

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.