

## **Explanatory Memorandum to the Environmental Protection (Microbeads) (Wales) Regulations 2018**

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Cabinet Secretary/Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Environmental Protection (Microbeads) (Wales) Regulations 2018.

I am satisfied that the benefits justify the likely costs.

HANNAH BLYTHYN,  
MINISTER FOR ENVIRONMENT  
18 May 2018

## **1. Description**

The Environmental Protection (Microbeads) (Wales) Regulations 2018 (the 2018 Regulations) ban the manufacture and sale of rinse-off personal care products containing plastic microbeads. This will reduce the release of plastic into the marine environment and lessen harm to marine organisms caused by this form of microplastic.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

None.

## **3. Legislative background**

The 2018 Regulations are being made under Section 140 of the Environmental Protection Act 1990 (EPA 1990). Section 140(1) (b) and (c) of the EPA 1990 states the Secretary of State may prohibit the supply and use of a specified substance for the purpose of preventing pollution of the environment or harm to human health or the health of animals and plants.

Under Article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) the functions exercisable under section 140 of the EPA 1990 were transferred to the National Assembly for Wales. Those functions were transferred to the Welsh Ministers by virtue of section 162 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

Civil sanctions are available to the Welsh Ministers by virtue of section 140 (9) of the EPA 1990 and sections 62(1) and paragraph 1 of Schedule 7 to the Regulatory Enforcement and Sanctions Act 2008 (RES Act 2008).

The power is subject to the requirements for consultation under section 59(3) and 60(1) of the RES Act 2008. The power is also subject to the requirements of section 42 of the RES Act 2008 and section 140 of the EPA 1990 as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015/664 Schedule 3(2) paragraph 16(2).

In accordance with Section 59(3) of the RES Act 2008 the Welsh Ministers consulted with the Secretary of State in March 2018, before making an Order under Part 3 of the RES Act 2008.

In accordance with the consultation requirements in section 60(1)(a) of the RES Act 2008 the Welsh Ministers consulted with Welsh Local Authorities in March 2018 in their capacity as the regulator.

In accordance with section 140(6)(b) of the EPA 1990 notices were placed in the London Gazette and Western Mail in April 2018 to inform the public about

the proposed 2018 Regulations and to invite public representation to the Welsh Ministers.

The instrument is an affirmative procedure and subject to approval of the Assembly.

#### **4. Purpose & intended effect of the legislation**

The purpose of this 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.

A microbead is a water-insoluble solid plastic particle which measures less than or equal to 5mm in any dimension. These are deliberately added to a variety of rinse-off personal care products and have been in use for many years.

The ban will extend to all rinse-off personal care products containing plastic microbeads, as defined in the Regulations. Rinse-off personal care products include, but are not limited to: products designed for use on the body, skin, hands, feet, nails, face, hair and oral cavity, including to exfoliate, cleanse, lighten or colour, soften skin or hair, remove hair, deodorise or perfume, as well as bath products with personal care properties and dental products.

The ban is intended to:

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

In Wales, we do not have any manufacturers using microbeads in their products. Through delivery of the ban on manufacture and sale, businesses will be supported in adjusting to the changes resulting in as little additional burden on industry as possible.

#### ***Context***

Welsh Government is committed to implementing an integrated policy-making approach which provides a framework for a clean, healthy, safe, productive and biologically diverse coast and seas. This helps to realise our ambition to improve the health and well-being of the people of Wales as set out in 'Prosperity for All', whilst ensuring more sustainable use of our seas.

Litter is a major issue for our seas and oceans. Welsh Government is committed to taking positive action to reduce the amount of plastic which ends up in our oceans.

The Welsh Government is already doing a lot to reduce and recycle plastic waste through its 'Towards Zero Waste' strategy. Wales leads the UK in recycling and according to an independent study, is ranked second in Europe and third in the world. We recycle 75% of plastic bottles collected from households, compared with the UK as a whole which recycles 57%. The Welsh Government has also commissioned a study to address further ways to increase recycling and reduce littering of key food and drink packaging.

Recently Welsh Government formed the Clean Seas Partnership where stakeholders are currently working to develop and deliver a marine litter action plan for Wales. The principles of the partnership include:

1. Collaboration with UK and global partners to build a strong evidence base of what is effective,
2. A focus on preventative action to address the problem at source,
3. Involvement of communities of place, communities of interest and users of the marine environment in developing and implementing solutions,
4. Integrated working to maximise economic, social and environmental outcomes,
5. Monitor the impact of specific interventions in achieving long term improvements.

Taking positive action to reduce the harmful discharge of microbeads into the sea supports the aims of the Marine Strategy Framework Directive (MSFD)<sup>1</sup>. MSFD sets the framework (which is delivered through a UK Marine Strategy) for how our seas are managed sustainably and contributes towards meeting our goal of achieving Good Environmental Status for our seas. This ban will make a positive contribution to protect the marine environment.

The UK Marine Strategy Part One<sup>2</sup> indicated some problems from marine litter in all regions of UK seas where there are systematic surveys of beach litter density. In addition to this, there is growing evidence the accumulating quantities of litter in our aquatic environments can harm marine ecosystems and affect coastal communities. Smaller items such as microplastic particles can be consumed by marine animals, damaging their health.

The UK Marine Strategy Part Three<sup>3</sup> sets out a comprehensive set of existing and planned measures to address marine litter. These measures include the OSPAR Regional Action Plan (RAP) to tackle marine litter<sup>4</sup>. Since 2014, the UK

---

<sup>1</sup> <http://gov.wales/topics/environmentcountryside/marineandfisheries/marine-fisheries-policy/directives/marine-strategy-framework-directive/?lang=en>

<sup>2</sup> <https://www.gov.uk/government/publications/marine-strategy-part-one-uk-initial-assessment-and-good-environmental-status>

<sup>3</sup> <https://www.gov.uk/government/publications/marine-strategy-part-three-uk-programme-of-measures>

<sup>4</sup> <https://www.ospar.org/documents?v=34422>

has been working with neighbouring countries and engaging with the cosmetics industry to promote a voluntary phase-out of the use of microplastics in cosmetics and personal care products.

This work led to a recommendation in October 2015 from the European Trade Association for the cosmetics industry, Cosmetics Europe, to voluntarily phase out the use of microbeads added for cleansing and exfoliating purposes. Many cosmetics companies, both large and small, issued public commitments to do so.

In August 2016 the UK Government Environmental Audit Committee's (EAC) inquiry into the environmental impact of microplastics was published. It included a recommendation to introduce legislation to ban the use of microbeads in cosmetic and personal care products.

### ***Evidence***

In 2016, the results of a five year study on the impact of microplastics in the marine environment were published<sup>5</sup>. The study was conducted by the University of Plymouth and showed microplastics ingested by marine organisms can cause harm either directly or by transporting other chemical contaminants into the systems of marine organisms. These findings reinforced the growing body of evidence of harm caused to marine organisms by ingestion of microplastics.

Microbeads are an avoidable source of marine pollution. In the UK it is estimated up to 680 tonnes of plastic microbeads are used in personal care products every year, billions of which are being washed into drainage systems and entering our seas. Microbeads accumulate in the marine environment because they do not biodegrade and because it is considered impossible to recover them once released.

In the cosmetics industry, there are suitable, economically feasible alternatives for plastic microbeads including silica, salt and ground seed kernels. Scientific evidence suggests these alternatives do not have negative impacts to the environment<sup>6</sup>.

Further information on why microbeads in cosmetics as an avoidable source of marine pollution, should be minimised, is in Part Two of this Explanatory Memorandum – the Regulatory Impact Assessment.

### ***Public interest***

The increased understanding and awareness of microbeads and the harm they cause to the marine environment has resulted in substantial public interest in

---

<sup>5</sup> <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=17683&FromSearch=Y&Publisher=1&SearchText=5416&SortString=ProjectCode&SortOrder=Asc&Paging=10#Description>

<sup>6</sup> <http://ec.europa.eu/environment/marine/good-environmental-status/descriptor-10/pdf/MSFD%20Measures%20to%20Combat%20Marine%20Litter.pdf>

reducing marine litter, microplastics and microbead pollution in the oceans, for example with the submission of public petitions around the issue of marine litter, for example, in January 2016, Greenpeace launched a petition calling for the UK Government to ban microbeads from cosmetics. This petition received over 385,000 signatures.

The voluntary action by industry, along with increasing pressure from consumers, has been successful to the extent that more than 70% of producers have already removed microbeads from their products. However, introducing a legislative ban will ensure consistency in understanding of what is meant by “microbead” and as a result will ensure all relevant products are free from microbeads.

### ***International support***

The Welsh Ministers together with counterparts across the UK took the decision to introduce legislation to bring in a national ban on the manufacture and sale of rinse-off personal care products containing microbeads, while continuing to engage with other countries to support the development of similar bans internationally.

Globally there is widespread support for a ban on plastic microbeads with many countries already having implemented legislation or in the process of implementing a ban such as, Canada, the United States of America, Australia, Taiwan, South Korea, New Zealand, Italy and India. Government Ministers in Austria, Belgium, Sweden, Luxembourg and the Netherlands have also called for an EU-wide ban on the use of microbeads. The EU Commission held a public consultation on policy options to reduce microplastics entering the marine environment which showed public support for a ban on microbeads in cosmetics<sup>7</sup>. France and Sweden have both introduced bans to prohibit rinse-off cosmetics containing microplastics in 2018. Belgium has notified its own draft plan to voluntarily phase out microplastics in all consumer products by 2019.

The Welsh Government worked collaboratively with all UK administrations to adopt a common approach to this ban, through joint development of UK consultation proposals and applied a consistent approach, where appropriate for Wales, in the 2018 Welsh Regulations.

### ***Consideration of impact on business and trade***

There are estimated to be around 300 cosmetics manufacturers in the UK. However, The UK Cosmetics, Toiletries and Perfumery Association has indicated there are no manufacturing businesses in Wales who use plastic microbeads in their products. The majority of Welsh businesses are small and tend to deal in organic and artisanal products.

---

<sup>7</sup> [https://ec.europa.eu/info/consultations/public-consultation-investigating-options-reducing-releases-environment-microplastics\\_en](https://ec.europa.eu/info/consultations/public-consultation-investigating-options-reducing-releases-environment-microplastics_en)

The 2018 Regulations are therefore not expected to have any impact on manufacturers in Wales. However, the ban on manufacture is necessary to provide a level playing field for industry.

The wider UK cosmetics industry has already taken voluntary steps to remove plastic microbeads from cosmetics and personal care products with over 72% of UK manufacturers no longer using them in their manufacturing process. Further, as noted above, a number of other countries are adopting similar bans and there is widespread public support for phasing out plastic microbeads from cosmetics and personal care products.

In terms of origin, 78% of beauty product imports come from other EU countries or from North America. The US are currently introducing a microbead ban<sup>8</sup>, and certain European countries are exploring the possibility of banning microbeads. Moreover, industry statements<sup>9</sup> on phasing out microbeads generally refer to global removal. This suggests a very small percentage of imports are likely to be affected by the ban.

With the action already being taken by the industry and lack of Welsh manufacturers the impact on Welsh businesses and retailers would be minimal as non-compliant stocks will naturally diminish as supply is exhausted. Full details of the impact on business and trade are contained within the Impact Assessment.

### ***Timing of the ban and legislation coming in to force***

The proposed UK ban was first announced in September 2016 and the UK wide consultation launched in December 2016. The Welsh Government launched a further consultation in October 2017 stating the ban on the manufacture and sale of personal care rinse-off products containing plastic microbeads would be effective from 30 June 2018 if that was, ultimately, the decision reached when all consultation responses were considered.

The public consultation documents issued by Welsh Government in October 2017 encouraged businesses to prepare and adapt their business operations in readiness for the proposed ban, if that was the decision reached when all consultation responses were considered. Further, at the time the ban is introduced in Wales, Welsh businesses selling products will have been given over one year to prepare for the introduction of the ban. In addition, there has already been widespread voluntary action from the cosmetic industry to phase out microbeads in the UK, however, we understand there may be wholesalers and retailers who supply and stock such products.

In addition, the ban on microbeads has received significant media attention and the Welsh Government is confident retailers will be aware of the ban coming into effect and impacts of the ban on businesses will therefore be minimised.

---

<sup>8</sup> <https://www.congress.gov/114/plaws/publ114/PLAW-114publ114.pdf>

<sup>9</sup> <https://www.beatthemicrobead.org/en/industry>

Once the ban is in place, businesses will be supported by guidance focussed on bringing business into compliance with the law and prevent harm being caused to the marine environment. Such guidance will assist manufacturers, suppliers, retailers and the public in understanding the ban and the products falling within the ban, the enforcement and civil sanctions regime.

### ***Enforcement***

The 2018 Regulations will be enforced by Welsh Local Authorities in accordance with published guidance.

The primary aims of the enforcement proposals are to bring people into compliance and prevent harm being caused to the marine environment.

It will be a criminal offence for anyone to manufacture, sell or offer to supply any rinse-off cosmetic or personal care products which contain plastic microbeads in Wales. There are also some related offences, for example, it will be an offence to fail to comply with a stop notice or fail to provide certain information within a reasonable period of being requested in writing to do so.

The 2018 Regulations introduce an enforcement regime which includes civil sanctions and provides a mix of enforcement notices and monetary penalties. Civil sanctions will allow the regulator to distinguish between those who are striving to comply and those who disregard the law. This flexibility will enable the regulator to impose a range of sanctions depending on the circumstances of the offence.

The 2018 Regulations provide the following enforcement tools for regulators as a result of non-compliance:

**Enforcement undertakings:** These enable a person, which a regulator reasonably suspects of having committed an offence, to give an undertaking (a promise) to a regulator to take one or more corrective actions set out in the undertaking.

**Third party undertaking:** These enable a person who has received a regulator's notice of intent to impose a variable monetary penalty, for example, to give a commitment to take action to benefit a third party affected by the non-compliance.

**Variable monetary penalty (VMP):** A requirement to pay a monetary penalty of an amount determined by the regulator reflecting the circumstances of the offence.

**Compliance notice:** A requirement to take specified steps within a stated period to ensure an offence does not continue or happen again.

**Notice of intent:** A notice of what action is proposed; is issued before imposing a variable monetary penalty or compliance notice.

**Final notice:** A final notice of what action is proposed.

**Stop notice:** A requirement for a person to stop undertaking an activity described in the notice until it has taken steps to come back into compliance.

**Non-compliance penalty:** Failure to comply with an undertaking or a compliance notice will result in a non-compliance penalty.

**Enforcement costs recovery notice:** A notice detailing what costs the regulator seeks as reimbursement for investigation and administration.

### Variable Monetary Penalties

Where an offence has been committed, enforcement officers will be able to impose a variable monetary penalty. The parameters the regulator will consider when setting a proportionate level of penalty are:

- the size of the business;
- scale of the offence;
- the impact on the environment;
- the level of financial benefit gained from the offence; and
- any other relevant matters.

Variable monetary penalties will be considered on a case-by-case basis but guidance will be published to establish guidelines for the regulator when determining the level of penalty to be applied, within the maximum penalty amount.

- Non-compliance penalty – a maximum of the lesser of 10% of the annual turnover of the business and £5,000.
- Failing to provide information or documentation for the purpose of determining whether certain offences have been or are being committed, or any requirement of a compliance notice, a stop notice or an enforcement undertaking has been, or is being contravened; – maximum penalty is the lesser of 10% of the annual turnover of the business and £20,000.

Should businesses fail to comply with a stop notice or compliance notice (where a VMP is not also imposed on a person) the regulator will have the power to instigate criminal proceedings.

Failure to comply with a compliance notice will be punishable on conviction by a fine to be determined by the Magistrates Court.

Failure to comply with a stop notice will be punishable by either imprisonment of up to twelve months or fine to be determined by the Magistrates Court.

Compliance notices and stop notices will only be issued as a last resort, where other approaches have failed or where breach of the ban is judged to be deliberate or significant in scale.

The Justice Impact Assessment completed showed there would be minimal impact on the justice system.

All appeals relating to civil sanctions are to the First-tier Tribunal.

### ***Other impact assessments***

The following impact assessments have also been completed and showed there would be minimal or no impact across them all: Children's Rights, Equality and Human Rights, Privacy, Competition, Rural Proofing and Welsh Language.

### ***EU Law***

As noted above, the purpose of drafting the 2018 Regulations is to reduce the growth in marine litter and protect the marine environment. The severity of the environmental impact of microbeads, specifically on the marine environment, has been outlined above. This includes the outcome of a five year study in 2016 which identified the harm caused to marine organisms by the ingestion of microplastics, and acknowledged their use as an avoidable source of marine pollution. It is considered therefore the environmental reasons relied upon in making the 2018 Regulations are sufficient and legitimate to justify the prohibition on the use of microbeads as an ingredient in the manufacture of rinse-off personal care products, and the sale of such products.

When developing the 2018 Regulations, Welsh Government worked with other UK Administrations to consider how to tackle the impact of microplastics on the marine environment, and have engaged with academic institutions and the cosmetic industry to try and identify what measures could be adopted to address this issue. As a result of such engagement it was considered a ban on the manufacture and selling of rinse-off personal care products containing microbeads was the most proportionate and rational mean to achieve the aim of reducing levels of marine litter in all areas of the UK seas, particularly in relation to the Welsh marine area. It was considered no lesser measure would achieve the aims sought, and the policy adopted also reflects the approach assumed in a number of countries around the world, as identified above.

The policy has gained support from the general public, as evidenced by consultation feedback. A broad and timely consultation process was undertaken to garner the views of the general public, and those likely to be impacted by the ban both on a UK wide and Welsh basis as set out below. In particular, the public consultation documents issued by Welsh Government in October 2017 encouraged businesses to prepare and adapt their business operations in readiness for the proposed ban (if that was, ultimately, the decision reached when all consultation responses were considered).

Further, and as noted above, support for the ban has been received from the

cosmetic industry. In October 2015 the European Trade Association for the cosmetics industry, Cosmetics Europe, supported a voluntary phase out of the use of microbeads added for cleansing and exfoliating purposes. In addition, many cosmetics companies, both large and small, have issued public commitments to similarly phase out the use of microbeads. The Welsh Government therefore consider, as a result of the voluntary phasing out of the manufacture of such products and a significant public awareness of the ban, any businesses which might be affected by these proposals in Wales have been afforded adequate time to adjust to the changes in the law.

Welsh Government believes the measures, adopted in the 2018 Regulations, are proportionate and will result in benefits including:

- reducing growth in marine litter and the amount of plastics entering our seas;
- protecting the marine environment; and
- working towards achieving Good Environmental Status for our seas.

These benefits, to be achieved through the ban on the manufacture and sale of personal care products containing microbeads, outweigh any possible negative impacts which may result from the restrictions imposed by the 2018 Regulations.

### ***Conclusion***

The intervention is designed to protect the marine environment from further pollution, foster consumer confidence the products they buy will not harm the environment, and support the cosmetics industry by setting a level playing field while ensuring a suitable timescale for implementation to minimise impact on the industry. It will also set an example for other countries and encourage wider adoption of legislation.

A Regulatory Impact Assessment was carried out on the UK wide proposals and updated when the English Regulations were made. This document is at Annex 1. This UK-wide assessment is the most up to date and is being used for the purposes of the Welsh Regulations. The following is a summary of the likely impact in Wales.

### ***Impact on enforcement bodies***

The impact on the public sector constitutes minimal additional regulatory burden with respect to enforcement of the ban as outlined in the Statutory Instrument. Local authorities are to be responsible for ensuring businesses compliance with the ban on manufacture and sale of rinse-off personal care products containing plastic microbeads. A small amount of additional resource burden is anticipated in the form of additional time for Local Authority officers and administration of sanctions where appropriate. The financial implications of this ban for Wales are largely with enforcement. The costs for Wales have been calculated from the UK Impact Assessment on a pro-rata basis. The estimated costs to the 22 Welsh Local Authorities to enforce this ban are £0 - £13,824 over ten years. The breakdown of costs is as follows:

Summary of enforcement costs (pro-rata for Wales from UK assessment costs)

	<b>Low estimate</b>	<b>Best estimate</b>	<b>High estimate</b>
Familiarisation cost (year 1) – One-off costs	£0	£4,400	£11,000
Annual cost (years 1-3)	£0	£76 (£228 over 3 years)	£764 (£2,292 over 3 years)
Annual cost (years 4-10)	£0	£76 (£532 over 7 years)	£76 (£532 over 7 years)

The expected level of non-compliance is expected to be low given the existing voluntary actions by industry and will therefore place little extra burden on Local Authorities. Any potential non-compliance issues will be short-lived as the supply becomes exhausted as non-compliant stocks cease to be manufactured.

### ***Impact on businesses***

The legislation applies to activities which are undertaken by businesses in the toiletries and cosmetics sector.

While the extent of microbead use by small businesses is difficult to determine, engagement with the UK Cosmetics, Toiletries and Perfumery Association has indicated there are no manufacturing businesses in Wales who use microbeads in their products. The 2018 Regulations are therefore not expected to have any impact on manufacturers in Wales.

In relation to businesses selling products, Welsh Government has carried out extensive consultation, and proposals to introduce a ban across the UK have been well publicised. Retailers have had over a year to adjust to the ban proposals and will also be supported through guidance, following implementation of the ban on 30 June 2018. Impacts are considered to be minimal on retailers in Wales. Further detail can be found in section 4 above.

### ***Benefits***

The microbead ban is expected to have a positive impact on the marine environment. There are other stresses experienced by marine organisms including other forms of historical pollution and ocean acidification. Adding stresses from microbeads increases the overall risk to marine ecosystems.

The UK Impact Assessment identifies the business and environmental benefits which are likely to be generated by the ban on plastic microbeads, however, these benefits could not be quantified and no further evidence was provided during either the UK or Welsh consultations, however, they are expected to be at least as high as the modest costs of the measure.

### ***Monitoring and review***

The 2018 Regulations will be subject to regular review. The obligations are set out in regulation 14 and include (i) a review of the operation of the provisions in Part 3 (Enforcement and Civil Sanctions) and Schedule within 3 years from the date the 2018 Regulations come into force, as required by section 67 of the RES Act 2008 . The Welsh Ministers will lay a copy of the report setting out conclusions of any review before the National Assembly for Wales.

## **5. Consultation**

### ***20 December 2016 – 28 February 2017 – UK wide consultation undertaken jointly by all four UK Governments – 12 weeks***

This was made publically available at:

<https://consult.defra.gov.uk/marine/microbead-ban-proposals/>

The consultation set out proposals to ban the manufacture and sale of cosmetics and personal care products containing microbeads in the UK (including all devolved administrations). It explained the ban would apply to solid microbeads less than 5mm in size in every dimension which are used as an ingredient in rinse-off cosmetics and personal care products. It set out timescales for introducing the ban across the UK and stated the devolved administrations would introduce the ban according to their own legislative processes.

The consultation asked for comments on the proposals, including specific questions on scope; potential exemptions; timescales; compliance monitoring and enforcement; costs to industry, impact on imports, and environmental risks of alternatives to plastic microbeads. It also raised awareness of the potential

for those with an interest to make representations on the legislation when it was notified prior to being made.

Proposals for a UK wide ban were drawn up following considerable engagement between all four UK administrations, key stakeholders including cosmetic companies, non-governmental organisations and those with specific expertise in marine pollution.

### ***16 October 2017 to 8 January 2018 – Welsh Government public consultation – 12 weeks***

Welsh Government conducted a further public consultation on the wider enforcement and implementation details for the ban specifically in Wales.

This consultation was made publicly available at:

<https://consultations.gov.wales/consultations/banning-manufacture-and-sale-cosmetics-and-personal-care-products-containing-plastic>.

The consultation set out a number of questions relating to proposals for a civil sanctions regime which would include a mixture of compliance notices and variable monetary penalties to be enforced by the local authorities trading standards services. The consultation also tested the level of variable monetary penalties.

The Welsh Government received 62 responses and widespread support for the enforcement and implementation proposals. The summary of responses can be found here: <https://consultations.gov.wales/consultations/banning-manufacture-and-sale-cosmetics-and-personal-care-products-containing-plastic>

### ***29 January 2018 – EU Technical Services Directive and World Trade Organisations notifications***

The draft statutory instrument was notified to the European Union (EU) under the Technical Standards Directive (TSD), as well as to the World Trade Organization (WTO) under the Technical Barriers to Trade Agreement (TBTA).

DEFRA carried out their TSD, WTO-TBT and EPA notifications ahead of the finalisation of the Welsh Government's draft 2018 Regulations. Following comments received during the DEFRA notifications the definition of plastic was amended in the Welsh Government's draft 2018 Regulations. The revised definition is included within the Welsh Government's Regulations to ensure consistency of approach across the UK.

In the 2018 Regulations "plastic" is defined as meaning a synthetic polymeric substance that can be moulded, extruded or physically manipulated into various solid forms and which retains its final manufactured shape during use in its intended applications.

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 5 mm or less in any dimension (i.e. microplastic 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 restriction procedure.

These comments have been noted and will be considered at the time the final outcome is available.

### ***March 2018 - RES Act 2008 consultation requirements***

- Welsh Local Authorities were consulted in accordance with section 60(1)(a) of the RES Act 2008 in their capacity as regulator.

Responses were received from three local authorities. The responses were supportive of the ban and noted the approach to enforcement will be predominantly intelligence led.

- The Minister for Environment wrote to the Secretary of State in accordance with the Welsh Ministers' duty under section 59(3) of the RES Act 2008 to consult on making an Order under Part 3 of the RES Act 2008.

No response was received from the Secretary of State.

### ***3 April 2018 – EPA 1990 publication requirements***

Notices were published by Welsh Government in the Western Mail and London Gazette, in line with the Environmental Protection Act 1990 requirements to inform the public about the proposed 2018 Regulations and invite public representations to the Welsh Ministers.

The notice was also published via a web link on <http://gov.wales/>, by email to those who responded to both the UK and Welsh public consultations and to the Welsh Government's wider network of marine stakeholders. The public were given one month to make their representations to the Welsh Ministers.

No comments were received as a result of the publication of the draft 2018 Regulations.

### ***Summary of consultations and outcomes***

Both the UK and Welsh consultations resulted in overwhelming support for the ban.

The Welsh consultation set out the proposed enforcement regime and implementation timescale. The consultation stated our intention for the ban on both the manufacture and the sale of products containing microbeads to come into effect 30 June 2018. The consultation suggested Local Authorities Trading Standards would be the most appropriate regulator to enforce the ban through a variety of civil sanctions and variable monetary penalties. 95% of respondents agreed the enforcement regime was reasonable and proportionate. The levels of variable monetary penalties received overall support from respondents. Some respondents suggested penalties should be higher.

The maximum level of penalties is consistent with those of the Single-use Carrier Bag Charge (Wales) Regulations 2010. We consider it appropriate to apply similar penalties because the microbeads ban will apply to a similar range of businesses of different sizes. The amount of maximum variable penalty is considered to be high enough to deter small to medium size businesses and we consider larger businesses to be deterred by the combination of a monetary penalty and published enforcement notices which might impact on the reputation of their business.

## **Annex 1 – link to UK Impact Assessment carried out for UK wide consultation**

A Regulatory Impact Assessment was carried out on the UK wide proposals. It has since been updated for the equivalent English Regulations and as this is the most up to date version, it is being used for the purposes of the Welsh Government's Regulations. The analysis within the RIA at Annex 1 has been undertaken at a UK level.

The RIA can be viewed via the following link:

<http://www.legislation.gov.uk/uksi/2017/1312/impacts>