

Circular Economy (Scotland) Bill

Fairer Scotland Duty Summary

June 2023

Charges for single use items

Creating a power to set a minimum charge for certain throwaway items in order to drive waste reduction and greater use of reusable items (the intention is for this initially to be applied to single-use Disposable beverage cups).

Householder's Duty of Care in relation to waste

Making it a criminal offence for a householder to breach their existing duties of care under the Environmental Protection Act 1990, in relation to fly-tipping and sorting of waste, and creating a new fixed penalty regimes to enforce these duties.

Household waste

Requiring local authorities to comply with a code of practice on recycling and giving local authorities a package of new responsibilities and powers, including powers to set recycling targets.

Littering from vehicles

Establishing a new civil penalty regime that will make the keeper of a vehicle liable to pay a penalty charge in respect of a littering offence committed from that vehicle.

Enforcement powers in respect of certain environmental crimes

Improving enforcement against fly-tipping and other waste crime through a power allowing the Scottish Environment Protection Agency ("SEPA") and local authorities to seize vehicles involved in specified waste crime.

Reporting of waste, surpluses, etc.

Obtaining information about where waste is occurring through a power to require information which would lead to public reporting of waste and surplus by businesses (the intention is for this initially to be applied to information about food).

Summary of evidence

Restrictions on the disposal of unsold consumer goods and charges for single use items

Evidence shows that people on low incomes may not purchase quality goods as part of a budgeting strategy. This implies a reliance on cheaper, potentially less durable goods or that people on lower incomes are doing without entirely or borrowing items or money where they can't do without². This may mean that low-income households face budget pressures if they are unable to avoid environmental charges (for example, by purchasing a reusable coffee cup) or if retailers respond to the introduction of restrictions on the destruction of unsold consumer goods by moving away from stocking entry-level or bargain products.

Whether these issues occur will depend on the design of secondary legislation and should be considered further prior to the design of secondary legislation. It is possible that measures may be needed to support households purchasing long-lasting goods that will be more cost-effective in the longer term but are initially unaffordable.

² [going under and without - jrf's cost of living tracker winter 2022 23 \(1\).pdf](#)

Household Waste

Householders' duty of care in relation to waste

Provisions relating to householders' duty of care in relation to waste were consulted upon through the proposed Flytipping (Scotland) Bill in 2022.³ In addition, a FSDA was consulted on as part of the development of a National Litter and Flytipping Strategy⁴, which indicated that that litter and flytipping are more prevalent in more deprived areas, with associated greater negative impacts on local people and businesses. Statistics from the Scottish Index of Multiple Deprivation show that only 32% Adults living in what are considered to be the 20% most deprived areas of Scotland would rate their neighbourhood as being a "very good place to live" in comparison with 77% of those living in the least deprived areas. There is assumed to be a correlation between this and the responses to questions relating to environmental quality and neighbourhood problems: 45% of all adults reported that they did not experience any neighbourhood problems in 2019. Those living in the 20% most deprived areas were more likely to experience neighbourhood problems, with top problems recorded as 'animal nuisance' (32%) and 'rubbish or litter lying around' (31%).⁵

Taking into account the above, and that householders can already be subject to enforcement action where household waste transferred in breach of the duty of care is subsequently fly-tipped (and they are thus considered jointly liable with the fly-tipper), further assessment needs for this proposal are considered unnecessary

For other measures, care will be needed in the design of any changes to the future approach to household waste collections, so as not to have an adverse impact on those experiencing socio-economic disadvantage. In a 2015 study, 20.4% of respondents personally thought that people should feel ashamed to claim at least one benefit⁶, therefore care must be taken to take account of any stigma around means testing in cost reduction for low-income groups.

At this stage it is not apparent to what extent those experiencing socio-economic disadvantage would be impacted. The results from the public consultation process and use of the Scottish Index of Multiple Deprivation, the Scottish Household Survey and additional existing external research have been 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 secondary legislation are developed.

In addition, low-income households may currently qualify for reduced, or no cost at all, household waste collections (e.g. garden waste or bulky item uplifts). When developing interventions, any changes in which the way household collections are paid for or incentivised could have a disproportionate impact on low-income households, and therefore care will have to be taken in the design of these measures. Further impact assessments will be completed during the development

³ [summary_of_consultation_responses--for-publication.pdf \(parliament.scot\)](#)

⁴ [National litter and flytipping consultation: fairer Scotland duty assessment - gov.scot \(www.gov.scot\)](#)

⁵ [Scottish Index of Multiple Deprivation 2020: introduction - gov.scot \(www.gov.scot\)](#)

⁶ [The stigma of claiming benefits: A quantitative study](#)

of these changes.

Recycling rates

Recycling rates are variable across Scotland, varying both by geography, but also by housing type and levels of deprivation.

In particular, 2019 data indicated that the percentage of household waste recycled was substantially lower in the council areas of Glasgow, Dumfries and Galloway, Orkney, Shetland and Highland.⁷

Households living in flats, maisonettes or apartments are reported as having a lower rate of recycling for all materials, with the difference most marked for glass, based on 2017 data. Recycling rates also show correlation with the Scottish Index of Multiple Deprivation, with recycling rates for all materials being below average in the 20% most deprived areas, and above average in less deprived areas, based on 2019 data.⁸ The data does not show whether recycling rates vary by household income.

It is not yet possible to determine if these differences would mean that those experiencing socio-economic disadvantage are affected by changes to household recycling differently from those who are not disadvantaged, either in terms of the materials collected or the way that services are delivered or funded.

At the secondary legislation stage, it will be important that changes to household recycling collections are designed to ensure that they are appropriate and accessible for citizens regardless of their geographical location, housing type or the level of deprivation of a community.

The Scottish Government will develop and provide new and updated guidance for both householders and local authorities to ensure a greater understanding of respective responsibilities. For local authority guidance this would include clear guidelines on when enforcement action, including use of Fixed Penalty Notices, would be considered reasonable. There is an existing Code of Practice in relation to the Duty of Care⁹ as provided for by section 34 (7)¹⁰ of the Environmental Protection Act 1990, which will be updated to reflect the changes to the householder duty of care as a result of this proposal. In the update to this guidance, the Scottish Government will consider how it can communicate effectively, including those from socioeconomically disadvantaged groups and those with protected characteristics.

Impact of littering and flytipping

There is evidence to suggest that litter and flytipping are more prevalent in more deprived areas, with potential for greater negative impacts on local people and businesses associated with this. Residents of the 20% most deprived areas were more likely to report experiencing neighbourhood problems, including 'rubbish or litter lying around'. It is unclear what the cause of this is, but it may mean that reductions in littering are of particular benefit to communities in these areas.

⁷ [2019-household-waste-commentary.pdf \(sepa.org.uk\)](#)

⁸ [Scotland's People Annual Report: Key findings - 2019 \(www.gov.scot\)](#)

⁹ [Duty of care: code of practice for managing controlled waste - gov.scot \(www.gov.scot\)](#)

¹⁰ [The Waste \(Scotland\) Regulations 2012 \(legislation.gov.uk\)](#)

While some groups are slightly more likely to litter (and admit it) than others, there is no evidence that a particular 'littering demographic' exists. The link between litter and flytipping in areas of social deprivation suggests that a combination of specific behavioural and contextual factors are contributors. Through the National Litter and Flytipping Strategy, the Scottish Government will take forward research on perceptions and behaviours to allow targeted litter and flytipping interventions to be developed.

Some responses to a proposed Fly-tipping (Scotland) Bill expressed concern that proposals to either increase fines or introduce a stricter liability on disposal of waste would be most likely to impact on people on low incomes. For example, people that cannot afford to pay local authority bulk uplift charges, or have access to a car to take waste to a local authority recycling centre, may dump their waste instead.

Enforcement and deterrents have been identified through consultation as important in preventing litter and flytipping. Stakeholders have asked that the enforcement process and procedures are reviewed, and for exploration into whether alternative solutions are available (such as education or volunteering for those who cannot afford to pay fines), with collaborative measures seen as crucial. Success in relation to this theme would ensure there is a strong and consistent enforcement model across Scotland that acts as a proportional deterrent. However, the current evidence base reviews enforcement against flytipping in general, rather than with a specific focus on the effectiveness of measures to prevent flytipping in deprived communities.

Impact on jobs

The introduction of resource reduction plans and other measures to reduce consumption via a circular economy strategy has the potential to impact on businesses in Scotland. This may impact those in precarious or low-paid jobs. Any impacts of this nature would be considered by a Business and Regulatory Impact Assessment and Fairer Scotland Assessment during the design of the future circular economy strategy.

Criminal Offences

The provision to amend the Environmental Protection Act 1990, making it a criminal offence to breach the existing householders Duty of Care obligation, whereby any transfer of waste must be to an authorised person, will provide for a fixed penalty notice (FPN) procedure as an alternative to criminal prosecution. This process will be available to local authorities as an enforcement tool and it is anticipated that this will be the primary enforcement mechanism for this offence. However, should the FPN not be paid, the enforcing authority must be prepared to prosecute the individual for the original offence. Failure to follow up on unpaid fixed penalty notices will undermine their effectiveness as an enforcement tool. This could potentially have a disproportionate impact on those with lower socio-economic status should they not be able to pay fines.

Reuse and socio-economic disadvantage

There are already examples of reuse projects targeted at improving life for those experiencing socio-economic disadvantage, for example Circular Communities Scotland and the UK-wide Reuse Network, which estimated they helped 1.5 million

households in the UK in 2020. Of the organisations that are members of the Reuse Network, 94% reported supporting people facing long-term unemployment.

In the short-term, the introduction of bans on the destruction of unsold goods could increase access to affordable goods via secondary markets as retailers find alternative ways of dealing with excess stock. This may also have the benefit of normalising second-hand and reused goods. However, it is unclear whether this would specifically benefit those experiencing socio-economic disadvantage as this would depend on how retailers chose to deal with excess stock. In addition, work on food insecurity has highlighted the need to ensure dignity for service users. Redistribution of excess food and food nearing sell-by dates has been identified as important for tackling food insecurity. This would also need to be considered prior to the development of secondary legislation.

For all of these issues, further consideration will be needed via further Fairer Scotland Duty Assessments prior to the development of secondary legislation.

Summary of assessment findings

Due to the majority of the proposals being enabling in nature, Circular Economy Bill provisions are not likely to directly impact on those experiencing socio-economic disadvantage. However some concerns have been identified relating to indirect impacts that might occur in relation to specific proposals enabled by the Bill that could potentially result in disproportionate impacts on lower income households. The Scottish Government will take these into consideration during the development of secondary legislation through Fairer Scotland Duty assessments for that legislation.

Mitigations would be designed to take account of potential disproportionate impact on deprived areas, particularly those experiencing mismanaged waste, i.e. fly-tipping and use of neighbours' bins, detrimentally affecting the community.

Interventions could have beneficial impacts on people in deprived areas, allowing them improved access to waste, recycling and reuse services and improving the overall neighbourhood experience. Implementation of measures and communications and engagement will need to be designed carefully.

This assessment has identified that there is the potential for there to be impacts once secondary legislation is introduced. Some areas have been identified in this assessment as areas that will require further research and targeted consultation to ensure that gaps in evidence are addressed. Further Fairer Scotland Assessments will be completed when secondary legislation is being developed to ensure that any issues are fully considered and any opportunities to reduce inequality can be proposals.

It is worth highlighting that this may apply in particular to the introduction of secondary legislation using the following powers:

- **Development of a future circular economy strategy.** Consideration of the impact on Scottish businesses, and in particular jobs for those on low-incomes or living in deprived communities. If a monitoring framework is established as part of

this, indicators in relation to socio-economic disadvantage could be considered.

- **Powers to introduce measures to ban the disposal of unsold consumer goods.** Consideration of how to ensure that goods becoming available for reuse reach those that need them, and avoiding overwhelming charitable provision. This should include consideration of dignity, to ensure that goods are supplied in an appropriate way.
- **Measures in relation to litter and flytipping.** Consideration of how to ensure that those experiencing socio-economic disadvantage have equal opportunities to understand and comply with the new legislation (and therefore avoid penalties) and how to ensure that deprived communities benefit from a reduction in littering and flytipping.

For other proposals, prior to development of secondary legislation, it may be beneficial to better understand why more deprived communities are more likely to report neighbourhood problems.

- **Measures to make changes to household recycling collections** in order to increase rates and quality of household recycling. Consideration of how to ensure that households have equal understanding of what to recycle and equal access to suitable ways in which to do this.
- **Powers to introduce charging for single use items (for example, single-use disposable cups)** Consideration of the affordability and suitability of alternative items, to ensure that those of low- income households are able to avoid environmental charges, in the same way that higher-income households may be able to.



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Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80525-635-9 (web only)

Published by The Scottish Government, June 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1262662 (06/23)

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