

THE ENVIRONMENTAL PROTECTION (SINGLE-USE PLASTIC PRODUCTS) (WALES) ACT 2023

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 which was passed by Senedd Cymru on 6 December 2022 and received Royal Assent on 6 June 2023. They have been prepared by the Climate Change and Rural Affairs Group of the Welsh Government in order to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

SUMMARY AND BACKGROUND

2. The aim of the Act is to address the Welsh Government's concerns around the environmental impact of disposable, unnecessary and commonly littered single use-plastic products.
3. This Act has been developed following publication of the consultation paper 'Reducing single use plastics' in 2020, which included proposals to ban eight commonly littered single use plastic products and products made of oxo-degradable plastic in Wales. Further engagement work was undertaken in 2022 with stakeholders on two other single use plastic products.
4. The Act makes it an offence for a person to supply or offer to supply (including for free), ten single-use plastic products and products made of oxo-degradable plastic to a consumer in Wales and establishes a local authority led enforcement regime.
5. The Act is comprised of 23 sections and a Schedule.

COMMENTARY ON SECTIONS

Section 1 – Key concepts: “plastic product”, “single-use” and “plastic”

6. This section provides definitions for the key concepts under the Act: 'single-use', 'plastic product', 'plastic' and, 'polymer'.
7. This section also clarifies that it is only carrier bags made from plastic film that is no greater than 49 microns in thickness that are considered to be single use carrier bags for the purpose of the Act.

Section 2 – Prohibited single-use plastic products

8. This section establishes the concept of a 'Prohibited single-use plastic product' under the Act.

9. This section also introduces the Table in the Schedule to the Act which lists those products that are prohibited single-use plastic products for the purpose of the Act.
10. A person supplying or offering to supply a single-use plastic product listed in column 1 of the table in the Schedule to a consumer in Wales would be committing the offence under section 5, unless a corresponding exemption is listed in respect of that product in column 2 of the Table.
11. This section also requires Welsh Ministers to prepare and publish guidance about the single-use plastic products prohibited under the Act, and how any exemptions listed under column 2 of the Table should be applied.

Section 3 – Prohibited single-use plastic products: power to amend

12. This section provides the Welsh Ministers with a regulation making power to amend the Schedule by:
 - adding or removing a product in column 1 of the Table in the Schedule;
 - adding or removing an exemption relating to a product in column 2 of the Table in the Schedule; and
 - making other amendments in accordance with this section.
13. This section also requires the Welsh Ministers to consult the following before making regulations under the powers in section 3:
 - local authorities,
 - Natural Resources Wales and any other bodies appearing to the Welsh Ministers to be concerned with promoting the protection of the environment in Wales,
 - such persons as the Welsh Ministers consider represent the interests of producers or suppliers of single-use plastic products in Wales,
 - such persons as the Welsh Ministers consider represent the interests of people who have a protected characteristic within the meaning given in section 4 of the Equality Act 2010 (c. 15), and on whom the regulations may have a particular impact for that reason, and
 - such other persons as the Welsh Ministers consider appropriate.

Section 4 - Power to amend: duties relating to sustainable development and reporting

14. This section provides that when considering the exercise of powers in section 3 to amend the Schedule, the Welsh Ministers must consider their duty to promote sustainable development under section 79(1) of the Government of Wales Act 2006 (c. 32) ('GOWA') and to carry out sustainable development under the Well-being of Future Generations (Wales) Act 2015 (anaw 2).

15. In the report they are required to publish under section 79(2) of GOWA, the Welsh Ministers must explain their consideration of any plans to exercise the powers in section 3 to add further single-use plastic products to column 1 of the Table in the Schedule. This includes, but is not limited to their consideration of whether to add wet wipes and sauce sachets to column 1 of the Table in paragraph 1 of the Schedule.
16. In the report required under section 79(2) of GOWA, the Welsh Ministers must also explain any consideration they have given to exercise the powers under section 3 to remove exemptions from column 2 of the Table in the Schedule, particularly the exemptions for cups, lids and containers that are not made of polystyrene.

Offence

Section 5 - Offence of supplying prohibited single-use plastic products

17. This section makes it an offence for a person to supply or offer to supply a prohibited single-use plastic product to a consumer in Wales.
18. Subsection (1) provides that a person described in subsection (2), commits an offence if that person:
 - supplies (as defined in subsection (3)) a prohibited single-use plastic product to a consumer who is in Wales. This includes arranging for the delivery of the product to a consumer at an address in Wales;
 - offers to supply (as defined in subsection (4)) a prohibited single-use plastic product by displaying it, or making it accessible or available to a consumer, on premises in Wales.
19. Subsection (2) provides that the offences in subsection (1) can only be committed by the following persons ("P"):
 - a body corporate (including a body exercising any function of a public nature);
 - a partnership;
 - an unincorporated association other than a partnership;
 - or a person acting as a sole trader.
20. Subsection (3) provides that P commits the offence of supply if either P or a person accountable to P sells the product, or provides it to a consumer free of charge.
21. Subsection (4) provides that P offers to supply a prohibited single-use plastic product under subsection (1) if either P or a person accountable to P displays the product on the premises (for example in a shop window) or keeps the product on the premises so that it is accessible by, or available to, a consumer at the premises (for example on a shop counter).

22. Subsection (5) provides that a person is “accountable to P” if that person:
- is an employee of P,
 - has a contract for services with P,
 - is an agent of P, or
 - is otherwise subject to the management, control or oversight of P,
- and that person is –
- acting in the course of P’s business, trade or profession,
 - acting in relation to the exercise by P of P’s functions,
 - acting in relation to P’s objects or purposes, or
 - otherwise acting under the management, control or oversight of P.
23. Subsection (6) clarifies that for the purpose of the offence of supply, where P is shown to have arranged for a product to be delivered to a consumer at an address in Wales by post or any other means, it is deemed to have been supplied to the consumer at the address to which P arranges for it to be delivered, even if it is delivered to another address or is not delivered at all.
24. Subsection (7) provides a defence for a person charged with an offence under subsection (1) to show they exercised due diligence and took all reasonable precautions to avoid committing it. If the defence is relied on, subsection (8) clarifies where the burden of proof lies. If sufficient evidence is raised, the burden of disproving the defence beyond reasonable doubt rests with the prosecution.
25. Subsection (9) sets out that in proceedings for an offence under subsection (1), an allegation that a product was a single-use plastic product listed in column 1 of the Table in paragraph 1 of the Schedule will be accepted as proved in the absence of evidence to the contrary.
26. Subsection (10) provides clarification that where two or more prohibited single-use plastic products are supplied, or offered for supply, together, for the purposes of subsection (1) this is to be treated as a single act of supply, or offering to supply, of a prohibited single-use plastic product.
27. Subsection (11) provides that for the purposes of this section ‘consumer’ means an individual acting for purposes that are wholly or mainly outside that individual’s trade, business or profession (whether or not the individual purchased the product). For example, an individual purchasing single-use plastic plates for use in their home would be considered a consumer for the purposes of the Act, while an individual purchasing single-use plastic plates from a wholesaler on behalf of a restaurant at which they work would not. However, the onward supply by that restaurant of such a plate to a consumer in Wales would constitute an offence.

Section 6 - Offence: mode of trial and penalty

28. This section provides that the offence under section 5 is a summary offence and so is triable in the Magistrates’ Court. If a person is found guilty of the offence, the Court may impose an unlimited fine.

Enforcement

Section 7 - Enforcement action by local authorities

29. Subsection (1) provides that a local authority may investigate complaints in respect of alleged offences under section 5 of the Act in its area, may bring prosecutions in respect of offences under section 5 of the Act in its area and may take other steps with a view to reducing the incidence of such offences in its area.
30. Subsection (2) explains that any reference in the Act to an authorised officer of a local authority is to any person authorised by the local authority.

Section 8 - Power to make test purchases

31. This section enables an authorised officer to make purchases and arrangements, and secure the provision of services if the officer considers it necessary for the purpose of the local authority's functions under this Act. This permits test purchases for example, to take place.

Section 9 - Power of entry

32. This section enables an authorised officer to enter, at any reasonable time, premises (excluding residential premises) if the officer has reasonable grounds to believe that an offence under section 5 has been committed in the area of the local authority, and the officer considers it necessary to enter the premises for the purpose of finding out whether such an offence has been committed. This power to enter premises does not enable the authorised officer to enter by force. If required, an authorised officer must, before entering the premises, show evidence of their authorisation.
33. Subsection (5) clarifies that for the purposes of sections 9, 10 and 11 of the Act, "residential premises" means premises, or any part of premises, used wholly or mainly as a dwelling.

Section 10 - Power of entry: residential premises

34. This section provides that a justice of the peace may issue a warrant to enable an authorised officer to enter residential premises in certain circumstances.
35. A warrant may be issued only where the justice of the peace is satisfied on sworn information in writing that there are reasonable grounds to believe that an offence under section 5 has been committed in the area of the local authority, and that it is necessary to enter the premises for the purpose of establishing whether such an offence has been committed. Entry may be obtained by force if need be.
36. Any such warrant will be in force for the period of 28 days beginning with the date it was issued.

Section 11 – Power of entry: other circumstances requiring warrant

37. If access to premises that are not residential premises (dealt with under section 10) is required because there are reasonable grounds to believe that an offence under section 5 has been committed, and entry is necessary to ascertain whether or not such an offence has taken place, this section enables a justice of the peace to issue a warrant authorising an authorised officer to enter such premises, if needs be by force. The premises to which entry is being sought under this section must be used for business purposes, or for use both as a business and a residence.
38. In order for a warrant to be issued, one or more of the requirements set out in subsections (3) to (4) must be met. The requirements include that a request to enter the premises has been, or is likely to be, refused and notice of intention to apply for a warrant has been given; and that requesting to enter, or giving notice of an intention to apply for a warrant, is likely to defeat the purpose of the entry.
39. Any such warrant will be in force for the period of 28 days beginning with the date it was issued.

Section 12 – Powers of entry: supplementary

40. Subsection (1) enables an authorised officer who has entered premises under the powers set out in sections 9, 10 or 11 to take with them any other persons and equipment as they consider appropriate.
41. Subsection (2) sets out that the powers of entry under section 9, 10, or 11 also apply to vehicles.
42. Subsection (3) sets out that if an authorised officer executes a warrant issued under sections 10 or 11 of the Act when the occupier is present, they must inform the occupier of their name, provide documentary evidence of their authority and supply the occupier with a copy of the warrant.
43. Subsection (4) also requires that if the premises are unoccupied or the occupier is temporarily absent, the authorised officer must leave them as effectively secured against unauthorised entry as the officer found them.

Section 13 – Power of inspection

44. This section confers powers on authorised officers entering premises under sections 9, 10 or 11 to do various things so as to find out whether an offence under section 5 has been committed. Officers may carry out inspections and examinations of premises. Officers may also request items, inspect them, take samples from them and/or take the item(s) and/or samples from the premises. For example, officers may wish to review CCTV footage of the premises, or likewise take documents or copies of documents.
45. The officer may also require information and help from any person, but that person is not required to answer any questions or produce any document which they would be entitled to refuse to answer or produce in the course of court proceedings in England and Wales.

46. The authorised officer must leave on the premises a statement detailing any items that have been taken and identifying the person to whom a request for the return of property may be made.
47. This section also applies to a vehicle as if it were premises.

Section 14 - Offence of obstruction etc. of officers

48. Subsection (1) provides that a person commits an offence if they intentionally obstruct an authorised officer from exercising their functions under sections 9 to 13.
49. Subsection (2) provides that a person commits an offence if, without reasonable cause, they fail to provide an authorised officer with facilities that are reasonably required under section 13(1) or they fail to comply with a requirement under section 13(1)(b), (d) or (4)(b) such as providing information relating to matters within that person's control.
50. Subsection (3) sets out that a person found guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. The levels on the standard scale are set out in section 122 of the Sentencing Act 2020 (c. 17).
51. Subsection (4) provides that refusal to answer questions or provide documents that the person would be entitled to refuse to answer or produce in a court in Wales or England does not constitute an offence under this section.

Section 15 - Retained property: appeals

52. This section enables a person with an interest in anything taken away from the premises by an authorised officer under section 13(1)(c) to apply to a magistrates' court for an order requesting the release of the property. Depending on the court's consideration of an application, it may make an order requiring the release of the retained property.

Section 16 - Appropriated property: compensation

53. This section provides a right for a person with an interest in anything which has been taken possession of under section 13(1)(c) to apply to a magistrates' court for compensation. Where the circumstances set out in subsection (2) are satisfied, the court may order the local authority to pay compensation to the applicant. The circumstances are that property has been taken; that it was not necessary to take the property to discover whether an offence under section 5 had been committed; that the applicant has suffered loss or damage as a result; and that the loss or damage was not due to the applicant's own neglect or default.

Section 17 - Civil sanctions

54. This section enables regulations providing for civil sanctions to be made in respect of criminal offences created under section 5 of the Act. This power corresponds to that in Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (c. 13) ("RESA").

55. 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.
56. Subsection (3) 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 subsection (3) is set out in the following paragraphs.
57. 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 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; and
 - that the authority has regard to the guidance in exercising functions.
58. 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).
59. 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.
60. 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).

61. 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, and into the UK Consolidated Fund where the enforcement authority has functions in relation to Wales and another part of the UK (see section 69 of RESA).
62. Subsection (4) applies section 59 and 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.
63. Regulations making provision enabled by this section must be made under the affirmative procedure.

Section 18 - Offences committed by partnerships and other unincorporated associations

64. This section provides that proceedings for offences under the Act alleged to have been committed by a partnership or unincorporated association other than a partnership are to be brought in the name of the partnership or association and not in the name of any of its members. Any fines on conviction for an offence under the Act are to be paid out of the assets of the partnership or the funds of the association.

Section 19 – Criminal liability of senior officers etc.

65. Where an offence under the Act is committed by a body corporate, partnership or an unincorporated association other than a partnership this section makes it possible, in the circumstances described in subsection (2), for individuals holding positions of responsibility within the relevant body, partnership or association (the “senior officers” defined by the section) to also be criminally liable for an offence.

General

Section 20 – Interpretation

66. This section provides definitions and signposting to definitions for the following terms used in the Act: ‘authorised officer of a local authority’, ‘carrier bag’, ‘consumer’, ‘local authority’, ‘partnership’, ‘plastic’, ‘plastic product’, ‘prohibited single-use plastic product’, ‘single-use’.

Section 21 – Regulations

67. This section explains how powers to make regulations under this Act are to be exercised and sets out the applicable procedure to be followed in making those regulations.

Section 22 – Coming into Force

68. This section sets out the provisions of the Act that will come into effect on the day after the date of Royal Assent (sections 3, 4, 17, 21, 22, 23); and those that will come into force in accordance with a commencement order made by the Welsh Ministers (being the remainder).

Schedule

69. The Schedule is introduced by section 2 and includes a table that sets out the prohibited single-use plastic products under the Act. The prohibited single-use plastic products listed in column 1 of the table are as follows:
- Cups
 - Cutlery
 - Drink-stirrers
 - Lids for cups or takeaway food containers
 - Straws
 - Plates
 - Takeaway food containers
 - Balloon sticks
 - Carrier bags
 - Cotton buds
 - Any product made of oxo-degradable plastic
70. In the main, a product is listed in Column 1 irrespective of the type of plastic it is made from. The only exception to this principle is products made of oxo-degradable plastic. These products are prohibited on account of the type of plastic they are made from rather than because of the product itself. Supply of oxo-degradable products is prohibited in all cases whether or not the product is also listed elsewhere in the table and might be subject to exemptions in that capacity. For example, supply of a single-use plastic carrier bag that is subject to an exemption would not in fact be exempted if the bag is made of oxo-degradable plastic.
71. Column 2 of the table provides for exemptions that apply in respect of a particular type of product or the purpose for which the product is supplied. These include exemptions for any cup or takeaway food container that is not made from expanded or foamed extruded polystyrene and an exemption for supply of a single-use plastic straw to a person who requires it for health or disability reasons.
72. The Welsh Ministers have the power under section 3 to make regulations to amend these exemptions in the future; for example, they might remove the exemption for cups or takeaway food containers made of plastic other than polystyrene.
73. The Schedule also provides for the definitions for the prohibited single-use plastic products listed in the table, and for the definitions of terms used in the exemptions in column 2 of the table.

Section 23 – Short Title

74. The short title of this Act is The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023.

*These notes refer to the Environmental Protection (Single-use Plastic Products) (Wales) Act 2023
(asc 2)
which received Royal Assent on 6 June 2023*

RECORD OF PROCEEDINGS IN SENEDD CYMRU

75. The following table sets out the dates for each stage of the Act's passage through the Senedd. The Record of Proceedings and further information on the passage of this Act can be found on the Senedd website at:

<https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=39943>

Stage	Date
Introduced	20 September 2022
Stage 1 - Debate	11 October 2022
Stage 2 - Scrutiny Committee - consideration of amendments	9 November 2022
Stage 3 - Plenary - consideration of amendments	6 December 2022
Stage 4 - Approved by the Senedd	6 December 2022
Royal Assent	6 June 2023