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## Net Zero, Energy and Transport Committee

# Net Zero, Energy and Transport Committee report on the Flytipping (Fixed Penalties) (Scotland) Order 2023 (SSI 2023/335)



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# Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Net Zero and Just Transition, with the exception of matters relating to just transition; on matters relating to land reform, natural resources and peatland, Scottish Land Commission; Crown Estate Scotland, and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands; and on matters relating to energy within the responsibility of the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy.



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# Committee Membership



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Scottish Conservative  
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**Deputy Convener**  
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**Bob Doris**  
Scottish National Party



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Scottish National Party



**Monica Lennon**  
Scottish Labour



**Douglas Lumsden**  
Scottish Conservative  
and Unionist Party



**Mark Ruskell**  
Scottish Green Party

# Introduction

1. The [Flytipping \(Fixed Penalties\) \(Scotland\) Order 2023](#) (SSI 2023/335) was laid before the Scottish Parliament on 10 November 2023 and referred to the Net Zero, Energy and Transport Committee. It is subject to the negative procedure.
2. As described in the policy note accompanying the instrument, "the purpose of the Order is to amend section 33A(9) of the Environmental Protection Act 1990, to increase the fixed penalty amount payable in relation to a fixed penalty notice for contraventions of section 33(1)(a) of that Act for the unauthorised deposit of controlled waste or section 33(1)(c) of that Act for keeping or managing controlled waste in a manner likely to cause pollution of the environment or harm to human health. These offences are commonly referred to as fly-tipping." <sup>1</sup>

# Delegated Powers and Law Reform (DPLR) Committee consideration

3. At its meeting on 21 November 2023, the DPLR Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit. <sup>2</sup>

## Motion to annul

4. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid (Rule 10.4 of the Scottish Parliament Standing Orders).
5. Under Rule 10.4, "any member (whether or not a member of the lead committee) may, by motion within the 40-day period, propose to the lead committee that the committee recommend that the instrument be annulled".
6. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.
7. On 4 December 2023, Murdo Fraser MSP lodged motion [S6M-11534](#)—

That the Net Zero, Energy and Transport Committee recommends that the Fly-tipping (Fixed Penalty) (Scotland) Order 2023 (SSI 2023/335) be annulled.



# Net Zero, Energy and Transport Committee consideration

8. At its meeting on 5 December 2023, the Committee took evidence on the Order from—
  - Lorna Slater MSP, Minister for Green Skills, Circular Economy and Biodiversity, Scottish Government;
  - Ailsa Heine, Solicitor, Scottish Government; and
  - Janet McVea, Head of Zero Waste Unit, Scottish Government.
9. Sarah Boyack MSP and Murdo Fraser MSP also attended.
10. The evidence taken and debate held at that meeting can be read in the Official Report.<sup>3</sup>

## Evidence session

11. In her opening remarks, the Minister stated that the purpose of the Order is to change the amount payable under a fixed-penalty notice for fly-tipping offences from £200 to £500, the maximum level that can be set under section 33A(10) of the Environmental Protection Act 1990. The Minister added that the Scottish Government is "serious about tackling waste crime"<sup>4</sup> and had made a commitment in the National Litter and Flytipping Strategy<sup>5</sup>, and the year 1 action plan published in June 2023<sup>6</sup>, to increase the amount payable under a fixed-penalty notice.<sup>7</sup>
12. The Minister told the Committee that there was broad support for the increase.<sup>8</sup>
13. The Committee queried whether the fine can be set at a higher amount. The Minister explained that fixed-penalty notices are "intended for small-scale crime"<sup>9</sup> and proportionate to the offence. She described the range of civil penalties that can be issued by the Scottish Environment Protection Agency (SEPA) for "serious waste crime".<sup>10</sup> She and her officials later repeated these points in response to suggestions that the increase was insufficient to act as a deterrent.<sup>11</sup>
14. The Committee asked for details on the numbers of fixed-penalty notices issued by local authorities and actions taken by SEPA.<sup>12</sup> The Minister and her officials undertook to provide the Committee with data held by the Scottish Government, but suggested this information was held by local authorities and SEPA.<sup>13</sup>
15. Referring to Murdo Fraser's motion to annul the instrument, the Committee asked what the impact would be if the motion were agreed to. The Minister confirmed that fixed-penalty notices would remain at £200.<sup>14</sup>
16. The issue of local authority funding was raised, including local authority provision of waste and recycling centres and whether fixed-penalty notices could provide an

additional revenue scheme for councils. The Minister said enforcement choices were a matter for councils and that the Scottish Government was concerned at reports of reduced access to waste and recycling centres. <sup>15</sup>

17. The Committee asked if there was any distinction between household and commercial waste in relation to the circumstances of a fixed-penalty notice. The Minister clarified that the purpose of the Order is not to change the crime or who will be fined. She explained that the fine for the householder, under the householder's duty of care in the Circular Economy (Scotland) Bill, is £200 and will remain at that level. She said, "This SSI is different and is to do with existing fly-tipping offences under section 33A(9) of the 1990 Act. It is those offences for which the fixed penalty will be going from £200 to £500." <sup>16</sup>
18. The Committee raised concerns around data collection on flytipping. The Minister said that the Scottish Government is "working on creating a national database and ensuring that we are pulling that data together." <sup>17</sup>
19. The Committee asked the Minister for her views on the equality impact of fly-tipping. The Minister replied that she is concerned about the equality impact of the issue and said, "Wherever we take action on litter prevention and give local authorities and SEPA more powers on litter prevention, we intend to benefit deprived communities". <sup>18</sup>
20. On the disposal of sofas and items containing persistent organic pollutants, the Minister said the Scottish Government needs to do work to promote the re-use of items like sofas and to ensure they are disposed of correctly at the very end of their life. <sup>19</sup>

## Debate

21. After the evidence session, Murdo Fraser moved—  
[S6M-11534](#)—That the Net Zero, Energy and Transport Committee recommends that the Fly-tipping (Fixed Penalty) (Scotland) Order 2023 (2023/335) be annulled.
22. A short debate took place and three members made contributions. Sarah Boyack raised the issue of funding for local authorities. The Minister undertook to share a note of her follow-up meeting with Murdo Fraser. In closing the debate, Murdo Fraser provided the Committee with an update on the progress of his Member's Bill proposal.
23. Murdo Fraser sought leave to withdraw the motion in his name. The Committee agreed to this.

# Conclusion

24. The Net Zero, Energy and Transport Committee makes no recommendations in relation to the Fly-tipping (Fixed Penalty) (Scotland) Order 2023 (2023/335).

## Net Zero, Energy and Transport Committee

Net Zero, Energy and Transport Committee report on the Flytipping (Fixed Penalties) (Scotland) Order 2023 (SSI 2023/335), 20th Report, 2023 (Session 6)

- 1 Scottish Government (2023). [The Fly-tipping \(Fixed Penalty\) \(Scotland\) Order 2023: Policy Note \(legislation.gov.uk\)](#)
- 2 Delegated Powers and Law Reform Committee. 68th Report, 2023 (Session 6). [Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 21 November 2023](#) . (SP Paper 475)
- 3 Net Zero, Energy and Transport Committee, [Official Report](#), 5 December 2023
- 4 Net Zero, Energy and Transport Committee, [Official Report](#), 5 December 2023, Col 55
- 5 Scottish Government (2023). [National Litter and Flytipping Strategy](#)
- 6 Scottish Government (2023). [National Litter and Flytipping Strategy 2023-24 Action Plan](#)
- 7 Net Zero, Energy and Transport Committee, [Official Report](#), 5 December 2023, Col 55
- 8 Net Zero, Energy and Transport Committee, [Official Report](#), 5 December 2023, Col 55
- 9 Net Zero, Energy and Transport Committee, [Official Report](#), 5 December 2023, Col 56
- 10 Net Zero, Energy and Transport Committee, [Official Report](#), 5 December 2023, Col 56
- 11 Net Zero, Energy and Transport Committee, [Official Report](#), 5 December 2023, Cols 58-59 and 60
- 12 Net Zero, Energy and Transport Committee, [Official Report](#), 5 December 2023, Col 56
- 13 Net Zero, Energy and Transport Committee, [Official Report](#), 5 December 2023, Col 57
- 14 Net Zero, Energy and Transport Committee, [Official Report](#), 5 December 2023, Col 58
- 15 Net Zero, Energy and Transport Committee, [Official Report](#), 5 December 2023, Col 59
- 16 Net Zero, Energy and Transport Committee, [Official Report](#), 5 December 2023, Col 62
- 17 Net Zero, Energy and Transport Committee, [Official Report](#), 5 December 2023, Col 62
- 18 Net Zero, Energy and Transport Committee, [Official Report](#) , 5 December 2023, Cols 62-63
- 19 Net Zero, Energy and Transport Committee, [Official Report](#), 5 December 2023, Col 63

