

Evidence session on the Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021

Note by the clerk

Introduction

1. The [Environmental Protection \(Single-use Plastic Products\) \(Scotland\) Regulations 2021](#) (SSI 2021/ 440) were laid in the Scottish Parliament on 11 November 2021. These Regulations are subject to the “negative procedure”. This means they will come into law unless, within 40 days, a motion to annul has been laid. If a motion to annul is laid, the instrument must be debated in by the lead Committee, which is the Net Zero, Energy and Transport Committee.
2. Where this happens, the debate will often be preceded by a short evidence session involving the relevant Minister and, on occasion, other stakeholders. However, a Committee always has the option to take evidence on a negative instrument, before formally disposing of it, whether or not a motion to annul has been made.
3. In this instance, the Convener considers that it would be helpful for the Committee to take evidence on the instrument before formally disposing of it, and has invited the Minister for Green Skills, Circular Economy and Biodiversity and officials to answer Members’ questions on it at the 30 November meeting.

What the Regulations do

4. The Regulations make it an offence to manufacture and/or supply particular types of single use plastic products. The explanatory note for the Regulations (Annexe A) provides more information. A person guilty of an offence is liable for a penalty up to 5 on the standard scale; currently £5000. The Regulations would come into force on 1 June 2022
5. The Scottish Government [consulted on proposals in October 2020](#) and [published an analysis of responses in March 2021](#). [Draft Regulations were made available for further public comments](#) from 17 March until 13 April 2021.

The Regulations and the rest of the UK

6. As explained further in the accompanying policy note (Annexe B), the United Kingdom Internal Market Act 2020 (a UK Act) introduces market access principles for goods in the UK, including the mutual recognition principle for goods. The policy note states that the Regulations will require to be read in light of the 2020 Act.
7. Other administrations in the UK have taken, or are consulting on, steps similar to those taken by the Scottish Government with regard to these Regulations.
 - In addition to an already existing ban on England on plastic straws and stirrers the UK Government has recently (20 November 2021) [published a consultation on introducing similar Regulations in England on other single-use plastics](#).
 - The [Welsh Government consulted on similar proposals in 2020](#).
 - The Northern Ireland Department for Agriculture, Environment and Rural Affairs (DAERA) [published a consultation on proposals](#) for the reduction of the usage of SUP cups and food containers in October 2021.

Delegated Powers and Law Reform Committee consideration

8. The DPLR Committee considered the Regulations on 23 November. The Committee made no recommendations in relation to the instrument in relation to its technical remit but agreed to write to the NZET Committee on wider policy and legal issues. The letter is at Annexe C.

Next steps

9. Later in the 30 November meeting, there will be an agenda item where the Committee will be invited to consider and discuss the evidence it heard on the Regulations. The Regulations will be formally disposed of at a Committee meeting in December.

Annexe A

Explanatory note

These Regulations prohibit the manufacture and the supply in the course of a business of the listed single-use plastic products and come into force on 1 June 2022.

Regulation 3 provides that it is an offence for a person to manufacture or, in the course of a business, supply, offer to supply, or have in their possession for supply any of the following products—

- (a) single-use expanded polystyrene beverage cups,
- (b) single-use expanded polystyrene beverage containers,
- (c) single-use expanded polystyrene food containers,
- (d) single-use plastic beverage stirrers,
- (e) single use plastic cutlery, and
- (f) single-use plastic plates.

Regulation 4 provides that it is an offence for a person, in the course of a business, to supply, offer to supply, or have in their possession for supply, single-use plastic balloon sticks, with the exception of sticks for attaching to balloons for industrial or other professional uses.

Regulation 5 provides that it is an offence for a person, in the course of a business, to supply, offer to supply, or have in their possession for supply, to an end-user, single-use plastic straws, subject to certain exceptions. The exceptions are the supply of straws which are medical devices or are for use for medical purposes (regulation 6), the supply of straws by retail pharmacy businesses (regulation 7), the supply of straws by catering establishments together with food or drink for immediate consumption (regulation 8), the supply of straws in certain establishments such as schools and care homes (regulation 9), the supply of straws for use in a support service which provides personal care or personal support (regulation 10), and the supply of straws which are packaging (regulation 11).

A person found guilty of an offence under these Regulations will be liable on summary conviction to a fine not exceeding level 5 on the standard scale (regulations 3(5), 4(3) and 5(3)).

Regulation 12 makes provision for offences by bodies corporate, Scottish partnerships and unincorporated associations. Regulation 13 provides a due diligence defence.

Regulation 14 provides that a local authority may authorise any person that appears suitable to exercise any of the powers specified in regulation 15.

Regulation 15 provides for enforcement officers to have powers of entry and associated powers to carry out the necessary investigations in order to determine whether an offence has been or is being committed.

A Business Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Environmental Quality and Circular Economy Division, Area 3H South, Victoria Quay, Edinburgh EH6 6QQ, and online at www.legislation.gov.uk.

Annexe B

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

November 2021

Annexe C

24 November 2021

Dear Dean

At its meeting yesterday, the Delegated Powers and Law Reform (DPLR) Committee considered the [Environmental Protection \(Single-use Plastic Products\) \(Scotland\) Regulations 2021 \(SSI 2021/410\)](#). While the Committee had no comments on the SSI under its technical remit, it agreed to write to you as Convener of the Net Zero, Energy and Transport Committee in relation to your Committee's scrutiny of the policy implications of the Regulations.

As you will know, the Regulations make it an offence to manufacture and/or supply specified single use plastic products. The accompanying [policy note](#) nevertheless highlights that the United Kingdom Internal Market Act 2020 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 policy note records that the Regulations will require to be read in light of the application of the 2020 Act.

As a consequence, the Committee understands that the policy intent behind the Regulations might not be achieved. The result is that the ban that the instrument imposes will apply to products that are produced in Scotland, but it will not apply to products that are produced in other parts of the UK where they are not banned.

While the Regulations are subject to the negative procedure, the Committee recognised that, given this potential impact, your committee might wish to take evidence on this instrument to establish the potential impact on producers in Scotland and the extent to which similar bans are being considered in other parts of the United Kingdom by, for example, contacting the Scotland Office and the relevant UK Government department. Further detail of the Committee's discussion can be found at the Committee's [Official Report of the meeting](#).

I hope this is helpful.

Yours sincerely

Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee