

SL(5)217 – The Environmental Protection (Microbeads) (Wales) Regulations 2018

Background and Purpose

The draft Regulations prohibit the use of microbeads as an ingredient in the manufacture of rinse-off personal care products and the sale of any such products containing microbeads. Breach of the prohibition is an offence. The regulations also introduce a civil sanctions regime to enable the regulator to impose a range of civil sanctions. The prohibition will come into force on 30th June 2018.

Procedure

Affirmative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Standing Order 21.3 (ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

- 1.The Explanatory Memorandum to these draft regulations states that the purpose of the legislation is to ban the manufacture and supply of rinse-off personal care products which contain plastic microbeads which evidence shows can pollute and cause harm to the marine environment.
- 2.A microbead is a water-insoluble solid plastic particle which measures less than or equal to 5mm in any dimension.
- 3.The ban will extend to all rinse-off personal care products containing plastic microbeads, as defined in regulation 2. The Explanatory Memorandum states



that rinse-off personal care products include, but are not limited to; products designed for use on the body, skin, hands, nails, face, hair and oral cavity, including to exfoliate, cleanse, lighten or colour, soften skin or hair, deodorise or perfume, as well as bath products with personal care properties and dental products.

4.The Explanatory Memorandum states that the ban is intended to:–

- Prevent further harm to marine animals and reduce the level of plastics entering our seas.
- Protect the marine environment and reduce the risk of severity of possible irreversible effects on food security and human health.
- Continue to encourage both existing and planned voluntary industry efforts to remove microbeads.
- Foster consumer confidence in products which will not cause marine pollution.
- Set an example for other countries and encourage wider adoption of legislation.

5.The Regulations will form part of a UK wide ban. UK Parliament have already approved similar legislation. The Scottish Government have also recently laid similar regulations.

Technical Standards Directive

6.In order to prevent creating new barriers to trade within the European Union, **Directive 2015/1535/EU** requires Members States to inform the Commission of any draft technical regulation prior to its adoption.

7.The draft regulations were notified to the Commission on 29th January 2018.

8.At page 14 of the Explanatory Memorandum it states:–

“The Commission provided a response to the TSD notification and noted they have requested the European Chemicals Agency (ECHA), in accordance with Article 69 (1) of the REACH Regulation to prepare an Annex XV dossier in view of



a possible restriction concerning the use of synthetic water-insoluble polymers of 5mm or less in any dimension (i.e. micro plastic particles) which are intentionally added to products of any kind. ECHA entered the relevant intention into the Registry of Intentions on 17 January 2018.

The Commission note if the UK authorities proceed to adopt the notified drafts, the Commission expects them to consider the adopted national measures as provisional and to take into account the final outcome of the ongoing REACH procedures”.

9. Article 5 (2) of **Directive 2015/1535/EU** requires notifying authorities to take the European Commission’s comments into account as far as is possible.

10. As it is not entirely clear from the Explanatory Memorandum whether the information provided represented the entirety of the European Commission’s comments, Assembly Legal Advisers sought further clarification.

11. Welsh Government are unable to share the Commission’s response but have confirmed that all European law obligations have been complied with when drafting the 2018 Regulations, and that the ongoing restriction procedure under the *Registration, Evaluation, Authorisation and Restriction of Chemicals Regulations (REACH Regulations) 1907/2006* is being monitored.

12. The Committee notes that there may be a need for the Welsh Government to make changes to legislation made by Welsh Ministers depending on the outcome of the REACH restriction procedure and any final Brexit agreement.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is not required.

Legal Advisers

Constitutional and Legislative Affairs Committee



25th May 2018



National Assembly for Wales
Constitutional and Legislative Affairs Committee