

PROPOSED FLY-TIPPING (SCOTLAND) BILL – MURDO FRASER MSP

SUMMARY OF CONSULTATION RESPONSES

This document summarises and analyses the responses to a consultation exercise carried out on the above proposal.

The background to the proposal is set out in section 1, while section 2 gives an overview of the results. A detailed analysis of the responses to the consultation questions is given in section 3. These three sections have been prepared by the Scottish Parliament's Non-Government Bills Unit (NGBU). Section 4 has been prepared by Murdo Fraser MSP and includes his commentary on the results of the consultation.

Where respondents have requested that certain information be treated as “not for publication”, or that the response remain anonymous, these requests have been respected in this summary.

In some places, the summary includes quantitative data about responses, including numbers and proportions of respondents who have indicated support for, or opposition to, the proposal (or particular aspects of it). In interpreting this data, it should be borne in mind that respondents are self-selecting and it should not be assumed that their individual or collective views are representative of wider stakeholder or public opinion. The principal aim of this document is to identify the main points made by respondents, giving weight in particular to those supported by arguments and evidence and those from respondents with relevant experience and expertise. A consultation is not an opinion poll, and the best arguments may not be those that obtain majority support.

Copies of the individual responses are available on the following website (www.murdofraser.uk). Responses are divided into organisational and individual responses and have been numbered for ease of reference. The relevant number is included after the name of the respondent.

A list of respondents is set out in the Annex.

SECTION 1: INTRODUCTION AND BACKGROUND

Murdo Fraser's draft proposal, lodged on 28 February 2022, is for a Bill to:

“reduce the incidence of fly-tipping by introducing new measures and strengthening existing measures to prevent it, including by improving data collection, improving enforcement procedures, increasing penalties for offenders, and by making changes regarding liability for the removal of fly-tipped waste.”

The proposal was accompanied by a consultation document, prepared with the assistance of NGBU. This document was published on the Parliament's website, from where it remains accessible:

<https://www.parliament.scot/bills-and-laws/proposals-for-bills/proposed-fly-tipping-scotland-bill>

The consultation period ran from 1 March 2022 to 23 May 2022. The following organisations and individuals were sent copies of the consultation document or links to it:

- All local authorities in Scotland;
- All community councils in Scotland;
- Cairngorms National Park Authority;
- Loch Lomond and the Trossachs National Park Authority;
- Police Scotland;
- The Crown Office and Procurator Fiscal Service;
- The Scottish Environment Protection Agency (SEPA);
- NFU Scotland;
- The Countryside Alliance;
- Scottish Land and Estates;
- Professor James Baird, Chair of Waste and Resource Management, School of Engineering and the Built Environment, Glasgow Caledonian University; and
- Dr Noleen Chikowore, Associate Lecturer in Geography & Sustainable Development, University of St Andrews.

The consultation exercise was run by Murdo Fraser's parliamentary office.

The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Member's Bill. Further information about the procedure can be found in the Parliament's standing orders (see Rule 9.14) and in the *Guidance on Public Bills*, both of which are available on the Parliament's website:

- Standing orders (Chapter 9):
<https://www.parliament.scot/about/how-parliament-works/parliament-rules-and-guidance/standing-orders/chapter-9-public-bill-procedures#topOfNav>
- Guidance (Part 3):
<https://www.parliament.scot/about/how-parliament-works/parliament-rules-and-guidance/guidance-on-public-bills/part-3>

SECTION 2: OVERVIEW OF RESPONSES

In total, 190 responses were received. 188 responses were submitted via Smart Survey, whilst a further 2 were submitted directly to the Member's office. There were 165 responses from individuals and 25 responses from organisations.

The responses can be categorized as follows:

- 3 (12% of organisational responses) from representative organisations [e.g. business association, trade union, political party or other body with a role representing its members or supporters' views collectively]
- 10 (40% of organisational responses) from public sector organisations [e.g. Scottish/UK Government, Govt agency, local authority, NDPB]
- 3 (2% of individual responses) from individual politicians [MSPs, MPs, MEPs, peers, councillors]
- 9 (5% of individual responses) from professionals with experience in the area;
- 153 (93% of individual responses) from private individuals (members of the public).

Included in this were 16 responses from community councils (64% of all organisational responses).

There were also:

- 67 (36%) submissions where the respondent wished to remain anonymous;
- 22 (12%) submissions that were "not for publication" (all or part of response).

A majority of responses were supportive of the draft proposal (79% fully supportive; 15% partially supportive). Answers to all of the multi-option questions posed by the member were supportive of each individual aspect of the proposal. The lowest levels of support for proposals in questions were 72% support for the introduction of a waste duty of care system similar to England and Wales (question 8) and 73% support for a review of the need for corroboration (question 10). The number of respondents who were fully or partially opposed to any proposal within the questions was consistently very low. An example of this related to question 6, where only two respondents were either fully or partially opposed to an increase in the level of fines issued by local authorities. Whilst the number of respondents indicating opposition in questions was low, there were a few cases where a notable number of respondents to questions indicated their neutrality, or that they were unsure (for example, in relation to proposals to review the need for corroboration, where more than one-in-five respondents were either unsure or neutral on the issue).

Given the low number of respondents indicating opposition to the proposals, the headings under each question in this document generally cover the arguments in support of the proposal, and then the counter arguments or any concerns or reservations expressed. The latter section includes any concerns

that were raised by respondents who took a neutral stance on an issue or were unsure.

Common issues raised in responses were:

- fly-tipping is an act of antisocial behaviour which is also bad for the environment and wildlife;
- fly-tipping is not a victimless crime;
- existing levels of fly-tipping are too high and are increasing;
- existing legislation is not fit for purpose and/or is not effectively enforced;
- landowners being liable for removal of waste deposited on their land is unfair;
- there are alternative measures that might help address the problem of fly tipping, such as the creation of more waste disposal sites or more waste collection;
- the originator of the waste and/or the fly-tipper can often be difficult to identify.

Overall there was broad agreement that fly-tipping is an increasing problem in Scotland and that the existing legislative framework is not acting as a deterrent. There was significant support for the removal of legal liability from the person who has waste deposited on their land. Of 190 responses, only 10 did not support this proposal. Similarly, 9 in 10 respondents were in favour of local authorities, national park authorities and SEPA being able to issue higher fines for fly-tipping. Support for the imposition of strict liability on to the generator of the waste was also high (88%) although over 10% of respondents were either opposed to that proposal or took a neutral stance. Support for other approaches mentioned in the consultation document, such as the introduction of a waste duty of care system, similar to that operating in England and Wales, and the removal of the requirement for corroboration, also received strong support, but in both cases, the number of respondents who either took a neutral stance, or were opposed to the measure, was higher than with other questions.

As noted above, the majority of responses were from individuals (87%). Of those, 95% were supportive of the draft proposal, with 81% fully supportive. There were 25 responses from organisations. Of these, 88% were supportive of the proposal, with 68% fully supportive.

Finally, it is notable that a high percentage (48%) of responses were marked as anonymous or not for publication. Some responses cited concerns about reprisals or personal security as their reasoning for wishing to remain anonymous or not having their submission published. A number of those concerns in themselves highlight the anti-social nature of fly-tipping.

SECTION 3: RESPONSES TO CONSULTATION QUESTIONS

This section sets out an overview of responses to each question in the consultation document.

General aim of proposed Bill

The consultation document set out four areas where the proposed Bill will seek to reduce the incidence of fly-tipping in Scotland by updating the law. These are:

- by improving data collection and reporting mechanisms,
- by changing legal liability so that victims of fly-tipping are not also legally responsible for removing the waste,
- by introducing strict liability on the person who disposed of the waste, and
- by increasing the sanctions available to the public authorities responsible for dealing with instances of fly-tipping.

The [Consultation Document](#) provides more detail on those measures. Respondents were asked the following questions:

Question 1: Which of the following best expresses your view of the proposed Bill (Fully supportive / Partially supportive / Neutral / Partially opposed / Fully opposed / Unsure)? Please explain the reasons for your response.

One-hundred and ninety respondents (100% of the total) answered this question. As mentioned above, this comprised 25 responses from organisations and 165 individual responses.

A majority of respondents (79%) were fully supportive of the proposed Bill, whilst a further 15% were partially supportive. Only four responses (just over 2%) were either partially or fully opposed. Seven responses were either unsure or took a neutral position in relation to this question.

The main reasons given for supporting the proposed Bill were:

- Fly-tipping is bad for the environment, wildlife and the landscape;
- Fly-tipping is an anti-social act which adversely affects communities;
- Current levels of fly-tipping are too high and increasing;
- Existing legislation is poor and is poorly enforced;
- Fly-tipping is not a victimless crime;
- Landowners being liable for removal of waste is unfair.

The main reasons given by the few respondents who were not supportive of the proposed Bill were:

- the proposed Bill is not going to solve the issue of fly-tipping;

- there are other issues that might address the issue, such as the creation of more waste disposal sites or more waste collection;
- the originator of the waste and/or the fly-tipper can often be difficult to identify.

Other issues mentioned were:

- Authorities (such as Police Scotland and local authorities) need to take fly-tipping and rural crime more seriously than they currently do;
- Lack of availability of local authority recycling centres has led to increased fly-tipping.

Those respondents who were only partially supportive of the proposed Bill tended to be so due to requiring to see further detail on what the Bill will do, arguing that the proposed Bill will not of itself solve the problem of fly-tipping with some others arguing that the Bill should form part of a wider set of measures to tackle fly-tipping and littering.

Reasons for supporting the proposed Bill

Fly-tipping is bad for the environment, wildlife and the landscape

A number of respondents who supported the proposed Bill expressed their view that fly-tipping is bad for the environment and natural habitats and the landscape more generally. For example, Kim Adams described it as “not only unsightly, but harmful, polluting the countryside and a danger to wildlife” (Adams, Kim, Ref 185986371 - 1). This was a view shared by Michael Robertson, who argued that more needed to be done to protect the environment, reduce pollution and maintain a pleasant visual environment (Robertson, Michael, Ref 1854942494 - 126). Dugald Pettigrew highlighted the anti-social nature of fly-tipping (see next point below) and its impact on the countryside:

“I am a keen countryman and enjoy the countryside and feel strongly about stamping out the anti social criminals who think it is ok to dump waste anywhere they choose”. (Pettigrew, Dugald, Ref 186124693 - 123)

Another individual, who wished to remain anonymous, described their experience of fly-tipping and its impact:

“I have fought against litter and particularly fly tipping in my local area for years. It is a growing problem that deters visitors to our country ... damages the environment, affects wildlife and destroys the beneficial effect of walking and cycling routes.” (Individual anon, Ref 186141284 - 47).

Several other respondents, such as Alister Gray, described fly-tipping as a “blight” on the landscape, and the perpetrators as “selfish” (Gray, Alister, Ref 187101260 – 31). Other responses referred to the countryside being “ruined” by the act of fly-tipping.

Fly-tipping is an anti-social act which adversely affects communities

As alluded to in the previous section on the environment, wildlife and the landscape, a number of responses which were supportive of the proposal made the point that fly-tipping is an anti-social act. For example, one respondent, who wished to remain anonymous, described it as “a scourge on our communities” (Individual anon, Ref 191752978 - 100). Another, Elaine Johnstone, described fly-tipping as “anti-social” and “out of control” in her area, and expressed concern that more needed to be done (including the introduction of portable cameras) to catch fly-tippers (Johnstone, Elaine, Ref 189008180 – 104). Helen Blackburn also indicated that fly-tipping was an issue where she lived, adding that “we are on the edge of farms and countryside, and often find our paths blocked by fly-tipped material” (Blackburn, Helen, Ref 187902765 – 6).

Other responses, marked as “not for publication”, went further in their descriptions of the nature and level of the problem, making clear that current levels of fly-tipping are having an adverse impact on communities across the country.

In supporting the proposed Bill, a number of individuals shared their own personal experiences of fly-tipping. For example, Michael Lee stated that “Over years I have witnessed the appalling activity of fly tipping and reported same to the local authority” (Lee, Michael, Ref 185918355 - 108), Dugald Pettigrew, elaborated on his comments quoted in the previous section, indicating that he felt “strongly about stamping out the anti social criminals who think it is ok to dump waste anywhere they choose” (Pettigrew, Dugald, Ref 186124693 - 123), and Bill Cowan, who described himself as a victim of fly-tipping, added that “The blight of fly-tipping is a direct result of poor legislation, poor enforcement of the poor legislation, and also the pathetic attitude of local Councils. It can be fixed, and it can be fixed now” (Cowan, Bill, Ref 187077431 - 17).

Several individuals who wished to remain anonymous also drew on their personal experience of fly-tipping to indicate support for the proposed Bill. For example, one stated that “I live in an area that suffers from regular fly tipping and I want the offenders to be held to account”. (Individual anon, Ref 186040122 - 45). Another, who requested anonymity, noted that “Fly-tipping and illegal dumping continue to blight our local area”, adding that “in recent years it has worsened” (Individual anon, Ref 1860051512 - 40). A further individual reflected that:

“I have fought against litter and particularly fly tipping in my local area for years. It is a growing problem that deters visitors to our country (confirmed by Visit Scotland research), damages the environment, affects wildlife and destroys the beneficial effect of walking and cycling routes”. (Individual anon, Ref 186141284 - 47).

Current levels of fly-tipping are too high and are increasing

A number of respondents argued that the levels of fly-tipping are currently too high and have increased in recent years (which is reflected in figures referred to on page 14 of the [Consultation Document](#)).

Scottish Land and Estates indicated that the problem of fly-tipping had increased since the Covid-19 pandemic, stating:

“The behaviour that leads to flytipping is already very well understood and has been demonstrated over many years. The severity of the problem has unfortunately become even more prevalent since COVID lockdown restrictions came into force, with a continuing lack of adequate support for those who are feeling the impact of such criminal activity on a regular basis” (Scottish Land and Estates, Ref 191919114 - 164).

Michael Breslin added that “the problem has got worse” and that “what is proposed is sensible” (Breslin, Michael, Ref 188378873 – 9). John Goffin, a landowner and farmer, highlighted his personal experience of fly-tipping:

“As a landowner and a farmer I have been the victim of fly tipping on numerous occasions. The current regime incurs significant costs on the victims of the crime and the local authorities are too slow to react to an incident and do not actively address the problem via anti flytipping campaigns or through the reduced hours and closed access of types of traffic to recycling stations” (Goffin, John, Ref 187682691 – 29).

Furthermore, a number of responses which were marked as “not for publication” drew attention to the increasing nature of the problem, in some cases citing specific evidence from their local area of incidences of fly-tipping.

Existing legislation is poor and/or is poorly enforced

An issue touched on by a number of respondents was that existing legislation to combat fly-tipping is not being enforced effectively. This point was made by some community councils.

For example, Cambuslang Community Council stated that legislation was needed as “the current legal powers and strategy towards fly tipping are not effective” (Cambuslang Community Council, Ref 190012600 - 147). At the other end of the country, Echt and Skene Community Council stated that “the current laws are not working and ...land-owners should not have to clear up

waste left on their land by others” (Echt and Skene Community Council, Ref 190931279 - 150). That community council added that local authorities “should do more to make it easier for waste to be disposed of responsibly by removing barriers to access their waste recycling centres”. Echt and Skene Community Council considered that booking systems introduced for waste recycling centres during the Covid-19 pandemic had exacerbated an already existing problem. It is worth noting that this was a general point made by a number of respondents in answer to different questions throughout this consultation (Echt and Skene Community Council, Ref 190931279 - 150).

The Scottish Countryside Alliance added that:

“We saw only too well how during lockdown fly-tipping increased, and the current laws and legislation seem inadequate to tackle this problem nor act as a deterrent to these criminals” (Scottish Countryside Alliance, Ref 191272580 - 163).

Fly-tipping is not a victimless crime

Several respondents, including Scottish Land and Estates (Scottish Land and Estates, Ref 191919114 - 164), stressed that fly-tipping is not a victimless crime, with landowners specifically and local communities more generally being the victims of it, a point highlighted by, for example, Stuart McDonald, in relation to Midlothian, where he described it as being at “epidemic” levels and where landowners were the victims of detritus being tipped over their boundary fences. He argued that the local authority should take responsibility for uplifting such waste (McDonald, Stuart, Ref 186110058 – 116).

Iain Walker Taylor stated that the “uncaring attitude” of fly-tippers “deserves greater attention, publicity and penalty” (Taylor, Iain, Ref 186905027 - 135). As referenced above, Alister Gray viewed fly-tipping as a “blight” and people who fly-tip as “selfish”, causing stress to people whose land they are dumping on and expenditure for local authorities that could be allocated to “better things” (Gray, Alister, Ref 187101260 - 31).

Malcolm Paterson spoke of witnessing first hand the difficulties faced by landowners in Aberdeenshire:

“Having seen fly tipping numerous times at roadsides in rural Aberdeenshire, and the difficulty of landowners or local residents to have it tidied up I fully support this bill. Also, knowing how much it can cost to dispose of waste (including cement fibre board, which is one of the commonly dumped items)” (Paterson, Malcolm, Ref 191718083 – 121).

E Beal made a similar point, arguing that fly-tipping is a particular issue in rural areas:

“It is imperative that landowners, who are the victims of this crime, are not burdened with the costs and responsibilities for clearing the mess up. Police Scotland need to be forced to take rural crime like this more seriously” (Beal, E, Ref 191713980 -5).

Landowners being responsible for the removal of waste is unfair

The argument that it is unfair and contrary to natural justice for the person who has waste deposited on their land being liable for the clear up of that waste was highlighted by a number of responses to this question. This issue is covered in more detail under question 4, but several responses highlighted the issue in their comments under question 1. E Beal (referenced immediately above) made this argument, which was reinforced by, for example, Heldon Community Council – Moray, William Benjamin Evans, and John Bruce, a farmer who had himself previously had to pay for removal of waste from his land. (Heldon Community Council, Ref 189036453 – 152; Evans William, Ref 188710271 – 24; Bruce, John, Ref 188211892 - 144).

Reasons for not supporting the proposed Bill

As mentioned in the introduction to this section, there were only 11 responses (6%) that were not supportive of the proposed Bill (6 neutral, 2 partially opposed, 2 fully opposed and 1 unsure). As such it is hard to draw out themes summarising why respondents do not support the proposed Bill. However, the following reasons were given:

- there are other solutions that might address the issue, such as the **creation of more waste disposal sites** or more waste collection – a number of respondents highlighted that, in their view, the reason for the increase in the level of fly-tipping was due to the lack of provision made by local authorities for waste to be legally disposed of. This point was made by David Gordon (Gordon, David, Ref 186220611 – 30) and a number of others who wished to remain anonymous or who did not wish their response to be published;

the proposed Bill is not **going to solve the issue of fly-tipping in itself**. For example, the Law Society of Scotland, which took a neutral position on this question, considered that a number of other factors were relevant, such as “societal attitudes towards disposal of litter and fly-tipping, the difficulties of disposing of waste particularly on a smaller scale from domestic use and business (for example, costs, availability of sites, booking systems), and challenges with enforcement including resourcing”. The Law Society added that “a multi-faceted approach, including tackling these matters, will be needed in order to resolve the issues around fly-tipping” (Law Society of Scotland, Ref 191949647 - 154). Kilmallie Community Council, which was partially opposed to the

proposed Bill, expressed a particular concern that the proposed Bill might actually make the problem worse rather than better, stating “by removing any legal liability from the land owner, the proposed Bill would make it less likely that waste would be removed” (Kilmallie Community Council, Ref 191830587 – 153).

- the originator of the waste and/or the fly-tipper can **often be difficult to identify**. This was a point highlighted by a couple of respondents who were not supportive of the proposed Bill, and was also acknowledged by respondents who were supportive of the proposal. One respondent, who wished to remain anonymous, and who was fully opposed to the proposed Bill, stated:

“Increasing the fine for littering / flytipping are unlikely to make a difference if the perpetrator of the crime still cannot be identified. The risk is that unsuspecting members of the public are caught out when they have given, in good faith, a waste item to a “man with a van” for disposal” (Organisation anonymous, Ref 188917027 - 160).

Other responses, including from the Law Society of Scotland (Law Society of Scotland, Ref 191949647 - 154) and others which were marked as “not for publication” made similar points in relation to how the imposition of strict liability on the generator of the waste could be squared with the fact that it can be difficult to trace who generated the waste and who fly-tipped it (if different). This issue is covered in more depth under question 5.

Question 2: Do you think legislation is required, or are there other ways in which the proposed Bill’s aims could be achieved more effectively?

One hundred and seventy-four respondents (92% of the total) answered this question.

Broadly speaking, the reasons given for **legislation being required** were as follows:

- existing legislation **needs to be strengthened** and **penalties need to be harsher**. This was a point made by a number of individuals, for example Marion Jess and William Benjamin Evans (Jess, Marion, Ref 186864176 - 103; Evans, William, Ref 188710271 – 24);
- legislation can **act as a deterrent**. This argument was advanced by a significant number of respondents, including Matthew Vogan (Vogan, Matthew, Ref 186108825 - 140), who argued in favour of increased fines. Another respondent, who wished to remain anonymous, argued that “the people who do this will not be swayed by discussion or appeal” so legislation is required (Individual anon, Ref 186141284 - 47). Another respondent who wished to remain anonymous argued

that, accompanied by substantial fines, legislation would act as a deterrent (Individual anon, Ref, 186066798 - 46).

- Legislation is required but it also needs to be **properly enforced**. For example, Councillor Alison Adamson stated, “we need to have more enforcers to be given the power to investigate and issue penalties” (Adamson, Alison Cllr, Ref 187450696 - 2). This was a view shared by Marion Ross, who argued that “you can have as much legislation as you like but without anyone to catch the perpetrators/enforce it you are wasting your time” (Ross, Marion, Ref 188209604 - 128). Glasgow City Council shared this view, arguing that the current legislation needs refreshed, adding that it should be enforced “rigorously and effectively” (Glasgow City Council, Ref 191946370 - 151). The Scottish Countryside Alliance stated that “current legislation and penalties to tackle fly-tipping are over 30 years old and no longer act as a deterrent to those who perpetrate” (Scottish Countryside Alliance, Ref 191272580 - 163).
- Legislation should help ensure that **landowners are no longer burdened with the cost of clear up and liability**. This was a view expressed specifically by Laura Riley (who considered that liability should lie with the perpetrator) (Riley, Laura, Ref 189819737 - 125) and Rab Boyd (Boyd, Rab, 191366932 - 8). Other respondents, who did not wish for their response to be published, expressed similar views.

Reasons given for legislation either not being required or not being the only solution to the problem were:

- The issue is more that legislation **is not resourced and enforced effectively**. This was a point made by Heldon Community Council in Moray, which was partially supportive of the proposed Bill and which stated “legislation is not effective unless it is enforced .often resources to not allow this” (Heldon Community Council Moray, Ref 189036453 - 152) . Several other respondents who wished for their response to be published anonymously made similar arguments (for example, Individual anon, Ref 187102312 – 60; and Individual anon, Ref 191844461 - 101);
- The importance of **enforcing existing laws and educating citizens**. Andy Thomson (who was fully supportive of the proposed Bill), cautioned: “There are other ways. Enforcement of existing laws and education at all levels of society regarding what good citizenship is about” (Thomson, Andy, Ref 191070667 - 137). Similar points about the importance of education were made by David Gordon (Gordon, David, Ref 186220611 - 30) and Brian Griffiths (Griffiths, Brian, Ref 186241814 - 32).

Alternative solutions to address the problem mentioned in this section were:

- legislate for **vehicles to be seized** (Hamilton, Robin, Ref 187230699 - 33),
- a **greater use of CCTV** in fly tipping hotspots and/or rural areas (Individual anon, Ref 187049591 - 58 ; Organisation anonymous, Ref 186392075 - 159);
- increase the **availability and accessibility of recycling centres** (Individual anon, Ref 187158563 - 63; Individual anon, Ref 187158563 - 64; Individual anon, Ref 187158563 - 62). The importance of increasing the availability and accessibility of recycling centres was a common theme that was highlighted in response to a number of questions posed in the consultation document.

In response to question 14 (any additional comments or suggestions), Glasgow City Council highlighted the need for clearer legal definitions of responsibilities vis a vis local authorities, SEPA and Police Scotland, adding that:

“at present, all are operating using the same powers under the same legislation and the current arrangement leads to confusion, which ultimately leads to missed opportunities to deal with fly-tipping” (Glasgow City Council, Ref 191946370 - 151).

Specific proposals in the consultation document

The consultation document set out four areas where the Bill will seek to reduce the incidence of fly-tipping in Scotland by updating the law. These are:

- by improving data collection and reporting mechanisms,
- by changing legal liability so that victims of fly-tipping are not also legally responsible for removing the waste,
- by introducing strict liability on the person who disposed of the waste, and
- by increasing the sanctions available to the public authorities responsible for dealing with instances of fly-tipping.

The following questions covered these areas in more detail:

Question 3: Which of the following best expresses your view of the proposal to place new duties on the Scottish Ministers in respect of reporting mechanisms on the collection of data (Fully supportive / Partially supportive / Neutral / Partially opposed / Fully opposed / Unsure)?

One hundred and eighty-eight respondents (99% of the total) answered this question. One hundred and sixty-three responses (87% of all responses) were from individuals.

Of the 188 responses, 64% were fully supportive of the proposal to place new duties on Scottish Ministers in respect of reporting mechanisms on the collection of data. A further 12% were partially supportive, 16% were neutral on this question, 1% were partially opposed and 2% were fully opposed. A further 5% were unsure.

Supportive

The main arguments supporting the proposal to place these new duties on Scottish Ministers can be summarised as follows:

To ensure more accurate reporting and better data leading to more informed decisions

Many respondents who were supportive of the duty advanced the argument that the duty will ensure more accurate reporting and the keeping of better data, which would inform decisions. Literati Guide to Inverclyde (a community group which focuses on improving and supporting the environment) stated:

“Only by collating (and reporting on) data can you make decisions. On trends, areas, communities, the environment etc” (Literati Guide to Inverclyde, Ref 185919599 - 155).

This was a view shared by Joanne Matheson, who argued “only by logging and acting on reports can we hope to properly manage the issue” (Matheson, Joanne, Ref 186370881 - 113), and by Mairi Brett who stated that a reporting duty on data collection would “make it easier to identify tipping hotspots” (Brett, Mairi, 186373196 - 10). Iain Cameron added:

“Without accurate recording of these events across the country, we will not accurately respond to individuals and communities concerns” (Cameron, Iain, Ref 187239637 - 12).

The Law Society of Scotland, which was partially supportive of the duty, added:

“We consider that improved data collection, co-ordination and reporting could assist in helping to understand the nature and extent of fly-tipping across Scotland and thereby help to target actions and resources appropriately” (Law Society of Scotland, Ref 191949647 - 154).

Glasgow City Council was fully supportive of a duty, and added the following thoughts on how it should work in practice:

“The creation of a national database would be beneficial and would be much easier to report on data nationally and at local levels. A centralised approach could provide useful information to help develop future strategies to tackle fly-tipping. However, data collection must be

consistent and complete, otherwise the benefits are limited. For example, this would allow [local authorities (LAs)] / SEPA to look at local areas to identify patterns/intelligence for example vehicles in operation that aren't only operating in one LA area e.g. waste disposal teams for house clearances etc operating through social media platforms which are picking up in one LA area and disposing illegally in another. It is important that reports are acted upon across all sectors" (Glasgow City Council, Ref 191946370 - 151).

Cambuslang Community Council added "If Ministers have responsibility for data monitoring it is likely to encourage action" (Cambuslang Community Council, Ref 190012600 - 147).

To ensure standardisation of data collection

Kilmallie Community Council supported a reporting duty, and advocated for a duty that would require the standardisation of data collection in one place:

"We would also like to see a duty to record the response of public bodies to fly-tipping incidents within a centralised database. This would identify incidents that were dealt with effectively and those which were not. Any centralised database should be capable of being accessed by the public, similar to the planning register or the register of derelict land" (Kilmallie Community Council, Ref 191830587 – 153).

There was also support for a centralised database from the National Farmers' Union for Scotland (NFUS) as, in its view, a database "would make it easier for victims to understand what they can do and how they are able to access help and support" (NFUS, Non-Smart Survey response - 158).

Scottish Land and Estates was supportive of the creation of a single national database, but caveated its response in the following way:

"the critical question is how this information would be used effectively to reduce the frequency of flytipping and bring offenders to account through an agreed process. The risk, as had been demonstrated by the Scottish Government's 2014 National Litter Strategy, is that such a database could remain just a source of information. Any new knowledge resource must be seen and used as an effective tool to tackle the problems we are increasingly facing, by enabling bodies such as local authorities, SEPA, Police Scotland and others to co-ordinate their efforts to deal with the issues" (Scottish Land and Estates, Ref 191919114 - 164).

One individual, who is a member of a community council but who wished to remain anonymous, also advocated standardisation of data collection but stressed the importance of clear communication with local authorities:

“[I] think it’s good to streamline it, doesn’t have to be central government, and need clear communication back to the impacted councils for it to be effective”. (Individual anon, Ref 186991902 - 56).

Tynewater Community Council added that a streamlined system should also lead to cost savings, whilst providing coherent useable data across all agencies and speeding up analysis (Tynewater Community Council, 191657752 - 166).

Neutral/Unsure/Opposed¹

Of the 44 respondents who were opposed, neutral or unsure on this question, those who added comments advanced the following arguments:

- The creation of a duty will simply lead to **more jobs for people paid for by the state**. The costs involved in creating a duty would be better spent being given to local authority waste teams to track down perpetrators (Colin Pike, Neutral) (Pike, Colin, Ref 186099736 -124);
- There is a **need for a system to catch fly-tippers, not collate data**. The reason for this bill would suggest that there is already enough data in existence to recognise there is a problem in the first place (Dugald Pettigrew, Unsure) (Pettigrew, Dugald, Ref 186124693 - 123);
- There is **insufficient information** given in the consultation document to reach the view that a duty would help (Heldon Community Council Moray, Unsure) (Heldon Community Council, Ref 189036453 – 152);
- There is a **cost** involved in collecting data (Anonymous, Partially opposed) (Individual anon, Ref 188763507 - 90);
- There will be issues with collecting data due to a **lack of witnesses** to the act of fly-tipping (Anonymous, Partially opposed) (Individual anon, Ref 185985881 - 39);
- There are **already data collection and reporting systems** in place (Anonymous, Fully opposed) (Organisation anonymous, Ref 188917027 - 160).

¹ As mentioned on page 4 of this document, given the low number of responses which were not supportive of the draft proposal, responses which are neutral or unsure are generally being grouped with responses which were opposed.

Question 4: Which of the following best expresses your view of the proposal that legal liability should be removed from the person who has the waste deposited on their property without their permission (Fully supportive / Partially supportive / Neutral / Partially opposed / Fully opposed / Unsure)?

One hundred and ninety respondents (100% of the total) answered this question. One hundred and sixty five (87%) were from individuals.

Of the responses, 86% were fully supportive of the proposal that legal liability should be removed from the person who has waste deposited on their land, 9% were partially supportive. The remaining 10 responses were split equally between neutral, partially opposed and fully opposed, whilst one respondent was unsure.

Supportive

Of the responses which were supportive of the removal of legal liability from the person who has waste deposited on their property, the main argument advanced was that this is **fundamentally unfair** and **contrary to natural justice** and the polluter pays principle for that person to be liable. The argument was summarised by one respondent, Robert Claase, who put it in the following terms:

“It's like somebody damaging your property and leaving you responsible. That's just nonsense and totally unfair to the put upon landowner” (Claase, Robert, Ref 191715664 - 14).

Heldon Community Council, Moray, made a similar point, stating that “they are guilty of nothing, why should [they] be responsible for the indiscretions of others?” (Heldon Community Council, Ref 189036453 - 152).

Murroes and Wellbank Community Council highlighted the impact of the current legal position on the **finances and wellbeing of landowners**:

“This has caused undue worry to landowners who have to remove waste from their property as costs as expensive for this service” (Murroes and Wellbank Community Council, Ref 186876968 - 157).

NFUS asserted that:

“The removal of waste, especially heavier materials such as building waste, or even dangerous materials such as asbestos, are extremely costly to remove. It is unfair that this cost falls on the landowner, whom is merely a victim of this crime” (NFUS, Non-Smart Survey response - 158).

NFUS added that this assertion was based on the fact that “26,000 tonnes of waste is fly tipped onto private land each year, and with 95% of NFUS members stating that fly tipping is a significant issue in their area, this is a serious financial burden”.

In a detailed response to this question, Scottish Land and Estates outlined the practical concerns that landowners/land managers have with the current legal position:

“There is no legal obligation for local authorities to assist with the removal of fly-tipped material, and therefore no incentive for them to address the problem. If reported independently, the land manager is frequently given notice by the local authority or other relevant body to remove and dispose of the waste at their own cost. If hazardous materials such as asbestos are present, a 7 day warning can be issued, with the land manager additionally being threatened [with] possible prosecution. This appears to now be an established process across Scotland where the victim is made to pay, and not the offender or the local body responsible for such waste” (Scottish Land and Estates, Ref 191919114 – 164).

A number of community councils were supportive of the need to change the current legal position in respect of liability, and two such responses are quoted above. What follows is a selection of comments which were made by other community councils from across the length and breadth of Scotland, and which encapsulates the strength of feeling expressed in responses on this issue:

- “It is totally unfair to expect the land owners to dispose of any fly tipped materials.” (Portknockie Community Council, Ref 189202196 - 162);
- “The property owner is the victim of the crime and should not suffer further” (Westhill and Elrick Community Council, Ref 189226954 - 167);
- “Members feel it is unfair for the liability to be placed on the land owner”. (Yell Community Council, Ref 190221665 - 168);
- “The current situation penalises the innocent and must be changed”. (Echt and Skene Community Council, Ref 190931279 - 150).

The Scottish Countryside Alliance also highlighted some of the practical measures that its members are currently having to take:

“Countryside Alliance members, including farmers and rural businesses, frequently have to clear up fly-tipped waste from their land and are having to resort to drastic measures to deter the crime such as leaving machinery or other objects in front of gates and field entrances. At the moment, it is often more expensive for the victim to remove the

fly-tipped waste from private land than the cost of any penalties to the criminals” (Scottish Countryside Alliance, Ref 191272580 - 163).

However, Glasgow City Council, which was partially supportive of the proposal to remove legal liability from the owner of the land, gave an alternative perspective, describing some of the **practical dilemmas** that might be faced by authorities should legal liability be removed from the person on whose property the waste was deposited, elaborated on these dilemmas:

“What if the person(s) responsible for the waste cannot be identified? What burden of proof is required, e.g. a successful court prosecution to prove in law that a particular individual deposited the waste? What if they can't/won't remove the waste? There could be significant delays in getting waste removed from private land. Furthermore, how would authorised officers know that the landowners did not receive payment in order to allow waste to be deposited on their land?” (Glasgow City Council, Ref 191946370 - 151)

A very similar point was made by Chris Dalrymple, who was partially opposed to the removal of legal liability (Dalrymple, Chris, Ref 191685224 - 19).

Neutral/Unsure/Opposed

Of the relatively few responses to this question that were not supportive of changing the law in respect of the removal of legal liability from the person who has waste deposited on their property, some highlighted the practical difficulties that removal of legal liability might cause. For example:

- “most fly-tipping is **carried out under cover of darkness**, or at a time when the property owner is known to be absent” (Irvine, Bob, Ref 186148406 - 102) (Unsure);
- “landowners should **remain responsible for securing their land** and disposing of any waste on, or from it” (Organisation anon, Ref 188917027 - 15) (Fully opposed) ;
- “if the liability is not on the owner (as per EPA 1990) and the offender of the fly-tipping is not known - who cleans up the waste? Who secures to prevent recurrence? Local Authorities cannot and will not accept liability for private land as there is the potential for landowners to abdicate duties to secure and prevent fly tipping. If this was to come to local authorities, appropriate annual funding would be required to allow this work to be undertaken including resource for enforcement”. (Dalrymple, Chris, Ref 191685224 - 19) (Partially opposed) (*and see above similar argument made by Glasgow City Council which was were partially supportive of a change – referenced earlier on page 20*);
- “This will likely result in fly-tipping becoming a greater problem which is opposite to the stated intention of the Bill. We believe a better

alternative is to provide more support to land owners to remove the waste and to help identify who may have dumped it. We would also support SEPA having a legal responsibility to organise the removal of waste in situations where the land owner fails to do this". (Kilmallie Community Council, Ref 191830587 - 153) (Fully opposed).

Question 5: Which of the following best expresses your view of the proposal that strict liability should be introduced to shift liability to the person responsible for generating waste that is fly-tipped (Fully supportive / Partially supportive / Neutral / Partially opposed / Fully opposed / Unsure)?

One hundred and eighty-eight respondents (99% of the total) answered this question. One hundred and sixty four (86%) were from individuals.

Of these responses, 68% were fully supportive of the proposal that strict liability should be introduced to shift liability to the person responsible for generating waste that is fly-tipped, whilst 20% were partially supportive. The remaining 22 responses were split between neutral (4%), partially opposed (3%) and fully opposed (4%), whilst two respondents (1%) were unsure.

Supportive

The following summarises evidence received from respondents which were supportive of the proposal that strict liability should be introduced to shift liability to the person responsible for generating waste that is fly-tipped:

A number of responses took the view that, whilst it might be challenging to enforce, this is the **right place for liability to lie**. This was the view expressed by Iain Walker Taylor, who stated:

“Although it may be difficult to always enforce, this is the rightful place to leave liability” (Taylor, Iain, Ref 186905027 - 135)

Bill Cowan reinforced the view that the waste generator should have responsibility for fly-tipping:

“The person who phones the 'man with van' advertised on the railings at the local roundabout is every bit as responsible as the actual unlicensed waste disposer” (Cowan, Bill, Ref 187077431 – 17).

Many others agreed, with Iain Cameron describing strict liability as “a must” (Cameron, Iain, Ref 187239637 - 12), Marlene Gill describing the approach as “common sense” (Gill, Marlene, Ref 187337404 - 28), and an individual who wished to remain anonymous describing it as “the only fair way” (Individual anon, Ref 188572791 - 82) . Echt and Skene Community Council stated that “the "polluter pays" principle should be applied” (Echt and Skene Community Council, Ref 190931279 - 150).

Councillor Alison Adamson made clear her view that, unless they can prove otherwise, the waste generator should be held accountable for any waste that is fly-tipped:

“Dumpers should be punished. Those who say “I thought it was ok to let a third party dispose of it” should also be held accountable unless they can prove they did all the necessary checks the removal people were fully licensed and approved” (Adamson, Alison Cllr, Ref 187450696 - 2).

Scottish Land and Estates, which indicated partial support for strict liability, drew attention to the fact that the fly-tipping chain **mostly includes more than one party**:

“In the vast majority of situations, fly-tipping is an offence committed by two or more parties. One is the originator of the waste, be that a householder, business or perhaps even the fly-tipper themselves. The second other party is the person(s) who actually commit the fly-tipping offence. Both should be considered jointly responsible for the crime and face the same penalties” (Scottish Land and Estates, Ref 191919114 – 164).

As referenced above, the percentage of respondents to this question who were **partially supportive** rather than fully supportive of the imposition of strict liability on the generator of waste was **higher than the percentage of respondents who were partially supportive of the proposal outlined in question 4** (removal of legal liability from the landowner). In other words, support for the imposition of strict liability on the generator of the waste is not quite as strong as support for the proposal to remove legal liability from the landowner.

A number of those responses which were only partially supportive expressed concern that a waste generator may have **legitimately and in good faith paid for a third party to remove their waste**. Such responses tended to argue that, whilst some liability ought to lie with the waste generator, in many cases they are not the fly-tipper, and may not be aware of their liability. For example, Aviemore and Vicinity Community Council expressed concern:

“that [the] waste generator might pay someone who might have a license but still fly tips as it's cheaper. Need to protect innocent members of public” (Aviemore and Vicinity Community Council, Non-Smart Survey response - 145).

However, in noting that point, Malcolm Paterson and others still believed that the generator should have some element of liability:

“Sometimes I think people don't realise what is going to happen to their rubbish. But, at the same time when they decide to have a "man with a van" who can get rid of it cheaply dispose of it, they should be held

accountable to a degree. Perhaps **shared liability** for the person to whom it belongs and the person illegally disposing of it” (Paterson, Malcolm, Ref 191718083 - 121).

Robert Claase made a similar point and highlighted the need for education for people who generate waste to avoid them inadvertently falling foul of any new provisions:

“Many people are taken in by waste removal people. It's time a better licensing system is introduced. If people allow waste carriers to take waste away without seeing the license they then become responsible. More government advertising needs to be directed at the population to advise that they will be held responsible with the huge new penalties” (Claase, Robert, Ref 191715664 - 14).

A related point made by those who were partially supportive of strict liability was that the nature of fly-tipping is such that it can be difficult to prove who generated the waste. Glasgow City Council argued:

“We support the principle behind this however in practice the liability can only be shifted where there is sufficient evidence to prove who the person responsible is. Unfortunately, all too often, this is not possible. It is often very difficult to identify the perpetrator. The landowner may be depositing the waste” (Glasgow City Council, Ref 191946370 - 151).

One respondent who wished to remain anonymous, but who had experience of dealing with incidences of fly-tipping, supported the assertion that identification can be challenging so implementing strict liability may be difficult:

“in practice it's difficult to implement as in the vast majority of cases it is not possible to identify the person responsible”. (Anonymous, partially supportive) (Organisation anonymous, Ref 188917027 - 160).

Scottish Land and Estates also advised that technology had in the past been used in England to identify and prosecute offenders but added that “such resources are **unlikely to be within the available means of land owners or managers** without significant financial assistance” (Scottish Land and Estates, Ref 191919114 – 164).

Neutral/Unsure/Opposed²

As mentioned on page 20, 22 responses (12%) were not supportive of the imposition of strict liability on the generator of the waste (neutral, unsure or

² As mentioned on page 4 of this document, given the low number of responses which were not supportive of the draft proposal, responses which are neutral or unsure are generally being grouped with responses which were opposed.

opposed). The main arguments advanced for adopting this position were as follows:

- Strict liability should be **imposed on the dumper of the waste** rather than the generator, unless it can be proven that the generator was fully aware that the waste was going to be dumped illegally. This was a view expressed by Davy Orr, who took a position of neutrality in relation to this question (Orr, Davy, Ref 186252262 - 120), along with others, some of whom indicated that they were opposed to the proposal in this question (see for example, Hamilton Robin, Ref 187230699 – 33 (partially opposed); Organisation anonymous, Ref 186392075 - 159 (fully opposed); Individual anon, Ref 187051862 - 59 (unsure)). This is the direct opposite view to that expressed by some who were opposed, who argued that unless the generator can prove that they were unaware that the waste was going to be dumped illegally, then they should be held liable for the waste;
- It is unfair to impose strict liability on the generator of the waste as they may have **legitimately and in good faith paid for someone to collect that waste**. This is a point that is discussed above with the supportive responses, some of whom accepted that this may be an issue that would require further consideration. The Law Society of Scotland, which took a position of neutrality on this question, expressed this view, and highlighted a number of wider legal issues for consideration (Law Society of Scotland, Ref 191949647 - 154);
- Before legislating to impose strict liability on the generator of the waste, it would be helpful to first better understand how existing law in this area might sit alongside new provisions. This was a point drawn out by the Law Society of Scotland, which added:

“In the event that such a measure is introduced, we consider that a **large-scale public awareness campaign would be required** so as to ensure that members of the public and businesses are **aware of their responsibilities** in this regard, and **how to evidence any requirements for a defence**, for example, how to carry out relevant checks to ensure that a third party has a valid licence. Depending on the requirements, this in itself could be a fairly high burden for certain groups in society, for example if the responsibility falls on the waste generator to check a centralised online system for the existence of a valid licence, this could present difficulties for those who are digitally excluded. In addition, consideration is required as to how the waste generator would be protected if, for example, steps were taken to check for a valid licence, but the third party had been dishonest” (Law Society of Scotland, Ref 191949647 - 154).

Finally, one further issue raised under this section, which is also relevant to question 4, was raised by Kilmallie Community Council and relates to the role of SEPA or local authorities at the point at which waste is discovered. The

community council, which was partially supportive of the imposition of strict liability on the generator of the waste, stated:

“We support measures that allow SEPA or the local authority to take effective action where the origin of the waste has been identified. We would also support measures that required SEPA or local authorities to take responsibility for the removal of waste that was judged to be seriously detrimental to the environment or important areas for the community. Our experience as a Community Council is that it is very difficult to engage with either SEPA or the local authority to prevent environmental or amenity damage as a result of the dumping of waste. This has resulted in the community having to organise the disposal through voluntary efforts. If SEPA and Highland Council had clearer legal responsibilities this would reduce the burden on the community” (Kilmallie Community Council, Ref 191830587 - 153).

Question 6: Which of the following best expresses your view of the proposal that the level of fines issued by local authorities and national park authorities should be higher? (Fully supportive / Partially supportive / Neutral / Partially opposed / Fully opposed / Unsure)

Question 7: Which of the following best expresses your view of the proposal that the level of fines issued by SEPA should be higher? (Fully supportive / Partially supportive / Neutral / Partially opposed / Fully opposed / Unsure)

Given the similarities between questions 6 and 7 these have been grouped for the purposes of this summary. The levels of support for increasing fines issued by each body are broadly similar.

Currently fines of £200 can be imposed by local authorities or national park authorities (which can be increased to £500 by Order), whilst SEPA can impose fines of £600 for fly-tipping. For the purposes of the consultation document Murdo Fraser MSP proposed fixed penalty notices of up to £2,000, but indicated that he would be interested in hearing views on an appropriate threshold.

One hundred and ninety respondents (100% of the total) answered question 6. One hundred and eighty-eight respondents (99% of the total) answered question 7. As with other questions a high number of these responses were from individuals (165 and 163 respectively).

In relation to question 6, 91% of respondents to that question were supportive of the proposal to increase the level of fines issued by local authorities and national park authorities (81% fully supportive; 10% partially supportive). Of the remaining 17 responses, 13 took a neutral position, One was partially opposed, one was fully opposed and one were unsure.

In relation to question 7, 89% of respondents to that question were supportive of the proposal to increase the level of fines issued by SEPA (82% fully supportive; 7% partially supportive). Of the remaining 20 responses, 11 took a neutral position, 2 were partially opposed, 2 were fully opposed and 5 were unsure.

Turning first to those responses which were supportive of higher fines:

Supportive

A number of reasons were given by respondents who were supportive of higher fines being imposed by local authorities, national park authorities and SEPA. These are summarised below

Higher level of fines will act as a deterrent to potential fly-tippers / cost of clean up

Higher fines acting as a deterrent to people from fly-tipping was the main reason given by respondents to questions 6 and 7 who were supportive of higher fines for fly-tipping.

Scottish Land and Estates set out its concerns about the extent to which existing fine levels do not act as a deterrent:

“An effective deterrent to fly-tipping does not exist in Scotland. The current measures are weak in the extreme, in the most unlikely situation that such an offender is ever brought to account for their crimes...A well organised fly-tipper who dumps waste on behalf of others may earn in the region of £500 - £800 per day. Existing penalties, if they are ever brought to account for their crimes are extremely punitive, perhaps less than £200 per offence. This will be seen as an acceptable overhead for the offender, and not a deterrent as they will still have several hundred pounds in their pocket from their activities that day. The lawful collection and removal of domestic and commercial waste by local authorities and authorised reputable contractors has escalated significantly recently. The lack of absolutely any similar progress regarding deterrents or penalties for fly-tipping offenders is perpetuating the prevalence and severity such criminality” (Scottish Land and Estates, Ref 191919114 – 164).

Scottish Land and Estates added that the pattern and level of fines issued by local authorities, national park authorities and SEPA should be consistent wherever possible.

A number of individuals also did not consider that current levels of fines were acting as significant deterrents against fly-tipping. For example, Gabrielle Harrington, MBE, stated that “Deterrence must play a significant role. £200

won't stop any unscrupulous offender" (Harrington, Gabrielle, Ref 186988408 - 34) whilst Marion Jess argued that "in some cases a custodial sentence should be imposed" (Jess, Marion, Ref 186864176 - 103). John Dunlop made the point that "In a lot of cases the cost to remove a large fly tip far exceeds the £200 fixed penalty that has been issued" (Dunlop, John, Ref 186565351 – 23). This was an argument also advanced by Canonbie and District Community Council, which argued in relation to question 6 that "fines need to reflect potential costs to clean-up fly tipping" and in relation to question 7 that "These fines need to reflect the potential harm to the environment and cost of clean-up/restoring the environment" (Canonbie and District Community Council, Ref 191088980 - 148). This argument was also advanced by the Scottish Countryside Alliance, which took the view that:

"Authorities should have a range of tools at their disposal to tackle and prosecute fly-tippers. The current levels of fines under the fixed penalty system are far too low and do not reflect the cost of clean-up or investigation, nor allow for the authorities to recognise and hold those fly-tippers to account for whose crimes are particularly bad" (Scottish Countryside Alliance, Ref 191272580 - 163).

In addition to Canonbie and District Community Council, many other community councils drew attention to the fact that existing fine levels were not acting as a deterrent. For example, Kilmallie Community Council stated that "current fines are unlikely to be a significant deterrent" (Kilmallie Community Council, Ref 191830587 - 153), Tynewater Community Council believed that "a more severe fine regime should apply" for industrial fly-tipping, with other measures such as "confiscation of vehicles and custodial driver sentences" being considered (Tynewater Community Council, 191657752 - 166), and Cambuslang Community Council argued that fines issued by local authorities, national park authorities and SEPA "should be at least £2,000 or even higher to act as a disincentive, particularly to criminal gangs" (Cambuslang Community Council, Ref 190012600 - 147).

Level of fines should be tiered depending on scale of fly-tipping

An argument advanced by a number of respondents who were supportive of the proposal to increase the levels of fines issued by local authorities, national park authorities and SEPA was that the level of fines issued should be tiered depending on the scale of fly-tipping taking place, or to reflect the fact that the fly-tipping had been done by a first offender or repeat offender.

For example, Glasgow City Council stated:

"We welcome increased fines, however, if there was an option to have a sliding scale which is [dependent] on the severity of the conduct that would be a welcomed option. Adequate enforcement resources would be required for this to be effective. In addition, the Procurator Fiscal service and Scottish courts also need the capacity to prosecute fly-

tipping offences where fixed penalties are not appropriate” (Glasgow City Council, Ref 191946370 - 151).

Glasgow City Council was also supportive of SEPA being able to fine fly-tippers up to £2,000.

The Scottish Countryside Alliance indicated that:

“We would be very supportive of tiered mechanisms enabling authorities to penalise accordingly depending on the gravity of the offence. We would expect guidance to be issued to authorities, so they know what level of fine to issue for offences” (Scottish Countryside Alliance, Ref 191272580 - 163).

TyneWater Community Council advocated:

“mandatory fines for any fly tipping - either a minimum amount or a fixed penalty. Repeat offenders fined on a sliding scale. Most useful for private individuals who are tipping their own waste material” (TyneWater Community Council, 191657752 - 166).

One respondent, who wished to remain anonymous, stated:

“Fining someone 2,000 pounds for fly-tipping a crisp packet is clearly nonsense - fining Hunterston [2,000] pounds for [dumping] nuclear waste is equally [ridiculous]...I think a carefully thought-out stratification of fines as guidance should be produced, probably on the basis that fine should be commensurate with the cost of repairing the problem, with perhaps the actual cost on top going to whoever had to remove the waste. There is also the question of compensation to the occupier, eg a farmer whose kine were made ill by dumped waste, and whether there might be an order that this should come from the local authority too?” (Individual anon, Ref 185985881 - 39) (Partially Supportive).

An organisation which wished to remain anonymous, considered the levels at which a sliding scale should be applied:

“Perhaps based on amount of fly tipping and whether first offence, or a regular thing. i.e. different levels of fines. A first offence for tipping one item should not be a £2000 fine, but if a large amount. £2000 may be too low” (Organisation anonymous, Ref 189226954 - 161).

Robert Claase added:

“Make the fines start at £5,000 for a certain volume and build in a sliding scale dependant on the increase in volume” (Claase, Robert, Ref 191715664 - 14).

Scottish Land and Estates gave its view on what a sliding scale might look like in practice:

“[£500] should be the minimum fine for a first offence, with a proportion of this and any subsequent penalties being used to enable further deterrents to be brought forward, and support the overheads of future prosecutions and clear up costs. Such levels will still be insufficient to deter committed fly-tippers however who have built such activities into their already established criminal portfolio. Subsequent fines of £2000 for a second offence, and unlimited fines for subsequent offences would send stronger signals that such criminality is not tolerated. The additional sale of, or crushing of the offender's vehicle would take away, even if on temporarily, the equipment required to commit the crime, with possible prison terms of up to 2 years or habitual offenders. The person who commissions a fly-tipper to take away their waste should be subject to equally severe deterrents” (Scottish Land and Estates, Ref 191919114 – 164).

The issue of whether £2,000 is an appropriate level of fine is discussed further under the next heading. The issues of a tiered approach to sanctions is discussed further under question 9 on criminal sanctions.

Views on the appropriate threshold for fines

In the consultation document, the Member proposed fixed penalty notices of up to £2,000, but indicated that he would be interested in hearing views on an appropriate threshold for fines issued for fly-tipping.

In response to questions 6 and 7, a number of individuals who were supportive of increasing the level of fines issued by local authorities, national park authorities and SEPA also commented on the level those fines should be at. It is notable that no responses which were supportive of higher fines took the view that £2,000 was too high. As referenced above, a number of responses discussed whether a sliding scale of fines might be appropriate. A number took the view that £2,000 was too low or that there should be provision to increase the fines beyond £2,000 for repeat offenders. Other respondents considered that additional measures, such as removal of vehicles, suspension of driving licences or the option of custodial sentences, should be considered. The summary of responses to question 9 goes into more detail on the issue of whether additional criminal sanctions should be imposed.

In relation to the appropriate threshold for fines, below is a selection of comments that were made by respondents who were supportive of a general increase in the level of fines:

- “Fines need to be even higher in my opinion” (Jess, Marion, Ref 186864176 - 103);
- “In many cases the chance of only a £2000 fine may be a cheaper alternative to proper disposal” (Cowan, Bill, Ref 187077431 - 17)

- “I would increase the fines to £5,000 and also take and destroy their van or vehicle” (Hamilton, Robin, Ref 187230699 - 33);
- “£2k seems about right” (Breslin, Michael, Ref 188378873 - 9);
- “[£2,000] is small change to these people. [You] should be thinking along the lines of at least £20000 and the confiscation of their vehicles and property. [Also] a good stiff jail sentence.” (Orr, Davy, Ref 186252262 - 120);

Others who supported an increase in fines argued for more creative solutions, such as the impounding of vehicles and a sliding scale for fines (mentioned above, with smaller fines for low-level fly-tipping or first offenders, rising for repeat offenders or larger scale fly-tipping), and significant penalties being issued for industrial scale fly-tipping. For example, Joanne Matheson argued that “Where the waste is potentially hazardous, toxic or damaging to the environment fines should be much higher than £2,000” (Matheson, Joanne, Ref 186370881 - 113), whilst Helen Blackburn argued that fines for offenders should be:

“Not only £2000 (which I would increase to £5000) but take their vehicle from them and make them clean up the mess they left. If they fly-tip again they should receive a custodial sentence” (Blackburn, Helen, Ref 187902765 - 6).

Scottish Land and Estates stated that:

“in circumstances where large commercial scale fly-tipping (resulting in clear-up costs exceeding c. £100,000), or where it has contributed to the contamination of land or waterways, such fines and other penalties should be unlimited” (Scottish Land and Estates, Ref 191919114 - 164).

Neutral/Unsure/Opposed³

The number of respondents who were not supportive of the proposal to increase the level of fines for fly-tipping was small. There were 17 such responses to question 6 (13 neutral; 1 partially opposed; 1 fully opposed; 2 unsure) and 20 such responses to question 7 (11 neutral; 2 partially opposed; 2 fully opposed; 5 unsure).

11 took a neutral position, 2 were partially opposed, 2 were fully opposed and 5 were unsure.

³ As mentioned on page 4 of this document, given the low number of responses which were not supportive of the draft proposal, responses which are neutral or unsure are generally being grouped with responses which were opposed.

The Law Society of Scotland took a neutral position in relation to questions 6 and 7, and gave the following reasons for reaching this view:

“We note that consideration is required as what is appropriate for direct civil sanction and what requires and/or deserves the treatment as a criminal offence. We suggest that this question should be considered in the light of other penalty regimes and not in isolation. It is important that penalties, both civil and criminal, are proportionate. We suggested in our response to the Scottish Government’s consultation that consideration be given to a clear scheme of escalating penalties, for example, including use of fixed penalties for one-off instances building up to more robust sanctions where there is a course of conduct or repeated instances involved. We also welcomed the work of the Scottish Sentencing Council in relation to environmental and wildlife crime [<https://www.scottishsentencingcouncil.org.uk/sentencing-guidelines/guidelines-in-development/environmental-and-wildlife-crime-sentencing-guideline/>]” (Law Society of Scotland, Ref 191949647 - 154).

There is further discussion of a scheme of escalating penalties in the section above, as a number of responses which were supportive of the need to increase the level of fines issued also supported a tiered approach to issuing fines. These matters are also discussed further in the summary of responses to question 9 on criminal sanctions.

A further issue that was raised in responses in this section as an alternative to increasing fines was the view that a more appropriate remedy for the increased level of fly-tipping would be for local authorities to increase the level of services they provide for waste to be legitimately disposed of. This was an issue raised by Martin Blackshaw, who was unsure on the issue of increasing fines (Blackshaw, Martin, Ref 186146469 - 7), and by an anonymous respondent, who took a neutral position, and who indicated that “councils need to make disposal of waste easier and cheaper” (Individual anon, Ref 186378181 - 50) (Fully opposed, response to Q6).

Some of the other reasons given by respondents for not supporting higher fines were:

- “Have to catch them to fine them” (Armes, Rupert, Ref 187028004 - 3) (Neutral, response to Q6);
- “Money should be put into making it easier to dispose of rubbish more easily” (Individual anon, Ref 187158563 - 63) (Neutral, response to Q7);
- “£2000 fine may deter more, but think that the people doing it probably know a way of avoiding getting caught”. (Individual anon, Ref 187802250 - 78) (Neutral, response to Q6);

- “Tinkering with fines will not deter, the lack of effect merely prolonging the issue” (Individual anon, Ref 188763507 – 90) (Partially opposed, Response to Q6).

Other proposals that the Member consulted on

The consultation document set out three further areas in relation to fly-tipping, which were not covered by the four specific proposals outlined above, but where the member was interested in hearing views. These areas were:

- whether a waste duty of care system, similar to that in England and Wales, should be introduced in Scotland;
- what potential there is for additional criminal sanctions to be applied for instances of fly-tipping;
- whether the system of corroboration of evidence should be reviewed.

The following questions covered these areas in more detail:

Question 8: What are your views on the potential to introduce a waste duty of care system, similar to that in England and Wales? (Fully supportive / Partially supportive / Neutral / Partially opposed / Fully opposed / Unsure)

One hundred and eighty-four respondents (97% of the total) answered this question. One hundred and sixty two responses (85% of the total) were from individuals.

Of the responses to this question, 56% were fully supportive of the proposal that a waste duty of care system should be introduced, whilst 16% were partially supportive, 15% took a neutral stance, 1% were partially opposed (1 respondent), 1% were fully opposed (2 respondents) and 11% were unsure.

The waste duty of care: code of practice in England and Wales is statutory guidance that applies to England and Wales and was published in November 2018. The code sets out practical guidance on how to meet waste duty of care requirements. It applies to anyone who imports, produces, carries, keeps, treats, disposes of or, as a dealer or broker has control of, certain waste in England or Wales. Further detail on the code of practice is provided on pages 12, 13 and 18 of the [consultation document](#).

Supportive

Fully supportive

Of the 72% of responses which were supportive of a waste duty of care system in Scotland, many took the view that the system **should be the same as the system in England and Wales** so as to avoid confusion. For example, Brian Griffiths stated “If it is working, I would suggest we follow the exemplar set in England and Wales rather than create a Scottish one for the sake of it as this will incur added costs and delays in establishing the scheme” (Griffiths, Brian, Ref 186241814 - 32). Similarly, Sharon Fishwick argued that

she would “prefer [a] similar system to rest of UK” (Fishwick, Sharon, Ref 189077740 - 26). Joanne Matheson added:

“I’m no expert, but the English system seems like it could work... This will help reinforce the message that if they have generated the waste, they are responsible for responsible disposal” (Matheson, Joanne, Ref 186370881 - 113).

William Benjamin Evans was fully supportive of adopting a similar system, arguing:

“this puts the onus on waste generators to ensure it will be disposed of in the correct manner and ensures people they use to dispose of waste are properly licensed” (Evans, William, Ref 188710271 - 24).

Literati Guide to Inverclyde argued that:

“Only reputable and licensed waste removers should operate in this space. This means that licenses have to be applied for and due waste removal and recycling methods (and standards) adopted” (Literati Guide to Inverclyde, Ref 185919599 - 155).

Bill Cowan was fully supportive of this approach, arguing that many actors have a responsibility for the appropriate disposal of waste:

“Everybody in chain of disposal of waste needs to be held responsible, perhaps even up to the creator of the things disposed of (eg the tyre manufacturer) right through to the 'recycling' contractor who sends the tyre to India to be burnt as fuel” (Cowan, Bill, Ref 187077431 - 17).

Iain Walker Taylor made a similar point:

“[the] use of circular economy is to be encouraged. It should be a responsibility of all. Manufacturer, Processor, Wholesaler, Retailer and consumer” (Taylor, Iain, Ref 186905027 - 135).

In terms of enforcement of a duty of care, Cambuslang Community Council (Cambuslang Community Council, Ref 190012600 - 147) stated that a system where “one authority is responsible for enforcement and has stronger powers could also work in Scotland”.

Partial or caveated support

Others who were supportive of the approach in principle caveated their support by highlighting issues with the system in England and Wales or concerns about how it might apply in Scotland. For example, Gabrielle Harrington, MBE, who was partially supportive of a waste duty of care system, stated:

“Good in principle but it must be properly enforced and monitored. We know that the English system is full of holes and that operators ostensibly with the right permits - or borrowed permits - can still slip through the cracks with waste still ending up in the wrong place” (Harrington, Gabrielle, Ref 186988408 - 34).

Westhill and Elrick Community Council, also partially supportive of a waste duty of care system, indicated that it was “uneasy” that individuals who did not comply with the duty of care may get a criminal record (Westhill and Elrick Community Council, Ref 189226954 - 167).

Scottish Land and Estates was fully supportive of such a system. Nevertheless it expressed the concern that:

“A core standardised system across Scotland would need to be appropriate for both urban and rural situations, although it should be recognised that the type of flytipped material does differ across such environments. Such action is however unlikely to deliver a reduction in the frequency of flytipping crimes where adequate recycling options are not available, or represent a challenging option for public access which can ultimately lead to an increase in flytipping” (Scottish Land and Estates, Ref 191919114 - 164).

An anonymous respondent highlighted the importance of ensuring such a system fitted with Scots law:

“If clarifying the Duty of Care ... is found to be necessary, need to ensure it works with Scottish law”. (Individual anon, Ref 185985881 – 39) (Partially supportive).

Keith Vance, a professional with experience in the area, was partially supportive of a duty of care system but indicated that local authorities:

“should provide detailed ways of how waste can be re- used. Reward those which show great care in waste management” (Vance, Keith, Ref 186882752 – 139).

Barry Knock expressed the concern that “Extra paper work may increase costs of legitimate movers of waste” (Knock, Barry, Ref 186977099 - 105).

Another anonymous respondent, who was supportive of the idea, cautioned that they were:

“not sure how members of the public would be supposed to be aware of this fact. I would prefer a system where the council must supply licences to waste companies, and are responsible for issuing these companies with the waste removal work, and informing the householder of the service and appointment”. (Individual anon, Ref 188628061 - 84) (Partially supportive).

This respondent also highlighted the need for a complete paper trail, for ease of tracking down the source of the waste.

Neutral

As indicated above, 27 responses (15% of responses to this question) indicated a position of neutrality in relation to this question. Many of those responses did not leave comments explaining why they were neutral on the matter or did not wish their response to be published. Those that left comments for publication made the following comments:

- “I still believe it would be very difficult to prove where the waste came from and from who’s property” (Hamilton, Robin, Ref 187230699 - 33);
- “If the waste centres were more accessible for all less fly tipping would occur” (Individual anon, Ref 187652923 - 76);
- “But it seems the problem is worse in England and Wales, so will it be effective?” (Individual anon, Ref 188763507 - 90);
- “Residents in Scotland are already responsible for the disposal of their waste. A potential solution would be to add a "bar code" to tyres, mattresses, sofas etc and other regularly flytipped items so the owner can be identified if these are later found flytipped”. (Organisation anonymous, Ref 188917027 - 160);

The Law Society of Scotland adopted a position of neutrality in relation to this question, and queried how a duty of care might sit alongside other provisions in a future Fly-tipping Bill, such as the imposition of strict liability on the generator of the waste, and other existing duties under section 34 of the Environmental Protection Act 1990. The Law Society indicated that it would welcome clarity on how a waste duty of care system might affect householders, in particular vulnerable individuals. In summary the Law Society stated:

“In the event that further measures are introduced, we consider that a large-scale public awareness campaign would be required so as to ensure that members of the public are aware of their responsibilities in this regard, and how to take measures (and evidence these) to ensure that waste is only transferred to an authorised person. Certain measures could present a burden for certain groups in society, for example if a householder is required to check a for the existence of a valid licence. Greater burdens in the disposal of waste by individuals could negatively impact consumer behaviour” (Law Society of Scotland, Ref 191949647 - 154).

Unsure

As indicated above, a further 21 respondents (11% of responses to this question) stated that they were unsure as to whether a waste duty of care should be established in Scotland. Very few of these responses added comments giving reasons as to why they were unsure. The small number that did expressed concern around its financing, with one response arguing that it may be a “money making venture rather than a service” (Individual anon, Ref 187460738 - 71), whilst another argued that it could be “cumbersome and potentially expensive” to administer (Individual anon, Ref 188696284 - 87). One respondent indicated that they simply did not know enough about the issue to comment constructively (Individual anon, Ref 188139088 - 79). It is possible that lack of knowledge of how the waste duty of care: code of practice operates in England and Wales lies behind the relatively high number of responses that were unsure (and potentially also neutral) in relation to this question.

Opposed

Only three respondents were opposed. One was partially opposed and two were fully opposed. None of the three responses left comments indicating why they were opposed to a waste duty of care system being introduced in Scotland.

Question 9: What are your views on the potential for additional criminal sanctions being applied for instances of fly-tipping? (Fully supportive / Partially supportive / Neutral / Partially opposed / Fully opposed / Unsure)

One hundred and eighty seven respondents (98% of the total) answered this question. One hundred and sixty three individuals (86% of the total) responded.

Of the responses, 76% were fully supportive of the proposal that additional criminal sanctions should be applied for instances of fly-tipping, whilst 10% were partially supportive, 6% took a neutral stance, 1% were partially opposed (1 respondent), 4% were fully opposed (7 respondents) and 4% were unsure (7 respondents).

Supportive

Several responses to this question were similar to responses to questions 6 and 7 on the levels of fines that should be able to be issued by local authorities, national park authorities and SEPA. For example, a common

theme emerging was that criminal sanctions should form part of a tiered deterrence system, to punish the most serious offences.

The following general themes emerged in responses that were supportive of additional criminal sanctions being imposed.

Link between larger scale fly-tipping and organised crime

Several responses drew attention to links between large scale fly-tipping and organised crime. Respondents argued that, therefore, criminal sanctions should be available to act as a deterrent.

This was a point highlighted by, for example, Michael Robertson (Robertson, Michael, Ref 1854942494 - 126), and Canonbie & District Community Council, which stated:

“Criminal sanctions may further deter organised crime profiting from fly-tipping repeatedly” (Canonbie and District Community Council, Ref 191088980 - 148).

In its response, Scottish Land and Estates expressed concern that recommendations contained in the Scottish Government’s National Litter and Flytipping Strategy would not act as a sufficient deterrent to “habitual flytippers whose activities account for a significant proportion of such problems across Scotland”. Scottish Land and Estates added that it understood that “flytipping is often part of serious organised crime activities” (Scottish Land and Estates, Ref 191919114 - 164).

Glasgow City Council was fully supportive of increasing existing criminal sanctions for fly-tipping on the basis that:

“The Courts often impose sanctions that are less than the money made by criminals involved in larger scale fly-tipping. Higher penalties should be imposed to make sure that fly-tipping does not pay” (Glasgow City Council, Ref 191946370 - 151).

Cambuslang Community Council argued for heavy penalties to be imposed where criminal gangs were operating and where hazardous waste is being dumped:

“In England and Wales courts have the power to inflict unlimited fines and failure to dispose of waste properly is a criminal offence so a similar deterrent could apply in Scotland. This could entail the removal of a licence to trade if appropriate or indeed imprisonment. This is especially relevant where criminal gangs are operating and where hazardous waste is being dumped” (Cambuslang Community Council, Ref 190012600 - 147).

Tiered approach including custodial or other criminal sanctions

Continuing a theme raised in response to questions 6 and 7, a number of respondents to this question advocated a tiered approach, whereby relatively modest fines are issued for low level fly-tipping, but where the sanctions increase based on the seriousness or scale of the fly-tipping, culminating in custodial sanctions for the most egregious breaches. For example, Tynewater Community Council argued for the following approach:

“impose severe fines, confiscate vehicles and for repeat offenders use custodial sentences” (Tynewater Community Council, 191657752 - 166).

A similar approach in respect of custodial sentences for persistent offenders was proposed by Stuart McDonald (McDonald, Stuart, Ref 186110058 – 116).

Brian Griffiths argued that there should be:

“Heavy fines backed up by seizure of assets to pay for them unless the offender works off their debt to society by collecting rubbish” (Griffiths, Brian, Ref 186241814 - 32).

An anonymous respondent, who had fought against fly-tipping in their local area, made a similar argument, and gave more detail as to how they considered a tiered approach to sanctions might work in practice:

“If it is a large consortium who have been caught the leader or leaders should be publicly named, and have to serv[e] community service for a minimum of 12 weeks clearing waste and litter. If they have damaged land/property as a result of their actions they should have to pay for any costs over and above a fine. If they are repeat offenders my earlier suggestion about an increasing scale of charges should be applied. If they repeat the offence more than twice they should be jailed for 4 weeks or more depending on the severity of their offence”. (Individual anon, Ref 186141284 - 47) (Fully supportive)

Malcolm Paterson, a rural resident who had dealt with fly-tipping over a number of years, outlined his own “three strikes” proposals for a tiered system of sanctions:

“Perhaps even a strike system, 1st offense large fine, second offense larger fine and perhaps points on license or other type sanctions, third offense possible custodial sentence” (Paterson, Malcolm, Ref 191718083 – 121).

Other comments

The following additional comments were made by respondents who were supportive of additional criminal sanctions being applied:

- “Create a single entity which has responsibility for the Scottish environment (streamline and morph all organisations where there responsibilities overlap) and give them the authority as well as the responsibility to support the mantra of reduce, reuse, recycle”. (Literati Guide to Inverclyde, Ref 185919599 - 155) (Fully supportive);
- “But only if they can be fully enforced. If a business is the guilty party, naming and shaming, together with the imposition of financial recompense to help repair any damage done to the environment, might work, in addition to a fine commensurate with the level of damage done” (Irvine, Bob, Ref 186148406 - 102) (Fully supportive);

Neutral / Opposed / Unsure

Of the 27 responses which were not supportive of additional criminal sanctions, the following is a selection of the main reasons given for not being supportive.

Additional criminal sanctions will potentially criminalise otherwise law abiding people

Of the responses which were not supportive of additional criminal sanctions, several expressed concern that additional criminal sanctions would not solve the problem, and may lead to otherwise law abiding individuals having criminal records. For example, Martin Blackshaw, who was fully opposed, stated:

“Otherwise ordinary people fly tipping because their Councils want to charge them for removal of bulky waste are not criminals in the true sense” (Blackshaw, Martin, Ref 186146469 - 7).

David Gordon, who was also fully opposed, added “The last thing we need is more people with criminal records. Community punishment would be much better” (Gordon, David, Ref 186220611 - 30).

A respondent who was fully opposed and who wished to remain anonymous expressed concern that additional criminal sanctions may have the unintended consequence of exacerbating levels of poverty:

“I imagine that it’s poor people that are doing this and I wouldn’t want a person ending up in more poverty” (Individual anon, 188521781 - 81) (Fully opposed);

Additional criminal sanctions are unlikely to be effective

Some respondents disagreed with the imposition of additional criminal sanctions on the grounds that they are unlikely to be effective, or used to their full extent. For example, Kilmallie Community Council, which was unsure, stated that “in most cases it seems unlikely to make much difference” (Kilmallie Community Council, Ref 191830587 – 153).

An organisation which wished to remain anonymous, argued that:

“You cannot apply additional sanctions if you cannot identify the person responsible for the crime. This will always be the sticking point in dealing with flytipping” (Organisation anonymous, Ref 188917027 - 160) (Neutral).

Another individual who wished to remain anonymous argued that “prison sentences are rarely likely to apply except where someone deliberately and knowingly caused serious hazard by dumping large quantities waste such as chemical or nuclear waste, and that may be covered by other legislation in any case” (Individual anon, Ref 185985881 - 39) (Neutral).

The Scottish Countryside Alliance, which took a neutral stance on this question, argued that, before implementing further criminal sanctions, an assessment ought to be made of the effectiveness of existing sanctions and whether they “reflect the gravity of the crime, and deter others from undertaking this criminal activity” (Scottish Countryside Alliance, Ref 191272580 - 163).

Other issues that arose

The following other issues were raised in responses which were not supportive of the proposal to apply additional criminal sanctions for fly-tipping:

- “I’d rather we made it **easier and cheaper for people to avoid fly tipping**” (Dixon, Angela, Ref 191749942 - 20) (Unsure);
- Use **VAT on goods** to fund the disposal of same/their replacement. It is the consumer who is the ultimate driver of the waste to **tax the consumption and pay for proper disposal of all goods that way** (Individual anon, Ref 188763507 - 90) (Partially opposed);
- “The public body(ies) having the power to impose or apply criminal sanctions **need to have the resources** to do so. It is undoubtedly the case that the level of fines that can be issued currently are too low” (Echt and Skene Community Council, Ref 190931279 - 150) (Neutral);

Question 10: What are your views on the proposal to review the system for the corroboration of evidence? (Fully supportive / Partially supportive / Neutral / Partially opposed / Fully opposed / Unsure)

One hundred and eighty-one respondents (95% of the total) answered this question. One hundred and fifty eight (83% of the total) of responses were from individuals.

Of the responses, 59% were fully supportive of the proposal to review the system for the corroboration of evidence, whilst 15% were partially supportive, 12% took a neutral stance, 1.5% were partially opposed (3 respondents), 1.5% were fully opposed (3 respondents) and 11% were unsure.

It is worth noting that, whilst very few respondents were opposed to this proposal, over one-in-five respondents (40 respondents in total) were either unsure or took a neutral stance on the issue of corroboration.

Supportive

Turning first to the reasons given by those respondents who were supportive:

Corroboration sets an unworkable high bar

Cambuslang Community Council was fully supportive of the proposal to review the system for corroboration of evidence, and gave its view as to what should constitute corroboration in this area:

“As suggested in the paper, the need for corroboration of evidence sets a high bar. It is not clear what counts as corroborating evidence however we feel that a single piece of traceable waste or evidence of someone seen dumping waste should be sufficient” (Cambuslang Community Council, Ref 190012600 - 147).

In another part of the country, Aviemore and Vicinity Community Council stated:

“The current system is not workable. The system needs to be pragmatic and appropriate to the incident of fly tipping” (Aviemore and Vicinity Community Council, Non-Smart Survey response - 145).

The Scottish Countryside Alliance was partially supportive of a review, indicating:

“The onus for two distinct pieces of evidence of fly-tipping is required before an FPN [fixed penalty notice] can be issued is draconian. We would be supportive of further work being undertaken on this issue and

bringing it down to one distinct piece of evidence to ensure that we can penalise those who fly-tip” (Scottish Countryside Alliance, Ref 191272580 - 163).

Canonbie and District Community Council added that, in its view:

“The rule of two pieces of evidence should perhaps be reduced depending on quality of evidence rather than needing to be corroborated” (Canonbie and District Community Council, Ref 191088980 - 148).

Other means to obtain evidence

A few respondents who were supportive of a review of the system of corroboration considered that there should be alternative means of obtaining evidence to ensure that cases of fly-tipping are prosecuted.

For example, Literati Guide to Inverclyde drew on its own experience of fly-tipping to suggest how technology, combined with changing the law in respect of liability, might enable a more streamlined approach to obtaining evidence in relation to fly tipping:

“We find evidence almost every week of waste which belongs to an individual, which has been fly tipped by an organisation[. Pushing] liability back into the detritus supply chain will ensure that a credible and licensed waste remover is used. Once again, pilot this via technology and in one 'grot spot' to determine the effectiveness of the process and once this has proven to be successful (physical evidence, formal evidence, visual evidence and technical evidence) then a more stream lined approach can be taken” (Literati Guide to Inverclyde, Ref 185919599 - 155).

Aaron Malcolm took a similar view:

“If the items can be traced back or CCTV shows who it is then they should be penalised” (Malcolm, Aaron, Ref 186146113 - 111).

Bill Cowan considered that the approach taken to obtaining evidence in relation to fly-tipping, could mirror that of the methods used by traffic wardens for gathering evidence:

“Traffic wardens carry a DNA sample kit in case they get spat on, maybe the same zeal could be used to collect evidence from fly tipped rubbish. Clothing for instance often features in fly-tipping” (Cowan, Bill, Ref 187077431 - 17).

Existing unwillingness to pursue cases

A related concern that was raised in relation to this question by Scottish Land and Estates was that there is currently an unwillingness among local authorities, even in situations where corroboration is obtained, to seek to pursue fly-tippers. In its view this was due to a lack of incentive to pursue the matter. Scottish Land and Estates was fully supportive of a review of the system of corroboration:

“Where material has been fly-tipped on private land, there is no incentive for a local authority to do anything, other than threaten the landowner with possible prosecution if the waste is not removed. Whilst we acknowledge that all local authorities are financially stretched, there is an increasing unwillingness from them to pursue offenders, even when clear and irrefutable corroborated evidence is handed to them by the landowner and Police Scotland. Local authorities are therefore taking the easy option, even where corroborated evidence exists, rather than the correct action which can reduce such offences and bring offenders to account for their crimes. This situation must be reversed” (Scottish Land and Estates, Ref 191919114 - 164).

Neutral/Unsure/Opposed⁴

Although only six respondents were opposed to the proposal to review the system for the corroboration of evidence, 40 respondents were either unsure or took a neutral position on this matter (21 neutral; 19 unsure). The reason given by most respondents who made a comment for not supporting the Bill was that the proposal **raised wider questions about Scots law** that went beyond the ambit of this particular Bill proposal.

One organisation which was not supportive of a review of the system for the corroboration of evidence was the Law Society of Scotland. The Law Society took the view that **corroboration is an important safeguard in Scots law**. The Law Society’s response stated:

“The need for criminal charges generally to be proved by corroborated evidence has been the subject of extensive scrutiny in recent years. It is recognised that corroboration is one of a number of essential safeguards that combine to provide a fair and Convention-compliant criminal justice system. Were it to be removed, there would be a need to consider other elements of the system” (Law Society of Scotland, Ref 191949647 - 154).

The Law Society acknowledged that there was a significant difference between the number of incidents and the number of cases ultimately actioned

⁴ As mentioned on page 4 of this document, given the low number of responses which were not supportive of the draft proposal, responses which are neutral or unsure are generally being grouped with responses which were opposed.

by the Crown Office and Procurator Fiscal Service. However, the Law Society argued that the **reasons for this difference may be around resourcing and prioritisation rather than difficulties in respect of evidence**, and that the reasons behind this should be established before systemic change is considered.

Martin Blackshaw made a similar argument, stating that “corroboration is essential to our criminal justice system, a mainstay of fairness and justice” (Blackshaw, Martin, Ref 186146469 - 7).

Other respondents who were not supportive highlighted that this question raised wider questions about Scots law so they could not support it or were not sufficiently experienced to comment (see for example, responses from Barry Knock, Bob Irvine and Tynewater Community Council (Knock, Barry, Ref 186977099 – 105; Irvine, Bob, Ref 186148406 – 102; and Tynewater Community Council, Ref 191657752 - 166)).

Gabrielle Harrington, MBE, who was also unsure, described the issue as “tricky” due to “the potential for wrongful accusation ... if the parties have an “issue” with each other”. However, she added that “in the case of fly tipping the evidence should be relatively easy to acquire beyond doubt” (Harrington, Gabrielle, Ref 186988408 - 34).

Jim Dixon, who took a neutral position on this question, reflected that enforcement powers which are available to SEPA “should be made available to Local Authorities and other enforcement bodies”, thereby removing the need for criminal prosecution and corroboration.⁵ (Dixon, Jim, Ref 191621839 - 21).

Kilmallie Community Council was partially opposed to this proposal given the importance in Scots law of corroboration. Nevertheless that Community Council questioned whether the requirement could be dropped in less serious cases where a non-criminal route was taken:

“Corroboration is an important yardstick in our legal system and has to be retained in principle. There’s a question of degree in these offences, however, so the requirement for corroboration could be dropped for offences that will result in FPNs [fixed penalty notices] but must be retained for more serious charges” (Kilmallie Community Council, Ref 191830587 – 153).

⁵ Enforcement powers available to SEPA are discussed further in page 9 of the [Consultation Document](#).

Standard questions for consultations on draft proposals

The final four questions are standard questions that accompany all consultations on draft proposals for Members' Bills. The questions are on:

- financial implications;
- equalities;
- sustainability;
- general / any other comments

Question 11: Any new law can have a financial impact which would affect individuals, businesses, the public sector, or others. What financial impact do you think this proposal could have if it became to law?

A significant increase in costs / some increase in costs / no overall change in costs / some reduction in costs / a significant reduction in costs / Skip to next question

One hundred and sixty respondents (84% of the total number of responses) answered this question. One hundred and forty one responses (74% of the total) were from individuals.

Of the responses:

- 20% believed there would be a significant increase in costs;
- 48% believed there would be some increase in costs;
- 20% believed there would be no overall change in costs;
- 7% believed there would be some reduction in costs (11 responses); and
- 4% believed there would be a significant reduction in costs (7 responses).

Among those who gave reasons for their position on the matter, the following comments were made:

Increase in costs

A number of respondents took the view that there would be an increase in costs due to the administration of a new system. Some of those explicitly stated that a short term increase in costs may lead to longer term savings (see for example, the response from Scottish Land and Estates below).

Michael Robertson stated "if there's more policing, more data, more recording, some costs will occur" (Robertson, Michael, Ref 1854942494 - 126).

Cambuslang Community Council, which considered there would be some increase in costs, outlined where it considered the cost increases would fall:

“Businesses and individuals may have to pay more to ensure that their waste is disposed of properly and local authorities may also have to bear a higher cost pursuing cases of fly tipping” (Cambuslang Community Council, Ref 190012600 - 147).

The Scottish Countryside Alliance also considered there would be some increase in costs, but highlighted the bigger picture in terms of the existing cost of fly-tipping:

“Creating a new reporting system, placing more responsibility for the disposal of waste on other authorities, and the strict liability will all have financial implications for authorities and householders, but we must remember the bigger picture that fly-tipping has on the environment, wildlife and our countryside. However, with a lower burden of proof for FPNs and the potential of increased fines, some of the costs could well be offset and ring-fenced into tackling fly-tipping” (Scottish Countryside Alliance, Ref 191272580 - 163).

Chris Dalrymple, a local authority official writing in a personal capacity, considered that there could be a significant increase in costs resulting from a Bill, particularly on local authorities, which would need to be provided for centrally:

“Depending on Bill, this could have a massive financial impact on Local Authorities from clearance of land, to resource for enforcement. As much of this is non-statutory, resources have been eroded over many years - therefore additional resource and funding would be required” (Dalrymple, Chris, Ref 191685224 - 19).

Jim Dixon, a professional with experience in the area who considered there would be some increase of costs, concurred with the need for additional resource:

“enforcement action against fly tippers will require adequate resources i.e. additional staffing, to carry out investigation” (Dixon, Jim, Ref 191621839 - 21).

Malcolm Paterson agreed that there would be some increase of costs, but considered that these could be “offset with higher fines” (Paterson, Malcolm, Ref 191718083 – 121).

Scottish Land and Estates, which was supportive of the draft proposal, considered that there would be some increase in costs, but believed that this would represent **investment in the reduction of environmental crime**, stating:

“If £10m of investment to tackle fly-tipping offences and criminal activities in Scotland could reduce the clear up costs by £15m, that would be a good investment in our future” (Scottish Land and Estates, Ref 191919114 - 164).

Scottish Land and Estates also noted that, in its view, landowners and managers are currently “covering the cost of managing and disposing of waste that would otherwise have been the responsibility of local authorities or other bodies”.

Glasgow City Council considered that there would be some increase in costs. highlighting that there would be, in its view:

“increased costs for regulators. Additional funding for enforcement staff, CCTV equipment, vehicles and administrative systems would help to increase current levels of investigation and enforcement” (Glasgow City Council, Ref 191946370 - 151).

Glasgow City Council also highlighted that greater collation of data would require additional IT solutions that would come at a cost. Finally, the Council expressed concern that the draft proposal would be **most likely to impact on people on low incomes**, as:

“These are people that cannot afford to pay local authority bulk uplift charges and may dump their waste instead. These are people that cannot afford a car that would allow them to take waste to a Council recycling centre. And these are people that do not have the means to pay the increased fines proposed in the Bill”.

No overall change in costs

Thirty-two respondents indicated that they considered that there would be no overall change in costs. A number of those did not comment on why they considered this to be the case. Those who did give their reasons for reaching this view tended towards the position that revenue from fines and increased compliance would offset initial costs. Below are a selection of the comments which were made:

- “if more is done in catching and prosecuting then the fines could cover the costs” (Evans William, Ref 188710271 – 24);
- “Initial increase costs...longer term saving due to increased compliance” (Thomson, Andy, Ref 191070667 - 137);
- “Fine offenders and use these revenues to fund the costs of the proposal” (Beal, E, Ref 191713980 -5);

- “As long as the fines are recycled back into the supporting system it should be close to paying for itself” (Individual anon, Ref 186991902 - 56).

Reduction in costs

Eleven respondents considered that the draft proposal would lead to some reduction in costs, whilst a further seven considered that it would lead to a significant reduction in costs. It is notable that, of those who made a comment outlining their reason for this position, a number reached the same conclusion as some respondents who considered there would be an increase in costs, namely that there would be an increase in costs in the short term but that this would represent investment as it could lead to longer term income through fines and savings in respect of existing clear up costs. Below are a selection of the comments that were made (emphasis added):

- Fly-tipping has a cost to society at the moment in both **monetary and environmental terms**. Reducing the incidence of fly-tipping should reduce the costs to landowners and local authorities (Echt and Skene Community Council, Ref 190931279 - 150) (some reduction in costs);
- “Substantially increasing fines would **create [a] fund that can be used to provide more CCTV monitoring in blackspots, Waste Warden Patrols, and more waste collection employees**. This would reduce the impact on [local authority] budgets, and create work reducing benefit claims. It would also reduce costs for businesses and land owners who are currently paying for the removal of illegally dumped waste” (Individual anon, Ref 186141284 - 47) (significant reduction in costs);
- “**Costs to the community** would surely be reduced” (Cowan, Bill, Ref 187077431 - 17) (significant reduction in costs);
- “Local authorities would save money [and] **controlled removal of waste would ensure better recycling**”. (Adamson, Alison Cllr, Ref 187450696 - 2) (significant reduction in costs);
- “a **reduction in costs for victims; an increase in costs for local authorities to prevent and remedy and an increase in costs to the perpetrators** assuming they are caught”. (Goffin, John, Ref 187682691 - 29) (some reduction in costs);
- 'income' from increased fines should be used to cover the cost of waste removal (Individual anon, Ref 188139088 – 79) (some reduction in costs)⁶;

⁶ Income from fines is centrally collected and paid into the Scottish Consolidated Fund. Further information is available here: [5. Fines, Forfeitures, and Fixed Penalties - Fiscal framework outturn report: 2020 - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultations/5-fines-forfeitures-and-fixed-penalties-fiscal-framework-outturn-report-2020)

- “If implemented properly, the bill would raise monies for the authorities, and ultimately act as a deterrent for fly tipping. The former aspect would raise income, the second would lower costs” (Individual anon, 191717470 - 97) (significant reduction in costs).

Question 12: Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. What impact could this proposal have on particular people if it became law?

Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.

Ninety-one respondents (48% of the total) answered this question.

Broadly, the responses split into two camps. Firstly, a number of responses argued that as fly-tipping is already an offence, the draft proposal **would not have an impact on any particular group due to a protected characteristic**. However, an alternative viewpoint was expressed by other respondents, who argued that imposition of strict liability may **disproportionately impact on disabled people, elderly people and people without the means to have waste legitimately collected or disposed of**. Of the responses which considered that there might be a disproportionate impact on those groups, a common opinion expressed for ways that the impact could be avoided or mitigated was that local authorities could offer more options for making disposal of waste more easy and accessible (such as offering free uplift or discounts for certain groups).

Comments from those who took the view that there would be no particular impact on people with particular protected characteristics included:

- “I can't see how this would affect anybody in these categories apart from providing clean and attractive locations to enjoy” (Harrington, Gabrielle, Ref 186988408 - 34);
- “This law would only discriminate on those who seek to continually commit crimes against our environment” (Literati Guide to Inverclyde, Ref 185919599 – 155);
- “Flytipping increasing[ly] affects us all in some way regardless of sex, age, demographics or other factors. The Scottish Government’s recent BRIA document highlights the significant negative environmental, economic, and health implications for us all, be that someone in a city high rise development, or a crofter who is farming in the islands”. (Scottish Land and Estates, Ref 191919114 - 164).

Comments from respondents who took the view that the provisions (in particular the imposition of strict liability on the generator of the waste) would have an impact on particular groups (for example, disabled people, older people and people experiencing poverty) included the following:

- “Possible impact on elderly or people with disability who have to rely on other people to remove waste” (Aviemore and Vicinity Community Council, Non-Smart Survey response - 145);
- “Elderly, or disabled residents may find it difficult to visit their local Recycling Centre to dispose of bulky waste and may be more likely to pay for a "man with a van" to dispose of it on their behalf” (Organisation anonymous, Ref 188917027 - 160);
- “Retired disabled and people on benefits should be able to get discount on removal of rubbish” (Individual anon, Ref 187300442 - 68);
- “Residents on a low income may need to replace appliances and furniture more frequently as they are not able to afford the initial outlay for a product with a longer life span. These residents may also be financially excluded from bulky waste collection services offered by LAs [local authorities]” (Organisation anonymous, Ref 188917027 - 160);
- “People who don’t drive or have access to a van/car can’t always get to waste centres” (Individual anon, 187652923 - 76).

Several other respondents made similar points in relation to the possible disproportionate impact of the draft proposal (in particular in relation to liability for disposal of the waste) but requested that their response not be published.

Question 13: Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations. Do you think that the proposal could impact in any of these areas? Please explain the reasons for your answer, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts.

One hundred respondents (53% of the total) answered this question.

Overwhelmingly, responses indicated that the draft proposal would have a positive impact on the environment, as well as other aspects of sustainability, such as a sustainable economy. Such comments included:

- “[The] environment would be protected, recycling would increase and everyone would benefit from cleaner communities” (Adamson, Alison Cllr, Ref 187450696 - 2);

- “I think the new law could have a benefit across all areas. Fly tipping is a menace. It poses a risk to health and ecology. It has a negative financial impact on communities. Fly tipping should be eliminated before the situation worsens and becomes the norm” (Individual anon, Ref 186878586 - 54);
- “So much waste dumped contains a cocktail or mash up of various items, all of which break down [and] pollute in different ways , stopping this happening is essential to preserve a healthy environment” (Robertson, Michael, Ref 1854942494 - 126);
- “A cleaner environment with properly recycled waste can only be a positive thing for our society” (Lee, Michael, Ref 185918355 - 108).

Some responses in this section did highlight concerns about existing waste collection arrangements by local authorities and how changes to these might prevent fly-tipping and protect and enhance the environment. These included the following comments about the importance of adequate waste collection facilities being provided:

- “If periodically councils set up regularly collection of waste , fly tipping would reduce. If booking of slots removed from waste centres fly tipping would reduce. It’s difficult to plan and book in advance any house clearing” (Individual anon, Ref 187652923 - 76);
- “It is our responsibility to protect the environment and all should be done to make removal of waste easier. Look at Denmark and its recycling facilities as an example, garden waste can be taken there and for a small cost fresh topsoil taken” (Individual anon, Ref 187193357 - 64);
- “This will help improve sustainability but SIMPLIFY waste collection & disposal first. We already pay for this through our council tax” (Malcolm, Aaron, Ref 186146113 - 111);
- “Give people a clear option to dispose of their items. Current options are cost prohibitive and not inclusive” (Armes, Rupert, Ref 187028004 - 3);
- “There needs to be a simple and effective way for householders and small businesses to dispose or pass on their waste. Local authorities should offer bulky uplifts for folk - especially for those who have no cars. Generally, folk from towns pollute the countryside, but other sites in town seem to be in regular use by tippers” (Individual anon, Ref 191746449 - 99).

Question 14: Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

Eighty-seven respondents (46% of the total) answered this question.

A number of the comments on this question reiterated or reinforced points already made elsewhere in consultation responses. In particular, a number of respondents highlighted again their desire for local authority uplifts to be more widespread, accessible and affordable, and for access to recycling centres to be improved. Other respondents reinforced points made elsewhere about the need to tackle littering as well as fly-tipping, the need for more CCTV, and the need for central government funding to be provided to support local authorities in tackling fly-tipping.

Of the responses to this question which are not covered elsewhere in the document, below are a some of the comments made (Grouped by theme):

Enforcement

- “We note that enforcement remains a key challenge to tackling flytipping, for example, with low levels of prosecution. Effective and active enforcement is necessary in order to tackle the issues, and this requires adequate resourcing for law enforcement agencies and for other parties involved, including for joint agency working” (Law Society of Scotland, Ref 191949647 - 154);
- To make any positive inroads into this problem, the enforcement would need to be given some form of priority by either the police or the local authority enforcement teams (Individual anon, Ref 191526851 - 93);
- “Removal and disposal of the fly tipping by the local authority needs to be done within a strict time frame ie 48hrs to ensure that the site doesn't become a magnet for other tipping, to prevent disruption to business and to limit environmental damage and impact. This time frame needs to be legislated and the local authority needs to be held to account. This in turn will encourage local authorities to deliver a prevention plan and to investigate and enforce appropriately. It should also be accompanied by a strengthening of litter laws in order to send a clear message that the disposal of any sort of waste should be done properly and with care” (Goffin, John, Ref 187682691 – 29);
- “Would be good to have a clear exemption to the provisions of the U.K. GDPR and any successor legislation where investigating fly tipping as past incidents I have experienced personally had evidence that could have been used to track the generator of the waste (eg parcel tracking data, order numbers) that the companies concerned tried to hide behind GDPR when presented with a request to disclose information despite existing exemptions for the purposes of crime prevention and public safety” (Individual anon, Ref 191530727 - 95);

- “There needs to be a clearer definition of 'fly-tipping' enshrined in legislation. The existing definition is difficult to interpret and is not easily understood by most people. Many people think that the small-scale localised dumping of waste, e.g. domestic bulk waste, is not fly-tipping and that the term only applies to criminals dumping large amounts of waste. A definition is required that all can understand and relate to (Glasgow City Council, Ref 191946370 - 151);
- “There are far too many "businesses" who never receive any checks on waste transfer notes or indeed anything and surely the public sector can easily find out who they are and check, we licence taxi drivers and window cleaners but why don't we licence all businesses or sole traders in the same way, help collect more tax and enforce good working practices” (Individual anon, Ref 188957950 - 91);
- “More responsibilities put on local councils to shorten the time in-between waste and recycling collection or provide larger bins, a substantial amount of fly tipping is from household waste” (Hatswell, Dawn, Ref 187276381 - 35).

Resourcing and support for agencies

- “However far reaching a Bill may be it will only succeed if it is implementable. Are the funds in place to allow the various Agencies to deliver the expected results?” (Tynewater Community Council, 191657752 - 166);
- Further discussions with Local Authorities and SEPA would be welcomed to allow MSP's to understand fully the challenges faced within local authorities, particularly around waste fly-tipped on private land (Dalrymple, Chris, Ref 191685224 - 19);
- “There needs to be a clearer definition of responsibilities for enforcement agencies, i.e. local authorities, SEPA and Police Scotland. At present, all are operating using the same powers under the same legislation and the current arrangement leads to confusion, which ultimately leads to missed opportunities to deal with fly-tipping” (Glasgow City Council, Ref 191946370 - 151).

Awareness raising

- “Only, that, with all new legislation, the first few weeks/months of operation will be really important re the clarity of message and impacts on those who flout the law. Pilot this in one area, learn the lessons, modify the approach and then improve, plan, do, check, act - continual improvement” (Literati Guide to Inverclyde, Ref 185919599 - 155);

- “If you do implement new legislation you also have to put in place a communication strategy that includes awareness and engagement campaigns around the impacts to the environment and also how the costs of remediating takes away resources from other vital services” (McGowan, Michael, Ref 186012144 - 117);
- “We recognise that a significant cultural and behaviour change will be required to tackle flytipping. Steps to alter the public acceptability of litter may need to be taken, in a similar way to actions which have been taken in relation to dog-fouling. This is likely to require both public education and strong enforcement ... Wider cultural and international comparisons, including in relation to attitudes towards flytipping, may be useful in understanding perceptions and behaviour” (Law Society of Scotland, Ref 191949647 - 154).

Government action

- “Our primary concern is that a further review as proposed by the Scottish Government, the findings of which would not be completed until 2024, will place Scotland further behind in its battle to tackle the blight of fly-tipping. Such delay is further evidence that the Scottish Government are unaware or unwilling to genuinely understand or appreciate the true severity of the problem across Scotland” (Scottish Land and Estates, Ref 191919114 - 164).

SECTION 4: MEMBER'S COMMENTARY

Murdo Fraser MSP has provided the following commentary on the results of the consultation, as summarised in sections 1-3 above.

I'd like to begin by thanking everyone who took time to respond to the consultation on my proposal to introduce a Bill to help address the issue of fly-tipping in Scotland. I appreciate that completing consultations of this nature can be a lengthy process requiring a deal of thought, and I am grateful for the effort everyone has taken, both organisations and individuals, in contributing to my thinking on the issue.

In total there were 190 responses received, 165 from individuals and 25 from organisations, the latter including a number of community councils. To me this illustrates the level of concern that exists in different communities across Scotland about the damage that is being done to our environment and landscape by the antisocial practice of fly-tipping.

I was delighted with the overall positive response to the consultation. The large majority of responses were supportive of the draft proposal, 79% being fully supportive, and 15% partially supportive. This demonstrates the issues there are with the current legislative framework, which a very large proportion of those responding believes it is simply not fit for purpose, and requires to be improved. Both Cambuslang and Echt and Skene Community Councils were clear that the current laws were not working, and this position was echoed by the Scottish Countryside Alliance, who said that "current laws and legislation seem inadequate to tackle this problem or act as a deterrent to these criminals".

A small minority of those responding to the consultation were not supportive of the changes being proposed. I was interested to read some of the reasoning given by those who were opposed. David Gordon, amongst others, raised the very valid issue that there needed to be easier access to legitimate waste disposal sites, and that the increase in the level of fly-tipping was due to a lack of provision made by local authorities for waste to be legally disposed of. I accept this point and did make specific reference to it in my consultation document, although I do not believe that legislative changes are necessary for this particular matter to see improvement.

I would also accept the point made by the Law Society of Scotland that changing the law in this area is not going to provide the entirety of a solution. There are other factors which are relevant, including societal attitudes towards fly-tipping, and there are challenges with enforcement. Again, these are points that I accept, although I do not believe that, in themselves, these constitute an argument against improving the law. I would also accept the arguments made by Heldon Community Council and others that legislation is only of value if it is properly resourced and enforced, and better enforcement of existing laws would in itself be helpful in helping address the problem, although to me this would not go far enough.

In relation to the specific proposals in the draft Bill, I note that 64% were fully supportive and 12% were partially supportive of the proposal to place new duties on Scottish Ministers in respect of reporting mechanisms in the collection of data. It was widely recognised by those responding that we need more accurate reporting so we can determine the overall scale of the problem. Glasgow City Council provided some helpful thoughts on how such data collection and presentation might work in practice.

In relation to the proposal that legal liability should be removed from the person who has waste deposited on a property without permission, there was very strong support for this proposal. 86% of respondents were fully supportive and 9% partially. A consistent theme in the responses here was that it is fundamentally unfair, and contrary to natural justice, that an innocent party is held liable for a wrong done by another. There were particularly strong responses in this area from NFU Scotland and Scottish Land and Estates, and this was backed up by a number of community councils, including Portknockie, Westhill and Elrick, Yell, and Echt and Skene. Glasgow City Council in their response did highlight some of the practical issues around this, and the question of who would clean up the waste if the offender could not be identified.

On the question of strict liability to the generator of waste, there were 68% of respondents fully supportive, and 20% partially supportive. Echt and Skene Community Council observed that this was an application of “polluter pays principle”. Other respondents, however, raised practical issues about how this measure might operate in practice, and issue with obtaining evidence. The Law Society of Scotland made the helpful comment that any change in the law would require a large-scale public awareness campaign.

On this issue of increasing fines, again there was very substantial support for this, with 81% fully supportive and 10% partially supportive. It is clear from the responses that the current £200 fixed penalty notice is not sufficient to deter those intent on fly-tipping, and much larger fines are required. A number of respondents also suggested a sliding scale dependent on the severity of the offence. On the question of the level of fines, there were no responses supportive of higher fines which took the view that a £2000 figure was too high, and some suggested that it was in fact too low.

On this issue of introducing a waste duty of care system, similar to that in England and Wales, which is a slightly different way of approaching the issue of strict liability on the part of the generator of waste, 56% were full supportive and 16% partially supportive, while 15% were neutral and 11% were unsure. Only three respondents were opposed in whole or in part, but from the responses it is clear that there needs to be better understanding of how such a system might work.

Eighty six percent of respondents were fully or partially supportive of the proposal to have additional criminal sanctions being applied for instances of fly-tipping. Some respondents drew a link between larger scale fly-tipping and organised crime, and made the point that criminal sanctions might help in

detering future antisocial activity. Glasgow City Council were supportive of higher penalties to ensure that fly-tipping does not pay, while Cambuslang Community Council made the point that there were greater powers in England and Wales to impose fines on criminals involved in this behaviour than in Scotland.

Finally, on the question of whether the system for corroboration of evidence should be reviewed, 59% were fully supportive while 15% partially supportive, whilst 12% took a neutral stance and 11% were unsure. One in five of those responding were either unsure or took a neutral stance, suggesting that there are complexities around this proposal. I noted the Law Society of Scotland's view that corroboration is an important safeguard in Scots law, and its removal should not be considered in isolation.

In summary, I am encouraged by the very high level of support expressed by those responding to the consultation for what is being proposed. It is clear that of the four core elements to my proposal, namely improving data collection, removal of liability on the part of the landowner, introduction of strict liability on the waste generator, and increasing penalties, are well supported and have sound arguments in their favour. The introduction of a duty of care within the waste hierarchy, mirroring arguments for strict liability, also has substantial support and could be introduced, as does the introduction of criminal penalties.

I accept the arguments put forward that there may be wider issues with the legal system for removing the requirement for corroboration in cases of fly-tipping, so I would not intend to take forward that particular matter. However, I would now intend to progress with a Bill that addresses the other issues considered within my proposal. Fly-tipping continues to be a serious blight on the environment across Scotland, and I do not believe that the opportunity to try and tackle the issue should be lost.

ANNEXE

Individual responses

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