

Countryside Alliance's response to the consultation on Murdo Fraser MSP Fly-tipping (Scotland) Bill

The Scottish Countryside Alliance (SCA) has long campaigned on the problem of fly-tipping in the countryside. Fly-tipping is not a victimless crime and figures on the level of fly-tipping only tell part of the story. It is having a significant impact on our rural areas and wildlife, with the RSPCA receiving 7,000 calls a year about litter-related incidents affecting wild animals.

The SCA welcomes this Bill from Murdo Fraser MSP as we need to equip authorities with the tools to tackle fly-tipping, educate the public about their duty of care to the waste they generate and ensure that private landowners are treated fairly when they are the victim of crime.

1. Which of the following best expresses your view of the proposed Bill?

Fully supportive - The UK, and Scotland, have a fly-tipping and litter problem and the SCA has long campaigned on this blight, its impact on the countryside, and wildlife. 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.

Fly-tipping is not a victimless crime and figures on fly-tipping only tell part of the story as official figures on the number of incidents on private land and the associated clear up costs are patchy and incomplete.

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?

The current legislation and penalties to tackle fly-tipping are over 30 years old and no longer act as a deterrent to those who perpetrate this crime. In England and Wales, there has been a more determined effort to tackle this crime and new legislation introduced. It is now time to bring laws in Scotland up to date and make them a real deterrent to this crime.

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 - Until we know the true extent of fly-tipping in Scotland, including where, when and what, then it is very difficult to produce a strategy to tackle this problem. Currently, the recording system is piecemeal and disjointed and unable to give us the full picture. It is also important to record incidents of fly-tipping on public and private land to ensure that we can support private landowners who are impacted by this problem in the countryside. This is why we are fully supportive of the proposal to ensure better collection, collation and coordination in reporting mechanisms for fly-tipping.

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 - Fly-tipping is the only crime where the victims can also be prosecuted for illegal storage of waste in a “double jeopardy” situation which is simply not fair.

Fundamentally, private landowners are liable for any waste dumped on their land and are responsible for clearing it away and paying for the cost of disposal. If they do not act or inform the local authorities about the fly-tipped waste, they risk prosecution for illegal storage of waste. 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.

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?

Partially supportive - The SCA does support the position in England and Wales regarding the “household waste duty of care”. However, we are also aware that the criminals masquerading as legitimate waste carriers can be very convincing and it is sometimes difficult to tell the difference between legitimate waste carriers and criminals. This needs to be recognised in the available defences for householders and should also form part of an education campaign so that householders are aware of their duty of care towards the waste they create and ensure they only pass it on to legitimate waste carriers.

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 - 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.

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.

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 - As above.

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 - The SCA would be fully supportive of introducing a duty of care system along the same lines as that in England and Wales but this needs to be coupled with an education campaign to ensure that householders are aware of their duty of care. The level of awareness about the duty of care in England and Wales is low and we must ensure that if a duty of care system is introduced in Scotland it goes hand in hand with an education campaign to ensure people know how to dispose of their waste legally.

9. What are your views on the potential for additional criminal sanctions being applied for instances of fly-tipping?

Neutral (neither support nor oppose) - Before any new additional legal sanctions are implemented you need to assess whether the current ones are fit for purpose, reflect the gravity of the crime, and deter others from undertaking this criminal activity. Once assessed and the current criminal sanctions are deemed to be failing then it is sensible to seek additional criminal sanctions to tackle fly-tipping.

10. What are your views on the proposal to review the system for the corroboration of evidence?

Partially supportive - In order to tackle fly-tipping, we must all work together, share information and have the appropriate deterrents in place that are easy to implement. The onus for two distinct pieces of evidence of fly-tipping is required before an FPN 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.

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?

Some increase in costs - 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.