

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Proposal

The Environmental Protection (Microbeads) (Scotland) Regulations 2018

Purpose and intended effect

Background

The Scottish Government is committed to a clean, healthy, safe, productive and biologically diverse marine and coastal environment that meets the long-term needs of people and nature. In order to meet this commitment our seas must be managed in a sustainable manner by balancing the competing demands on marine resources with appropriate conservation measures. Our seas must be protected to ensure our future marine ecosystem is capable of providing the economic and social benefits it yields today. As part of the sustainable management of our seas, the Scottish Government published its Marine Litter Strategy in 2014 to develop current and future measures to ensure that the amount of litter entering the marine and coastal environment is minimised to bring ecological, economic and social benefits. The Strategy supports OSPAR's action plan and also helps Scotland to meet our obligations under the Marine Strategy Framework Directive to achieve good environmental status in our marine waters by 2020 and the requirement that "the properties and quantities of marine litter do not cause harm to the coastal and marine environments."

Proposal

The Environmental Protection (Microbeads) (Scotland) Regulations 2018 make it an offence to manufacture any rinse-off personal care product using microbead as an ingredient. The Regulations also make it an offence to supply, offer to supply or have in possession for supply any rinse-off personal care product containing plastic microbeads in Scotland. A person who commits an offence under the Regulations is liable on summary conviction of a fine not exceeding £5,000, or on conviction on indictment, to a term of imprisonment not exceeding 2 years or a fine not exceeding £5,000 or both.

These Regulations, in conjunction with those introduced by the UK Government, Welsh and Northern Irish Administrations ensure that there will be a UK-wide ban on these products.

Objectives

The intervention is designed to protect the environment and food supply from further pollution, foster consumer confidence that the products they buy will not harm the environment, and support the cosmetics industry by setting a level playing field. It will also set an example for other countries and encourage wider adoption of legislation.

Rationale for Government intervention

Plastic microbeads in cosmetic products can pass through sewage treatment works and reach the marine environment. Once there it is impossible to recover them. They do not biodegrade and instead accumulate in the marine environment. There is evidence they cause harm when ingested by marine animals. There are suitable non-plastic alternatives to microbeads in cosmetics so they are an avoidable source of pollution. Some businesses have already taken voluntary actions but others still continue to use microbeads. Therefore there is a market failure rationale for intervention based on externalities given that the environmental costs caused by microbeads to the environment are not taken fully into account by these businesses. A public consultation indicated widespread support for the approach.

Consultation

The results of the UK-wide public consultation on the proposal to ban the manufacture and sale of rinse-off personal care products containing plastic microbeads demonstrate over-whelming support for these Regulations.

In addition, a public notice of the draft Environmental Protection (Microbeads) (Scotland) Regulations 2018 was placed in the Edinburgh and London Gazette on 22nd December 2017. The notice provided a link to the Regulations and invited representations to be received by 11 January 2018. No representations were made by email or post.

Policy Options

Option 1 – Do Nothing

This is the baseline option without Regulations; Continue to support the current voluntary action from certain cosmetics manufacturers to remove microbeads from their products. Affected products will still be made elsewhere and bought and used in Scotland, with thousands of microbeads per shower flowing through drains, passing through sewerage systems and entering our waters, threatening

the health of the marine environment. Accordingly, the impact of those measures introduced by the UK Government, Welsh and Northern Irish administrations will be limited.

Option 2 - Introduce a prohibition through secondary legislation

Under this option, the Scottish Government would introduce legislation to protect the marine environment. The Environmental Protection (Microbeads) (Scotland) Regulations 2018 make it an offence to manufacture, supply, offer to supply and have in possession with intent to supply rinse-off personal care products containing microbeads through the introduction of secondary legislation. The regulations would ensure a UK-wide approach to the prohibition of rinse-off personal care products containing microbeads.

Sectors and groups affected

The Scottish manufacturing industry will not be affected as no businesses in Scotland make the products covered by these Regulations. Based on industry feedback, those affected in other parts of the UK do not expect additional costs as a result of product reformulation or relabeling. Furthermore, the net impact on suppliers (importers) of microbeads in the UK is assumed to be zero. Customers are therefore not expected to be affected with a change in price. This is detailed in the attached UK-wide impact assessment.

There is one sector which will be affected; public bodies responsible for enforcement, i.e. local authorities' trading standards bodies.

Benefits

- **Option One**
There will be no additional burden on the enforcement bodies in Scotland. However our waters will not be protected from further pollution from plastics.
- **Option Two**
Scottish legislation demonstrates the intention of the Government to protect the marine environment, work with other administrations and show international leadership on the issue of marine plastics.

Costs

- **Option One**

There are no measurable financial costs, however further marine plastic pollution threatens the marine environment on which we rely for many ecosystem services such as fish for food, waters for recreation, gas and climate regulation etc.

- **Option Two**

There is an estimated enforcement cost on public bodies of £660 (i.e. local authorities' trading standards bodies). These costs will not fall on businesses. Trading standards are expected to enforce the ban, since they currently enforce Regulation (EC) No 1223/2009 on cosmetic products ingredients. There are 1379 substances that are currently banned from cosmetics, and a further 296 substances that are restricted¹. Frequent changes to the list of banned cosmetics ingredients mean that familiarisation with an additional prohibited substance can be considered part of business as usual, with no specific enforcement plan required. Zero familiarisation cost for enforcement is considered the low estimate.

However, domestic implementation of the microbead ban and the relatively high public profile of microbeads may mean that explicit advice provision and/or enforcement is required. An indicative estimate of the additional familiarisation burden that this would place on 32 local authority trading standards bodies is 2 days of staff time at £100/day. Therefore the best estimate for familiarisation cost of enforcement is £6,400. A high estimate for the familiarisation cost is based on 5 days of staff time at £100/day per local trading standards body, which gives a total estimate of £16,000.

In addition to the familiarisation costs, **annual enforcement** costs are expected to be between £0-6,600 per year. The lower estimate is based on enforcement of the microbead ban as part of business as usual alongside other restrictions on cosmetics products. It is assumed that trading standards would be able to test for microbead content alongside checking for other banned substances at no additional cost.

An intermediate best estimate is based on the amount that trading standards are assumed to spend on enforcing restrictions on cosmetics ingredients per banned substance (since one banned substance will be added).

Total trading standards expenditure in England in 2015/2016 was £115m². Assuming this is equally divided between 6³ activity areas (consumer safety, counterfeit goods, product labelling, weights and measures, under-age sales,

¹<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1473246448678&uri=CELEX:02009R1223-20160812>

²<https://www.gov.uk/government/statistics/local-authority-revenue-expenditure-and-financing-england-2015-to-2016-individual-local-authority-data>

³<http://www.tradingstandards.uk/jobs/jandc-careerints.cfm>

and animal welfare), each activity area would have expenditure of £19m. If this product safety budget is equally divided between 20⁴ categories (for example cosmetics, toys, and fireworks) then the budget for enforcing restrictions on cosmetics products in England is estimated at around £0.96m. If we scale this figure up using national GVA figures⁵ we can estimate a total UK cosmetics enforcement budget of £1.1m.

There are currently 1675 restrictions on the contents of cosmetics ingredients. Dividing the total UK figure by the number of current restrictions results in an estimated additional burden of enforcing the microbead ban of £660 per year. Due to the relatively high public profile of microbeads, trading standards may introduce some specific enforcement activity for the microbead ban, although this is considered unlikely as compliance is anticipated to be high. Specific enforcement of this kind is indicatively assumed to be 10 times more burdensome than business as usual enforcement, with a cost of £6,600 in the first three years, before falling to £660 for the rest of the appraisal period.

Table 1 - Summary of enforcement costs

	Low estimate	Best estimate	High estimate
Familiarisation cost (year 1) – One-off costs	£0	£6,400	£16,000
Annual cost (years 1-3)	£0	£660	£6,600
Annual cost (years 4-10)	£0	£660	£660

Scottish Firms Impact Test

There are no businesses in Scotland manufacturing rinse-off personal care products containing microbead products, and those selling them will not be financially affected.

Competition Assessment

Any trade effects have been tested with notifications under both the WTO Technical Barriers to Trade Agreement and the EU Technical Standards Directive. No relevant comments or criticisms of the draft Regulations have been received. The European Commission has responded that European legislation on microbeads is expected in the future. In June 2017 the OSPAR Commission called on the EU to introduce appropriate measures to achieve a 100% phasing out of microplastics in personal care and cosmetic products in line with Action 47 of the OSPAR Regional Action Plan on Marine Litter.

⁴ <https://www.businesscompanion.info/en/quick-guides/product-safety>

⁵ <http://www.ons.gov.uk/economy/grossvalueaddedgva/bulletins/regionalgrossvalueaddedincomeapproach/december2015>

Moreover, since most of the UK cosmetic industry (some operating at an international scale) is already taking voluntary action, the assumption is that only a minor percentage of trade will be affected (preliminary analysis suggests around 1% of cosmetics imports – see section 5). No additional evidence was provided during the consultation. We continue to engage with European partners in regard to a EU-wide ban, particularly through OSPAR.

Competition filter questions

- Will the proposal directly limit the number or range of suppliers?
No, as alternatives to plastic microbeads are readily available.
- Will the proposal indirectly limit the number or range of suppliers?
No, as alternatives to plastic microbeads are readily available.
- Will the proposal limit the ability of suppliers to compete?
Limited – in the longer term there will be legislative action against microbeads internationally. However, there is already a voluntary move towards alternatives. Scotland also has no affected manufacturers.
- Will the proposal reduce suppliers' incentives to compete vigorously?
No, the introduction of these Regulations is not expected to reduce suppliers' incentives to compete vigorously.

Test run of business forms

It is not envisaged that the introduction of these Regulations will result in the creation of new forms for businesses to deal with, or result in amendments of existing forms.

Legal Aid Impact Test

The expected level of non-compliance with these Regulations is very low, as a result we would not consider there to be any legal aid impacts.

Enforcement, Sanctions and monitoring

The regulations allow for enforcement by Local Authorities, with a presumption that they will use their Trading Standards departments. These bodies will be responsible for monitoring, investigating and bringing suspected cases to court. Courts will set penalties on summary conviction of a fine not exceeding £5,000, or on conviction on indictment, to a term of imprisonment not exceeding 2 years or a fine not exceeding £5,000 or both.

Implementation and Delivery Plan

Implementation of the bans is expected to be 19 June 2018, to meet the dates of the UK Government legislation.

Post implementation review

This policy will be reviewed when the EC introduce microbead legislation, or in June 2021, whichever is soonest.

Summary

It is proposed to make it an offence to manufacture, supply, offer to supply or have in possession with intent to supply any rinse-off personal care products containing microbeads as an ingredient through the introduction of the Environmental Protection (Microbeads) (Scotland) Regulations 2018. The Regulations mirror the prohibition introduced in England, Wales and Northern Ireland ensuring a UK wide approach thereby ensuring our seas are protected from further pollution from plastic microbeads.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact will be assessed with the support of businesses in Scotland

Signed:

Date:

Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform

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