility (EPR) schemes for packaging, waste electrical and electronic equipment and batteries from 2024 onwards.</p> <p>Recycling Guidance Develop guidance for household waste and recycling services.</p> <p>Review of Service Charging Review of household waste and recycling service charging.</p> <p>Commercial Zoning Pilots Research and launch commercial waste zoning pilots.</p> <p>Residual Waste Strategy Implement a Residual Waste Plan.</p> <p>Sector-led Plan for Incineration Develop a sector-led plan for incineration by 2024 to restrict the incineration of fossil materials.</p> <p>Food Waste Prevention Target Investigate the feasibility of food waste prevention action plans for businesses and organisations.</p>	<p>Single-Use Disposable Beverage Cups Charge Introduction of a charge on single-use disposable beverage cups.</p> <p>National Re-Use Target Investigate the feasibility of a national reuse target.</p> <p>Separate Collections - Textile Waste Separate collections of textile waste, in line with EU requirements</p> <p>Bio Ban Introduction on ban of landfilling of biodegradable municipal waste.</p> <p>Landfill Gas Capture Expand landfill gas capture programme to double the number of sites that undertake investigative or development work.</p>	<p>Powers for Environmental Charging Develop a prioritised approach to charges & bans on other environmentally damaging products.[†]</p> <p>Ban on Destruction of Durable Goods Ban on the destruction of unsold durable goods.[†]</p> <p>National Consumption Reduction Target Develop statutory targets to tackle consumption reduction.[†]</p> <p>Mandatory Reporting Introduction of mandatory public reporting of food surplus/waste.[†]</p> <p>Statutory Performance Targets Introduction of statutory recycling & reuse local performance targets for household waste services, targets to be met from 2030.[†]</p> <p>Statutory Recycling Guidance Introduction of statutory guidance for household waste & recycling services.[†]</p>
<p>Research Programme Launch a programme of research in 2022-23 on waste prevention, behaviour change, fiscal incentives and material-specific priorities</p>		<p>Digital Waste Tracking Implementation of mandatory digital waste tracking service (timing dependent on consultation responses)</p>		
				<p>[†] Circular Economy Bill Proposal</p>

Circular Economy Bill Proposals

As has been highlighted in the previous sections, there is a range of activity already ongoing through policy, existing legislation and potential future regulation.

The next sections set out a number of areas in which we are seeking views on whether to take powers within a new Circular Economy Bill. These are split into 4 sections: Strategic Interventions; Reduce and Reuse; Recycle; and Littering and Improving Enforcement.

1) Strategic Interventions

Setting our circular economy objectives within the wider strategic framework and mainstreaming across policy is vital to meeting our objectives.

Ongoing Activity

Delivering economic transformation requires action across all areas of our economy. That is why we recently published a 10-year National Strategy for Economic Transformation⁹. The Strategy aims – within the powers currently available to us – to ensure Scotland maximises its economic potential to create a more prosperous and fairer economy and society for all, highlighting the opportunity a circular economy can provide.

Our draft National Planning Framework 4¹⁰ was laid before the Scottish Parliament in November 2021, and, once adopted at the end of the consultation process, will help ensure that we make best use of our assets and infrastructure to support emissions reduction. Through this framework, we are updating our planning policies to reflect the opportunities that arise from the shift towards a circular economy. Planning can support development which better reflects the waste hierarchy, prioritising the reduction and reuse of materials, and facilitating the infrastructure we need to make this possible.

Through Zero Waste Scotland (ZWS) we provide a range of support to businesses and communities to make the changes we need to see to help deliver these aims. This includes partnering with Social Investment Scotland to deliver the £5m Social Enterprise Net Zero Transition Fund¹¹ delivery of its Circular Cities and Regions programme¹² and a business support programme¹³.

We are changing what and how we buy things too. Public procurement in Scotland has a value of over £13 billion per year and is a significant lever in changing behaviour. Following the previous Circular Economy Bill consultation, we have taken further action to embed circular economy principles in public procurement processes.

In November 2019, we established the National Climate and Procurement Forum with key sectors, to provide leadership and direction to support the climate emergency response, including supporting the circular economy. In early 2021, we issued a policy note¹⁴ which sets out that we expect public bodies to use their public procurement spend to support climate and circular economy ambitions. We continue to promote the Scottish Government's Sustainable Procurement Toolkit¹⁵. We will also look to identify areas where regulations under section 82A of the Climate Change (Scotland) Act 2009

⁹ [Scotland's National Strategy for Economic Transformation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/national-strategy-for-economic-transformation/pages/introduction.aspx)

¹⁰ [Scotland 2045 - fourth National Planning Framework - draft: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scotland-2045-fourth-national-planning-framework-draft-consultation/pages/introduction.aspx)

¹¹ [Social Enterprise Net Zero Transition Fund | Zero Waste Scotland](https://www.zerowastescotland.com/news/social-enterprise-net-zero-transition-fund)

¹² [Circular economy in cities and regions | Zero Waste Scotland](https://www.zerowastescotland.com/news/circular-economy-in-cities-and-regions)

¹³ [Circular Economy Business Support Service | Zero Waste Scotland](https://www.zerowastescotland.com/news/circular-economy-business-support-service)

¹⁴ [Taking account of climate and circular economy considerations in public procurement: SPPN 1/2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/taking-account-of-climate-and-circular-economy-considerations-in-public-procurement-sppn-1-2021/pages/introduction.aspx)

¹⁵ [Sustainable Procurement \(sustainableprocurementtools.scot\)](https://www.sustainableprocurementtools.scot/)

- Develop a monitoring and indicator strategy.
- Develop targets in relation to different aspects of the waste hierarchy and individual sectors (in line with proposal 2 below).
- Report annually on progress.

Questions:

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

A) Yes
B) No
C) Neither agree nor disagree
2. Do you have any further thoughts on a statutory duty to produce a Circular Economy Strategy?

Proposal 2: Statutory targets – consumption reduction, reuse and recycling

Context

The Scottish Government recognises that sustainable consumption and production are essential for our transition to a low-carbon and green economy, which will meet our obligations to tackle the climate emergency and the biodiversity crisis. In our response to Scotland’s Climate Assembly and Children’s Parliament recommendations in December 2021, we outlined the need to reduce consumption and waste by embracing society-wide resource management and reuse practices²¹. 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.

At a European level, 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 consumption²². Subsequent research by ZWS has highlighted that there is currently no consistent approach to measuring consumption in other countries and consumption-based targets are rare²³.

In May 2021, ZWS also published Scotland’s first Material Flow Accounts²⁴. This is one of a number of potential existing high-level indicators that could be used to measure consumption. These include:

- The Material Flow Accounts (the flow of resources into, within and out of Scotland);
- Material footprint (raw materials used per person, tonnes per capita); and
- Carbon footprint (greenhouse gas emissions on a consumption basis).

Whilst these indicators provide an economy-wide view of material use (or carbon) in Scotland, these indicators may not be the best mechanism to drive consumption reduction in Scotland. This is because they do not track the wider impacts of our consumption, and may not reflect the effects of specific changes in policy due to their high-level nature. For example, as these indicators are weight-based, they can be quite crude; we cannot compare a tonne of sand to a tonne of gold as they have different impacts. In addition, the newness of the material flow account and material footprint may make it challenging to set appropriate targets at this point in time.

Example and Evidence

Developing a ‘monitoring framework’ would allow 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

²¹ [Scottish Government response to Scotland's Climate Assembly: Recommendations for Action](#)

²² [European Parliament resolution of 10 February 2021 on the New Circular Economy Action Plan \(2020/2077\(INI\)\)](#)

²³ [Zero Waste Scotland research: Consumption reduction targets](#)

²⁴ [Material Flow Accounts \(MFA\) | Zero Waste Scotland](#)

account. A monitoring framework would sit alongside the Environment Strategy Monitoring Framework²⁵ and allow us 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.

We propose taking powers to set statutory circular economy targets through secondary regulations. We believe that there is merit in developing statutory targets to tackle consumption reduction as well as other aspects of the circular economy, including reuse, to create a focus for action and maintain alignment with the direction of EU policy.

Questions

3. Do you think we should take enabling powers to set statutory targets in relation to the circular economy?
 - A) Yes
 - B) No
 - C) Neither agree nor disagree

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

²⁵ [Resources: We use and re-use resources wisely and have ended the throw-away culture \(data.gov.scot\)](https://data.gov.scot)

Proposal 3: Establishment of circular economy public body

Context

The Circular Economy as a professional sector is one that is growing both in Scotland and internationally, with increasing relevance and importance in all settings.

Delivering a circular economy will require us to further build on partnerships and continue to provide leadership across sectors and across society. This can be achieved in different ways.

Currently, ZWS, a not-for-profit company limited by guarantee, exists to lead Scotland to use products and resources responsibly, focusing on where they can have the greatest impact on tackling climate change. In its unique role as Scotland's circular economy expert, ZWS works with citizens, businesses, academics, public sector and community organisations to reimagine the way we live, work and travel and to embrace the environmental, economic, and social benefits of a circular economy. ZWS is a significant delivery partner for the Scottish Government, in receipt of grant award funding to deliver a range of strategic Circular Economy programmes. In addition, ZWS has also received European Regional Development Funding of approximately £6m per year (£43m since 2015), which has been used to deliver the priorities set out in ZWS's Corporate Plan.

The introduction of a Circular Economy Bill provides an opportunity, if deemed necessary, to establish a public body to help realise our Circular Economy ambitions and to perform relevant statutory functions.

Public bodies play an important role in the delivery of public services in Scotland and are funded to promote, deliver, fund and scrutinise public services, or to provide impartial expert advice to Ministers, the Parliament, the public and other organisations that deliver public services.

Example

In the context of the Circular Economy, and by way of an illustration, a dedicated public body might perform the following statutory duties:

- Provision of expert advice to Scottish Ministers and leadership in the development of Circular Economy priorities and strategies.
- Pro-active support in the form of funding and advice to stakeholders in meeting national Circular Economy targets and ambitions, particularly cross-sector stakeholders.
- Where appropriate, delivery of key Scottish Government initiatives and programmes to progress Circular Economy ambitions nationally.
- Commissioning and/or production of progressive and leading research that will support and inform the strategic direction of Circular Economy policy in Scotland.

One of the primary advantages of a public body structure relates to governance and the high levels of assurance which public bodies are required to meet, particularly in relation to effective delivery and stewardship of public funds.

A circular economy public body would be accountable to Scottish Ministers and/or the Scottish Parliament and have to meet public sector accountability requirements, such as compliance with the Scottish Public Finance Manual and key public sector legislation including the Freedom of Information (Scotland) Act 2002, which ensures transparency and access to information held by Scottish public authorities.

Given the need to build on work to date and to deliver the policies and legislative proposals outlined in both this consultation and the Route Map, we would be interested in views on establishing a public body to deliver our circular economy ambitions.

Responses to this consultation will inform our view on the necessity of a public body for the Circular Economy and help to identify the primary functions of any such body.

Questions

5. Should a dedicated Circular Economy public body be established?
 - A) Yes
 - B) No
 - C) Neither agree nor disagree

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

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

2) Reduce and Reuse

Reducing and reusing waste are at the top of the waste hierarchy and central to changing our relationship with materials and products. Building an economic system that moves away from being based on items that are designed to be disposable will yield the biggest environmental impacts.

Ongoing Activity

At an EU level, The Sustainable Products Initiative²⁶ aims to make products placed on the market more sustainable. Ultimately, consumers, the environment and the climate will benefit from products that are more durable, reusable, repairable, recyclable, and energy-efficient. The European Commission has recently proposed a range of provisions including banning the destruction of unsold goods and the development of digital product passports which will include mandatory information on circularity and other environmental aspects.

This is an emerging area of policy development and we recognise that many issues, such as elements of product standards and labelling and consumer protection, are reserved. The Environment Act 2021²⁷ provides a range of powers including enabling regulations to be made in relation to minimum resource efficiency standards, resource efficiency information for products and electronic waste tracking. These powers can be exercised by the Scottish Ministers, or by the UK Government with the Scottish Ministers' consent. We will look to work with UK administrations to take forward joint action where appropriate and utilise powers available under the Environment Act 2021 to keep pace with emerging policies from the Sustainable Products Initiative.

The Ecodesign for Energy-Related Products and Energy information Regulations²⁸, or 'right to repair' regulations, provide eco-design and energy labelling requirements for specified energy-related products. These reflect equivalent EU regulations. We are engaged with UK Government and the devolved administrations and working closely on eco-labelling.

In November 2021, we made the Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021²⁹ to make it an offence to supply, in the course of business, some of the most problematic single-use plastic products; for some items the manufacture is also banned. The legislation is the first in the UK to ban such a wide range of single-use plastic items and goes further than the single-use plastic bans currently in force in the rest of the UK.

At the moment, the Regulations require to be read in light of the application of the Internal Market Act. However, we have been pressing the UK Government to ensure the ban will be excluded from the UK Internal Market Act and we have secured that

²⁶ [New proposals to make sustainable products the norm \(europa.eu\)](https://european-council.europa.eu/media/en/press-operations/infographic-122333.pdf)

²⁷ [Environment Act 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2021/17/enacted)

²⁸ [The Ecodesign for Energy-Related Products and Energy Information Regulations 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2021/1251/contents/matter)

²⁹ [The Environmental Protection \(Single-use Plastic Products\) \(Scotland\) Regulations 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2021/1251/contents/matter)

exclusion. While it is frustrating the UK Government will not have this exclusion in place by 1 June when our ban comes into force, it should follow shortly after, ensuring the regulations can be fully effective. In addition, we are undertaking further analysis in relation to action on oxo-degradable plastic products which would align with Article 5 of EU Single-use Plastic Directive.

Our 2019 Food Waste Reduction Action Plan (FWRAP) made clear what measures we believe are required to achieve our ambitious food waste reduction target of 33% by 2025. We will assess our progress towards this target by publishing a review and update of the FWRAP in 2022. The FWRAP is designed to engage with every part of our food supply chain, to reduce unnecessary demand and avoidable waste and to optimise how we use our organic resources, including by promoting research and innovation in emerging bio-technologies. In line with the FWRAP, we plan to consult later this year on the current rural exemption and food waste separation requirements for food waste collections.

We are also signatories to WRAP's Courtauld Commitment³⁰, a voluntary agreement that enables collaborative action across the entire UK food chain. We intend to renew our relationship with Courtauld Commitment 2030 to maximise the benefit of this relationship for Scotland's businesses and people, working with WRAP to implement bespoke projects focused on driving positive sectoral and household behaviour change on food waste.

Textile waste is also a particular challenge, making up just 4% of household waste but 31% of carbon impacts. In the first half of 2022, we will introduce a new £2 million Textile Innovation Fund, to support businesses working in this sector to address issues associated with textile waste and throwaway culture.

³⁰ [The Courtauld Commitment 2030 | WRAP](#)

Proposal 4: Measures to ban the destruction of unsold durable goods

Context

The destruction of unsold goods 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 products³¹. This included measures to ban the destruction of unsold durable goods, which was consulted on in March 2021³².

Existing Duty of Care legislation in Scotland 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 promotes high quality recycling. We would welcome views on whether we should take powers to make regulations and amend the current duty of care to ban the destruction of unsold durable goods.

Example

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.

A phased introduction may be desirable, first banning incineration or landfill to push goods towards reuse or remanufacture where appropriate. Any regulations could be focused on goods where there is the most significant environmental impact and informed by improved data collection that digital waste tracking will provide and other proposals contained within this document, such as mandatory public reporting of waste and surplus.

There will be circumstances in which recycling could be justifiable for example:

- Electrical items withdrawn from the market for safety reasons where rectification is not possible.
- Items which do not comply with product legislation.
- Items with no prospect of use / resale – e.g. out of date diaries or calendars.

Questions

8. Do you agree that the Scottish Government should have powers to ban the destruction of unsold durable goods?
 - A) Yes
 - B) No
 - C) Neither agree nor disagree

³¹ [new_circular_economy_action_plan.pdf \(europa.eu\)](#)

³² [Have your say \(europa.eu\)](#)

9. Do you have any comments in relation to proposals to ban the destruction of unsold durable goods?
10. Are there particular product categories that you think should be prioritised?
11. Are there product categories that should be excluded from such a ban?

Proposal 5: Environmental charging for single-use items

Context

In May 2018, the Scottish Government formed the Expert Panel on Environmental Charging and Other Measures (EPECOM) to provide expert advice on measures that may be adopted in Scotland, with the goal of encouraging long-term and sustainable changes in consumer and producer behaviour required to move towards a circular economy.

Informed by the EPECOM recommendations³³ and the positive impact of the single-use carrier bag charge, we are proposing to include a power to enable Scottish Ministers to introduce charges on the provision of items that are harmful to the environment, that can be replaced with sustainable alternatives or are problematic to recycle.

Responses to the 2019 consultation, “Developing Scotland's circular economy: consultation on proposals for legislation”, showed that there is widespread support from individuals and organisations on introducing powers to enable such a charge. Nearly three-quarters of organisations (73%) and almost all individuals (97%) agreed that Scottish Ministers should have the power to set such a charge.

Example

One area where we intend to use this power is in relation to single-use disposable beverage cups, which create 4,000 tonnes of waste in Scotland each year, and are a symbol of our throwaway society and a very visible sign of litter. The previous consultation found that there was overall support to prioritise implementing a charge on single-use disposals cups (82% overall). That is why we have already taken action and announced the formation of an Advisory Group on the implementation of a mandatory charge on single-use disposable beverage containers. It is our intention to introduce the secondary legislation to implement the charge on the provision of these type of cups during the course of this parliament.

We are also interested to understand views about other single-use items to which a charge might be applied in the future, building on suggestions from the previous consultation to set out where the next set of priority items may be and helping us move to a more circular economy that prioritises reuse over consumption.

We recognise that there have been significant developments since 2019, not least the COVID-19 pandemic. We are therefore requesting any further views or new information on how the proposal to implement a charge on items that are harmful to the environment should be implemented.

Questions

³³ [Single-use disposable cups: EPECOM recommendations - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/epecom-recommendations/pages/10-single-use-disposable-cups.aspx)

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

Proposal 6: Mandatory reporting of waste and surplus

Context

We are keen to make sure that, in key sectors, there is public transparency on unwanted surplus stock and waste management. Scottish businesses can play a leading role in encouraging wider, positive behaviour changes in relation to waste by measuring and taking action on their waste and surplus. To facilitate this, we must improve data capture and encourage businesses to act on, and ultimately reduce, their levels of waste.

We want businesses to identify whether they have an issue with waste and surplus in their supply chain, effectively measure it, and then act on the results. This journey of waste reduction can then be a positive and inspiring story to tell to the public and act as a key driver of wider citizen behaviour change.

We are proposing that Scottish Ministers should have powers to require mandatory public reporting of unwanted surplus stock and waste of certain materials by Scottish businesses.

Example

Our intention is that the initial priority for subsequent secondary legislation, with further consultation, would be to introduce reporting on food waste and food surplus. Food waste is responsible for 25% of Scotland's total carbon waste footprint³⁴ and an integral part of the EU Action Plan for the Circular Economy. Some UK food businesses voluntarily report their food waste and surplus annually to WRAP.³⁵ However, there is no requirement for them to make this information public. We believe food businesses in Scotland can have a significant and positive influencing role on wider society in regards to food waste and its effect on climate change.

We are also keen to explore the scope to apply this requirement to textiles and potentially other waste streams.

The previous Circular Economy Bill consultation indicated broad support for mandatory public reporting of waste and surplus. In the May 2020 analysis of responses, 93% of respondents were in favour of mandatory public reporting of business waste and 87% were in favour of mandatory public reporting of business surplus. Furthermore, 91% of respondents were in favour of mandatory public reporting of food waste and 89% were in favour of mandatory public reporting of food surplus. In their 2020 Progress Report to the Scottish Parliament, the Committee on Climate Change also recommended introducing mandatory business food waste reporting.³⁶ However, concerns have been raised by some UK wide businesses and representative bodies who have made clear their opposition to Scotland-specific

³⁴ [2017-18 ZWS Carbon Metric Summary Report V02.00.pdf \(zerowastescotland.org.uk\)](#)

³⁵ [The Courtauld Commitment Annual Report 2021 | WRAP](#)

³⁶ [Reducing-emissions-in-Scotland-Progress-Report-to-Parliament-FINAL.pdf \(theccc.org.uk\)](#)

reporting requirements, which they consider will place additional burden on businesses.

Questions

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?

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?

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

3) Recycle

Where waste does occur we need to make sure that Scotland is gaining the most value from it. This is essential for our economy and our responsibility as a global citizen.

Ongoing Activity

We are already investing in the infrastructure we need. We launched the Recycling Improvement Fund in 2021, a five-year £70 million fund designed to support local authorities to improve recycling and reuse infrastructure. Over £20.3m has already been awarded to 13 local authorities to increase the quantity and quality of recycling, marking the beginning of one of the biggest investments in recycling in Scotland in a generation. The investments will fund a range of improvements, including more frequent recycling collections, the extension of food and garden waste collections, new capacity to recycle problematic materials like plastic films, and local service redesigns to align with Scotland's Household Recycling Charter. These initial investments are projected to boost recycling by 22,100 tonnes and reduce CO2 emissions by 21,400 tonnes each year - the equivalent of taking over 11,400 cars off the road.

Scotland's Deposit Return Scheme, the first in the UK, will be fully implemented by 16 August 2023. It will be among the most environmentally ambitious and accessible in Europe, including tens of thousands of return points for plastic, metal and glass containers, as well as pick-ups for online deliveries. The scheme will improve recycling rates, tackle littering, encourage wider behaviour change towards materials and help stimulate investment in high quality sorting and reprocessing.

We are working to introduce Extended Producer Responsibility (EPR) across a range of materials to increase recycling rates and drive more-sustainable design choices including better recyclability. Packaging EPR, which will see producers covering the cost of efficient and effective local-authority recycling systems for packaging, will come in from 2024 on a UK-wide basis. This is anticipated to increase recycling rates for in-scope packaging materials to 76% by 2030. We are also working with the other UK administrations to bring in EPR for waste electrical and electronic equipment and for batteries.

We are founding signatories of the UK Plastics Pact, led by WRAP, a collaborative initiative that seeks to create a circular economy for plastics. It brings together businesses from across the entire plastics value chain with UK governments and Non-Governmental Organisations (NGOs) behind a common vision and ambitious set of targets, including 100 per cent of plastic packaging to be recyclable or compostable by 2025³⁷.

The European Parliament voted on 16 February 2022 in favour of a European strategy³⁸ for offshore renewable energy which calls for an EU-wide landfill ban on decommissioned wind turbine blades by 2025 in order to ensure circularity, minimise

³⁷ [The UK Plastics Pact | WRAP](#)

³⁸ [Texts adopted - A European strategy for offshore renewable energy - Wednesday, 16 February 2022 \(europa.eu\)](#)

Proposal 7: Strengthening approach to household recycling collection services

Context

Recycling helps to conserve our natural resources, keeps valuable materials flowing through our economy and reduces the amount of waste sent to landfill. In Scotland we have targets to increase recycling of waste from all sources to 70% by 2025, and reduce the amount of waste sent to landfill to 5% by 2025.

Between 2004 and 2011, Scotland's recycling rate more than doubled. However, in more recent years progress has slowed. Our 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.

While we now recycle more than we send to landfill, it is clear we will not meet our 2025 recycling targets without significant action.

Across Scotland, local authority household recycling rates vary significantly and in 2020 ranged from 18% to 58%⁴⁰. The local authorities with lower recycling rates tend to manage the largest national shares of household waste. We are therefore prioritising measures to embed best practice and drive local improvements to achieve consistently high recycling rates across Scotland.

The voluntary Scottish Household Recycling Charter and its Code of Practice, developed in 2015 in partnership between 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 investment in Scotland's recycling infrastructure. However, only around one-third of local authorities have fully aligned their services to reflect Code of Practice standards.

We propose to take powers to enable Scottish Ministers to place additional requirements on local authorities regarding household collection services and to develop statutory guidance for provision of high-performance household waste services in different contexts. Requirements and future statutory guidance will be informed by findings and outputs from a 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 supporting Code of Practice. The previous 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 more mandated approach. The vast majority of respondents (91%) responded favourably to this proposal.

Example

The purpose of additional requirements and statutory guidance would be to provide a clear strategic direction for recycling in Scotland, improve consistency of services for

⁴⁰ [2020-household-waste-statistics.pdf \(sepa.org.uk\)](#)

households, and accelerate improvements to both the quality and quantity of recycling collected to help meet our targets. Our Route Map consultation proposes a service co-design process with households and operators, to design modern, efficient, 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 Extended Producer Responsibility and its funding model, and the implementation of Scotland's Deposit Return Scheme.

Our Route Map consultation has proposed a number of broader measures to boost recycling performance against our 2025 targets, including strengthening the monitoring and reporting framework for local authority waste services, and exploring the use of existing powers to require local authorities to report publicly on end destination of household recycling collected.

Questions

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?

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?

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?

Proposal 8: The role of targets to support recycling performance

Context

A key element to meeting Scotland's ambitious waste targets is achieving high levels of recycling in all parts of the country. In order to support this aim we propose that the Bill provides powers to enable Scottish Ministers to set recycling targets (e.g. recycling, preparation for reuse and composting) for local authorities to help drive further improvements in local recycling performance. We also propose to consider the introduction of powers for Scottish Ministers to set financial incentives to meet targets, or penalties should these targets not be met.

Example

Research from around the world, commissioned during the development of our Route Map, has shown 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.

We recognise that targets must be achievable, that local authorities are at different starting points, and that service providers must have the tools available to meet the required standard. We will therefore work with local government to set achievable, appropriate targets.

Questions

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

- A) Yes
- B) No
- C) Neither agree nor disagree

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?

- A) Yes
- B) No
- C) Neither agree nor disagree

22. Please explain your answer

Proposal 9: The Duty of Care for households

Context

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

The measures described above to support more consistent approaches to household recycling are intended to ensure that householders are clearer about **what** they can recycle and **how** to do this.

However, through the Circular Economy Bill and the Route Map we believe it is important to consider wider powers to ensure that appropriate incentives for recycling are in place, and local authorities can properly ensure responsibilities are met.

There is evidence to suggest that rates of non-participation by householders in separating recyclable waste properly is high. SEPA data shows that just under a fifth of everything put out for recycling by householders is non-recyclable⁴¹. Contamination makes managing recycling collections more costly and in extreme cases, can mean the whole load has to be diverted for incineration or landfill.

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.

As part of the previous consultation in November 2019, we asked if householders' existing obligations were sufficient. The majority of respondents (70%) said 'no'. We are keen to hear views, new evidence or context on whether householders' existing obligations are sufficient and if any further steps should be taken in Scotland to support, encourage or require householders to play their full part in improving both the quality and the quantity of materials provided for recycling. In particular, we are keen to understand views about the current powers local authorities have in this area, and whether powers to enforce recycling requirements through strengthened obligations, or through means of a fine as in England for example, would be appropriate.

Example

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, failure to comply with a notice has been decriminalised, and local authorities are able to issue written warnings and fixed penalty notices to householders who have not complied with

⁴¹ See [Recyclate Quality \(sepa.org.uk\)](https://sepa.org.uk)

notices. There is no provision currently for these alternative enforcement methods in Scotland.

Householders have some specific, limited, obligations under the existing Duty of Care guidance⁴² to ensure that their waste is handled and stored safely and is only transferred to an appropriately-registered waste carrier.

Scotland's Household Recycling Charter 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.

Questions

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?

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

- A) Yes
- B) No
- C) Neither Agree nor Disagree

25. Please add any additional comments

⁴² <https://www.gov.scot/publications/duty-care-code-practice/pages/9/>

Proposal 10: Incentivising waste reduction and recycling (households)

Context

Through the Route Map consultation, we are proposing to conduct a review of waste and recycling service charging by 2024 to ensure that we have the right incentives to reduce waste and maximise use of recycling and reuse services.

At the moment households in Scotland can be charged for collection of certain waste streams, such as garden waste or uplift of larger items: as a result, householders are effectively being charged for recycling services, which may be acting as a disincentive to recycling. This review will investigate whether the current position incentivises the behaviour that we want in line with the waste hierarchy, or delivers the most value for local authorities, including the highest quality recycle.

We are seeking views regarding further enabling powers for Scottish Ministers in the Circular Economy Bill, and if appropriate, local authorities, to incentivise positive household behaviours, to support waste reduction and increased recycling.

Example

Analysis of high performing recycling systems around the world⁴³ 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 incentivised to minimise residual waste to support recycling rate improvements. In other countries this has been achieved in multiple ways, for example through restricting effective weekly residual waste capacity (via smaller bins and/or less frequent collections), enforced volume limits (as in Wales), or other measures.

Questions

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?

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?

28. Please add any additional comments

⁴³ [Eunomia report, Review of High Performing Recycling Systems, 2021](#)

Proposal 11: Business recycling collection zoning

Context

Through the Circular Economy Bill consultation, and the Route Map, we are keen to hear views on commercial waste zoning approaches for different contexts in Scotland and the potential to pilot these approaches. Scottish Ministers could take powers that would enable Local Authorities to create such zoning areas for commercial waste collections.

Meeting our recycling targets requires all businesses and commercial organisations to fully utilise recycling services.

The variety of business waste collection providers in an area, operating different collection infrastructure and uplift times impacts on the local environment, including air quality, noise and emissions from multiple vehicles entering the same area to service different clients with similar waste.

Business collection zoning involves contractors competing to undertake all commercial collection in a particular 'zone', potentially providing opportunities for greater collaboration, cost savings, service standardisation, reducing traffic, transparent charges and added benefits such as bin weighing, carbon accounting and end-destination reporting as part of the contract. Businesses can also be challenged by the array of commercial waste services available.

Evidence

Zoning has been utilised by a number of business districts, towns, cities and regions across the world, including Los Angeles, New York, Waregem (Belgium), Barcelona and London, as a method of improving their local environment. Analysis by WRAP has suggested that businesses could save up to 40% by collaborating on service procurement alongside container and collection optimisation⁴⁴. Collaboration could also improve service consistency, and improve recycling performance through optimised efficiency of collections.

There are multiple ways to implement zoning and the Route Map consultation considers this in further detail and seeks views on implementation in Scottish contexts.

Questions

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
- B) No
- C) Neither agree nor disagree

⁴⁴ [Extended Producer Responsibility for Packaging consultation \(2021\)](#)

30. Please add any additional comments:

4) Littering and Improving Enforcement

Littering and flytipping is a blight on local communities, damaging to the environment and a cost to taxpayers and businesses.

Ongoing Activity

The National Litter and Flytipping strategy consultation⁴⁵ asked respondents if they supported further measures to use civil penalties to enforce flytipping offences and bring powers for local authorities in line with those available to SEPA. It also outlined proposals to explore raising fixed penalty notices beyond the current maximum (£500 for local authorities and £1000 for SEPA). These measures will be pursued under the Circular Economy Bill, subject to the outcome of the Litter and Flytipping consultation which closed on 31 March 2022.

The Scottish Government also has policies and legislation in place and planned to prevent marine plastic pollution which are implemented through the Marine Litter Strategy Action Plan⁴⁶, in conjunction with the terrestrial Litter and Flytipping Strategy. There is a focus on prevention of marine litter as well as its removal, supporting the inclusion of plastics within a circular economy which may otherwise be lost to landfill, as degraded material, or sadly to the marine environment. The Strategy's Action Plan covers many plastic items, whether large, such as fishing gear, or small, such as plastic pellets, powders or flakes (nurdles).

Actions include working with the fishing and aquaculture industries to improve waste management of end of life gear, developing a system with other UK administrations that will support the collection and recycling of these items. To enable easier recycling, the Scottish Government is also working internationally on the development of a European Committee for Standardization (CEN) standard⁴⁷ for the circular design of fishing and aquaculture gear. This aligns with the EU SUP Directive, and both will be subject to public consultation.

With regard to nurdles, the Scottish Government has led and will continue to progress international efforts to reduce this form of microplastic pollution, the second largest globally. Previous work initiated the publishing of an internationally recognised standardisation document, the PAS510⁴⁸, which sets the first formalised requirements for businesses managing and handling this material to prevent their loss to the environment. These fundamental requirements, and those developed through the Scottish Government approach are reflected in the OSPAR Recommendation⁴⁹ which also includes the minimal asks of any certification scheme to verify responsible nurdle handling and management by businesses. The international plastics industry is in the process of developing a certification scheme, and the Scottish Government continues to work with them to strive for high ambition levels to end this form of avoidable marine pollution, and prevent the loss of this

⁴⁵ [National litter and flytipping strategy consultation - Scottish Government - Citizen Space](#)

⁴⁶ [Marine litter strategy for Scotland - gov.scot \(www.gov.scot\)](#)

⁴⁷ [A new CEN TC will develop standards for Life Cycle Management and Circular Design of fishing gear - CEN-CENELEC \(cencenelec.eu\)](#)

⁴⁸ [PAS 510:2021 | BSI \(bsigroup.com\)](#)

⁴⁹ [Action 52: Zero pellet loss in the manufacturing chain | OSPAR Commission](#)

material from our circular economy. As part of these discussions we will consider whether further regulation or legislation is needed in this area.

Proposal 12: New penalty for littering from vehicles

Context

A review of the previous litter strategy *Towards a litter-free Scotland* (2014), recognised that road litter still poses significant challenges and recommended that there needs to be future actions focused on reducing roadside litter. Enforcement is one of three themes that is the focus of the new National Litter and Flytipping Strategy, which was consulted on between 13 December 2021 and 31 March 2022.

Under the Environmental Protection Act 1990, littering is an offence in Scotland. This includes litter that is dropped from a vehicle. Current legislation requires the person leaving the litter to be identified before enforcement action can be taken. Feedback from litter authorities and key stakeholders 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.

There is a separate enforcement regime for flytipping offences which are waste crimes. Section 33 of the Environmental Protection Act 1990 defines the criminal offence of flytipping and provides for criminal penalties, as well as fixed penalty notices. There is also a presumption of responsibility for those in control of vehicles used in flytipping offences. Furthermore, SEPA has civil enforcement powers under the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015. Our recent consultation on a National Litter and Flytipping Strategy included proposals to review existing legislative powers for enforcing flytipping offences, and raise the current fixed penalties that can be issued for flytipping offences. A finalised strategy will be published later this year.

Example

To strengthen the current enforcement regime, we are proposing 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. This will both increase the deterrent effect and the options available to enforcement officers in tackling roadside littering.

The proposed power will allow Scottish Ministers to introduce secondary legislation to implement a fixed penalty regime designed to complement existing offences, which can still be used where the person who dropped the litter can be identified. The intention behind this new power is to allow a vehicle's registered keeper to be issued with a fixed penalty notice when a litter authority has reason to believe that a littering offence has been committed from their vehicle, regardless of whether or not it can be established that the litter was dropped/deposited by the registered keeper.

The introduction of this fixed penalty regime will bring Scotland into line with England and Wales where such a fixed penalty regime was introduced by the Anti-social Behaviour, Crime and Policing Act 2014 and subsequent regulations. It also delivers on the Scottish Government commitment made within the National Litter Strategy to

look for a suitable opportunity to legislate to remove barriers to enforcement in littering from vehicles.

There was support for this proposal under the previous Circular Economy Bill consultation in 2019. 93% respondents said they agreed that Scottish Ministers should have powers to introduce a new fixed penalty regime for littering from vehicles; and 73% of respondents agreed that the registered keeper of a vehicle is responsible for offences such as littering from or in relation to their vehicle.

Questions

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?

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?

Proposal 13: Seizure of vehicles

Context:

The vehicle seizure powers in Scotland are under Section 6 of the Control of Pollution (Amendment) Act 1989 (COPA 89) and require that an enforcement authority obtains a warrant from the sheriff.

The Clean Neighbourhoods and Environment Act 2005 provided environmental regulators in England and Wales with new and more flexible powers to search and seize vehicles in relation to waste crime. Amendments were made to COPA 89, as well as to the Environmental Protection Act 1990 enabling environmental regulators in England and Wales to search and seize vehicles used in the commission of specified waste crimes where there are 'reasonable grounds' to believe or suspect that an offence has been committed and the vehicle was used in the commission of the offence. Changes also provided for the court to order the forfeiture of a vehicle used in the commission of an offence.

The offences covered include:

- unauthorised or harmful depositing (including flytipping), treatment or disposal, etc. of waste;
- breaches in duty of care, as respects waste; and
- handling or storing waste without an environmental permit.

Example

As part of the previous consultation in November 2019, it was proposed that enforcement authorities (such as SEPA and local authorities) in Scotland should be given powers to seize vehicles linked to waste crime. This is part of the overall efforts to minimise waste crime in Scotland and also bring us into line with the powers that are available in the rest of the UK.

The vast majority of respondents (91%) were in favour of these powers being provided and so Scottish Ministers intend to take powers as part of the Circular Economy Bill.

Question

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?

Assessing Impact of Bill Proposals

We are committed to assessing the impact of our proposals. This consultation marks the start of processes to assess the equalities, business and regulatory, and environmental impact of our plans in compliance with legislative requirements and, importantly, to inform the policy development process.

A: Equality

In developing proposals for the Circular Economy Bill, the public sector equality duty requires the Scottish Government to pay due regard to the need to:

- eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a relevant protected characteristic.

These three requirements apply across the 'protected characteristics' of:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion and belief;
- sex and sexual orientation.

We have developed an Equality Impact Assessment (EQIA) to accompany this consultation. Many of the proposed Bill provisions are enabling powers, which in themselves cannot impact on an individual, or on the protected characteristics listed above. However, the aim of the Scottish Government is to use this consultation process as a means to explore fully any potential equality impacts. Comments received will be used to update the Equality Impact Assessment and to determine if any further work in this area is needed. Any secondary legislation that flows from the powers within the Circular Economy Bill will be subject to a further consultation and equality impact assessment.

Question

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?

B: Business and regulation

In developing proposals for legislation, a Business and Regulatory Impact Assessment (BRIA) analyses whether a policy is likely to increase or reduce the costs and burdens placed on businesses, the public sector, voluntary and community organisations.

A Business and Regulatory Impact Assessment (BRIA) accompanies this consultation. Many of the proposed Bill provisions are enabling powers and are therefore unlikely to impact directly on the costs and burdens placed on businesses, the public sector, voluntary and community organisations. Your comments will help update the BRIA, which will be published at the same time as a Circular Economy Bill is introduced. Any secondary legislation that flows from the Bill's primary powers will be subject to a full BRIA and consultation at that time.

Question

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?

C: Children's Rights and Wellbeing Impact Assessment

The Articles of the UNCRC and the child wellbeing indicators under the Children and Young People (Scotland) Act 2014 apply to all children and young people up to the age of 18, including non-citizen and undocumented children and young people.

We have assessed the proposed provisions against the requirements of a Children's Rights and Wellbeing Impact Assessment (CRWIA). We have identified that;

- secondary legislation using the powers in respect of littering from vehicles may affect young people up to the age of 18 if they are registered keepers of motor vehicles, as the definition of "vehicle" for the purposes of the Bill is a motor vehicle within the meaning of the Road Traffic Regulation Act 1984, a vehicle drawn by a motor vehicle, mobile plant; and
- Secondary legislation using the powers in respect of environment charging may indirectly impact on children and young people, if it impacts on household finances.

As the provisions proposed for the Bill give Scottish Ministers powers to make more detailed secondary regulations at a later date, it is our assessment that the Bill in itself will not affect children and young people up to the age of 18. The proposed measures are primarily enabling in nature and therefore do not have a direct or indirect impact on children or services used by children.

We would take into consideration any impact on children and the likely impact on young people aged 16 up to the age of 18 if they are registered keepers of motor vehicles as part of the impact assessments during development of the secondary regulations, as well as the indirect impact on children due to environmental charging. Such impacts would be considered via a Fairer Scotland Assessment at the secondary legislation stage.

Question

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?

D: Islands Communities Impact Assessment

The Islands (Scotland) Act 2018 provides for a duty on Scottish Ministers and other relevant public bodies that they must have regard to island communities in exercising their functions and in the development of legislation.

Section 13 of the 2018 Act obliges the Scottish Ministers to prepare an Islands Communities Impact Assessment (ICIA) in relation to legislation which, in their opinion, is likely to influence an island community that is significantly different from its effect on other communities in Scotland.

As the majority of the measures within the Circular Economy Bill are enabling powers, it is not possible to fully assess the impact of these parts of the Bill on island communities at this stage. As and when each piece of secondary legislation is developed, more detailed ICIA's will be carried out. Those ICIA's will provide opportunities for island local authorities, communities, and businesses to understand the potential impact more fully on island communities and to influence the detail of proposals as appropriate.

Question

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?

E: Fairer Scotland Duty

The Fairer Scotland Duty (the Duty) is set out in legislation in Part 1 of the Equality Act 2010 and came into force in Scotland from April 2018. It requires Scottish Ministers and named public bodies to actively consider what more can be done to reduce the 'inequalities of outcome' caused by 'socio-economic disadvantage' when making 'strategic decisions'.

This assessment has not identified the need for any changes to the proposals, because the nature of the Circular Economy Bill means that it will not directly impact on those experiencing socio-economic disadvantage. However, this assessment will

be revisited following the public consultation, to ensure that any issues raised there are addressed.

In addition, this assessment has identified that there is the potential for there to be impacts once secondary legislation is introduced. Further Fairer Scotland Assessments should be completed when secondary legislation is being developed to ensure that any issues are fully considered and any changes necessary can be made to the proposals.

Question

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?

F: Environment

The Environmental Assessment (Scotland) Act 2005 ensures that those public plans that are likely to have a significant impact on the environment are assessed and measures to prevent or reduce adverse effects are sought. As the proposed legislation is in effect setting an enabling framework to allow Scottish Ministers to take action through the use of secondary legislation it is our view there will be no or minimal direct environmental impacts from the Bill provisions.

The proposed enabling powers as they stand would not enact any new laws that would have a positive or negative impact on the environment. The impacts and where a more meaningful assessment could take place would be from any future secondary legislation that is developed to enact the provisions; and it is anticipated that a full Strategic Environmental Assessment (SEA) would be required at this stage.

All future legislation flowing from the enabling powers in the Circular Economy Bill would be subject to a more robust and detailed SEA impact assessment, as part of a full suite of other impact assessments, consultation and parliamentary procedure.

Question

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

Conclusion

The focus of this consultation is to invite views on our planned approach to further developing a circular economy in Scotland. Together with the Route Map consultation responses will inform our policy on how this can best be achieved, including legislative changes which we intend to present for consideration by the Scottish Parliament.

The questions throughout the consultation are repeated in a questionnaire at Annex A. However, in responding to this consultation, please do not feel constrained by the questions set. We appreciate some people will have a particular interest in certain areas. We would encourage you to respond to any or all of those areas where you feel you have a contribution to make.

We value your opinions and welcome your views on our proposals identified in this consultation document.

Question

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?

Glossary of Terms

BRIA	Business and Regulatory Impact Assessment
CEN	The European Committee for Standardization
CEP	European Union Circular Economy Package
COPA 89	Control of Pollution (Amendment) Act 1989
CoPLAR	Code of Practice on Litter and Refuse
COSLA	Convention of Scottish Local Authorities
CRWIA	Children’s Rights and Wellbeing Impact Assessment
DRS	Deposit Return Scheme
EPECOM	Expert Panel on Environmental Charging and Other Measures
EPR	Extended Producer Responsibility
EQIA	Equalities Impact Assessment
EU	European Union
FWRAP	Food Waste Reduction Action Plan
ICIA	Island Communities Impact Assessment
NGOs	Non-governmental organisations
RIF	Recycling Improvement Fund
SEA	Strategic Environmental Assessment
SEPA	Scottish Environment Protection Agency
SMEs	Small and medium-sized enterprises
SUP	European Union Single-Use Plastics Directive
UNCRC	United Nations Convention on the Rights of the Child
VAT	Value-Added Tax
WRAP	Waste and Resources Action Programme
ZWS	Zero Waste Scotland

Delivering Scotland's Circular Economy A Consultation on Proposals for a Circular Economy Bill



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Respondent Information Form

Please Note this form **must** be completed and returned with your response.
To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email Address

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No



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