

**EXPLANATORY MEMORANDUM TO**  
**The Environmental Protection (Microbeads) Regulations (Northern Ireland)**  
**2018**

**SR 2019 No. 18**

**1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture, Environment and Rural Affairs to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 32 of the Waste and Contaminated Land (Northern Ireland) Order 1997 and is subject to the negative resolution procedure.

**2. Purpose**

- 2.1. These Regulations ban the manufacture and sale of rinse-off personal care products containing microbeads. This will reduce the release of plastic into the aquatic environment and lessen harm to aquatic organisms caused by this form of microplastic. The Regulations will complete a UK ban on the manufacture and sale of rinse-off cosmetic products which became effective during 2018 in England (manufacturing ban 9 January 2018 and ban on sale 19 June 2018), Scotland (both bans effective from 19 June 2018) and Wales (both bans effective from 30 June 2018).

**3. Background**

- 3.1. There is growing evidence on the presence of microplastics in the aquatic environment. Since 2014, the UK has been working with neighbouring countries through the OSPAR Regional Action Plan (RAP) to tackle Marine Litter. Part of this work has looked at engaging with the cosmetics industry to promote a voluntary phase-out of the use of microplastics in cosmetics and personal care products.
- 3.2. In January 2016, Greenpeace launched a petition calling for the UK Government to ban microbeads from cosmetics. This petition received over 385,000 signatures. In August 2016 the Environmental Audit Committee's 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. The Environmental Audit Committee advocated consistency with international legislation.
- 3.3. Microbeads are an avoidable source of aquatic pollution. Up to 680 tonnes of plastic microbeads are used in personal care products in the UK every year, billions of which are being washed into drainage systems and entering our seas. Microbeads accumulate in the aquatic environment because they do not biodegrade and because it is impossible to recover them once released.

- 3.4. The increased understanding and awareness of microbeads and the harm they cause, has resulted in substantial public interest in reducing microbead pollution in the oceans.
- 3.5. 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 that all relevant products are free from microbeads.
- 3.6. The ban extends to all rinse-off personal care products, 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.
- 3.7. The ban applies across the UK. Equivalent legislation is: The Environmental Protection (Microbeads) (England) Regulations 2017; The Environmental Protection (Microbeads) (Scotland) Regulations 2018, and The Environmental Protection (Microbeads) (Wales) Regulations 2018.

#### **4. Consultation**

- 4.1. Proposals for the ban were drawn up following engagement with key stakeholders including cosmetics companies, non-governmental organisations and those with specific expertise in aquatic pollution. A public consultation entitled “Proposals to ban the use of plastic microbeads in cosmetics and personal care products in the UK and call for evidence on other sources of microplastics entering the aquatic environment” was held between 20th December 2016 and 28th February 2017. This was made publically available on <https://www.daera-ni.gov.uk/consultations/proposals-ban-use-plastic-microbeads-cosmetics-and-personal-care-products-uk-and-call-evidence-other> . It was also publicised in the Belfast Telegraph, Irish News and News Letter and also NI Business. Stakeholders with aquatic interests and section 75 groups were additionally notified by email and were encouraged to respond.
- 4.2. 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.
- 4.3. 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.

- 4.4. A copy of the Government Response is available from <https://www.daera-ni.gov.uk/publications/synopsis-responses-consultation-proposals-ban-use-microbeads-cosmetics-and-personal-care-products>
- 4.5. In accordance with Article 32(3) of the Waste and Contaminated Land (Northern Ireland) Order 1997 the Department of Agriculture, Environment and Rural Affairs published a notice indicating the effect of these Regulations and seeking representations. No representations were received in response to the notice.

## **5. Equality Impact**

- 5.1. An Equality and Human Rights Assessment has been carried out. The legislation was assessed to ensure compliance with section 75 of the Northern Ireland Act 1998. No opportunities were identified to better promote equality of opportunity for people within the Section 75 equalities categories. The policy was therefore screened out from the requirement to undertake a full Equality Impact assessment on the basis that is likely to benefit the aquatic environment and people who live in Northern Ireland.
- 5.2. The legislation will reduce the plastic pollution load on the aquatic environment and help protect human health. It is therefore unlikely to have any impacts on people in terms of their equality of opportunity, their rights as people with a disability or their human rights under the Human Rights Act 1998. A copy of the screening decision is available from <https://www.daera-ni.gov.uk/publications/equality-screening-policies-and-decisions-2018>

## **6. Regulatory Impact**

- 6.1. A Regulatory Impact Assessment has been carried out. This concluded that the microbead ban is expected to have a positive impact on the aquatic environment. There are currently a number of stresses experienced by aquatic organisms, including other forms of historical pollution and ocean acidification. Additional stresses from microbeads increases the overall risk to aquatic ecosystems. It is not possible to monetise the benefits and no further evidence was provided from the policy consultation. However, the benefits are expected to be at least as high as the modest costs of the measure.

## **7. Financial Implications**

- 7.1. Based on research in council areas no manufacturers or distributors of rinse-off cosmetic products containing plastic microbeads were identified. The cost to industry has been assessed as zero. The ban will be enforced by council Consumer Protection Officers. The cost of enforcement in Northern Ireland is estimated to be in the region of £6,200 over a ten year period.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. The legislation was assessed to ensure compliance with the Human Rights Act (HRA) 1998 which brings the European Convention on Human Rights (ECHR) into UK law. No potential adverse impacts that the policy or legislation may have in relation to human rights issues were identified. The

legislation is considered to be compliant with section 24 of the Northern Ireland Act 1998.

## **9. EU Implications**

- 9.1. The draft legislation was notified to the European Union under the Technical Standards Directive as well as the World Trade Organisation under the Technical Barriers to Trade Agreement. Defra carried out these notifications ahead of the first draft of the Environmental Protection (Microbeads) Regulations (Northern Ireland) 2018. Following comments received during the Defra notifications the definition of plastic was amended. The revised definition has been included in the Environmental Protection (Microbeads) Regulations (Northern Ireland) 2018.
- 9.2. The EU Commission responded to the Technical Standards Directive notification. The response noted that they have requested the European Chemical Agency to prepare an Annex XV dossier in view of a possible restriction concerning the use of synthetic water-soluble polymers of 5mm or less in any dimension (microplastics) which are added to products of any kind. This is in accordance with Article 69(1) of the Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).
- 9.3. The Commission note that if the UK authorities proceed to adopt the draft Microbeads Regulations the Commission expects them to consider the adopted national measures as provisional and to take into account the final outcome of the ongoing REACH restrictions procedure.
- 9.4. These comments have been noted and will be considered at the time the final outcome is available.
- 9.5. The EU Commission underlined the requirement to provide a summary or references of all relevant data in accordance with the principles provided for in the relevant part of Section II.3 of Annex XV to the REACH Regulation. A copy of the UK Impact Assessment has been forwarded by way of response.

## **10. Parity or Replicatory Measure**

- 10.1. The Environmental Protection (Microbeads) Regulations (Northern Ireland) 2018 replicate the Environmental Protection (Microbeads) (Scotland) Regulations 2018. Unlike the Environmental Protection (Microbeads) (Wales) Regulations 2018 and the Environmental Protection (Microbeads) (England) Regulations 2017 they do not make provision for civil sanctions as an enforcement tool. This is because of limited powers available in the Waste and Contaminated Land (Northern Ireland) Order 1997.
- 10.2. The legislation is necessary to introduce a UK-wide ban on the manufacture and sale of rinse-off cosmetic products which contain plastic microbeads. The legislation will help protect the aquatic environment.

## **11. Additional Information**

- 11.1. A Rural Needs Impact Assessment has been undertaken. This concluded that the impact of the policy in rural areas is likely to be the same as it is in urban areas; a reduction in aquatic microplastic pollution.