

Agenda – Climate Change, Environment, and Infrastructure Committee

Meeting Venue:	For further information contact:
Video Conference via Zoom	Marc Wyn Jones
Meeting date: 29 September 2022	Committee Clerk
Meeting time: 09.30	0300 200 6565
	SeneddClimate@senedd.wales

Private pre-meeting (09.15–09.30)

Public meeting (09.30)

- 1 Introductions, apologies, substitutions and declarations of interest**
(09.30)
- 2 Papers to note: note papers from the Committee's meeting on 22 September 2022 (6.1 to 6.11)**
(09.30)
- 3 Draft Environmental Protection (Single-use Plastic Products) (Wales) Bill – evidence session 5**
(9.30–10.30) (Pages 1 – 27)
Matt Davies, Head of Public & Environmental Affairs – British Plastics Federation (BPF)
Natalia Lewis-Maselino, Industrial Issues Executive; Plastics & Flexible Packaging – British Plastics Federation (BPF)

[The Draft Environmental Protection \(Single-use Plastic Products\) \(Wales\) Bill](#)



Senedd Cymru
Welsh Parliament

Attached Documents:

Research brief

Paper – British Plastics Federation

Break (10.30–10.40)

4 Draft Environmental Protection (Single–use Plastic) Bill – evidence session 6

(10.40–11.25)

(Pages 28 – 32)

Judith Parry, Chair – Trading Standards Wales, and, Trading Standards and

Registrar Service Manager – Rhondda Cynon Taf County Borough Council

Craig Mitchell, Head of Waste Support – Welsh Local Government Association

(WLGA)

Attached Documents:

Paper – Welsh Local Government Association (WLGA)

Break (11.25–11.30)

5 Draft Environmental Protection (Single–use Plastic) Bill – evidence session with the Minister for Climate Change

(11.30–12.30)

Julie James MS, Minister for Climate Change

Elen Shepard, Deputy Director, Environmental Protection – Welsh Government

Nick Howard, Senior Government Lawyer – Welsh Government

Richard Clark, Head of Local Environment Quality – Welsh Government

6 Papers to note

(12.30)

6.1 The Environmental Protection (Single-use Plastic Products) (Wales) Bill

(Pages 33 – 52)

Attached Documents:

Letter from the Minister for Climate Change in relation to amendments the Minister will be seeking at Stage 2 consideration of the Environmental Protection (Single-use Plastic Products) (Wales) Bill

6.2 The Environmental Protection (Single-use Plastic Products) (Wales) Bill

(Pages 53 – 61)

Attached Documents:

Letter and statement of policy intent from the Minister for Climate Change in relation to the Environmental Protection (Single-use Plastic Products) (Wales) Bill

7 Motion under Standing Order 17.42 (vi) and (ix) to resolve to exclude the public from the remainder of today's meeting
(12.30)

Private meeting 12.30–13.00

8 Draft Environmental Protection (Single-use Plastic Products) (Wales) Bill – consideration of evidence heard under items 2, 3 and 4

9 Consideration of the Committee's draft report on the Legislative Consent Memoranda for the UK Infrastructure Bank Bill

10 Consideration of the Committee's Forward Work Programme

(Pages 62 – 67)

Attached Documents:

Paper – Forward Work Programme

Document is Restricted

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith /
Climate Change, Environment and Infrastructure Committee
Bil drafft Diogelu'r Amgylchedd (Cynhyrchion Plastig Untro) (Cymru)/
Draft Environmental Protection (Single-use Plastic Products)(Wales) Bill
SUP_22
Ymateb gan Ffederasiwn Plastigau Prydain / Evidence from British Plastics Federation
(BPF)

The Environmental Protection (Single-use Plastic Products) (Wales) Bill – BPF Briefing Note

Established in 1933, the British Plastics Federation (BPF) is recognised as the single voice of the UK plastic industry with over 500 members across the plastics industry supply chain, including polymer producers and suppliers, additive manufacturers, recyclers, services providers, end users, plastics processors and machinery manufacturers, representing over 80% of the industry by turnover.

Speaking broadly on the Environmental Protection (Single-use Plastic Products) (Wales) Bill, it is important to note that the UK-wide Environment Bill sets out measures for all single use materials and not just single use plastics. Any new measures should align with this, as switching to alternative materials does not always have the best environmental outcome and should be based on a full Life Cycle Analysis (LCA), and be recyclable at the end of its life. This is also something WaterUK highlighted in their submission to DEFRA's 2022 consultation on commonly littered items when discussing the issue of wet wipes being incorrectly flushed. As an example, although there are alternatives to wet wipes containing plastics, they tend to be made from bamboo, compostable or biodegradable products which are likely to create the same issues in sewers if they are disposed of incorrectly such as littered or flushed down the toilet. Biodegradable and compostable materials require the correct conditions to completely compost or degrade, for example, the correct temperature, time, moisture level and anaerobic activity. Therefore, the policy proposals should discourage the incorrect disposal of plastic items otherwise the approach adopted will not meet the policy objective stated.

Reuse is another area which could aid the reduction in waste. Again, the adoption of reuse models should be based on a full LCAs to ensure that there are no adverse outcomes.

As the items listed in the Bill go beyond those listed in the EU Single Use Plastics Directive and include other 'takeaway containers', it is vital that full LCAs and impact assessments are undertaken to ensure that the items replacing them do not continue to cause littering and other adverse socio-environmental impacts. Legislation should also work holistically with the sustainability landscape, ensuring businesses and consumers have the means to meet other environmental goals such as Net Zero targets, without alternative products setting them back further on this journey.

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith /
Climate Change, Environment and Infrastructure Committee
Bil drafft Diogelu'r Amgylchedd (Cynhyrchion Plastig Untro) (Cymru)/
Draft Environmental Protection (Single-use Plastic Products)(Wales) Bill
SUP_29

Ymateb gan Cymdeithas Llywodraeth Leol Cymru / Evidence from Welsh Local Government
Association

Climate Change, Environment and Infrastructure Committee : 5th September 2022

Draft Environmental Protection (Single-use Plastic Products) (Wales) Bill

INTRODUCTION

1. The Welsh Local Government Association (WLGA) is a politically led cross party organisation that seeks to give local government a strong voice at a national level. The Association represent the interests of local government and promotes local democracy in Wales. The 22 councils in Wales are all members of the WLGA and the 3 fire and rescue authorities and 3 national park authorities are associate members.
2. The WLGA believes that the ideas that change people's lives, happen locally. Communities are at their best when they feel connected to their council through local democracy. By championing, facilitating, and achieving these connections, we can build a vibrant local democracy that allows communities to thrive.
3. The main aim of the Association is to promote, protect, support and develop democratic local government and the interests of councils in Wales. This means:
 - Promoting the role and prominence of councillors and council leaders
 - Ensuring maximum local discretion in legislation or statutory guidance
 - Championing and securing long-term and sustainable funding for councils
 - Promoting sector-led improvement
 - Encouraging a vibrant local democracy, promoting greater diversity
 - Supporting councils to effectively manage their workforce.

General Points and comments

4. The WLGA welcomes the opportunity to comment on the Draft Environmental Protection (single use plastics) (Wales) Bill.
5. The Committee have asked a series of specific questions in their call for evidence, and these are set out below alongside the WLGA response.
6. ***Whether a Bill is needed to introduce a ban on commonly littered single-use plastic items;***
7. It is essential that businesses and the public understand what is required, why and how to comply with this. A Senedd Bill certainly has the profile to encourage this civic debate and ensure visibility on the issue. From an enforcement point of view having clear statute with paths of enforcement that are proportionate and suitable is also essential. It is vital that there is a reduction in microplastic entering the environment and the food chain and therefore it is agreed that this Bill is necessary.
8. ***The advantages and disadvantages of using a Bill rather than secondary legislation to introduce a ban;***
9. This is a technical legal issue and the WLGA does not have a view on this. The legal advice to government would clarify this and set out the pro's and con's of various approaches. Again, the outcome sought is clarity about the what, the why and the how and what is the most effective route to deliver that.
10. ***Whether the provisions of the draft Bill will deliver the policy intention;***
11. Clearly the intention of the Bill is to reduce the inappropriate use of plastics within society and minimise the wider environmental impacts of their misuse and disposal. The draft Bill would seem to deliver on this ambition subject to several caveats.
12. Welsh Parliament committees themselves have in the past noted the porous border with England and the impact that can have on Wales only legislation. It can also potentially cause confusion in the public's mind and for retailers. The WLGA have views on the implementation to counter this which is set out in a later question

response. There would need to be a substantive engagement and communications campaign to get the public to understand the reasons for this legislation alongside how to comply.

13. A critical issue is what will retailer behaviour be considering the bans. A concern remains of perverse outcomes where equally environmentally damaging materials are substituted in to allow technical compliance with the bans but not the ethos. At this stage it is very difficult to predict these behaviours.
14. An area that has caused problems in the past is around biodegradable materials especially cutlery and so forth. The committee will be aware that all LAs in Wales send food waste to AD plants to process the material and turn into digestate which can then be applied to the land in agricultural practice. Often this biodegradable material is disposed of through the food waste route however it is not suitable for AD plants and is a contaminant. This jeopardises the outputs from these plants which are rigorously tested by NRW to achieve PAS 100 certification to ensure that the material spread back to land is safe. This is just one example of the need to remain vigilant to unsuitable outcomes or substitutions especially where people feel they are 'doing the right thing'.
15. There have been instances in plastic free communities where the switch to this type of material has been well intentioned but caused problems. Therefore, these materials need to be fully considered in their life cycle and their carbon impacts. The future potential impact of UK wide Extended Producer Responsibility schemes also needs to be planned for, especially where the scope of such schemes may be widened beyond packaging. In essence these whole systems view to consider the impact of different policy levers and their impact is a difficult but essential part of this committee's work.
16. A good example of this is where LAs supply corn starch plastic bags which are biodegradable for food waste caddies in households. These now need to be stripped out of food waste to enable it to go to AD (and the bags often go to EfW) and generally cost more than double 'normal' plastic bags. Because these corn starch bags by definition cannot contain recycled plastic, they are captured by the plastic tax which further increases their cost. The difficulty is that the public see these bags as the more environmentally friendly options and are concerned at LAs who seek to move to a traditional plastic bag supply for household caddies (which incidentally are easier to strip out of the food waste than corn starch bags because they are not as stretchy). This is a roundabout way of demonstrating that any issue is often not as clear and straightforward as it appears.
17. ***Whether there are any potential barriers to the implementation of the draft Bill's provisions (including the United Kingdom Internal Market Act 2020);***

18. ***Whether the powers in the draft Bill for Welsh Ministers to make subordinate legislation are appropriate;***
19. These are complex legal issues which we understand are still being tested through the UK legal system. Therefore, the WLGA do not have a view on this other than to restate our position of subsidiarity in that decision making should be devolved to the lowest appropriate level (whilst ensuring necessary consistency and clarity). Given the need for the legislation to develop and respond to changing practice and circumstance the level of subordinate powers seem appropriate.
20. ***Whether there are any unintended consequences arising from the draft Bill;***
21. There is potential for law abiding citizens and retailers to fall foul of this inadvertently if there is not a significant campaign of awareness raising, information and supported enforcement. The roll out of smoking bans and so on in the past began with an emphasis on support to enable compliance and this would be an essential element of this process. A recent example of the minimum unit price for alcohol is set out below as an indication of the level of implementation required. After this initial implementation period it is likely that Las will take a more reactive approach to enforcement in line with several other policy areas and the need to prioritise very limited resources.
22. Another area highlighted above is the potential for retailers to substitute materials that are also damaging to the environment but not covered by this ban. At this stage it is impossible to predict this behaviour and what 'new' materials may come onto the market to fill this gap. Hence the need for legislation to remain responsive to the potential issues.
23. ***The financial implications of the draft Bill (including for businesses and consumers).***
24. In relation to the local authority costs for an effective implementation of a new policy such as this, local authorities would relate their recent experience of the introduction of the minimum unit price of alcohol regime, under the Public Health (Wales) Act.
25. For a period of approximately two years prior to implementation, the Welsh Government and local authorities planned a communications strategy, mailings to businesses, and training for enforcement officers. Once the legislation was implemented, local authorities (trading standards teams) conducted targeted education and inspection work. This allowed for face-to-face discussion with businesses, who could obtain further advice and help to secure compliance with the new requirements.

26. The Welsh Government agreed to provide £300,000 of funding to local authorities to ensure the legislation was embedded into businesses' daily compliance activity. The targeted approach was split over three years, with an agreed front-loaded inspection regime of 3013 visits made to businesses during the three months of the first year of the new legislation.
 27. After the first 3 months, the noncompliance rate was found to be at 6% (176 premises). Follow up compliance visits were made, and a total of 6 Fixed Penalty Notices were subsequently issued for repeated contravention.
 28. Inspection and enforcement activity is now reactive, based on intelligence received by the services.
 29. **Conclusions**
 30. The WLGA supports this piece of legislation as a necessary step to reduce environmental harm and improve local environmental quality. The legislation does need to be backed by the necessary resources to ensure compliance and enforcement is effective and that the public understand the outcomes sought. It will need to be kept under review to determine how effective it has been in light of potential material substitutions and/or changes. It will need to also reflect as other legislation/policy comes forward such as EPR, Plastic tax, non-domestic recycling regulations and possible extension of Emissions Trading Scheme to Energy from Waste as just some examples.
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Llywodraeth Cymru
Welsh Government

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Eich cyf/Your ref
Ein cyf/Our ref

Llyr Gruffydd MS
Chair of the Climate Change, Environment
and Infrastructure Committee
Senedd
Cardiff Bay
Cardiff
CF99 1SN

20 September 2022

Dear Llyr

The Environmental Protection (Single-use Plastic Products) (Wales) Bill

Since the determination of the Environmental Protection (Single-use Plastic Products) (Wales) Bill, ongoing consideration of some complex technical and legal matters has led us to wish to make some minor (but not insignificant) changes to the Bill.

We have not made these changes to the Bill prior to introduction in order to keep as closely to the timetable as possible, following the period of national mourning after the death of Her Majesty, Queen Elizabeth II. The Bill, as introduced, is the same as the draft Bill we published on 15 August 2022 and which your Committee has been able to undertake initial consultation on.

The purpose of this letter, therefore, is to inform you as early as possible of our intention to propose these amendments at Stage 2. The proposed changes are summarised below:

1. A change to section 1 to clarify that for the purposes of the Bill, adhesives, paint and ink are excluded from the definition of the word “plastic” (as is our intention).
2. A change to section 5 to ensure that the offence “offering to supply” a single-use plastic product cannot be interpreted such as to capture actions that we did not intend to capture. In particular, these changes clarify that this offence may only be committed on premises in Wales. In doing this, we also want to take the opportunity to make it clearer that a person who is outside Wales *would* commit an offence if they “supply” a prohibited single-use plastic product to a consumer who is in Wales (for example through an online or mail order sale).

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

3. A change to section 20 (interpretation) to move the substance of the definition of “carrier bag” so that it is listed amongst the other definitions of prohibited products set out in the Schedule.
4. A change to correct a technical issue in the drafting of the first exemption in respect of “straws” (listed in the Table in the Schedule). This simplifies the drafting of the exemption, something that is complicated by the fact that it must refer both to the pharmacy business which sells the straw in law, and to the individual who may carry out the transaction on behalf of the business.

In the interests of transparency, and for your convenience, we attach a draft version of the Bill produced in order to show the amendments we will propose within context (in other words as tracked changes of the draft that has been introduced). We will, of course, produce these proposed amendments in the normal way, together a table showing their purpose and effect, for formal consideration by the Senedd at the appropriate time.

Yours sincerely



Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

ACCOMPANYING DOCUMENTS

Explanatory Notes and an Explanatory Memorandum are printed separately.

The Environmental Protection (Single-use Plastic Products) (Wales) Bill

[DRAFT]

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Schedule 1 - Prohibited single-use plastic products

The Environmental Protection (Single-use Plastic Products) (Wales) Bill

[DRAFT]

An Act of Senedd Cymru to prohibit supply of certain single-use plastic products, to enable supply of additional single-use plastic products to be prohibited, and for connected purposes.

Having been passed by Senedd Cymru and having received the assent of His Majesty, it is enacted as follows:

Prohibition on the supply of certain single-use plastic products

1 Key concepts: “plastic product”, “single-use” and “plastic”

- (1) This section defines certain key concepts for the purposes of this Act.
- (2) A “plastic product” is a product –
 - (a) of which all or any of the main structural components are made wholly or partly of plastic, or
 - (b) that has a lining or coating made wholly or partly of plastic.
- (3) “Single-use”, in relation to a plastic product, means a product that is not designed or manufactured to be used for the purpose for which it was designed or manufactured more than once (or on more than one occasion) before being disposed of.
- (4) “Plastic” means a material consisting of a polymer, **other than an adhesive, paint or ink**, and includes a material consisting of a polymer mixed with additives or which has other substances added to it.
- (5) In subsection (4), the reference to “polymer” –
 - (a) means a polymer that can function as the main structural component of a product;
 - (b) does not include a natural polymer that has not been chemically modified.
- (6) For the purposes of subsection (3), a carrier bag is deemed to have been designed to be used to carry goods more than once before being disposed of unless it is made of plastic film no greater than 49 microns in thickness (in which case it is considered to be a plastic product that is single-use).

2 Prohibited single-use plastic products

- (1) For the purposes of this Act, a single-use plastic product is prohibited if –
 - (a) it is a product that is listed in column 1 of the Table in paragraph 1 of the Schedule, and
 - (b) no exemption in a corresponding entry in column 2 of that Table applies, in respect of –
 - (i) a particular type of the product, or
 - (ii) the purpose for which the product (or particular type of product) is supplied.

- (2) A product that falls within subsection (1) is referred to in this Act as a “prohibited single-use plastic product”.

3 Prohibited single-use plastic products: power to amend

The Welsh Ministers may by regulations amend the Schedule –

- (a) to add a product to, or remove a product from, column 1 of the Table in paragraph 1;
- (b) to add an exemption to, or remove an exemption from, column 2 of the Table in paragraph 1, or to amend an exemption in that column;
- (c) to add a definition to, or remove a definition from, paragraph 2, or to amend a definition in that paragraph.

4 Power to amend: duties relating to sustainable development and reporting

- (1) In considering whether to exercise the power in section 3, the Welsh Ministers must take into account their duty –
- (a) to promote sustainable development under section 79(1) of the Government of Wales Act 2006 (c. 32), and
 - (b) to carry out sustainable development under the Well-being of Future Generations (Wales) Act 2015 (anaw 2).
- (2) In the report they are required to publish under section 79(2) of the Government of Wales Act 2006, the Welsh Ministers must set out information about their consideration of whether to exercise the power in section 3 –
- (a) to add further single-use plastic products to column 1 of the Table in paragraph 1 of the Schedule, including but not limited to wet wipes;
 - (b) to remove an exemption from, or amend an exemption in, column 2 of the Table in paragraph 1 of the Schedule, including but not limited to exemptions in respect of cups, takeaway food containers and lids for these products that are not made of polystyrene.

Offence

5 Offence of supplying prohibited single-use plastic product

- (1) A person of a description referred to in subsection (2) (“P”) commits an offence if that person –
- (a) supplies (as to which see subsection (3)) a prohibited single-use plastic product to a consumer who is in Wales, including by delivering the product to a consumer who is in Wales;
 - (b) offers, on premises in Wales, to supply (as to which see subsection (4)) a prohibited single-use plastic product to a consumer.
- (2) The descriptions of person that may commit an offence under this section are –
- (a) a body corporate (including a body exercising any function of a public nature);
 - (b) a partnership;

(c) an unincorporated association;

(d) a person acting as a sole trader.

~~(1) It is an offence for a person (“P”) of any of the following descriptions to supply a prohibited single-use plastic product to a consumer in Wales—~~

~~— (a) a body corporate (including a body exercising any function of a public nature);~~

~~— (b) a partnership;~~

~~— (c) an unincorporated association;~~

~~— (d) a person acting as a sole trader.~~

(3) P supplies a prohibited single-use plastic product if P, or any person accountable to P—

(a) sells the product, or

(b) provides the product free of charge, or

~~— (c) offers to sell the product or provide it free of charge.~~

(4) P offers to supply a prohibited single-use plastic product if P, or any person accountable to P, displays the product on the premises or otherwise keeps the product on the premises so that it is accessible by, or available to, a consumer on the premises.

(5) A person is accountable to P if—

(a) that person—

(i) is an employee of P,

(ii) has a contract for services with P,

(iii) is an agent of P, or

(iv) is otherwise subject to the management, control or oversight of P, and

(b) that person—

(i) is acting in the course of P’s business, trade or profession,

(ii) is acting in relation to the exercise by P of P’s functions,

(iii) is acting in relation to P’s objects or purposes, or

(iv) is otherwise acting under the management, control or oversight of P.

~~(2) Where P arranges for a product to be delivered to a consumer, P supplies the product when it is delivered to the address provided by the consumer.~~

~~(3) For the purposes of subsection (4), if the product is delivered to an address that is different to that provided by the consumer, it is deemed to have been supplied to the consumer at the address provided.~~

(4) In proceedings for an offence under subsection (1), it is a defence for P to show that P exercised all due diligence and took all reasonable precautions to avoid committing the offence.

(5) P is taken to have shown that P exercised all due diligence and took all reasonable precautions to avoid committing the offence if—

(a) sufficient evidence of this is adduced to raise an issue with respect to it, and

(b) the contrary is not proved beyond reasonable doubt.

- (6) In proceedings for an offence under subsection (1) –
- (a) an allegation that a product was a prohibited single-use plastic product will be accepted as proved in the absence of evidence to the contrary;
 - (b) in the case of an offence under paragraph (a), a product is deemed to have been supplied to the consumer at the address to which P arranges for it to be delivered (whether or not it is so delivered).
- (7) In this section ~~Act~~, “consumer” means an individual acting for purposes that are wholly or mainly outside that individual’s trade, business or profession (whether or not the individual purchased the product).

6 Offence: mode of trial and penalty

A person guilty of an offence under section 5 is liable on summary conviction to a fine.

Enforcement

7 Enforcement action by local authorities

- (1) A local authority may –
- (a) investigate complaints in respect of offences under section 5 alleged to have been committed in its area;
 - (b) bring prosecutions in respect of offences under section 5 committed in its area;
 - (c) take any other steps with a view to reducing the incidence of offences under section 5 in its area.
- (2) References in this Act to an authorised officer of a local authority are to any person authorised by a local authority for the purposes of this Act.

8 Power to make test purchases

An authorised officer of a local authority may make such purchases and arrangements, and secure the provision of such services, as the officer considers necessary for the purpose of the exercise of the local authority’s functions under this Act.

9 Power of entry

- (1) An authorised officer of a local authority may enter premises at any reasonable time if the officer –
- (a) has reasonable grounds for believing that an offence under section 5 has been committed in the area of the local authority, and
 - (b) considers it necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed.
- (2) This does not apply in relation to premises used wholly or mainly as a dwelling.
- (3) An authorised officer of a local authority may not enter premises by force under this section.
- (4) Before entering premises under this section an authorised officer must, if asked to do so, show documentary evidence of the authorisation referred to in section 7(2).

10 Power of entry: dwellings

- (1) A justice of the peace may issue a warrant authorising an authorised officer of a local authority to enter premises used wholly or mainly as a dwelling, by force if necessary, if satisfied on sworn information in writing—
 - (a) that there are reasonable grounds for believing that an offence under section 5 has been committed in the area of the local authority, and
 - (b) that it is necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed.
- (2) The warrant continues in force until the end of the period of 28 days beginning with the date it was issued.

11 Power of entry: other circumstances requiring warrant

- (1) A justice of the peace may issue a warrant authorising an authorised officer of a local authority to enter premises, other than premises used wholly or mainly as a dwelling, by force if necessary, if satisfied on sworn information in writing that—
 - (a) there are reasonable grounds for believing that an offence under section 5 has been committed in the area of the local authority,
 - (b) it is necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed, and
 - (c) a requirement set out in subsection (2) or (3) is met.
- (2) The requirement is that—
 - (a) a request to enter the premises has been, or is likely to be, refused, and
 - (b) notice of intention to apply for a warrant under this section has been given to the occupier, or to a person who reasonably appears to the local authority to be concerned in the management of the premises.
- (3) The requirement is that requesting to enter the premises, or the giving of notice of intention to apply for a warrant under this section, is likely to defeat the purpose of the entry.
- (4) The warrant continues in force until the end of the period of 28 days beginning with the date on which it was issued.

12 Powers of entry: supplementary

- (1) An authorised officer of a local authority entering premises under or by virtue of section 9, 10 or 11 may take such other persons and such equipment as the officer considers appropriate.
- (2) The powers of entry exercisable under or by virtue of section 9, 10 or 11 apply in relation to a vehicle as if it were premises.
- (3) If the occupier of premises is present at the time the authorised officer seeks to execute a warrant under section 10 or 11 and enter the premises, the officer must—
 - (a) inform the occupier of the officer's name;
 - (b) produce documentary evidence to the occupier of the officer's authorisation;
 - (c) supply a copy of the warrant to the occupier.

- (4) If premises that an authorised officer is authorised to enter by a warrant under section 10 or 11 are unoccupied, or if the occupier is temporarily absent, then on leaving the premises the officer must leave them as effectively secured against unauthorised entry as when the officer found them.

13 Power of inspection

- (1) An authorised officer of a local authority entering premises under or by virtue of section 9, 10 or 11 may do any of the following if the officer considers it necessary for the purpose of ascertaining whether an offence under section 5 has been committed –
- (a) carry out inspections and examinations on the premises;
 - (b) require the production of anything on the premises, inspect it, and take and retain samples of or extracts from it for as long as the officer considers necessary for that purpose;
 - (c) take possession of anything on the premises, and retain it for as long as the officer considers necessary for that purpose;
 - (d) require any person to give information about, or afford facilities and assistance with respect to, matters within the person’s control.
- (2) If an authorised officer of a local authority considers it necessary for the purpose of ascertaining whether an offence under section 5 has been committed, the officer may arrange for anything produced under subsection (1)(b) or anything that the officer has taken possession of under subsection (1)(c) to be analysed.
- (3) If by virtue of subsection (1)(c) the authorised officer of a local authority takes anything away from the premises, the officer must leave on the premises a statement –
- (a) giving particulars of what has been taken and stating that the officer has taken possession of it, and
 - (b) identifying the person to whom a request for the return of the property may be made.
- (4) The powers conferred by this section include the power –
- (a) to copy documents found on the premises;
 - (b) to impose requirements as to how documents are provided (which may include requirements to provide legible copies of documents found on the premises that are stored electronically).
- (5) For this purpose, “documents” includes information recorded in any form; and references to documents found on the premises include –
- (a) documents stored on computers or other electronic devices on the premises, and
 - (b) documents stored elsewhere that can be accessed by computers or other electronic devices on the premises.
- (6) A person is not required by this section to answer any question or produce any document that the person would be entitled to refuse to answer or produce in or for the purposes of proceedings in a court in Wales or in England.
- (7) This section applies to a vehicle as if it were premises.

14 Offence of obstruction etc. of officers

- (1) A person who intentionally obstructs an authorised officer of a local authority exercising functions under sections 9 to 13 commits an offence.
- (2) Any person who without reasonable cause fails to comply with a requirement under section 13(1)(b) or (d) or 13(4)(b) commits an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) Where a person does not answer any question or produce any document that the person would be entitled to refuse to answer or produce in or for the purposes of proceedings in a court in Wales or in England (see section 13(6)), this does not amount to obstruction under this section.

15 Retained property: appeals

- (1) A person (“A”) with an interest in anything taken away under section 13(1)(c) (“retained property”) may apply by way of complaint to any magistrates’ court for an order requiring the retained property to be released, either to A or to another person.
- (2) If, on an application under this section, the court is satisfied that the continued retention of the retained property is not necessary for the purpose of ascertaining whether an offence under section 5 has been committed, it may make an order requiring the release of the retained property.
- (3) An order under this section may contain whatever provision the court thinks appropriate for delaying its coming into force pending the making and determination of an appeal (including an application under section 111 of the Magistrates’ Courts Act 1980 (c. 43)).
- (4) If the court adjourns the hearing of an application under this section, it may make an order in respect of the retained property that lasts until the final hearing of the application or until any further order is made, if it considers it appropriate to do so.
- (5) Nothing in this section affects any other power of the court to make an order in respect of the retained property, including any power to make an order under section 1 of the Police (Property) Act 1897 (c. 30) (power to make order with respect to property in possession of police).

16 Appropriated property: compensation

- (1) A person (“A”) with an interest in anything of which an authorised officer of a local authority has taken possession under section 13(1)(c) (“appropriated property”) may apply by way of complaint to any magistrates’ court for compensation.
- (2) Subsection (3) applies if, on an application under this section, the court is satisfied that –
 - (a) A has suffered loss or damage in consequence of the authorised officer’s taking possession of the appropriated property, or retaining it, in circumstances where doing so was not necessary for the purpose of ascertaining whether an offence under section 5 had been committed, and
 - (b) the loss or damage is not attributable to the neglect or default of A.
- (3) The court may order the local authority to pay compensation to A.

17 Civil sanctions

- (1) In this section, “the 2008 Act” means the Regulatory Enforcement and Sanctions Act 2008 (c. 13).
- (2) The Welsh Ministers may by regulations make any provision, in relation to the offence under section 5, that could be made under Part 3 of the 2008 Act (civil sanctions) if –
 - (a) a local authority was a regulator for the purposes of Part 3 of that Act, and
 - (b) the offence was a relevant offence in relation to a local authority for the purposes of Part 3 of that Act.
- (3) Sections 63 to 70 of the 2008 Act (guidance; exercise of powers; payment into Consolidated Fund) apply to provision made under this section as they apply to provision made under Part 3 of that Act.
- (4) Section 60(1) and (2) of the 2008 Act (consultation) apply to regulations under subsection (1) as they apply to an order under Part 3 of that Act.
- (5) For the purposes of subsections (3) and (4), references to a regulator in sections 60 and 63 to 70 of the 2008 Act are to be read as references to a local authority.

18 Offences committed by partnerships and other unincorporated associations

- (1) Proceedings for an offence under this Act alleged to have been committed by a partnership are to be brought in the name of the partnership (and not in that of any of the partners).
- (2) Proceedings for an offence under this Act alleged to have been committed by an unincorporated association other than a partnership are to be brought in the name of the association (and not in that of any of its members).
- (3) Rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate.
- (4) Schedule 3 to the Magistrates’ Courts Act 1980 (c. 43) applies in proceedings for an offence brought against a partnership or an unincorporated association other than a partnership as it applies in relation to a body corporate.
- (5) A fine imposed on a partnership on its conviction for an offence under this Act is to be paid out of the partnership’s assets.
- (6) A fine imposed on an unincorporated association other than a partnership on its conviction for an offence under this Act is to be paid out of the funds of the association.

19 Criminal liability of senior officers etc.

- (1) This section applies where an offence under this Act is committed by –
 - (a) a body corporate;
 - (b) a partnership;
 - (c) an unincorporated association other than a partnership.
- (2) If the offence is proved to have been committed by, or with the consent or connivance of, or to be attributable to neglect on the part of –
 - (a) a senior officer of the body corporate or partnership or unincorporated association,
or

(b) any person purporting to act in a capacity mentioned in paragraph (a), that senior officer or person (as well as the body corporate, partnership or association) is guilty of the offence and liable to be proceeded against and punished accordingly.

- (3) In this section, “senior officer” means –
- (a) in relation to a body corporate, a director, manager, secretary or other similar officer of the body corporate;
 - (b) in relation to a partnership, a partner in the partnership;
 - (c) in relation to an unincorporated association other than a partnership, any officer of the association or any member of its governing body.
- (4) In subsection (3), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

General

20 Interpretation

In this Act–

“authorised officer of a local authority” (“*swyddog awdurdodedig awdurdod lleol*”) has the meaning given in section 7(2);

“carrier bag” (“*bag siopa*”) **has the meaning given in paragraph 2 of the Schedule** ~~means a bag, with or without handles, supplied for the purpose of carrying items sold or provided with the bag (and see also section 1(6));~~

“consumer” has the meaning given in section 5(9);

“local authority” (“*awdurdod lleol*”) means a county council or county borough council for an area in Wales;

“partnership” (“*partneriaeth*”) means –

- (a) a partnership within the Partnership Act 1890 (c. 39), or
- (b) a limited partnership registered under the Limited Partnerships Act 1907 (c. 24);

“plastic” (“*plastig*”) has the meaning given in section 1(4);

“plastic product” (“*cynnyrch plastig*”) has the meaning given in section 1(2);

“prohibited single-use plastic product” (“*cynnyrch plastig untro gwaharddedig*”) has the meaning given in section 2(2);

“single-use” (“*untro*”), in relation to a plastic product, has the meaning given in section 1(3).

21 Regulations

- (1) A power to make regulations under this Act is exercisable by statutory instrument.
- (2) A power to make regulations under this Act includes a power –
 - (a) to make different provision for different purposes;
 - (b) to make supplementary, incidental, consequential, transitional, transitory or saving provision, including provision amending this Act.

- (3) A statutory instrument made under this Act may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.

22 Coming into force

- (1) This section and sections 3, 4, 17, 21 and 23 come into force on the day after the day on which this Act receives Royal Assent.
- (2) The other provisions of this Act come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.
- (3) An order under subsection (2) –
 - (a) may make transitional, transitory or saving provision;
 - (b) may appoint different days for different purposes.

23 Short title

The short title of this Act is the Environmental Protection (Single-use Plastic Products) (Wales) Act 2023.

SCHEDULE 1
Introduced by section 2

PROHIBITED SINGLE-USE PLASTIC PRODUCTS

1 This is the Table referred to in section 2.

TABLE 1

Product	Exemption
<i>Products for consumption of food and drink</i>	
Cups	A cup that is not made of expanded or foamed extruded polystyrene.
Cutlery	
Drink-stirrers	
Lids for cups or takeaway food containers	A lid that is not made of polystyrene.
Straws	<p><i>Exemption 1</i></p> <p>In respect of the sale of a straw by a person (“P”) who is conducting or involved in lawfully conducting a retail pharmacy business –</p> <p>(a) where the individual carrying out the transaction is a pharmacist or is acting under the supervision of a pharmacist, and</p> <p>(b) where the person to whom P supplies the straw declares to P that they need the straw, or a person to whom they will give the straw needs the straw, for health or disability reasons.</p> <p>(c) In respect of the sale of a straw by a person (“P”) where –</p> <p>(d) P is a person lawfully conducting or involved in lawfully conducting a retail pharmacy business,</p> <p>(e) where P is not a pharmacist, the individual selling the straw on behalf of P is a pharmacist or an individual acting under the supervision of a pharmacist, and</p> <p>(f) the person to whom P supplies the straw declares to P that they need the straw, or a person to whom they will give the straw needs the straw, for health or disability reasons.</p> <p><i>Exemption 2</i></p> <p>In respect of the provision of a straw free of charge by a person (“P”), where the person to whom P supplies the straw (“A”) –</p> <p>(a) is in P’s care, and</p> <p>(b) P reasonably believes that A needs, the</p>

	<p>straw for health or disability reasons.</p> <p><i>Exemption 3</i> In respect of the provision of a straw free of charge by a person (“P”), where the person to whom P supplies the straw declares to P that they need the straw, or another person to whom they will give the straw needs the straw, for health or disability reasons.</p> <p><i>Exemption 4</i> A straw that is supplied for a purpose connected to the provision of medical care or treatment.</p>
Plates	
Takeaway food containers	A takeaway food container that is not made of expanded or foamed extruded polystyrene.
<i>Other products</i>	
Balloon sticks	
Carrier bags	<p><i>Exemption 1</i> A carrier bag that –</p> <ul style="list-style-type: none"> (a) has maximum dimensions of 125mm (height) x 125mm (width), (b) does not have a gusset, and (c) does not have handles.
	<p><i>Exemption 2</i> A carrier bag, of a size commensurate to the size or nature of the items to be carried, supplied for the purpose of carrying items of the following description –</p> <ul style="list-style-type: none"> (a) raw fish, meat or poultry (including raw fish, meat or poultry products) for human or animal consumption (whether or not the item is packaged); (b) any other food for human or animal consumption that is unpackaged; (c) food for human or animal consumption (to the extent the item does not fall within paragraph (a) or (b)) provided free of charge; (d) medicinal products or listed appliances supplied in accordance with a prescription issued by a health professional;

	<p>(e) supplied in accordance with a prescription issued by a health professional);</p> <p>(f) unpackaged seeds, bulbs, corms or rhizomes;</p> <p>(g) unpackaged goods contaminated by soil;</p> <p>(h) unpackaged blades or bladed articles;</p> <p>(i) unpackaged items made of paper;</p> <p>(j) personal hygiene products provided free of charge;</p> <p>(k) live aquatic creatures in water.</p> <p><i>Exemption 3</i> A carrier bag that is supplied for the purpose of carrying alcohol or tobacco in an area designated as a security restricted area under section 11A of the Aviation Security Act 1982 (c. 36).</p>
Cotton buds	
<i>Products made of oxo-degradable plastic</i>	
Any product made of oxo-degradable plastic, whether or not –	
<p>(a) that product appears elsewhere in this table, and</p> <p>(b) the particular type of the product, or the purpose for which that product (or particular type of product) is supplied, would otherwise be exempted by way of an entry in column 2.</p>	

2 For the purposes of the Table –

“balloon stick” (“ffon balwôn”) means a stick, including any attached mechanisms, designed to be attached to a balloon so that it may be carried or supported;

“carrier bag” (“bag siopa”) means a bag, with or without handles, supplied for the purpose of carrying items sold or provided with the bag (and see also section 1(6));

“cotton bud” (“ffon gotwm”) means a small, thin stick with cotton wool attached around one or both tips, designed to be used for cosmetic applications or personal or animal hygiene;

“cup” (“cwpan”) means a cup designed to be used to hold liquid food or drink for consumption;

“cutlery” (“cytleri”) means a fork, knife, spoon, chopstick or other utensil designed to be used for consuming or serving food;

“drink-stirrer” (“tröydd diod”) means a stick designed to be used for stirring drink and liquid food;

“expanded or foamed extruded polystyrene” (*“polystyren ehangedig neu bolystyren allwthiedig ewynnog”*) means polystyrene where the polymeric material is expanded at any point during its manufacture by any means (such as heat from steam and expansion during cooling) using any blowing agent (such as butane, pentane and propane);

“health professional” (*“proffesiynolyn iechyd”*) means –

- (a) a fully registered person within the meaning of the Medical Act 1983 (c. 54) who holds a licence to practise under that Act;
- (b) a person registered in the dentists register kept under section 14 of the Dentists Act 1984 (c. 24);
- (c) a supplementary prescriber, a nurse independent prescriber, an optometrist independent prescriber, a pharmacist independent prescriber or an approved country health professional, within the meanings given in the Human Medicine Regulations 2012 (S.I. 2012/1916) (see regulations 8(1) and 213(1));
- (d) an independent nurse prescriber, a paramedic independent prescriber, a physiotherapist independent prescriber, a podiatrist or chiropodist independent prescriber or a therapeutic radiographer independent prescriber, within the meanings given in regulation 2(1) of the National Health Service (Pharmaceutical Services) (Wales) Regulations 2020 (S.I. 2020/1073 (W. 241));

“lid” (*“caead”*) means a cover designed to retain the content in a cup or takeaway food container or to help maintain the temperature of the content of the cup or takeaway food container;

“listed appliance” (*“cyfarpar rhestredig”*) means an appliance included in a list approved for the purposes of, or made by virtue of –

- (a) section 80 of the National Health Service (Wales) Act 2006 (c. 42),
- (b) Article 63 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)),
- (c) section 2CA of the National Health Service (Scotland) Act 1978 (c. 29), or
- (d) section 126 of the National Health Service Act 2006 (c. 41);

“medicinal product” (*“cynnyrch meddyginiaethol”*) has the meaning given in section 130 of the Medicines Act 1968 (c. 67);

“oxo-degradable plastic” (*“plastig oco-so-ddiraddiadwy”*) means plastic containing additives which accelerate the oxidation and fragmentation of the plastic when exposed to heat or light (whether or not this is, or may be, followed by partial or complete breakdown of the material by microbial action);

“retail pharmacy business” (*“busnes fferyllfa fanwerthu”*) means a business (other than a professional practice carried on by a doctor or dentist) which consists of, or includes, the retail sale of medicinal products that are not subject to general sale;

“pharmacist” (*“fferylllydd”*) means –

- (a) in relation to Great Britain, a person registered in Part 1 of the register of pharmacists and pharmacy technicians maintained under article 19(2) of the Pharmacy Order 2010 (S.I. 2010/231), and
- (b) in relation to Northern Ireland, a person registered in the register of pharmaceutical chemists for Northern Ireland maintained under Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976 (S.I. 1976/123 (N.I. 22));

“pharmacy medicine” (*“meddyginiaeth fferyllol”*) has the meaning given in regulation 5(5) of the Human Medicines Regulations 2012 (S.I. 2012/1916);

“plate” (*“plât”*) means a flat receptacle designed to hold food for eating but not for serving;

“straw” (*“gwelltyn”*) means a straw designed to be used for consuming drink and liquid food;

“takeaway food container” (*“cynhwysydd cludfwyd”*) means a receptacle other than a plate (for example a bowl, box, cone, or tray), designed or manufactured to be used to take food away from the place where it is provided, and that food—

- (a) is ready to be consumed without any further preparation, such as cooking, boiling or heating, and
- (b) is normally consumed immediately.

- 3 Until section 20(2) of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) comes into force, paragraph (c) of the definition of “listed appliance”, set out in paragraph 2, is to be read as if “section 27” was substituted for “section 2CA”.

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Agenda Item 6.2



Llywodraeth Cymru
Welsh Government

Llyr Gruffydd MS
Chair of the Climate Change,
Environment
and Infrastructure Committee
Senedd
Cardiff Bay
Cardiff
CF99 1SN

20 September 2022

The Environmental Protection (Single-use Plastic Products) (Wales) Bill

Following the introduction of The Environmental Protection (Single-use Plastic Products) (Wales) Bill into the Senedd on 20 September 2022, please find attached a statement of policy intent. These documents are provided to support the Committee's scrutiny of the Bill.

I look forward to providing evidence to the Committee in due course.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee.

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The Environmental Protection (Single-use Plastic Products) (Wales) Bill

Statement of Policy Intent for Secondary Legislation

Introduction

This paper summarises the Welsh Ministers' powers for making secondary legislation as outlined in The Environmental Protection (Single-use Plastic Products) (Wales) Bill (the Bill), as introduced to the Senedd Cymru on 20 September 2022.

The paper explains why these powers have been chosen and the current government policy for use of these powers. The justification for the Senedd procedure selected is set out in table 5.1 of the Explanatory Memorandum.

Regulations made using these powers will be subject to consultation with key stakeholders in the relevant sectors and representatives of protected characteristics groups.

This document is intended to provide stakeholders with an initial opportunity to provide feedback on the intended use of these powers to ensure robust and effective policy and to assist committees during the scrutiny of the Bill. The Welsh Ministers have considered the use of powers in the Bill as set out below and are satisfied they are necessary and justified.

Overview of the Bill

The Bill Contains 4 parts and 1 Schedule.

- Part 1 outlines key concepts, sets out what constitutes 'prohibited single-use plastic products', introduces the Schedule that includes the list of prohibited single-use plastic products, associated exemptions, and definitions for the particular prohibited single-use plastics listed in the Schedule. This part also confers a power on the Welsh Ministers to make Regulations to amend the Schedule.
- Part 2 creates the offences of supply and offer to supply a prohibited single-use plastic product and outlines the mode of trial and penalty.
- Part 3 establishes a local authority led enforcement regime and provides the local authorities with powers of entry and inspection. This part also gives the Welsh Ministers a power to make Regulations to confer power on a local authority to impose a civil sanction on any person who commits the offence of supply or offering to supply a prohibited single-use plastic product.
- Part 4 contains miscellaneous provisions, including provisions on interpretation, the regulation making powers and when specific provisions within the Bill will come into force.
- The Schedule sets out the list of 'prohibited single-use plastic products', exemptions and provides key definitions to support interpretation of the Bill.

Other documentation

This document should be read in conjunction with the following:

- The Environmental Protection (Single-use Plastic Products) (Wales) Bill;
- The Explanatory Notes to the Bill; and
- The Explanatory Memorandum to the Bill.

Power to amend the Schedule

Section	Form	Provision	Procedure
3	Regulations	Prohibited single-use plastic products: power to amend	Draft Affirmative

Description of power

This provision gives the Welsh Ministers a power to make Regulations to amend the Schedule to the Bill to:

- add or remove a product in column 1 of the Table in paragraph 1 of the Schedule;
- add or remove an exemption relating to a product in column 2 of the Table in the Schedule; and
- to add the definition of a product, or remove a definition from paragraph 2 of the Schedule, or to amend a definition in that paragraph.

In exercising this power, the Welsh Ministers must take into account their duty to promote sustainable development under section 79(1) of the Government of Wales Act 2006 and their duty to carry out sustainable development under the Well-being of Future Generations (Wales) Act 2015.

A plastic product that:

- is single-use;
- is listed in column 1 of the table in the Schedule to the Bill, and
- has no exemption in a corresponding entry in column 2 of that Table applicable in respect of—
 - (i) a particular type of the product, or
 - (ii) the purpose for which the product (or particular type of product) is supplied;

would be considered a ‘prohibited single -use plastic product’ under the Bill. The supply of a ‘prohibited single-use plastic product’ to a consumer in Wales is effectively prohibited under the Bill as a person supplying such a product- to a consumer in Wales would be committing a criminal offence under section 5 of the Bill.

Given this power enables Welsh Ministers to make subordinate legislation that amends primary legislation, it is appropriate that such regulations are to be made subject to the draft affirmative procedure.

Policy purpose and intent

The regulation-making provision will enable the legislation to keep pace with any emerging scientific evidence which may suggest other single-use plastic products are problematic or if a shift in consumer behaviour in purchasing single-use plastic products is proven detrimental to the environment.

For example, respondents to our consultation raised concerns of the littering and waste associated with take away or single serving condiment sachets and the presence of certain plastic-containing sanitary products in our rivers and sea. As we gather further evidence on the impact of these plastic products and the availability of suitable alternatives, Ministers will have the ability to take action through regulations to add these items to the Schedule to the Bill and ban or restrict supply of these single-use plastic products.

In bringing forward future bans, we will follow an evidence-based process. Where necessary, we will consult with those affected by any ban, and ensure the impact of banning the products is fully taken into account. We will also establish an oversight project board and advisory panel for single-use products. These groups will regularly review progress of our policy and legislative proposals, through monitoring product-specific projects. We will establish ambitious milestones to ensure rapid progress, enable accountability, delivery and evaluation. We will establish appropriate mechanisms to collaborate with and involve stakeholders in developing and delivering our proposals.

The Bill also places a duty on the Welsh Ministers to set out, in a report they are required to publish under section 79(2) of the Government of Wales Act 2006, information about their consideration of whether to exercise this regulation making power to add further products or make changes to exemptions included in the current Bill.

Power to make Regulations to confer power on a local authority to impose civil sanctions in relation to an offence

Section	Form	Provision	Procedure
17	Regulations	Civil Sanctions	Draft Affirmative

Description of power

This provision gives the Welsh Ministers a power to make Regulations to confer power on a local authority to impose a civil sanction on any person who commits the offence of supply or offering to supply a prohibited single-use plastic product under section 5 of the Bill.

This power corresponds to that in Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (c.13) ("RESA"). Part 3 of RESA allows the Welsh Ministers to make regulations to provide for alternative civil sanctioning powers for relevant criminal offences that relate to regulatory non-compliance. The civil sanctions available under RESA are: fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings. They are an alternative to, rather than a replacement for, criminal conviction especially for minor breaches of regulatory requirements.

This provision applies section 63 to 69 of RESA to regulations made under this section as they would apply to an order made under Part 3 of RESA. The effect of this is set out in the following paragraphs.

Where the Welsh Ministers confer power on a local authority to impose a civil sanction in relation to an offence, the Welsh Ministers must also make provision to ensure the following results (see section 63 of RESA)—

- that the authority publishes guidance about its use of the sanction;
- that guidance contains specified information, depending on the type of sanction - such as the circumstances in which a monetary penalty or stop notice is likely to be imposed, the circumstances in which it cannot be imposed; the amount of any monetary penalty; how to discharge penalties and rights of appeal and similar;
- that the guidance is revised where appropriate;
- that the authority consults persons specified in the Welsh Ministers' regulations before publishing any guidance;

- that the authority has regard to the guidance in exercising functions.

Where power is conferred on a local authority to impose a civil sanction in relation to an offence the authority must also—

- prepare and publish guidance about how the offence is to be enforced (see section 64 RESA);
- publish reports about the cases in which the civil sanction has been imposed (see section 65 RESA).

The Welsh Ministers may not make provision enabling a local authority to impose a civil sanction in relation to an offence unless the Welsh Ministers are satisfied that the authority will act in accordance with the following principles (referred to in RESA as “the regulatory principles”) in exercising that power—

- that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and
- that regulatory activities should be targeted only at cases in which action is needed.

Where the Welsh Ministers have conferred a power to impose civil sanctions, they must review how that power is being operated (see section 67 of RESA) and may suspend the power of a local authority to impose such sanctions (see section 68 of RESA).

Receipts from civil sanctions — e.g. from the payment of monetary penalties — must be paid into the Welsh Consolidated Fund where the local authority has functions only in relation to Wales (see section 69 of RESA).

This provision also applies section 60(1) and (2) of RESA to regulations made under this section as they would apply to an order made under Part 3 of RESA. This means that prior to making regulations under this section the Welsh Ministers must consult

- (a) the regulator to which the regulations relate,
- (b) such organisations as appear to the Welsh Ministers to be representative of persons substantially affected by the proposals, and
- (c) such other persons as the Welsh Ministers considers appropriate.

If, as a result of the consultation requirement above it appears to the Welsh Ministers that it is appropriate to substantially change the whole or any part of the proposals, the Welsh Ministers must undertake such further consultation with respect to the changes as it considers appropriate.

Since this is a relatively broad power it is appropriate that such regulations are made subject to the draft affirmative procedure

Policy purpose and intent

The primary aim of this power is to provide Local Authorities with an alternative enforcement mechanism with which to bring people into compliance with the Bill's requirements.

Whilst we anticipate Enforcement Officers will seek to engage with businesses before taking formal enforcement action and the legislation will be accompanied by awareness raising messages, the establishment of a Civil Sanctions regime will allow further action to be undertaken where there are deliberate or significant breaches. This can include compliance notices, stop notices and variable monetary penalties.

Where there is repeated non-compliance with the legislation then enforcement would move to utilise criminal sanctions. Members of the public and retailers will be able to challenge a decision made by appealing through the court system.

A [Welsh Government review of civil sanctions](#) for environmental offences in 2015 reported the use of civil sanctions deterred non-compliance, provided an effective and fair way of enforcement, reducing risks of environmental harm and prevent harm from occurring or continuing.

Agenda Item 10

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted