

POLICY NOTE

THE ENVIRONMENTAL PROTECTION (SINGLE-USE PLASTIC PRODUCTS) (SCOTLAND) REGULATIONS 2021

SSI 2021/410

The above instrument was made in exercise of the powers conferred by section 140(a)(b) and (c), (2), (3)(c) and (d) and (9) of the Environmental Protection Act 1990(a). The instrument is subject to *negative procedure*.

These Regulations make it an offence to manufacture and/or supply specified single-use plastic products.

Policy Objectives

These Regulations ban the manufacture and/or supply of problematic single-use plastic (SUP) items in line with Article 5 of the Directive (EU) 2019/904 on the reduction of certain plastic products on the environment (the EU Single-Use Plastics Directive). The Scottish Government has committed to match or exceed the standards in the EU Single-Use Plastics Directive.

The aim of the Regulations is to reduce the environmental impact of single-use plastic products and contribute towards the move to a more circular economy. Guidance will be published to aid those affected by the Regulations such as people who require access to plastic straws to support independent living requirements or businesses making preparations for when the Regulations come into force.

The Regulations make it an offence to supply, in the course of business, and to manufacture:

- single-use expanded polystyrene beverage cups
- single-use expanded polystyrene beverage containers
- single-use expanded polystyrene food containers
- single-use plastic cutlery
- single-use plastic plates
- single-use plastic beverage stirrers.

The Regulations make it an offence to supply, in the course of a business and subject to specified exemptions of:

- single-use plastic straws
- single-use plastic balloon sticks.

The United Kingdom Internal Market Act 2020 (the Internal Market Act) was passed by the UK Parliament, and received Royal Assent on 17 December 2020. The Scottish Parliament withheld consent for the Act. The Act established a market regime for the UK which introduces market access principles for goods in the UK, including the mutual recognition principle for goods. The mutual recognition principle for goods provides that goods which have been produced or imported into one part of the UK, and which can be sold or supplied there without contravening any relevant requirement, can be sold in any other part of the UK, free from any relevant requirements which would otherwise apply. The Regulations will require to be read in light of the application of the Internal Market Act.

Therefore the prohibition of supply of the listed single-use plastic products in the Regulations will not apply to any products which are produced or first imported into another part of the UK, and which can be lawfully supplied in that part of the UK. The Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020 prohibit the supply in the course of a business of single-use plastic straws (with exemptions) and plastic drink stirrers in England, which would need to be taken into account in determining which products may be supplied in England.

The Scottish Government is in discussion with the UK Government and other devolved administrations through the Resources & Waste Common Framework to explore how best to manage policy divergence in this area, including how the Internal Market Act impacts on this.

Consultation

A consultation titled *Tackling Scotland's Throwaway Culture: Introducing Market Restrictions on Problematic Single-Use Plastic Items in Scotland* ran from 12 October 2020 to 4 Jan 2021. The consultation was made available online at <https://consult.gov.scot/>. The consultation sought views on the items to be covered by the restrictions, and how the restrictions might be implemented.

The consultation received 2,689 responses, comprising 787 substantive (i.e., personalised) responses and 1,902 campaign responses (i.e., responses submitted using a standard template – in this case, provided by Friends of the Earth Scotland).

As a result of the consultation one significant change was made to the Regulations. Bowls, trays and platters were no longer included in the measure to ban the manufacture and supply of single-use plastic plates. Following feedback from stakeholders it was felt that overlapping definitions of these products and single-use plastic food containers, which are not covered by these Regulations unless made of expanded polystyrene, would cause significant confusion for businesses, users of the products and those tasked with enforcing the Regulations. Single-use plastic bowls, trays and platters will now be included in considerations for other work under the implementation of the EU Single-Use Plastics Directive designed to reduce the environmental impact of single-use plastic products and contribute towards the move to a more circular economy.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website, including Friends of the Earth Scotland, Keep Scotland Beautiful and Scottish Environment Link.

The draft Regulations were made available online for further public comments on 17 March until 13 April 2021 in the form of a discussion paper. The paper received 90 responses from individuals and organisations.

Following comments received on the discussion paper it was decided to remove the ban on the supply and manufacture of oxo-degradable plastic products from the Regulations while further research is conducted. This is an area of significant complexity and rapid change and it is important that decisions made are based on the most up to date information. A ban on oxo-degradable plastic products will be considered once the research findings are provided.

The regulations were sent to the World Trade Organisation for comments from members as part of the Technical Barriers to Trade Agreement the Scottish Government is signed up to as a result of the UK's membership of the WTO. One comment was received from the USA on behalf of the American Forest & Paper Association relating to the definition of plastic used in the Regulations.

A response will shortly be issued to the comment confirming the Scottish Government's commitment to take action on single-use plastic pollution and move to a more circular economy. No changes were made to the Regulations as a result of the comment.

Impact Assessments

The following impact assessments have been completed and are attached:

- Business Regulatory Impact Assessment
- Strategic Environmental Assessment
- Equality Impact Assessment
- Fairer Scotland Duty
- Islands Communities Screening Assessment.

Work performed as part of the impact assessment process found that restricting the availability of plastic straws may impact on some people with protected characteristics more than others. This included loss of independence and loss of functions related to eating and drinking that other straws do not provide.

Targeted exemptions to the ban on supply of single-use plastic straws are included in the Regulations to enable users who require single-use plastic straws for independent living reasons to be able to access them.

Financial Effects

There is no financial impact of this policy on the Scottish Government, minimal impact on Local Government enforcement departments and minimal impact on Scottish industry.

Environment and Forestry Directorate

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