

Net Zero, Energy and Transport Committee

35th Meeting, 2023 (Session 6)

Tuesday, 5 December 2023

Cover note: The Fly-tipping (Fixed Penalty) (Scotland) Order 2023 (2023/335)

Introduction

1. The Committee is due to consider [The Fly-tipping \(Fixed Penalty\) \(Scotland\) Order 2023](#) (2023/335). This is subject to the negative procedure.

Procedure for Negative Instruments

2. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

3. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. 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.

4. 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.”

5. The lead committee must consider the instrument and report within the 40-day period, which in this case ends on 18 December 2023. The Committee will consider the SSI and the motion to annul at its meeting on 5 December 2023.

6. There will be an evidence session on the instrument. This is an opportunity for discussion on the policy and detail of the instrument with the Minister and officials before the formal debate on the motion to annul.

7. If, at the end of the debate on the motion, the motion is pressed, the Committee will be invited to agree to it. If the Committee does not agree to the motion to annul then the Committee reports its decision to Parliament. This completes the procedure.

8. If the lead committee agrees to recommend to the Parliament that the instrument be annulled, the Committee reports its decision to Parliament and the Parliament is asked to agree on a Bureau motion to that effect.

Clerks

Net Zero, Energy and Transport Committee

Title of instrument: The Fly-tipping (Fixed Penalty) (Scotland) Order 2023 (2023/335)

Type of Instrument:	Negative
Laid Date:	10 November 2023
Circulated to Members:	10 November 2023
Meeting Date:	5 December 2023
Minister to attend meeting:	Yes
Motion for annulment lodged:	Yes - 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.”
Drawn to the Parliament’s attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	18 December 2023
Purpose:	The purpose of this instrument 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.

9. An electronic copy of the Regulations is available at:
<https://www.legislation.gov.uk/ssi/2023/335/contents/made> ([legislation.gov.uk](https://www.legislation.gov.uk)).

10. Copies of the explanatory and policy notes for SSI 2023/335 are provided below.

Delegated Powers and Law Reform (DPLR) Committee consideration

11. 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.

- [Read the Official Report – 21 November 2023 \(Scottish Parliament\)](#)
- [Read the Committee’s report - Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 21 November 2023 \(68th Report, 2023\)](#)

Accompanying documents - The Fly-tipping (Fixed Penalty) (Scotland) Order 2023 (2023/335)

EXPLANATORY NOTE

(This note is not part of the Order)

Section 33A of the Environmental Protection Act 1990 (“the 1990 Act”) provides for a fixed penalty notice procedure for an offence under section 33 in respect of a contravention of subsection 1(a) (for unauthorised deposit of controlled waste) or (1)(c) (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. Payment of the fixed penalty in pursuance of a notice under section 33A of the 1990 Act operates to discharge any liability to conviction for an offence under section 33.

This Order increases the fixed penalty amount specified in section 33A(9) from £200 to £500.

A business and regulatory impact assessment has not been prepared for this Order as no impact upon business is foreseen.

POLICY NOTE

THE FLY-TIPPING (FIXED PENALTY) (SCOTLAND) ORDER 2023

SSI 2023/335

The above instrument was made in exercise of the powers conferred by Section 33A(10) of the Environmental Protection Act 1990. The instrument is subject to negative procedure.

Summary Box

The purpose of this instrument 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.

Policy Objectives

The National Litter and Flytipping Strategy (NLFS) and the associated 2023-24 Action Plan, published in June 2023, contain an action to increase the fixed penalty amount payable in relation to a fixed penalty notice for fly-tipping offences under sections 33(1)(a) and (c) of the Environmental Protection Act 1990 within the first year of the strategy being introduced.

The Strategy’s vision is for a future where Scotland’s environment and communities are not blighted by litter and fly-tipping, and materials remain within a circular economy. Supporting behaviour change and strengthening enforcement are two key

themes of the Strategy. One of the Strategy's specific objectives is to develop a more effective enforcement model to deter and robustly tackle fly-tipping. The increase in the fixed penalty notice amount for fly-tipping offences is one of the key actions to achieve this.

This instrument will amend the fixed penalty amount payable in relation to a fixed penalty notice for fly-tipping offences as currently prescribed by section 33A(9) of the Environmental Protection Act 1990, from £200 to £500.

EU Alignment Consideration

This instrument is not directly related to the Scottish Government's policy to maintain alignment with the EU, but is in-keeping with the general principles of Directive 2008/98/EC of the European Parliament and of the Council on waste, including the protection of the environment by preventing or reducing the adverse impacts of waste generation and management.

Consultation

A public consultation on the National Litter and Flytipping Strategy took place from 13 December 2021 until 31 March 2022.

The analysis of the consultation responses showed strong support across almost all respondent types for the fixed penalty amount payable in relation to a fixed penalty notice for fly-tipping to be increased to £500 which is the current level 2 amount on the standard scale, and the maximum level at which the fixed penalty amount can be set by order under section 33A(10) of the Environmental Protection Act 1990. For this reason it was included as a Scottish Government commitment in the year one action plan which accompanied the strategy.

A full list of those consulted and the consultation report is published on the Scottish Government website¹.

Impact Assessments

As an EQIA², ICIA³ and SEA⁴ were carried out for the National Litter and Flytipping Strategy, it was not considered necessary to carry out further impact assessments for this SSI.

Financial Effects

The Minister for Green Skills, Circular Economy and Biodiversity confirms that no BRIA is necessary as there are no additional costs associated with the fixed penalty notice change to the Scottish Government, local government or on business.

¹ <https://consult.gov.scot/environment-forestry/national-litter-and-flytipping-strategy/>

² <https://www.gov.scot/publications/national-litter-flytipping-consultation-equality-impact-assessment/pages/1/>

³ <https://www.gov.scot/publications/national-litter-flytipping-strategy-island-communities-impact-assessment/pages/1/>

⁴ <https://www.gov.scot/publications/national-litter-flytipping-consultation-strategic-environmental-assessment/>

Scottish Government
Environment & Forestry Directorate
November 2023