

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Proposal

The Environmental Protection (Cotton Buds) (Scotland) Regulations 2019

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 EU Marine Strategy Framework Directive and the particular requirement that "the properties and quantities of marine litter do not cause harm to the coastal and marine environments."

Proposal

The Environmental Protection (Cotton Buds) (Scotland) Regulations 2019 make it an offence to manufacture, supply, offer to supply or have in possession for supply plastic-stemmed cotton buds in Scotland. A person who commits an offence under the Regulations is liable on summary conviction to 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.

Objectives

The intervention is designed to protect the environment and food supply from further plastic pollution, and foster consumer confidence that the products they buy will not harm the environment. It will also support industry by setting a level playing field, as some businesses have already moved away from single-use plastic stemmed cotton buds. The Regulations set an example for other countries and show that Scotland is proactively taking steps to protect the marine environment, ahead of implementation of the recently published EU Single-Use Plastics Directive.

Rationale for Government intervention

Plastic-stemmed cotton buds are frequently disposed of by flushing down toilets. The cotton buds can then pass through sewage treatment works and reach the marine environment. Once there, they threaten the health of wildlife when whole and their fragmentation by ultra-violet light exposure extends their impact across the ecosystem. It is impossible to recover this fragmented plastic, it does not biodegrade and instead accumulates in the marine environment. There are suitable non-plastic alternatives which can be used in cotton bud stems, and reusable swabs made with materials other than plastic and cotton, so disposable plastic-stemmed cotton buds are an avoidable source of pollution. Behaviour change campaigns have failed to stop the disposal of plastic-stemmed cotton buds down the toilet. Some businesses have already taken voluntary actions but others still continue to use plastics. There is therefore a 'market failure' rationale for intervention based on externalities given that the environmental costs caused by plastics 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 public consultation on the proposal to ban the manufacture and sale of plastic-stemmed cotton buds demonstrate overwhelming support for these Regulations with 99.4% of respondents supporting a ban.

In addition, a public notice of the draft Environmental Protection (Cotton Buds) (Scotland) Regulations 2019 was placed in the Edinburgh and London Gazette on 31 August 2018. The notice provided a link to the Regulations and invited representations to be received by 13 September 2018. Representations were received from the environmental charity Fidra questioning the definitions in the Regulations, however these did not reflect any impact upon businesses.

Policy Options

Option 1 – Do Nothing

This is the baseline option without Regulations. The Scottish Government would continue to support the current voluntary action from certain manufacturers using plastic alternatives in their production of cotton buds. Affected products would still be made, and bought and used in Scotland, with plastic-stems passing through sewerage systems and entering our waters, threatening the health of the marine environment. Consumers would not be incentivised to reduce their use of plastic-stemmed cotton buds, which would potentially be cheaper than more environmentally friendly incentives, other than through their own motivations to protect the environment.

Option 2 - Introduce a prohibition through secondary legislation

Under this option, the Scottish Government would introduce legislation – the Environmental Protection (Cotton Buds) (Scotland) Regulations 2019 – to protect the marine environment. The Regulations would make it an offence to manufacture, supply, offer to supply and have in possession with intent to supply plastic-stemmed cotton buds.

Sectors and groups affected

The Scottish manufacturing industry will not be affected as no businesses make the products covered by these Regulations. Based on consultation feedback, and with the knowledge that many businesses have moved to plastic alternative products, we do not expect additional costs as a result of product redesign, and the net impact on suppliers (importers) of cotton buds in Scotland is assumed to be zero. Customers are therefore not expected to be affected with a change in price.

There is one sector which may 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 the marine and coastal environment will not be protected from further pollution from plastics.
- **Option Two**
The legislation demonstrates that the Scottish Government is proactively taking steps to protect the marine environment and showing international leadership on the issue of marine plastics. The marine environment will be protected from further pollution from plastic-stemmed cotton buds.

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 and climate regulation etc.

- **Option Two**

The following costs are based on those estimations made for introducing the Environmental Protection (Microbeads) (Scotland) Regulations 2018. There is an estimated total enforcement cost on public bodies, which does not fall on businesses, 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 conduct routine inspection of businesses for compliance with legislation. Zero familiarisation cost for enforcement is considered the low estimate.

However, domestic implementation of the plastic-stemmed cotton bud ban combined with the relatively high public profile of marine plastics 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 across Scotland. 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 across Scotland are expected to be between £0 - £6,600 per year. The lower estimate is based on enforcement of the ban as part of business as usual alongside other restrictions. The higher estimate would be applicable if Trading Standards pursue specific enforcement of these Regulations, however they have stated that these Regulations would be considered as part of routine work, due to resource restrictions.

Table 1 - Summary of total enforcement costs across Scotland

	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 manufacturing plastic-stemmed cotton buds, and those businesses in the retail sector which responded to the public consultation supported the ban.

Competition Assessment

We assessed competition using the results of our public consultation, WTO Technical Barriers to Trade Notification (TBT), and the EU Technical Standards Directive (TSD) Notification.

No response was received during the 3 month WTO Technical Barriers to Trade Notification, so there were no concerns regarding trading competition.

The Commission responded to our TSD notification with an invitation to postpone the adoption of the notified draft regulations until the EU Single-Use Plastic (SUP) Directive had been adopted, or until 13 January 2020, whichever was soonest. The SUP Directive has now been adopted (and will be implemented by the Scottish Government in due course) so the Scottish Government is satisfied that the Regulations comply with the requirements of the EU TSD.

Competition filter questions

- Will the proposal directly limit the number or range of suppliers?
No, as alternatives to plastic-stemmed cotton buds are readily available.
- Will the proposal indirectly limit the number or range of suppliers?
No, as alternatives to plastic-stemmed cotton buds are readily available.
- Will the proposal limit the ability of suppliers to compete?
Limited – there is already a voluntary move towards alternatives and the SUP Directive means that there ought to be an EU-wide ban on single-use plastic-stemmed cotton buds by July 2021. 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 decide 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

The ban is due to come into force on 12 October 2019.

Post implementation review

This policy will be reviewed 3 years following implementation.

Summary

It is proposed that The Environmental Protection (Cotton Buds) (Scotland) Regulations 2019 are implemented to ensure our seas are protected from further pollution from plastic.

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: R. Cunningham

Date: 29th August 2019

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

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