

**WASTE UPDATE**

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**1.0 INTRODUCTION**

- 1.1 This report provides an update on a number of waste related matters, which include meetings held with the Scottish Environment Protection Agency (SEPA) on 4 October 2023 and with Scottish Government (SG) Officials on 6 October 2023 regarding the Waste PPP contract.
- 1.2 Council officers have been planning for the introduction of the guidance relating to Persistent Organic Pollutants (POPs) which are found within Waste Upholstered Domestic Seating (WUDS). SEPA released their guidance relating to disposal of these items on 31 October 2023.
- 1.3 The Council has been successful in securing funding from the Recycling Improvement Fund to support improvements to recycling infrastructure on Council operated Civic Amenity/ Landfill sites.
- 1.4 Argyll and Bute Council's (ABC) Officers have engaged with Zero Waste Scotland (ZWS) which links directly to the Council's Waste Strategy and provides information on the Circular Economy Bill and high level implications to the authority, as well as the offer of officer support from Zero Waste Scotland to progress matters relating to the Biodegradable Municipal Waste Ban to Landfill, this is inclusive of an options appraisal and a composition analysis, detailed further in section 3.4.

**2.0 RECOMMENDATIONS**

- 2.1 It is recommended that Members of the Environment, Development and Infrastructure Committee:-
- i. Consider and note the update regarding meetings held with SEPA on the Waste PPP contract;
  - ii. Note that officers will conclude conversations which are ongoing regarding the derogation and will bring a further report to the next meeting of this Committee for a decision on the way forward for the Council;
  - iii. Consider the update regarding Persistent Organic Pollutants and note the date of implementation of compliance with SEPA mandatory guidance as 1 November 2023;

- iv. Note the bid to the Recycling Infrastructure Fund and officers' achievement in successfully securing funding for improvements;
- v. Note the officer support offered by Zero Waste Scotland; and
- vi. Consider the detail provided in this report regarding the Circular Economy Bill.

### **3.0 DETAIL**

#### **3.1 Waste PPP**

- 3.1.1 In December 2022, the Council's Environment, Development and Infrastructure Committee agreed to pursue a derogation from the Scottish Government, from the implementation date of the Biodegradable Municipal Waste Ban of 1 January 2026 to the end of the Council's Waste PPP contract in September 2026.
- 3.1.2 The Council has in place a 25 year Waste PPP contract which ends in September 2026. The Waste PPP contract covers Oban and Lorn, Mid Argyll and Kintyre, Bute and Cowal together with the inner islands.
- 3.1.3 The Scottish Government are due to introduce a Biodegradable Municipal Waste (BMW) landfill ban from the end of December 2025. The last 9 months of the PPP 25 year contract will not be compliant with the new regulation.
- 3.1.4 Argyll and Bute Council is the only Local Authority with a PPP contract, this leaves the authority in a unique situation whereby it is hampered by a 25 year contract which was supported by the Scottish Executive in 2001. To remove itself from the contract has significant financial implications for the authority.
- 3.1.5 A derogation would enable the PPP contract to continue with the Mechanical Biological Treatment (MBT) process until the contract comes to an end in September 2026, this being some 9 months after the BMW ban comes in to place. Note – the islands and Helensburgh and Lomond areas are intended to be BMW compliant from 1 January 2026. Should a derogation not be permitted, the Council are seeking funding for additional costs (circa £1.5M) which would be incurred by the Council in respect of varying the PPP contract from Scottish Government (SG).
- 3.1.6 Council officers met with SEPA Officials to discuss the subject of the derogation from the BMW landfill ban for a 9 month period until the Waste PPP subsists on 2 September 2026. Thereafter, Council officers engaged with SG based upon the SEPA discussion. The following points were discussed:
  - The Council Leader met with the Minister of Green Skills, Circular Economy and Biodiversity supported by the Scottish Government officials and council officers on 26 July 2023.
  - Following the meeting, the Minister confirmed that SG officials had explored opportunities to create a workaround to permit a derogation to be achieved without a change in law and advised Council officers that it would not be possible and that the authority should engage with SEPA;

- Council officers met with SEPA and advised the agency that the Scottish Government (SG) had informed Council officers that they were not in a position to fund the cost associated with not achieving a derogation (circa £1.5M) and the change would require a change in law which they wouldn't be supporting;
- The SEPA meeting was arranged on 4 October 2023 where a request was made to SEPA to allow a derogation until the contract end date in 2026;
- SEPA advised that SEPA's regulatory remit in relation to the BMW ban is clear, and that they were preparing to fully implement the ban in line with the legislation and within their enforcement policy, ultimately informing the Council that they must comply with the BMW ban;
- This information was fed back to SG officials who are going to arrange a follow up meeting with the Council Leader and SEPA senior officials based upon the Council Leaders letter requesting the derogation, no date is set for this meeting yet;
- A subsequent meeting between Council officers and SG officials was due to take place on 13 October 2023 however this is being rescheduled. The meeting will focus on Council officers requesting an update from SG regarding the meeting with the Council Leader and SEPA senior officials.
- On 14 November a strategic meeting took place including the Council Leader, Chief Executive, Executive Director and Head of Service and senior officials from SEPA. At the time of writing SEPA have not confirmed their position regarding the Council's request for a derogation.

3.1.7 Officers continue discussions relating to the derogation as previously discussed at the Environment, Development and Infrastructure Committee and will conclude those discussions with Government officers. Officers from the Council's Waste Service will bring a further update to the next meeting of this Committee to provide detail on engagement with SG, and to ensure the Council have a compliant solution going forward.

## 3.2 Persistent Organic Pollutants (POPs)

3.2.1 SEPA have now confirmed that POPs guidance takes effect from 1<sup>st</sup> November 2023. Council officers have been planning for the processing of POPs material to comply with legislative changes but also to support the three distinct waste models operated by the Council. The changes have seen investment in storage for the material at all Council locations and also changes will be implemented by the Council contractors for the Waste PPP and the H&L Waste model. Summarised below are some points in relation to POPs.

3.2.2 The UK has signed up to Worldwide Environmental Legislation (Stockholm Convention) which bans POPs (above a certain threshold) from landfill.

- The Environment Agency (EA) in England discovered that POPs is contained within fire retardant foam for domestic seating (made prior to 2019), exceeded the threshold for landfill disposal;
- The EA in 2022 wrote to all Councils in England stating that by the end of

2022 waste domestic seating (containing POPs) could no longer be landfilled and instead would have to go to an Energy from Waste (EFW) plant for incineration;

- In 2023, SEPA notified Councils that a similar landfill ban on Waste Upholstered Domestic Seating was likely to come into Scotland during 2023 with draft guidance issued to Councils;
- SEPA notified Councils mid-October that they expected formal guidance to be issued on 31 October 2023 but that they expect Councils and landfill operators to already be in compliance and that the formal guidance will not differ much from the draft;
- SEPA have also indicated that they will expect compliance of not landfilling the material on day 1 (i.e. 1 November 2023) of the formal guidance being issued and will also issue enforcement timescales for non-compliance;
- SEPA formal guidance was issued on 31 October 2023;
- Compliance will incur additional requirements on the Council and its waste disposal contractors which will result in additional costs to the Council. A report highlighting the issue was brought to the August EDI Committee which included a range of costing options;
- At the moment, the mid-range costs estimates of circa revenue £173k per annum and one-off capital costs of £110k, appear to be a reasonable estimate;
- One of the Councils waste disposal contractors is already asking that WUDS items are segregated ASAP to ensure SEPA compliance, this started from 1 November 2023.

3.2.3 Waste Upholstered Domestic Seating typical items containing POPs which have been historically disposed of in landfill and are likely to have to be transitioned to EFW include but are not limited to:-

- Sofas;
- Sofa beds;
- Armchairs;
- Kitchen and dining room chairs;
- Stools and foot stools;
- Home office chairs;
- Futons, bean bags, floor and sofa cushions; and
- Leather, synthetic leather, other fabric and foam.

3.2.4 SEPA wrote to the Council on 17 October 2023 to confirm that their intention was to publish their guidance on 31 October 2023 – a copy of this is attached at **Appendix 1**. SEPA also published information which clearly signposts the regulatory support available to enable operators who currently have a waste management authorisation to continue to store and treat WUDS (Waste Upholstered Domestic Seating) containing POPs whilst working towards full compliance with the requirements outlined in the guidance document.

3.2.5 SEPA's guidance makes it very clear that at the point at which an item of upholstered domestic seating becomes waste (WUDS), it is an offence for it (or any waste arising from its treatment) to be disposed of by landfilling, or in

any other way that is not one of the appropriate disposal routes.

- 3.2.6 Within SEPA's communication on 17 October 2023, SEPA confirmed that whilst it is necessary for Scottish Local Authorities to comply with the landfill ban without delay, SEPA will not take enforcement action in respect of any failure to do so before 31 January 2024.

### 3.3 Zero Waste Scotland (ZWS) – Recycling Improvement Fund

- 3.3.1 Council Officers engage with ZWS in relation to all recycling matters and submitted an application to the Recycling Improvement Fund (RIF) which is managed by ZWS with funding approvals given by Scottish Ministers. In summary, the application was for funding from the Recycling Improvement Fund to support improvements to recycling infrastructure at six Household Waste Recycling Centres (HWRC) on the islands and the Helensburgh and Lomond area. The improvements will increase the quality and quantity of recycle material captured by the Council and provide further re-use opportunities for items deposited at these sites.
- 3.3.2 On 12 October 2023, Zero Waste Scotland confirmed that the Council had been successful in securing funding through the Recycling Improvement Fund, The funding awarded is £891,945.12. A breakdown of the works being undertaken and the timescales of the work are noted within the table which is attached at **Appendix 2**.

### 3.4 Zero Waste Scotland (ZWS) Resource

- 3.4.1 Following discussions between the Council and ZWS, it has been agreed that ZWS will supply technical staff time to Argyll and Bute Council. This will be in the form of up to two days a week to support and the focus will be:
- The preparation for, and completion of recycling and waste management projects, including waste compositional analysis (waste composition analysis is a process of physically separating, weighing and categorising waste and can be used both to determine total amounts of food, loss and waste (FLW) and to categorise the different types of foods that have been discarded (fruits, vegetables, meat) or distinguish between food and inedible parts);
  - Options appraisal on recycling – looking at how we better recycle, what options are open to the Council to improve recycling activities with the outcome being the production of a revised Waste Strategy;
  - Preparation for the forthcoming ban on landfilling Biodegradable Municipal Waste (BMW);
  - Energy from Waste works in liaison with West Dunbartonshire Council.

This support will be for a six month period and commence as soon as the Council have confirmed their agreement. It may be extended subject to agreement on both sides.

3.4.2 This resource is notwithstanding the offer of funding to conduct a waste composition analysis at Moleigh and to support a Council options appraisal once the requirements of the authority are determined. This will be funded by ZWS in this financial year. It should be noted that Moleigh is the only site where there is sufficient space to do this piece of work. ZWS will assist with data templates and other items.

### 3.5 Circular Economy Bill (CEB)

3.5.1 The Circular Economy Bill (CEB) was published on 14<sup>th</sup> June 2023 with its purpose being to move Scotland closer to more sustainable levels of consumption, which aligns with policies on climate change and biodiversity.

3.5.2 In June 2023, Parliament agreed a motion for consideration. The CEB is at Stage 1 of the Scottish Government process. On 28 June 2023, Parliament agreed a motion that consideration of the Circular Economy (Scotland) Bill at stage 1 be completed by 26 January 2024. [S6M-09754 | Scottish Parliament Website](#)

3.5.3 The CEB makes provision for circular economy policy and targets, littering, fly tipping and improving Councils' household waste recycling services. The latter is based in large parts on the Scottish Government previous consultations on a Scottish waste route map "Scotland's circular economy - route map to 2025 and beyond: consultation2". <https://www.gov.scot/publications/consultation-delivering-scotlands-circular-economy-route-map-2025-beyond/>

3.5.4 The Bill requires Scottish Ministers to introduce measures to help develop a circular economy, which includes:-

- Publishing a Circular Economy Strategy;
- Developing Circular Economy Targets;
- Reducing Waste;
- Increasing penalties for littering from vehicles;
- Making sure individual householders and businesses get rid of waste in the right way;
- Improving waste monitoring.

3.5.5 More important to Local Government are the provisions for recycling and enforcement. For household waste, giving local authorities a package of new responsibilities and powers:

- Establishing a new fixed penalty notice procedure and concurrent civil penalty regime for Councils to tackle recycling contamination;
- Requiring Councils to comply with a Code of Practice on recycling;
- Giving powers to Scottish Ministers to set recycling targets for local authorities;

- Deter littering from vehicles by establishing a new civil penalty regime that will make the keeper of a vehicle, rather than an individual, liable to pay a penalty charge in respect of a littering offence committed from that vehicle;
- Deter fly tipping by improving enforcement against fly-tipping and other waste crime through a power allowing the Scottish Environment Protection Agency (SEPA) and Local Authorities to seize vehicles involved in specified waste crime;
- Prevent fly tipping by requiring householders to transfer their waste to an authorised person.

3.5.6 COSLA supports the general policy intent of the CEB to move Scotland closer to a circular economy and sustainable levels of consumption. The Waste Managers Network feed directly into COSLA and the opinions are reflected in responses from COSLA to the SG. Points from the most recent COSLA report are noted below for information:-

- The CEB only sets the framework for the delivery of future waste policy which means that much of the detail, including the full financial implications of the new powers, will not be realised for some years. Household waste recycling in particular will depend on financial decisions made as part of the extended producer responsibility scheme and in future Scottish budgets;
- In general, the measures in the CEB will not be successful unless they are supported by significant new investment;
- Recognition to the co-design of the new Code of Practice and local waste targets with Local Government, this commitment will only be credible if it can be evidenced that there are sufficient resources available to deliver the changes which are necessary;
- This commitment to co-design also does not bind any future Scottish Government to work in this way with Local Government, this is a concern as much of the CEB will not be delivered until long after the next Scottish elections;
- The Bill grants powers to impose targets on Local Authorities without a clear commitment that the investment required to achieve these targets will be fully funded. COSLA believe this is especially problematic as the Scottish Government is also seeking power to impose a liability on a local authority to pay a penalty if a target imposed under the regulations is not achieved. COSLA do not believe that seeking this measure is consistent with the Verity House Agreement signed by the Scottish Government.

3.5.7 The view of officers is that there are a number of risks associated with the Circular Economy Bill in terms of waste management for the Council, the risks are noted below.

- The Council has to comply with a statutory Code of Practice for waste and recycling that results in additional revenue and capital costs;
- Statutory recycling targets are imposed in future which result in fines by the Scottish Government if the targets are not achieved;

- Councils are not resourced with the available staff to carry out the significant number of requirements in the Bill including enforcement staff in relation to the new powers granted to Councils for domestic waste.

#### **4.0 CONCLUSION**

- 4.1 In concluding this report, an update on various meetings held with the Minister, Scottish Government Officials and SEPA, relating to the Council's request for a time limited derogation for the Waste PPP area from 1 January 2026 - September 2026 for the BMW landfill ban which is due to be implemented from 1 January 2026. The Committee agreed, in December 2022, to pursue two options and officers continue to take these forward in tandem.
- 4.2 Officers will continue to monitor and review updates from SEPA regarding Persistent Organic Pollutants and report verbally when the formal guidance has been made available. This report highlights further, the cost implications which will be incurred by the authority.
- 4.3 This report informs the Committee of the commitment made by Zero Waste Scotland and also adds insight into the CEB and raises concerns identified by COSLA.

#### **5.0 IMPLICATIONS**

- 5.1 Policy – The Council's waste strategy will evolve in line with the changes in legislation relating to the BMW ban of waste to landfill. A derogation will be sought, failing a successful response the current Renewi contract will be varied to comply with legislative changes.

The Council's waste strategy will evolve in line with the changes in legislation relating to the Persistent Organic Pollutants.

- 5.2 Financial – Compliance with the 2025 Landfill ban will require financial resource from the Council. As the Scottish Government are initiating the change, Officers will pursue financial support from the Scottish Government for this change to provide a long-term financially sustainable solution. Through lobbying it is our intention to seek to recover any additional costs which have resulted from the changes to legislation, through Scottish Government. However, there remains a risk that funding is not forthcoming.

Implications are prevalent with regard to both revenue and capital expenditure. The best case scenario would see the Council have additional costs of £78,500. The Mid-Range scenario is £173,000 and the worst case costing range is £366,000 of additional revenue costs. The three costs ranges also have capital expenditure implications which are approx. £110,000 this would be a one off cost. Based upon the three scenarios the mid-range estimates seem most likely.

The Council have received funding from the Recycling Improvement Fund of £891,945.12 to support improvements to recycling infrastructure.

- 5.3 Legal – The existing PPP contract was not designed or written to accommodate the changes that the 2025 legislation will require. The contract allows variations to be made although the process is quite cumbersome. There will be legal implications, which will need to be resolved, relating to a contract variation regarding the derogation and/or changes in Renewi's contract.

Based upon the initial information provided by COSLA, the Council will be given additional powers for enforcement and to deter waste crime. Councils will have to comply with the Code of Practice on recycling. The introduction of the CEB applied targets to local authorities, liabilities and penalties are also notable.

- 5.4 HR – HR issues will be addressed prior to and during the process of contract handback. Having sufficient resource will factor into the project demands of waste management. TUPE will be relevant at the handback and during the process of progressing to handback should the Council operate the sites themselves.

HR issues may have relevance due to insufficient resource being available should the CEB changes be enforced upon the Council. Additional resources are being provided by ZWS, however this is only for two days per week, for a six month period.

- 5.5 Fairer Scotland Duty:

5.5.1 Equalities – None.

5.5.2 Socio-economic Duty – None.

5.5.3 Islands – There may be potential ferry capacity issues for bulking and transporting waste material from islands, this has been flagged to Transport Scotland.

- 5.6 Climate Change – Transitioning from Landfill to Energy from Waste would result in a reduction in the annual quantity of Greenhouse Gas Generated in Argyll and Bute. However, the additional road miles incurred taking waste to EFW markets will partly offset the carbon reductions achieved through not landfilling.

Incineration is the only way to dispose of POP's Waste material. Transitioning from Landfill to Energy from Waste would result in a reduction in the annual quantity of Greenhouse Gas Generated in Argyll and Bute. However, the additional road miles incurred taking POP's waste to EFW markets may partly offset the carbon reductions achieved through not landfilling.

- 5.7 Risk – there are financial risks associated with no derogation.

As in section 5.2 of this report, there are financial risks associated with POPs waste material.

There are potential financial risks associated with the CEB based on the information available. SG should be lobbied for financial support through COSLA.

5.8 Customer Service – None.

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**APPENDICES:**

Appendix 1 – SEPA Guidance on Persistent Organic Pollutants

Appendix 2 – Recycling Infrastructure Fund – breakdown of works and timescales