



## **Proposed Fly-tipping (Scotland) Bill**

A proposal 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.

Consultation by

Murdo Fraser MSP, Member for Mid Scotland and Fife Region.

1 March 2022

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## Foreword from Murdo Fraser MSP



There is no doubt that fly-tipping is a blight on Scotland's environment. The irresponsible dumping of refuse and waste at unauthorised locations is a selfish and unjustifiable act, and unnecessary when there are adequate facilities for the lawful disposal of such items. Not only does fly-tipping cause environmental harm, it is unsightly, particularly in locations frequented by visitors to our country who come to enjoy its scenic beauty. Moreover, landowners and public authorities are left with the cost of cleaning up the mess created by others.

The law already provides for both criminal sanctions and civil liabilities against fly-tipping, but despite this, reported incidents are on the increase. The closure, or restrictions on opening times, of local authority recycling centres during the Covid-19 pandemic may have been a factor in this increase, but the issue has continued to grow even after their re-opening. There is increasing evidence that fly-tipping is not simply the act of random individuals, but part of organised crime benefitting from a relatively low-risk revenue stream, collecting waste from businesses and failing to dispose of it properly. For example, BBC Scotland's *Disclosure* documentary series recently focused on this, when a programme entitled *Dirty Business* revealed how organised crime gangs are making millions of pounds through fly-tipping and dumping waste, while the environment suffers.<sup>1</sup>

The current law around fly-tipping dates back more than 30 years and given the recent increase in the problem it is clear that this is no longer adequate for purpose. The purpose of my consultation is to look at a number of ways in which the current law could be improved, to better hold to account those responsible for this anti-social behaviour, and to ensure that there are appropriate deterrents to try and reduce its frequency.

I do, of course, recognise that improving the law in this area will only ever be one part of the solution. There are many other steps that need to be taken to help tackle the scourge of fly-tipping, in addition to legal changes. There is a role for substantially enhanced public education in this area, which might include improved signage in hot spots.

I am aware that some local authorities have already trialled the use of mobile CCTV cameras in areas with a history of fly-tipping, to help deter offenders, and also provide evidence for proceedings. In addition, we need to look at the question of access to local authority recycling centres, as the more access to these is restricted or made more

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<sup>1</sup> <https://www.bbc.co.uk/iplayer/episode/m00145kf/disclosure-series-4-dirty-business>

expensive, the greater the incentive there is for offenders to fly-tip. I am aware that the Scottish Government is working on a new fly-tipping strategy which will try to address a number of these issues, and I look forward to working with Scottish Ministers to try and find solutions to these problems.

I am grateful to all the many stakeholders who have been happy to engage with me in the preparation of this consultation document. I hope that a way can be found to move forward to improve the law in this area, and deal with what is a growing blight on the Scottish environment and society.

**Murdo Fraser MSP**  
**28 FEBRUARY 2022**

# How the Consultation Process works

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

<https://www.parliament.scot/about/how-parliament-works/parliament-rules-and-guidance/standing-orders/chapter-9-public-bill-procedures#topOfNav>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at (Murdo Fraser MSP, M2.14 Scottish Parliament, Edinburgh, EH99 1SP, 0131 348 5293 and [murdo.fraser.msp@parliament.scot](mailto:murdo.fraser.msp@parliament.scot)).

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website ([www.parliament.scot](http://www.parliament.scot)) under Parliamentary Business / Bills / Proposals for Bills [Proposals for Bills](#)

# Aim of the Proposed Bill

The proposed Bill will seek to reduce the incidence of fly-tipping in Scotland by updating the law in this area in four ways. Namely:

- 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.

There are other complementary policies that I am also considering including in the Bill. More detail on the four main elements of the proposed Bill, and the additional policies I am considering are set out under the section titled “Purpose and detail of the Proposed Bill”.

## Background – Existing legal provision

Fly-tipping is prohibited under [section 33\(1\)](#) of the Environmental Protection Act 1990 (“the 1990 Act”).<sup>2</sup> This can be enforced in a number of different ways, as discussed further below.

[Section 59](#) of the 1990 Act establishes the arrangements for removal of fly-tipped waste, and where liability lies.<sup>3</sup>

### *Enforcement*

Under [section 33\(8\)](#), a person who fly tips is liable to face summary prosecution, with penalties of up to a £40,000 fine (unlimited on indictment) or twelve months in prison, or two years if convicted on indictment.<sup>4</sup> As the statistics from the COPFS suggest, this particular route of sanction is taken for a relatively small number of cases.

The Antisocial Behaviour (Scotland) Act 2004 (“the 2004 Act”) inserted [section 33A](#) into the 1990 Act<sup>5</sup>, and provides an authorised person with the power to issue fixed penalty notices now standing at £200 for breach of section 33(1) of the 1990 Act. An authorised person is a person authorised by the relevant local authority or, in the case of the Loch Lomond and the Trossachs National Park Authority, by that authority to issue such

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<sup>2</sup> [Environmental Protection Act 1990 \(legislation.gov.uk\)](#)

<sup>3</sup> [Environmental Protection Act 1990 \(legislation.gov.uk\)](#)

<sup>4</sup> [Environmental Protection Act 1990 \(legislation.gov.uk\)](#)

<sup>5</sup> [Environmental Protection Act 1990 \(legislation.gov.uk\)](#)

notices. This is a quicker, and arguably more effective, route for sanctioning perpetrators of fly-tipping.

Separately, under [Section 20](#) of the Regulatory Reform (Scotland) Act 2014 (“the 2014 Act”) Scottish Environment Protection Agency (SEPA) has additional fixed penalty notice making powers in respect of relevant offences of £600<sup>6</sup>.

### *Liability for removal of waste*

[Section 59 of the 1990 Act](#) sets out provision in relation to the removal of unlawfully deposited waste (with some further provision in section 59ZA in certain circumstances where the landowner is not the occupier of the land).<sup>7</sup>

This provision gives the waste regulation authority (Scottish Environment Protection Agency - SEPA) and the waste collection authority (the respective local authority) powers to require occupiers to remove waste fly-tipped on occupied land, supported by a criminal offence in section 59(5).

Under section 59(7) local authorities or SEPA may – although section 59 does not compel them to do so – step in to remove the waste where it is necessary to prevent pollution or harm to human health or the occupier of the land neither made or knowingly permitted the deposit of the waste.

Under section 59(8) the local authority or SEPA, as appropriate, is entitled then to recover the costs incurred from the occupier of the land in cases where the removal was to prevent pollution or harm to human health, unless the occupier can prove that they neither made nor knowingly caused nor knowingly permitted the deposit of the waste. The local authority and/or SEPA are also entitled, in any case, to recover those costs from the fly-tipper (section 59(8)(b)). If a compensation order has already been made in favour of the local authority following a criminal conviction for fly-tipping in breach of section 33(1) of the 1990 Act, the local authority may not recover the costs incurred from the offender under section 59(8).

It is open to the occupier of the land to appeal a requirement to remove waste that is imposed on them by SEPA or the local authority under their section 59(1) powers. The requirement on the occupier to remove the waste can be quashed by the court if the court is satisfied that they neither knowingly caused nor knowingly permitted the deposit of the waste. This places some onus on the landowner to initiate an appeal and to adduce evidence that they had not caused or permitted the deposit of the waste. Where the local authority steps in to remove the waste, it would be for the occupier of the land to establish that they had not knowingly caused the waste or

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<sup>6</sup> Section 20 of the Regulatory Reform (Scotland) Act 2014 gave the overall power to SEPA and specified that levels would be specified in Order. The Order that followed (the Environment Regulation (Enforcement Measures) (Scotland) Order 2015 (SSI 2015/383)) provided that a person committing an offence under section 33(1) of the 1990 Act could be issued with a fine of £600 by SEPA

<sup>7</sup> [Environmental Protection Act 1990 \(legislation.gov.uk\)](#)

knowingly permitted the waste to be caused where faced with cost recovery on the part of the local authority or SEPA.

## Current reporting practice

There are a number of ways in which instances of fly-tipping can currently be reported. Zero Waste Scotland, a company limited by guarantee which receives Government funding, operates a “Dumb Dumpers hotline”, whereby citizens can phone the hotline or email to highlight examples of fly-tipping. Zero Waste Scotland will then send on details to the relevant enforcement agency (generally SEPA, the relevant local authority or Police Scotland to pursue a prosecution). Alternative reporting mechanisms are to contact local authorities or SEPA direct. The police also have the authority to issue fixed penalty notices for breach of [section 33](#) of the 1990 Act.

Tackling fly-tipping is a joint responsibility of local authorities and SEPA. Most reports of fly-tipping are made directly to local authorities from members of the public and it is the local authorities themselves who investigate the majority of these incidents. Although there is a general approach that SEPA will investigate in circumstances where the fly-tipped waste is hazardous, in or near a water course, or of a quantity greater than one skip load, this has not been adopted consistently across Scotland. I understand that SEPA and local authorities hope to use the Scottish Government’s proposed fly-tipping forum as a platform to bring more clarity and consistency to the way they work together.<sup>8</sup>

SEPA has a variety of enforcement measures available to use, as can be found in their [enforcement guidance](#). As set out in the Regulatory Reform (Scotland) Act 2014 and [The Environmental Regulation \(Enforcement Measures\) \(Scotland\) Order 2015](#), SEPA can issue fixed monetary penalties (FMPs) of £600 and variable monetary penalties (VMPS) of up to £40,000 for fly-tipping<sup>9</sup>. As these are civil penalties, the burden of proof lies in the balance of probability.

SEPA can also pursue criminal proceedings by referring a case to the Crown Office and Procurator Fiscal Service (COPFS) who will decide if the case can be recommended for a fiscal fine or prosecution through the Scottish Courts and Tribunals Service. In line with the Lord Advocate’s guidelines, civil measures cannot be pursued solely on the basis that a lower burden of proof is required, rather they must be deemed the most appropriate level of enforcement action. Finding evidence of which individual(s)/business(es) is/are responsible for fly-tipped waste can be very challenging and it can be difficult to meet the threshold of evidence required to pursue a civil or criminal line of enforcement.

SEPA has established a waste campaign which brings together a range of fixed monetary penalties (FMPs) for fly-tipping and related offences (such as duty of care, burning of waste, not having a waste carrier licence), creating a more effective suite of

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<sup>8</sup> Information provided by SEPA

<sup>9</sup> [The Environmental Regulation \(Enforcement Measures\) \(Scotland\) Order 2015 \(legislation.gov.uk\)](#)

FMPs that can be applied simultaneously to individuals/businesses who breach more than one of these offences.

## Purpose and detail of the Proposed Bill

The proposed Bill will seek to address fly-tipping in the following four distinct but complementary ways.

### 1 Data collection and reporting mechanisms

Firstly, the proposed Bill will seek to **ensure better collection, collation, coordination and reporting mechanisms** for processing and analysis of data on the number of fly-tipping cases reported. We need a clearer picture through reliable datasets of the incidences of fly-tipping across Scotland, region by region, to enable the extent of the issue to be identified, then effectively scrutinised and then addressed. I note, for example, that the table on page 14 under *Incidence of fly-tipping*, shows that incidences of fly-tipping in 2016 and 2017 rose significantly to over 10,000, then dropped to just over 1,000 in 2019, then increased again during the Covid-19 pandemic. It is not clear, on the face of it, why those figures diverged markedly from year to year. So, I consider that greater clarity around the collection of data and how it is reported and published is required to ensure that there is a clearer picture in respect of incidence of fly-tipping.

Given the increase in reported cases during the Covid-19 pandemic, and the decrease in the number of cases reported to the COPFS over the same period (see below), the need to be able to accurately identify the extent of the issue is becoming more and more important.

I believe that there is a case for existing reporting mechanisms and collation of the data received to be looked at, with a view to streamlining and strengthening those procedures.

As discussed above, there are currently a number of routes for reporting instances of fly-tipping. For example, fly-tipping could be reported to the local authority, who would have the power to issue a fixed penalty of £200, or to escalate the matter to Police Scotland and the COPFS to pursue a prosecution.

Alternatively, fly-tipping can be reported to SEPA, who would have power to impose monetary penalties of £600, or to escalate to Police Scotland and the COPFS for prosecution.

Another way of reporting fly-tipping is through the Zero Waste Scotland hotline.

I would like to see a system where this data is consolidated in one place and handled appropriately. I would also like to see it published and regularly reported on and scrutinised as appropriate by the Parliament. To that end, the proposed Bill will create a duty on the Scottish Ministers, requiring that data to be collected in one place.

I propose that the Bill will further require local authorities, SEPA and Zero Waste Scotland to report to the Scottish Ministers on a regular basis on the data they hold if they all continue to have a role in recording instances of fly-tipping. Any data collected by different bodies would also need to use similar criteria for collection to ensure data collected by different bodies is comparable, allowing it to be centrally collated for publication and enabling effective scrutiny (for example to identify trends across Scotland).

**I am open to suggestions as to how data collection, reporting and publication might work in practice.**

## **2 Legal liability**

Secondly, the Bill will seek to **remove legal liability from the person on whose land or property the waste has been deposited**, where they did not generate the waste or did not give permission for it to be deposited.

Under section 34 of the Regulatory Reform (Scotland) Act 2014, where an individual is caught and found guilty of depositing waste on land, that individual may be required to pay compensation of up to £50,000 to the person whose land or property the waste has been deposited.

However, whilst they may ultimately be afforded compensation, immediate legal liability for the removal of the waste lies with the occupier of the land under [section 59\(1\)](#) of the 1990 Act<sup>10</sup>. The occupier can face fines if they do not remove the waste. The person on whose land or property the waste has been deposited can also face the risk of having to meet the costs of removal of the waste where local authorities or SEPA step in to remove it (unless they can show that they did not deposit the waste themselves, which can be difficult to prove). I consider that this is an unfair practice, contrary to natural justice, and goes against the 'polluter pays principle'.

Accordingly, the proposed Bill will seek to remove liability from the owner/occupier of the land relative to waste dumped on their land, where they did not generate it. As discussed further below, the proposed Bill will also seek to strengthen liability on the generator of the waste. Local authorities should be permitted to remove waste from private land and, where possible, recoup costs from the generator of the waste.

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<sup>10</sup> [Environmental Protection Act 1990 \(legislation.gov.uk\)](#)

### 3 Strict liability

Thirdly, the Bill will also seek to introduce **strict liability on the generator of the waste** for its clear up and in respect of sanctions for its disposal. This would be consistent with the position in England and Wales where there is a statutory "household waste duty of care" on the generator of waste (discussed below). This duty is accompanied by a [code of practice](#), which sets out in practical terms how a householder should meet their waste duty of care requirements.<sup>11</sup> Where a third party is involved in the actual disposal of the waste, a householder or other waste generator should not be absolved of liability or enforcement action simply by saying that they have paid someone else to dispose of the waste. I believe that it should only be a defence for the generator to state that he or she had paid for the waste to be disposed of by a third party who has a valid licence for waste disposal, and where the generator could provide proof, possibly through the production of receipts. In that scenario liability would transfer to the third party.

**I would invite comments on this particular issue, including available defences and the level of evidence that should be produced by the householder or waste generator that a suitably authorised third party was engaged to dispose of the waste.**

By introducing strict liability on the generator of the waste, responsibility immediately passes to the generator, thereby requiring that individual to prove that they were not responsible for the illegal disposal of the waste, and that they had legitimately passed the waste on to a licensed company for disposal. This ought to begin to provide an evidence trail to the individual or group which has illegally disposed of the waste.

The case studies on pages 16 and 17 below are good examples of some issues currently faced by local authorities in dealing with cases of fly-tipping.

One such issue, highlighted in case study 2, is the current need for corroboration to prove that a party was liable for the disposal of the waste. Given that fly-tipping is often carried out surreptitiously, the requirement for two pieces of evidence to prove guilt creates a high bar which can have the effect of preventing local authorities from taking any action against an individual they suspect of being responsible for illegally disposing of the waste, due to the low chance of successful prosecution along with the resource required to pursue such a prosecution.

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<sup>11</sup> In England a household waste duty of care was imposed by the [Environmental Protection \(Miscellaneous Amendments\) \(England and Wales Regulations 2018 \(SI 1227\)\)](#). These regulations provide enforcement authorities with the power to issue fixed penalty notices of between £150 and £400 for breach of this duty. In Wales the [Household Waste Duty of Care \(Fixed Penalties\) \(Wales\) Regulations 2019 \(SI 331\)](#), provided that enforcement authorities could impose a fixed penalty notice of £300 for breach of this duty. The code of practice is available here: [Waste duty of care: code of practice - GOV.UK \(www.gov.uk\)](#)

As mentioned above, I believe that the introduction of strict liability on the generator of the waste may mark a step towards addressing this problem, as it places a responsibility on the waste generator to provide documented evidence that they were not responsible for its illegal disposal. This potentially creates an immediate evidence trail to assist with identification of the offender. The position elsewhere in the UK is discussed on pages 17 and 18, with particular reference to the [Waste duty of care: code of practice](#), which 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.<sup>12</sup> A separate duty of care applies in England and Wales to householders (occupiers of a domestic property), limited to taking all reasonable measures available to them to ensure their waste is only transferred to an authorised person. **I would be interested in hearing views on how a similar duty of care in Scotland might sit alongside the introduction of strict liability on the generator of the waste.**

## 4 Sanctions

Fourthly, the Bill will seek to **increase and standardise the sanctions that are imposed for fly-tipping.**

As outlined above, currently, under [section 33A\(9\)](#) of the 1990 Act a local authority or national park authority can impose a fixed penalty of £200 for breach of the fly-tipping offence set out in section 33(1) of that Act.<sup>13</sup> This amount can be increased up to £500 by Scottish Ministers by Order.

Separately, [the Environment Regulation \(Enforcement Measures\) \(Scotland\) Order 2015 \(SSI 2015/383\)](#) gives SEPA the power to impose a fixed monetary penalty of £600 for breach of section 33(1) of the Act.<sup>14</sup>

Finally, the COPFS can pursue a criminal prosecution with penalties of up to £40,000 or 2 years in prison for breach of section 33(1) (although this tends to be used sparingly and in more extreme cases).

I do not consider a punishment of up to £200, or even £600, to fit the crime for such antisocial behaviour. I believe that local authorities, SEPA, and other authorised persons (e.g. Loch Lomond and Trossachs National Park officers) should be able to issue higher monetary penalties for fly-tipping. For the purposes of this consultation I am proposing fixed penalty notices of up to £2,000, but I would be interested in hearing views on what an appropriate threshold would be. I would also be interested in hearing views on whether it might be appropriate to include a tiered mechanism depending on the gravity of the offence.

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<sup>12</sup> [Waste duty of care: code of practice - GOV.UK \(www.gov.uk\)](#)

<sup>13</sup> [Environmental Protection Act 1990 \(legislation.gov.uk\)](#)

<sup>14</sup> [The Environment Regulation \(Enforcement Measures\) \(Scotland\) Order 2015 \(legislation.gov.uk\)](#)

In summary the proposed Bill will seek to increase the penalties that are available and, where possible, consolidate the legal position in respect of how, and by whom, fines are issued. It is clear that there are a number of legal routes that can be taken to address issues of fly-tipping (via local authorities, national parks authorities, SEPA or the COPFS), and I would like to explore whether there are any ways in which these processes could be streamlined.

I do not currently have any proposals to seek to change the fines or prison sentences available in respect of criminal prosecutions for more extreme cases of fly-tipping. **I would, however, be open to views on this issue, and, if it appears that there is a case for making legal changes to these criminal sanctions, then I may seek to use the Bill to do so.**

## **Incidence of fly-tipping**

### *Scale of fly-tipping*

Fly-tipping has been a problem across Scotland for many years, causing environmental, social and economic damage to communities and individuals across Scotland. Sadly, there was a notable increase in incidents when local authority recycling centres were closed in 2020 during the first lockdown resulting from the Covid-19 Pandemic. This is evidenced by figures in the following table which shows that there was a fourfold increase in the number of reported cases of fly-tipping between 2019 and 2020:

Year	Fly-tipping incidents recorded by Fly-mapper and Litter Monitoring System
2014	3,096
2015	7,295
2016	10,447
2017	10,329
2018	6,613
2019	1,018
2020	4,272
2021*	2,534

\*This relates to the number of fly-tipping incidents up to 8 September 2021<sup>15</sup>

The decline in reported cases between 2016-17 and 2019 requires some explanation. According to Zero Waste Scotland, this fly-tipping data cannot be used as a representative indicator of the number of actual fly-tipping incidents, or any trends. Zero Waste Scotland states that the figures are just what was recorded, so it just may be that in some years more incidents were recorded by local authorities than in other years. Zero Waste Scotland also pointed out that improving data is one of the areas that action is planned for under the new Scottish Government’s Litter and Fly-tipping Strategy, referred to below.<sup>16</sup>

Separate figures obtained from the Crown Office and Procurator Fiscal Service (COPFS) and outlined in the below table show that this increase in the number of incidents does not appear to be translating into a consequential increase in fines being issued or other sanctions. The table shows charges reported to COPFS by local authorities under sections 33(1)(a) and 33(6) of the Environmental Protection Act 1990 where controlled waste has been deposited, knowingly deposited or knowingly permitted to be deposited (aka fly-tipping):

Action taken	Financial Year Reported			
	2017-18	2018-19	2019-20	2020-21
Court - summary level	3	2	3	1
Direct Measure - Fiscal				
Fine	10	7	4	0
Direct Measure - Warning	2	1	1	0
No Action	28	20	24	7
No Decision yet	0	0	0	1
<b>Total charges reported</b>	<b>43</b>	<b>30</b>	<b>32</b>	<b>9</b>

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In a written answer to a parliamentary question in October 2021, the Minister for Green Skills, Circular Economy and Biodiversity stated that the Regulatory Reform (Scotland) Act 2014 expanded SEPA’s toolkit for tackling environmental crime, through fixed penalty notices, variable monetary penalties and enforcement undertakings<sup>18</sup>.

I understand from another written answer to parliamentary question S6W-2272 that the Scottish Government is commissioning research on the scale and cost of litter and fly-

<sup>15</sup> Written answer to parliamentary question S6W-02710. Available at: [Written question and answer: S6W-02710 | Scottish Parliament Website](#)

<sup>16</sup> Information received from Zero Waste Scotland

<sup>17</sup> Figures provided by the Crown Office and Procurator Fiscal Service in response to a freedom of information request

<sup>18</sup> Written answer to parliamentary question S6W-03207. Available at: [Written question and answer: S6W-03207 | Scottish Parliament Website](#)

tipping in Scotland, and I note that this research will be published before the final National Litter and Fly-tipping Strategy is published.

There is further discussion of the Scottish Government's position and its ongoing work in this area on pages 18 and 19 of this document.

Despite this ongoing work it is clear from the case studies that follow that significant problems with fly-tipping still exist and need to be addressed. Furthermore, a recent [BBC Scotland Disclosure documentary](#), *Dirty Business*, highlighted specific issues around organised crime gangs depositing waste for a fee on land in quiet and often rural areas, causing significant environmental damage. The documentary claimed that there were cases of landowners being threatened or intimidated where they did not allow waste to be deposited on their land<sup>19</sup>. The documentary stated that SEPA is currently investigating 234 cases of waste crime. Of those, 31 are of the highest concern due to links with serious and organised crime or the potential for severe environmental damage.<sup>20</sup>

### *Case studies*

More generally, anecdotal reports suggest that levels of fly-tipping remained at a high level even after the re-opening of local authority recycling centres. This has fuelled calls for action to be taken to address the issue<sup>21</sup>. The case studies below give a flavour of the issues experienced recently by farmers and landowners.

#### **Case Study 1: Fife**

A tenant farmer in Fife was the victim of fly-tipping on the land where he farms. He contacted both Fife Council and Police Scotland to complain. The council advised him that while they would take steps to remove the rubbish, this could take several weeks. This impasse meant that the farmer had no alternative but to move the rubbish from its location to the side of the field to allow him to carry on with farming activities.

In this case, whilst the farmer was required to move the waste, neither he nor the landowner were charged for it. However, he still faced costs in having to move the fly-tipped material to permit him to continue to carry out his legitimate farming activities, whilst he waited for its removal by the authorities.

Source: NFU Scotland

<sup>19</sup> [The crime gangs cashing in by burying illegal waste - BBC News](#)

<sup>20</sup> [The crime gangs cashing in by burying illegal waste - BBC News](#)

<sup>21</sup> See for example: [Call for action as fly-tipping surges in Scotland | HeraldScotland](#)

## Case Study 2: West Lothian

Information provided by Scottish Land and Estates showed how one particular area can become a 'hotspot' for fly-tipping. Details provided by West Lothian Council show that there had been 93 fly-tipping inquiries in the Livingston South ward alone from July 1 to September 30 2021, with the total costs of fly-tipping for this period amounting to £39,406.41.

Of particular importance is the fact that the local authority here did not issue any Fixed Penalty Notices (FPN) during this period. This was due to the difficulties in obtaining the necessary evidence, given the need for corroboration – two distinct pieces of evidence before an FPN can be issued.

The local area committee report that was submitted to Livingston South committee members, which states the figures that were dealt with up to September 30 this year, in comparison to last year (2020), is available at:

<https://coins.westlothian.gov.uk/coins/viewDoc.asp?c=e%97%9Di%92k%82%89><sup>22</sup>

Source: Scottish Land and Estates

The first case study quoted above suggests that existing legislation is being interpreted in different ways by the authorities, but ultimately it is still the position in law that the person who has the waste deposited on their land has liability for the costs of removal, even if they were the innocent victims of a crime. This is, in my view, contrary to natural justice, and to the 'polluter pays principle' that underpins environmental legislation, so a change to the law is therefore required to protect individuals who are victims of fly-tipping. As an alternative, as set out above, I would wish to see strict liability for the clean-up costs placed on the original generators of the waste.

At a practical level, also detailed above, I accept that there needs to be a role for SEPA or local authorities in removing waste that is fly-tipped - that itself could not rest with the offender entirely as the waste might never get removed. I would not, however, be supportive of SEPA or local authorities having significant new mandatory requirements relative to the removal of waste, although I would welcome views on this matter. Nevertheless, in the interests of practical and speedy removal of waste, I would wish to see a situation whereby SEPA and local authorities are permitted to remove waste from private land, recouping costs from the generator of the waste, or such individual as is responsible for the illegal disposal of the waste.

**In relation to the challenges identified in the second case study in relation to corroboration, I would be particularly interested in hearing views on whether the**

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<sup>22</sup> <https://coins.westlothian.gov.uk/coins/viewDoc.asp?c=e%97%9Di%92k%82%89>

**requirement for two pieces of evidence before a FPN is issued should be removed.**

## **Position elsewhere in the UK**

Fly-tipping legislation in England and Wales has been updated in the last four years<sup>23</sup> to impose a duty of care on anyone who imports, produces, carries, keeps, treats, disposes of, (or is a dealer or broker that has control of) “controlled waste” (which includes household, industrial and commercial waste)<sup>24</sup>. Relevant enforcement authorities can issue fixed penalty notices for breach of this duty. The legislation creating this duty was accompanied by a [Waste Duty of Care Code of Practice](#), which was published jointly by the UK and Welsh Governments in November 2018, and which sets out for waste generators guidance on how to meet their waste duty of care requirements<sup>25</sup>.

The duty of care is regulated in England by the Environment Agency, and in Wales by Natural Resources Wales. Failure to comply with the duty is a criminal offence, and the courts have the power to issue unlimited fines for non-compliance. Furthermore, anyone found in breach would also have a criminal record. The Environment Agency and Natural Resources Wales can settle matters out of court by issuing fixed penalty notices, which would avoid prosecution. Those authorities have discretion to decide whether to pursue prosecution.<sup>26</sup>

To demonstrate that they have met their duty of care where waste has subsequently been fly-tipped, a body or individual should take certain steps to demonstrate that they carried out due diligence on any body they have used to dispose of waste (such as keeping receipts of transactions, holding details of the business used and checking the operator’s registration, permit or exemption number).<sup>27</sup>

**As set out above, I would be interested in hearing views on whether and how a similar approach in Scotland might work in practice.**

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<sup>23</sup> In England a household waste duty of care was imposed by the [Environmental Protection \(Miscellaneous Amendments\) \(England and Wales Regulations 2018 \(SI 1227\)\)](#). These regulations provide enforcement authorities with the power to issue fixed penalty notices of between £150 and £400 for breach of this duty. In Wales the [Household Waste Duty of Care \(Fixed Penalties\) \(Wales\) Regulations 2019 \(SI 331\)](#), provided that enforcement authorities could impose a fixed penalty notice of £300 for breach of this duty.

<sup>24</sup> House of Commons Library paper, “Fly-tipping: the illegal dumping of waste”. Available at: <https://commonslibrary.parliament.uk/research-briefings/sn05672/>

<sup>25</sup> [Waste duty of care: code of practice - GOV.UK \(www.gov.uk\)](#)

<sup>26</sup> [Waste duty of care: code of practice - GOV.UK \(www.gov.uk\)](#), section 5.7

<sup>27</sup> [Waste duty of care: code of practice - GOV.UK \(www.gov.uk\)](#), section 5.6.

## Scottish Government Position

The Scottish Government published its [Consultation on National Litter and Flytipping Strategy](#) on December 13, 2021.<sup>28</sup>

The paper sets out the aims of the National Litter and Fly-tipping strategy, due to be published in early 2022. These include the following initiatives:

1. Providing support to private landowners by exploring the use of technology and alternative financial supports. It highlights an area that is raised in this Bill proposal - that private landowners and land managers are particularly adversely affected by the problem, as they can often be left paying the cost to clear and dispose of any material fly-tipped on their land.
2. Improving the consistency and quality of data collection, including exploring establishing a national database and ensuring that there is a fit for purpose mechanism for citizen reporting of fly-tipping.
3. Initially raising fixed penalties to the maximum permitted level, and exploring the possibility of raising the maximum level even further. The Scottish Government have also said they want to explore the possibility of enabling local authorities to use civil penalties to enforce fly-tipping offences.
4. A campaign of public education around the negative impacts of fly-tipping.

The Scottish Government stated that it intends to publish the final strategy in early 2022 and have said that responses to the consultation will inform the development of this initiative. The Scottish Government consultation closes on 31 March 2022.

There is some degree of overlap between what the Scottish Government is consulting on currently, and what is in my own proposal. On the issue of data collection, the Scottish Government consultation recognises the importance of evidence gathering, monitoring and evaluation, including the reporting of issues by the public and communities, national reporting and monitoring by bodies with a statutory duty to clear litter and fly-tipping (page 13 of the Scottish Government consultation). It recognises that ongoing data collection and monitoring will enable future evaluation of policy. Action point 3.1 states: “review the available litter data and approach to litter data collection across Scotland and reach an agreement between stakeholders on a common approach to collecting data”. My own proposal goes further than this in proposing a statutory duty on Scottish Ministers to collect data and report on it on a regular basis.

On the issue of penalties, the Scottish Government Consultation proposes increasing the fixed penalties issued by local authorities, Police Scotland, Loch Lomond and Trossachs National Park for fly-tipping to the maximum currently permitted (£500), and exploring the possibility of raising the maximum further at a later date (Action 13.2). It

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<sup>28</sup> [National litter and flytipping: consultation - gov.scot \(www.gov.scot\)](#)

also recommends exploring raising current fixed penalty notices that can be issued by SEPA to the maximum of £1000 and exploring the possibility of raising this further at a later date (Action 13.4). Whilst these proposals are welcome, I would be concerned that the proposed maximum sums do not go far enough to provide a sufficient deterrent.

On the issue of liability which sits at the core of my own proposal, there are no recommendations within the Scottish Government Consultation in this area.

## Financial implications

In relation to the specific measures I am proposing the financial implications of each is as follows: -

### A. Data Collection

Given the data is already being collected by local authorities, Zero Waste Scotland and SEPA, I would not anticipate there to be any net increase in cost involved in the requirement on Scottish Ministers to collect and report on data. Any additional administrative costs are likely to be minimal.

### B. Legal Liability

The removal of legal liability from individuals on whose land or property the waste has been deposited, where they did not generate that or give permission for it to be deposited, will have a positive financial benefit for those impacted. Although in practice such individuals having to pay the cost of removal is relatively rare, and they can in some circumstances be compensated, nevertheless a removal of liability will reduce costs on such individuals.

### C. Strict Liability

The introduction of strict liability on the generator of waste will essentially place an additional financial burden on those persons to ensure that waste is properly disposed of, which may involve additional expense. However, that has to be weighed against the substantial costs to wider society from fly-tipping, which is more likely to be deterred should strict liability be introduced.

### D. Sanctions

The introduction of higher penalties for fly-tipping will generate additional sums for public authorities, including local authorities. This, in turn, would allow local authorities and other bodies to devote more resources to the enforcement of the law in this area. The deterrent effect of increased penalties might well reduce the incidence of fly-tipping, thus reducing the burden on authorities to investigate incidents and seek to identify and pursue offenders.

## Sustainability

The principles of sustainable development are:

- living within environmental limits
- ensuring a strong, healthy and just society

- achieving a sustainable economy
- promoting effective, participative systems of governance
- ensuring policy is developed on the basis of strong scientific evidence.

As part of the policy development process a Sustainable Development Impact Assessment (SDIA) has been carried out on the provisions of the proposed Bill.

Policy development is at an early stage, therefore this particular section is in relatively general terms. Broadly, the overarching aim and principle of the proposed Bill is to reduce instances of fly-tipping. Less fly-tipping ought to have a positive impact on the environment and biodiversity. Furthermore, improved reporting and better data collection will allow local authorities, national park authorities and SEPA to more strategically plan allocation of resources to deal with instances of fly-tipping.

In general terms, the act of fly-tipping would appear to go against the principles listed above, causing, as it does, environmental damage, and weakening societal cohesion. A former UK Government Parliamentary Under Secretary of State for Communities and Local Government, who had responsibility for this issue, described fly-tipping and littering in the following terms:

“...antisocial environmental crimes that pose risks to human health and animal welfare, spoil relationships between neighbours and their wider community, and affect the way people feel about the place that they call home”.<sup>29</sup>

This succinct description makes clear that fly-tipping is contrary to the sustainability principles listed above. As mentioned earlier in the document, I believe that the existing law in this area also has the unintended consequence of placing duties on people who are actually victims of fly-tipping. In my view this goes against principles of natural justice.

Equally I am mindful of the fact that further thought is required to ensure that the introduction of strict liability on perpetrators of fly-tipping does not have the unintended consequence of leading to delays in the removal of waste, and I will reflect on this during policy development.

The SDIA assesses in more detail the impact of the provisions of the draft proposal on the sustainability principles. In broad terms I am confident that the provisions of the proposed Bill will have a positive impact on sustainability.

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<sup>29</sup> Defra, Fly-tipping statistics for England, 2019/20, 24 February 2021. Source: House of Commons Library paper, “Fly-tipping: the illegal dumping of waste”. Available at: <https://commonslibrary.parliament.uk/research-briefings/sn05672/>

## Equalities

An Equalities Impact Assessment (EQIA) has been carried out as part of policy development on the proposed Bill. The EQIA assesses the impact of the Bill's provisions, both positive and negative, on different protected characteristics under the Equality Act 2010.

Broadly speaking, I consider that the impact on people with particular protected characteristics will be positive where there is a specific impact. The provisions of the proposed Bill would seek to improve the surrounding environment and health and safety of residents of areas where fly-tipping is a particular problem. Fly-tipping can be part of more antisocial behaviour and crime and may occur in areas where residents, some of whom will have protected characteristics, may currently feel unsafe or lack confidence in reporting instances of fly-tipping and other antisocial behaviour. I consider that the provisions of the proposed Bill may help empower individuals to report such instances with confidence that this will lead to change. This may include for example, older people, disabled people, people from black and minority ethnic communities and people with other protected characteristics under the 2010 Act.

## Data protection

I expect that the provisions of the proposed Bill, particularly around revised reporting mechanisms, will involve the processing of personal data. Therefore, a full Data Protection Impact Assessment is being undertaken as part of policy development. Furthermore, I shall be informing the Information Commissioner's office under Article 36(4) of the General Data Protection Regulation of my intention to introduce legislation in this area.

### **For more information:**

- Scottish Government website: <https://www.gov.scot/policies/managing-waste/litter-and-flytipping/#penalties>
- Zero Waste Scotland website: <https://www.zerowastescotland.org.uk/content/litter-and-fly-tipping-legislation>)

### **For more information:**

House of Commons Library briefing: <https://commonslibrary.parliament.uk/research-briefings/sn05672/>

# Questions

## About you

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:
  - an individual – in which case go to Q2A
  - on behalf of an organisation? – in which case go to Q2B
  
- 2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)
  - Politician (MSP/MP/peer/MEP/Councillor)
  - Professional with experience in a relevant subject
  - Academic with expertise in a relevant subject
  - Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

- 2B. Please select the category which best describes your organisation:
  - Public sector body (Scottish/UK Government or agency, local authority, NDPB)
  - Commercial organisation (company, business)
  - Representative organisation (trade union, professional association)
  - Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
  - Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:
  - I am content for this response to be published and attributed to me or my organisation
  - I would like this response to be published anonymously
  - I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

5. Data protection declaration

- I confirm that I have read and understood the [Privacy Notice](#) to this consultation which explains how my personal data will be used.

If you are under 12 and making a submission, we will need to contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

- Please **ONLY** tick this box if you are UNDER 12 years of age.

## Your views on the proposal

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

### Aim and approach

1. Which of the following best expresses your view of the proposed Bill? **Please note that this question is compulsory.**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

2. Do you agree that legislation is required, or are there are other ways in which the proposed Bill’s aims could be achieved more effectively? Please explain the reasons for your response.

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 (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response, including on how a streamlined system to collate and report data could work in practice.

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 (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

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 (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

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 (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response, including your views on my suggested increase of fines to £2,000.

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 (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response, including your views on my suggested increase of fines to £2,000?

8 What are your views on the potential to introduce a waste duty of care system, similar to that in England and Wales? **[see pages 12, 13 and 18 of the consultation document]**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed

- Unsure

Please explain the reasons for your response, including how a duty of care system might operate in Scotland.

9 What are your views on the potential for additional criminal sanctions being applied for instances of fly-tipping? **[see page 14 of the consultation document]**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response, including what the additional criminal sanctions might be.

10 What are your views on the proposal to review the system for the corroboration of evidence? **[see pages 12, 17 and 18 of the consultation document]**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response, including any suggestions on what a different threshold for proof could be.

## 11. Financial implications

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 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

Please explain the reasons for your answer, including who you would expect to feel the financial impact of the proposal, and if there are any ways you think the proposal could be delivered more cost-effectively.

## 12. Equalities

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? If you do not have a view skip to next question.

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

13. **Sustainability**

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 the proposal could impact in any of these areas?  
If you do not have a view then skip to next question.

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.

**General**

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)?

# How to respond to this consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

## Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

### *Online survey*

To respond via online survey, please follow this link:

<https://www.smartsurvey.co.uk/s/ProposedFlyTippingScotlandBill/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above or here: [Privacy Notice](#).

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

### *Electronic or hard copy submissions*

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

murdo.fraser.msp@parliament.scot

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Murdo Fraser MSP  
Room M2.14  
Scottish Parliament  
Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the [Privacy Notice](#) .

You may also contact my office by telephone on (0131) 348 5293.

## Deadline for responses

All responses should be received no later than **23 May 2022**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

## How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website: [www.murdofraser.uk](http://www.murdofraser.uk).

Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The [Privacy Notice](#) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The [Privacy Notice](#) explains how such responses will be handled.

## Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

## Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The [Privacy Notice](#) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: [www.ico.gov.uk](http://www.ico.gov.uk).

## Freedom of Information (Scotland) Act 2002

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So, if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at: [www.itspublicknowledge.info](http://www.itspublicknowledge.info).