

Report on The Environmental Protection (Single-use Plastic Products) (Wales) Bill

October 2022

1. The Committee's approach to scrutiny

1. In his July 2022 legislative statement, the First Minister outlined the Welsh Government's intention to bring forward a Bill to introduce a ban on single-use plastic products early in the autumn term. He said:

"This will meet our key programme for government commitment in this area. But, in addition, the Bill will also support our ongoing legal challenge to the United Kingdom Internal Market Act 2020. In the current litigation, brought by the Counsel General, the court has indicated it would find it helpful to consider a practical example, in the form of a piece of Senedd legislation, against which it can test the issues under consideration. This Bill will provide that practical example, and in that context we will be seeking the agreement of Business Committee to expedite the scrutiny of the Senedd on this Bill."

2. Shortly thereafter, the Welsh Government made a request to the Business Committee that, under Standing Order 26.9, the Bill should not be referred to a committee for consideration of its general principles. The Chair of this Committee wrote to the Business Committee to ask it to defer its decision until after the Bill was introduced.

3. The Chair of this Committee secured a commitment from the Minister for Climate Change, Julie James MS, ('the Minister') to publish a draft Bill to enable the Committee to undertake some scrutiny work outside the formal Bill scrutiny process. On 15 August, the Welsh Government published the draft Environmental Protection (Single-use Plastic Products) (Wales) Bill ('the draft Bill') and a summary of responses to a related consultation undertaken between July and October 2020. This enabled the Committee to undertake a short consultation on the



draft Bill and to take oral evidence from witnesses. The Committee Chair asked the Minister to publish supporting information alongside the draft Bill, including the Explanatory Memorandum and Regulatory Impact Assessment. The Government determined that it could not agree to this request.

4. On 20 September 2022, the Minister introduced the Environmental Protection (Single-use Plastic Products) (Wales) Bill ('the Bill') to the Senedd. On the same day, the Counsel General made a Legislative Statement on the Bill, and the Minister wrote to the Committee setting out proposals to bring forward amendments in several areas during Stage 2 consideration of the Bill. These amendments are considered in the appropriate section of this report.

5. In accordance with a request made by this Committee's Chair, the Business Committee consulted the Committee before making its decision under Standing Order 26.9. On 27 September, the Business Committee decided not to refer the Bill to a committee for consideration of its general principles.

Terms of reference

- 6.** The Committee sought views on the following issues concerning the draft Bill –
- Whether a Bill is needed to introduce a ban on commonly littered single-use plastic items;
 - The advantages and disadvantages of using a Bill rather than secondary legislation to introduce a ban;
 - Whether the provisions of the draft Bill will deliver the policy intention;
 - Whether there are any potential barriers to the implementation of the draft Bill's provisions (including the United Kingdom Internal Market Act 2020);
 - Whether the powers in the draft Bill for Welsh Ministers to make subordinate legislation are appropriate;
 - Whether there are any unintended consequences arising from the draft Bill; and
 - The financial implications of the draft Bill (including for businesses and consumers).

Oral evidence

- 7.** The Committee heard oral evidence from the following:
- Jemma Bere, Keep Wales Tidy

- Richard Caddell, Wales Governance Centre
- David Chapman, UK Hospitality Wales
- Matt Davies, British Plastics Federation
- Will Henson, Institute of Welsh Affairs
- Julie James MS, Minister for Climate Change
- Brett John, Federation of Small Businesses
- Natalia Lewis-Maselino, British Plastics Federation
- Ben Maizey, Chartered Institute of Waste Management Wales
- Craig Mitchell, Welsh Local Government Association
- Judith Parry, Welsh Local Government Association and Chair of Trading Standards Wales
- Liz Smith, Wales Environment Link
- Megan Thomas, Disability Wales

Our view

We would like to take this opportunity to comment on the scrutiny process for this Bill.

The Welsh Government has sought to bypass Stage 1 committee scrutiny for this Bill. We secured a commitment from the Minister that she would publish a draft Bill so that we could undertake scrutiny outside the formal Bill scrutiny process. If we had not conducted this work, there would be no public consultation on the detailed provisions of the Bill and no opportunity for those affected by the proposals to have their say.

In mid-August, the Welsh Government published a draft Bill and a summary of responses to a related consultation undertaken in 2020. This enabled us to start work over the summer. However, these arrangements were less than satisfactory, particularly in comparison to Stage 1 committee scrutiny. Because of the timing, we were able to undertake only a short public consultation. The Welsh Government determined that it could not agree to the Committee's request to publish explanatory notes, an explanatory memorandum, or an impact assessment

alongside the draft Bill. This meant that stakeholders did not have the full picture of the Welsh Government's assessment of the effect or impact of the provisions in the Bill.

During her oral evidence session, the Minister said on more than one occasion that she would be interested in the Committee's views on certain matters. We are grateful that the Minister has engaged constructively with the Committee in relation to the Bill, and that she places value on our work on it. But we must remind her that, initially, the Welsh Government did not want committee scrutiny of this Bill to take place at all.

We believed it was important for us to conduct this work to avoid a scrutiny deficit. We feel that we succeeded in that aim, but it should not be considered equivalent to, and certainly not an adequate replacement for, Stage 1 Committee scrutiny.

The Committee recognises the Welsh Government's aim to use the Bill as material to support its case in relation to the UK Internal Market Act in the Supreme Court. That is why it wishes to progress the Bill through the Senedd quickly. This was generally supported by stakeholders during our scrutiny. However, it is disappointing that the Welsh Government has prioritised its case in the Supreme Court over ensuring adequate scrutiny of the Bill in the Senedd.

2. Policy and legislative background

8. The Bill proposes to ban or restrict the supply to consumers of several single-use plastic products in Wales. The Explanatory Memorandum accompanying the Bill says:

"This Bill will support action to tackle the climate and nature emergencies. It will also contribute to our long-term ambitions of phasing out unnecessary single-use products, especially plastic, and sending zero plastic to landfill. Whilst we recognise some uses of disposable plastic are essential, such as those used in medical settings, we want to see a greater shift to more sustainable reusable products. Where single-use products are needed, they should be designed in a way which minimises impacts on the environment."

9. The Bill seeks to make it an offence for a person to supply or offer to supply (including for free), certain "commonly littered and unnecessary" disposable single-use plastic products to a consumer in Wales. The Bill includes a regulation-making power to enable Welsh Ministers to add or remove a single-use plastic product to the list of products subject to the offence of supply (or offer of supply).

Welsh Government policy

10. In March 2021, the Welsh Government published its circular economy strategy, Beyond Recycling. It reaffirms the commitment for Wales to be "zero waste" by 2050, meaning all waste produced is re-used or recycled as a resource, without landfill or energy recovery. On single-use plastics, the strategy says:

"We will phase out unnecessary single-use items, especially plastic. We will send zero plastic to landfill and progressively reduce the amount sent to energy recovery. We will achieve this with game-changing reforms such as an Extended Producer Responsibility Scheme for packaging, a Deposit Return Scheme for drinks containers and by applying bans or restrictions on unnecessary single-use items."

Approaches taken elsewhere in the UK

England

11. Following a consultation in October 2018 on proposals to ban the distribution and/or sale of plastic straws, plastic-stemmed cotton buds and plastic drink stirrers in England, the UK

Government introduced The Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020, which came into force in April 2020.

12. In November 2021, the UK Government consulted on proposals to introduce bans for single-use cutlery, plates, balloon sticks, expanded and extruded polystyrene cups, beverage containers and food containers. A call for evidence was also launched on reducing the use of other single-use products including wet wipes, tobacco filters, sachets, and single-use cups.

Scotland

13. In October 2019, the Scottish Government introduced The Environmental Protection (Cotton Buds) (Scotland) Regulations 2019 to ban the sale and manufacture of single-use cotton buds in Scotland.

14. Following a consultation on proposals to ban the sale and manufacture of single-use straws, stirrers, plates, cutlery, expanded polystyrene food and drinks containers, the Scottish Government introduced The Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021, which came into force in June 2022.

Northern Ireland

15. In late 2022, the Department of Agriculture, Environment and Rural Affairs launched a consultation on the reduction of single-use beverage cups and food containers.

Welsh Government consultation

16. In July 2020, the Welsh Government launched its consultation on banning nine single-use plastic items. The proposed items were aligned with those included in Article 5 of Directive (EU) 2019/904, the EU's Single-use Plastic Directive.

17. The proposals in the Bill to ban specific items include two items that were not subject to consultation - polystyrene lids and single-use plastic carrier bags. The Explanatory Memorandum states these changes have been shared with relevant stakeholders and groups. The Welsh Government said it considered it more appropriate and efficient to take this approach, rather than publish a draft Bill for full consultation.

18. Contributors to the Committee's work were generally content with the Welsh Government's consultation on the proposals. However, Megan Thomas (Disability Wales) said that the development of the proposals, specifically concerning the exclusion for straws for medical reasons, had brought to light problems with "listening to, and including, the voices of the people who are most affected".

3. The need for legislation and the approach taken

19. There was widespread support among contributors for the intentions of the Bill, but many cautioned that the legislation alone would not reduce levels of littering or existing plastic pollution.

One of a suite of policies

20. Craig Mitchell (WLGA) explained that the proposal was one part of a suite of expected interventions in this policy area over the coming years, explaining that:

"we've got the plastics tax, we've got extended producer responsibility and deposit-return schemes. Also in Wales, next year, we've got the non-domestic regulations, which will make a significant change for businesses and the public sector in terms of how commercial waste is collected. We've got initiatives in Wales around plastic film...And we also have the emissions trading scheme, a possible extension towards energy from waste. So, I mention all of these because they do all have an impact upon the behaviours of businesses, of the public sector, of the waste industry, and also in terms of people's behaviour change. So, understanding the full range of those different interventions I think is quite important in terms of understanding the proposition here and how that sits."

21. The Food Packaging Association (FPA), AVA, Benders Paper Cups and Seda argued the Bill will "contribute little towards the policy intention of reducing litter":

"Those who litter will not change their behaviour because of a change in material. The Bill would simply replace one type of litter with another."

What are the risks arising from the ban?

22. Natural Resources Wales (NRW) said an unintended consequence of the Bill may be that "more non-plastic items are used instead and littering issues continue," a concern shared by Caerphilly County Borough Council and Chartered Institute of Waste Management Cymru Wales. The WLGA felt there was a risk that retailers might replace single-use plastic products with other products which could potentially be equally or more damaging to the environment but are not covered by the ban. Dr Richard Cadell (Wales Governance Centre) raised this with the Committee and explained:

"if you get given a more robust container to take your burger home at the end of the day from your festival or anything else, that stuff still gets tossed away, and all you have is a more resilient plastic causing the problem, it's just not single-use, and I think you then shift that problem. So, I think there's a case for saying that consumers are part of this; the end users of this plastic really are a big part of this, and that's not necessarily writ large within the plastics Bill at the moment."

Accessing alternative products

23. In oral evidence, Ben Maizey (CIWM) told the Committee that he would like to see alternative, acceptable products suggested by the Welsh Government:

"What we would like to see is, with the banning of such products, there are alternative solutions that can be recommended and suggested for people to use, and businesses, of course, supported in that, so that they can find these at a cost that will not impact their business, but the consumer as well."

24. When asked about whether such information should be included on the face of the Bill, Dr Richard Cadell said there is a risk in being too prescriptive because "if you create an accepted list of acceptable alternatives, anything that's not on that list is then seen as unacceptable." He suggested that acceptable alternative products could be referenced in documents supporting legislation, such as Explanatory Memorandums.

25. The WLGA highlighted the potential issue of alternatives to single-use plastic being inadvertently but incorrectly disposed of in food waste, creating issues at anaerobic digestion plants, and jeopardising their output. Similarly, CIWM Wales Cymru cautioned about the knock-on effect that alternatives may have on the resources and waste sector in relation to recycling or treatment.

The need to raise public awareness

26. Dr Richard Caddell highlighted there is no commitment in the draft Bill to awareness raising or broader education. GAMA Healthcare cautioned that a:

"... ban will only be successful if accompanied by concerted efforts at public education to drive behaviour change and ensure products are appropriately disposed of."

Financial implications

27. The Regulatory Impact Assessment (RIA) sets out a summary of costs and benefits arising from the Bill. The estimated total cost of the Bill up to 2029-30 is £18.9m.

28. The Welsh Government will incur total administrative costs of £1.5m. The Initial implementation costs are estimated to reach £500,000, which includes the development of bilingual guidance, communications to support the introduction of the Bill and staff costs associated with its implementation. The Welsh Government also anticipates recurring costs of £100,000 over ten years for staff managing the implementation of the Bill and future policy development.

29. Compliance costs are likely to reach £17.1m. There will be costs of £16.8m over the appraisal period split between businesses and consumers. This reflects the price differential between single-use plastic items and non-plastic alternatives. Businesses will incur a £300,000 cost to train staff, change suppliers and ensure compliance. Other costs, estimated to reach £300,000, are expected to relate to the waste treatment of products.

30. Additionally, an assumed £100,000 one-off regulatory implementation cost to introduce the ban and a further annual ongoing cost of £100,000 from year 2 of the ban relating to management and enforcement is also included in the RIA.

31. The main unquantified costs and disbenefits relate to manufacturers and other businesses, in switching production away from plastic items – the RIA states this is due to a lack of data about the number of manufacturers in Wales. However, businesses may already have incurred these costs due to market demands elsewhere in the UK and throughout the EU.

32. The RIA states the "net present value" of benefits arising from the Bill to 2029-30 would be £12m, including a cost-benefit of £8.6m from manufacturing revenues if the sector switches to non-plastic.

Meeting the costs of the ban

33. When responding to this Committee's consultation on the draft Bill, stakeholders will not have had sight of the Explanatory Memorandum (EM) or Regulatory Impact Assessment (RIA). Written and oral submissions, therefore, did not respond to the financial information included in those documents.

34. Stakeholders including the Federation of Small Businesses (FSB), FPA, AVA, Benders Paper Cups and Seda highlighted the current economic climate and the potential impact on

businesses. AVA suggested that “additional cost will have to be passed on to the consumer” and said:

“The bans on some items will have a negative financial impact for foodservice and vending companies. For example, while there are suitable alternatives to cups made from expanded polystyrene, preliminary costings suggest replacement lids would be significantly more expensive.”

35. Newport City Council highlighted possible unintended “pressures for organisations to procure alternative products that may perhaps be at a higher price, and therefore a requirement to pass this cost on to consumers.” However, Keep Wales Tidy said the consumer should not be expected to bear the costs, as they already do so “for the pollution removal through council taxes and/or water bills.” Both Wales Environment Link (WEL) and Keep Wales Tidy (KWT) suggested the ‘Polluter Pays’ principle should be more explicit in the Bill.

A grace period?

36. Stakeholders including the Institute for Welsh Affairs, CIWM Cymru Wales and the ACS called for clarity over ‘leftover stock’ and ‘lead-in times’ or a grace period before the commencement of provisions in the draft Bill. ACS cautioned:

“Failure to provide sufficient lead time could result in rushed switches to alternative materials that may have an equally detrimental impact on the environment.”

37. David Chapman of UK Hospitality Wales agreed on the issue of leftover stock and added that:

“where there will be the opportunity to not have to waste bags or whatever it would be, in order to meet a deadline [of the introduction of a ban], that there is some sort of sensible recognition of the ability to be able to use those bags properly.”

38. In relation to transitional arrangements, Natalia Lewis-Maselino of the British Plastics Federation (BPF) said that “businesses would need time to change, they'd need time to switch over, they'd need time to invest in new machines, in new programmes and things like that. Consulting with businesses beforehand would be beneficial for them, in that sense”.

39. Brett John of the FSB told the Committee that “In terms of the enforcement date, what we've seen in Scotland and England in terms of the legislation that's been passed there is that it's been at least half a year.” He expected similar arrangements in Wales.

Raising the awareness of retailers, suppliers, and local authorities

40. NRW stated that clear advice and guidance would be needed for manufacturers, businesses, and regulators to:

"...assist business in complying...and assist Local Authorities in regulating these requirements in Wales."

41. FSB and Benders Paper Cups cautioned that awareness of the ban among retailers will depend on Welsh Government publicity. In reference to engagement with Welsh Government about raising awareness amongst manufacturers and suppliers, Matt Davies (BPF) told the Committee that "It's not something that we've had in-depth discussions, to be honest with you, with the Welsh Government yet. But it's something that we would welcome the opportunity to do".

42. The WLGA called for a "significant campaign of awareness raising, information and supported enforcement." Judith Parry (WLGA) told the Committee:

"The run-up to the introduction of any legislation is key. We've had really good support from the Welsh Government and WLGA previously in respect of guidance going out, social media messaging and campaigns, and that very much does help."

43. Caerphilly County Borough Council suggested the Welsh Government should lead on awareness raising and publicity. Judith Parry (WLGA) said that "advice and guidance to businesses from local authorities...was cut from a lot of local authorities around about 2015 because of costs."

Implications of the UK Internal Market Act

44. The UK Internal Market Act 2020 ('the Act') sets 'market access principles', which presumes that (in general) goods, services and professional qualifications that can be sold or recognised in one part of the UK should be able to be sold or recognised in any other part, regardless of what the law in that other part of the UK says.

45. Sections 10 and 18 of the Act allow the UK Government to make regulations to create exclusions from the principles. Following a request by the Scottish Government, in January 2022 it was confirmed that the UK Government will exclude the products covered by the Scottish Government's ban.

46. The United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles: Single-Use Plastics) Regulations 2022 remove the restriction that the Act would have on a specific list of single-use plastics. However, the Welsh Government Bill includes products or items that are not included in this list, namely carrier bags (with some exceptions) and all products made of oxo-degradable plastic. Both restrictions would not be covered by the exclusion from the Act.

The impact of the UK Internal Market Act on environmental law

47. The IWA said the Act is likely to “significantly reduce the ability of the Welsh Government to make effective law” and that the “practical impact” of the Act is “ensuring English market rules are applied to Wales.” Dr Richard Caddell said the Act:

“... places a clear ceiling on Welsh environmental law and attempts to address a problematic product or substance must inevitably proceed at the speed of the slowest legislative authority – or deploy the difficult and time-consuming process to gain an exemption under the Act itself. This has implications far beyond the specific issue of single-use plastic.”

48. Brett John of the FSB told the Committee he was concerned that disputes arising from the Act would lead to uncertainty:

“I think any suggestions that proposals are progressed and business is expected to make significant changes to its supply chains through investments of time and funds only for that to be flipped on its head at some point are concerning, but it is reassuring, through the Scottish example, that an exemption was permitted in that case and the narrative from UK Government has been fairly positive on this issue in particular.”

Post-implementation review

49. The RIA outlines the Welsh Government will conduct a post-implementation review of the Bill no later than five years after it has come into force. It is envisaged the review will assess the effectiveness of the policy in achieving its objectives of:

- Supporting action to tackle the climate and nature emergencies;
- Reducing the littering of single-use plastic products;
- The wasteful use of resources; and
- Adapting consumer behaviour to more sustainable alternatives.

50. Several contributors referred to the need to monitor the impact of the legislation, particularly to assess the impact of unintended consequences.

The Minister's evidence

51. On the prospect of the introduction of a grace period, the Minister said:

"we're not intending to give a grace period for businesses because we've engaged extensively, and, seriously, who doesn't know that we're planning to do this? There will be a six-month standstill period to support a transition across though, but we are recommending loudly all groups affected take appropriate steps now, because we anticipate that the Bill will have support right through the Senedd process, and that it will be the law shortly."

52. The Minister explained that the Bill if passed, would engage "the World Trade Organisation's treaty on technical barriers to trade, and that requires the six-month standstill period following the passing of the Bill and Royal Assent."

53. In reference to the issue of leftover stock, the Minister said:

"we want to just encourage businesses to think about changing their supply chains, use up existing stocks of the single-use products included in the Bill to avoid enforcement action and swap their purchasing policies as fast as possible. We've seen—I'm sure the committee has heard evidence of this—that that's happening. Already, the most commonly littered products when we started this consultation are no longer the most commonly littered products, because, actually, they're already going out of the market. So, the behaviour change is happening."

54. In response to the issues raised by stakeholders about the need to raise awareness amongst suppliers and retailers, the Minister said the Welsh Government would use the six-month standstill period to "continue to work with business manufacturers, all the public sector groups and communities, protected characteristic groups, to develop comprehensive guidance...to support the Bill." She explained the guidance would clarify "what we consider the right interpretation to be; what we think is caught; how we think it should be interpreted by local trading standards, to help businesses adapt to the Bill".

55. In reference to acceptable alternative products, the Minister said:

"We've looked at a lot at alternatives, so compostable paper straws, carbon balloon sticks, paper plates, wooden cutlery, bamboo cotton buds: all of those

have been widely available in the market for a very, very long time. There are lots of other alternatives on the market as well, so the transition is a wise option for lots of businesses, and actually, loads of businesses already don't sell single-use products, and you'll particularly notice that the plastic straws have largely disappeared, and people have replaced them with the paper ones."

56. On the potential of replacing single-use plastics with products that are equally or more damaging to the environment, the Minister said:

"what we'd be looking to do is make sure that, as we substitute plastic with bamboo, for example, we are not encouraging the wholesale destruction of a native rainforest for a bamboo plantation. But there are lots and lots of sustainable sources for bamboo. We'll be making sure that we encourage Welsh manufacturers to use certified sources for those bamboos."

57. In relation to the impact of the UK Internal Market Act, the Minister explained:

"So, the arguments that are set out, which I'm sure the committee's familiar with, are that the Act can't cut across the devolution settlement by the back door, by stealth, if you like. It's a constitutional statute and it cannot be impliedly repealed. This is an argument that's going to occur with other forthcoming legislation going through as well. That remains our position, so the Senedd's competence to legislate on devolved matters is not, in our view, limited by the UKIMA Act, and therefore it does not impact on this Bill. We wait to see what view the UK takes of that. But I think we're right to be robust in saying, 'This is the devolution settlement. We are entitled to enact the will of the people of Wales in Wales,' and the will of the people of Wales is quite clearly that they want this stuff banned."

Our view

As many of our stakeholders told us, this Bill is just **one part of the jigsaw** of interventions in this policy area. We are expecting further changes over the next few years. We agree that this Bill alone will not affect the serious levels of plastic pollution and littering we see all around us, but it is a starting point and a necessary, if belated, step in the right direction.

The Welsh Government must ensure that interventions at a Wales level are clearly understood by those who will be affected. We have some sympathy for businesses, who need assurance that the various policies will be aligned and that investments they are making to adapt

production today will not prove to be a wasted investment a year later. We think that the Welsh Government can do more to explain clearly what its longer-term plans are in this area. We believe the Welsh Government should, in due course, publish a strategy for the reduction of plastic pollution in Wales, which will bring together these various policies in one place.

The Minister has given several commitments that various issues arising from the Bill will be dealt with in **guidance**. In the interest of providing clarity to stakeholders, businesses, and local authorities, we believe these should be set out on the face of the Bill.

We agree with the comments from stakeholders about the need to **raise awareness amongst the public**. We welcome the commitments from the Minister on this, but there needs to be an ongoing programme of education and publicity around the principles underpinning the ban and the other forthcoming policies in this area. Otherwise, there is a risk that we will see continued high levels of littering, but of a different material.

We agree that one of the **risks arising from the ban** is that single-use plastics might be replaced by other products that are damaging to the environment. This needs to be addressed through communication with suppliers, retailers, and members of the public. The Welsh Government should consider these damaging products in the context of the wider suite of interventions in this policy area. If necessary, it needs to act.

Information on **acceptable alternatives** is sensible as a way of mitigating this impact and would be helpful for suppliers and retailers. We agree that this should not be on the face of the Bill and should be addressed through guidance. The list of acceptable alternative products will need to be reviewed regularly, to ensure that it reflects the list of banned items and exemptions.

We note that several stakeholders asked for the inclusion of a **grace period**. Some said that this would provide an opportunity for suppliers to use up **'leftover stock.'** The Minister has said there will be a 6-month standstill period after the Bill receives Royal Assent to meet WTO requirements. The Minister will then need to bring forward regulations to commence the provisions in the Bill which ban the listed items. We are satisfied that this would be a sufficient transitional period in principle, but we seek reassurance from the Minister that she is confident that this will be enough time to **raise awareness with suppliers and local authorities**. **We note that the Minister has said the ban will not be a surprise for suppliers, but a significant number of retail and hospitality businesses will be affected, many of whom will be small businesses. Raising awareness amongst them of the ban will be a challenge.** Many suppliers will also need to source alternative products that are appropriate to their business, and we would be grateful for an explanation from the Minister of any assessment she has made of the availability of alternative products in the short term. In particular, we would be grateful for her assessment of whether

there is sufficient supply of alternative products to be able to deal with a spike in demand for them as a result of the ban. We would be concerned, for example, if businesses could not operate because of a lack of alternative products or because the cost of alternative products is prohibitively expensive.

The RIA sets out that there will be a **post-implementation review** of the legislation no later than five years after it has come into force. We welcome this. The Minister will be aware that commitments she makes cannot bind a successive Government and therefore our preference would be for the Minister to commit that the review will take place during this Senedd term. If she cannot do so, we believe the requirement for a post-implementation review should be included on the face of the Bill, to ensure that it will be conducted by a future Government.

We note the Minister's comments about the **UK Internal Market Act**. We note the concerns expressed by many of our stakeholders in relation to the impact of the Internal Market Act. We agree it will potentially add layers of unnecessary bureaucracy when trying to legislate in relation to the environment and it risks creating a scenario where progressive policies are held back by the country with the lowest ambitions. It cannot be right that people and businesses in Wales are prevented from seeing the changes they feel are necessary for fear of disadvantaging businesses elsewhere. Whatever the decision by the Supreme Court on this case, this is surely not sustainable.

Recommendations

Recommendation 1. The Welsh Government should bring forward a strategy setting out the suite of initiatives it plans to bring forward to reduce plastic pollution. This will give clarity to stakeholders and certainty to businesses, which will need to plan investment in alternative products.

Recommendation 2. The Minister should bring forward amendments at Stage 2 to set out on the face of the Bill the various pieces of guidance that will be issued by the Welsh Government, either as a result of commitments given by the Minister or arising from recommendations by Senedd Committees.

Recommendation 3. The Minister should develop an ongoing programme of education and publicity to raise awareness amongst the public about the principles underpinning the Bill and the need to reduce plastic pollution.

Recommendation 4. The Minister should ensure that efforts to raise awareness of the public, suppliers, and retailers also address the risk of alternative products that are not banned but are nonetheless damaging to the environment.

Recommendation 5. The Minister should bring forward guidance on acceptable alternatives to the single-use plastic items that are prohibited. The Minister should commit to reviewing the list regularly.

Recommendation 6. Given that the Minister has said it is her intention that the ban should apply as soon as possible after the 6-month standstill period, the Minister should explain in writing the steps that are in place to help businesses, suppliers, and local authorities prepare.

Recommendation 7. The Minister should update the Senedd on any assessment she has made of the availability of alternative products in the short term.

Recommendation 8. The Minister should give a commitment that the post-implementation review will take place during this Senedd term. If she cannot do so, the Minister should bring forward amendments at Stage 2 to include a requirement for a post-implementation review on the face of the Bill, to ensure that it will be conducted by the next Welsh Government.

4. The list of banned items

Prohibition on the supply of certain single-use plastic products

Section 1 - Definitions

58. Section 1 defines the key concepts of “single-use”, “plastic product” and “plastic”. A “plastic product” is a product of which all or any of the main structural components are made wholly or partly of plastic, or has a lining or coating made wholly or partly of plastic.

59. “Single-use” in relation to a plastic product means a product not designed or manufactured to be used for the purpose for which it was designed or manufactured more than once (or on more than one occasion) before being disposed of. This section also clarifies that it is only carrier bags made from plastic film no greater than forty-nine microns in thickness that are considered to be single-use carrier bags for the purpose of the Bill.

60. “Plastic” means a material consisting of a polymer and includes material consisting of a polymer with additives or which has other substances added to it.

The need for aligned definitions

61. A large number of respondents highlighted the need for consistent definitions. The majority suggested the use of descriptions in line with the EU Single Use Plastics Directive and the implementation guidelines.¹ However, NRW suggested a definition of plastic that aligns with the Plastic Packaging Tax Regulations.

62. Brett John (FSB) told the Committee that his preference would be for consistency in the definitions used in the legislation implemented across the UK. Matt Davies (British Plastics Federation) agreed, saying: “We obviously represent companies that operate across the devolved nations, so as long as there's regulatory alignment in the definitions, then that suffices.”

63. The need for further clarity on what constitutes a ‘single-use’ item was noted by several respondents, including Newport City Council. Dr Richard Caddell, WEL and KWT highlighted

¹ The EU definition of a 'single-use plastic product' is a product that is made wholly or partly from plastic and that is not conceived, designed, or placed on the market to accomplish, within its life span, multiple trips, or rotations by being returned to a producer for a refill or reused for the same purpose for which it was conceived.

concern that the definition of 'single-use' could allow the supply of 'multi-pack' or 'family size' products that comprise multiple individually packaged items as part of a single product.

64. WEL and KWT suggested the definition be amended to include the word 'conceived' in line with the EU definition of single-use plastic product, which would prevent loopholes such as single-use products being relabelled with instructions to the consumer to wash and reuse, a concern shared by CIWM Cymru Wales. Dr Richard Cadell suggested that the use of the word 'conceived' was raised during the passage of the EU directive and was "considered to be something they could iron out in guidelines rather than in the primary legislation itself".

Oxo-degradable and oxo-biodegradable

65. Symphony Environmental Technologies Plc (Symphony) highlighted the need to distinguish between oxo-degradable and oxo-biodegradable plastics. It describes 'oxo-degradation' of plastic as:

"... ordinary plastics, which degrade by oxidation under the influence of light and heat in the open environment and create microplastics, but do not become biodegradable except over a very long period of time."

66. In oral evidence, Matt Davies (BPF) said:

"we're aware of bans in the European Union on oxos, we're aware that England are minded to introduce a separate consultation on it as well. So, it's something that we acknowledge as being included in here, and we understand the alignment with the European Union in terms of their single-use plastics directive."

67. The Bio-based and Biodegradable Industries Association (BBIA) highlighted the need to clearly define 'oxo-degradable' to prevent manufacturers from renaming products to circumvent the ban. The FPA shared this concern.

68. The FPA and BBIA both highlighted an Australian definition of 'oxo-degradable plastic,' which they recommended:

"Oxo-degradable plastic means a material (however described) made of plastic which includes additives to accelerate the fragmentation of the material into smaller pieces, triggered by ultraviolet radiation or heat exposure, whether or not this is, or may be, followed by partial or complete breakdown of the material by microbial action."

69. The BBIA highlighted that oxo-degradable products claim to be ‘oxo-**biodegradable**’ to avoid such bans. It suggested a similar approach to that taken in the US where “any plastic sold that claims biodegradability must be compostable” according to relevant standards, and “therefore prohibits the use of other marketing claims.”

70. Symphony described ‘Oxo-**biodegradation**’ as plastic degrading:

“... by oxidation until its molecular weight is low enough to be accessible to bacteria and fungi, who then recycle it back into nature by cell-mediated phenomena. It does not leave microplastics.”

71. Symphony said attention should turn to what happens to the plastic if it gets into the open environment (as escape cannot be prevented in the short to medium term). As such, it stated that the draft Bill as currently worded would “make matters worse,” as oxo-biodegradable plastic would also be banned.

72. The Oxo-Biodegradable Plastics Association concluded that:

“Oxo-biodegradable technology is the only way to reduce the accumulation in the environment of plastic waste which cannot realistically be collected. Far from seeking to ban it, the Welsh Government and Parliament should be making it mandatory for all short-life plastic products.”

73. The Association of Convenience Stores (ACS) called for clear guidance to help businesses understand the definition of oxo-degradable plastic and suggested a more extensive definition than that in the draft Bill is needed.

Section 2 – Prohibited single-use plastic products

74. Section 2 outlines prohibited single-use plastic items, by reference to the table in paragraph 1 of the Bill’s schedule. A product is prohibited if it is listed in column 1 of the table and it is not exempt by being included in column 2.

Should supply *and* manufacture be banned?

75. WEL and KWT highlighted concerns that the draft Bill, unlike the equivalent Scottish regulations, banned supply only, rather than the supply *and* manufacture of listed items. KWT said:

“... it is important that as a ‘globally responsible’ nation, the legislation should prevent the manufacture and export of known pollutants to other countries.”

76. In oral evidence, Craig Mitchell (WLGA) said:

"I don't think it's appropriate that we're manufacturing these items and then exporting them around the world to cause harm elsewhere, but the concern was that there needs to be, perhaps, a transition and support for any manufacturers in Wales to allow them to move away from these products, and whether that's a specific time-limited sunset clause to be added to the Bill, or whether that's a separate process, that's to be debated."

77. On this issue, Matt Davies (BPF) said that:

"to ensure that there are the opportunities to supply these items where they may be needed in a professional capacity, I think it's important to ensure that manufacture can at least continue. Albeit, I'm aware that the manufacture of some of these items is probably quite limited within Wales."

Which items should be banned and why?

78. Several respondents, including the FPA, Benders Paper Cups, and Seda, highlighted that many of the prohibited products in the draft Bill "do not feature in litter survey data while those most featured are not included". This point was also raised by KWT. Cigarette/e-cigarette litter was given as an example of this.

79. FPA, Vending and Automated Retail Association (AVA), Benders Paper Cups and Seda highlighted several impacts as a result of the prohibition of products. These included:

- the lack of suitable available alternatives to polystyrene lids for hot drinks, and associated health and safety issues;
- serving staff having to 'determine' whether a person needs a straw "for health or disability reasons;" and
- an impact on the ability of workplaces to provide hot meals out of hours.

80. Similarly, Denbighshire County Council raised concerns about the impact on school catering services, particularly in the provision of plastic cutlery.

81. Single-use carrier bags were not included in the Welsh Government's 2020 consultation but are included in the draft Bill (with exemptions). KWT welcomed the inclusion, stating it is a "demonstration of Wales leading the way in this area in the UK". However, Caerphilly County Borough Council considered the provisions complex and potentially confusing for businesses.

Should wet wipes containing plastics be included?

82. Dŵr Cymru and WEL expressed disappointment that wet wipes containing plastics were not included in the draft Bill. KWT suggested that wet wipes (and sanitary items which are frequently disposed of incorrectly) should be “earmarked for further action within this Government term”. Similarly, Hafren Dyfrdwy called for “plastic to be removed from all single-use wipes and sanitary products”.

83. The Co-op expressed support for a ban on “conventional plastic wet wipes” but would encourage an exemption for ‘plastic-free’ or ‘compostable alternatives.’

84. Kimberly-Clark, a manufacturer of wet wipes, said it has invested almost £5m to transitioning towards producing 100% plastic-free wet wipes and is:

“...committed to selling only 100% plastic-free consumer wet wipes in the UK by 2025, and our intent is to produce them at our Flint site.”

85. The company welcomed the omission of wet wipes containing plastic at this stage and suggested the primary consideration should be “proper disposal and labelling, regardless of their composition”.

86. The BPF explained that whilst alternatives to wet wipes containing plastics exist, “they tend to be made from bamboo, compostable or biodegradable products which are likely to create the same issues in sewers if they are disposed of incorrectly such as littered or flushed down the toilet.”

87. GAMA Healthcare was pleased that wet wipes were not included in the scope of the draft Bill, highlighting that “professional wet wipes are critical to effective infection prevention strategies.”

Exemptions

88. Jemma Bere (KWT) recognised that exemptions are necessary to respond to certain circumstances but suggested fewer exemptions would make the arrangements less complicated and easier to explain to suppliers and users. Brett John of the FSB agreed.

89. The Co-op and the BBIA both highlighted that, as currently worded, the draft Bill would prohibit the sale of compostable carrier bags in Wales. Both organisations suggested an additional exemption for compostable carrier bags “certified to BS EN 13432”. BBIA explained this standard is used for plastics defined as “plastics compostable in industrial composting and anaerobic digestion.”

90. Jemma Bere told the Committee that:

"One of the biggest problems there is that we don't have a legal definition as to what biodegradable and compostable is, so, at the moment, it would be very, very difficult to go down the route of specifying the items and the materiality without that definition in place. A lot of biodegradable and compostable items...are not designed for home composting. A lot of them are designed to biodegrade in quite hot conditions of 60 degrees centigrade and above—so, industrial composting or incineration."

91. Community Pharmacy Wales and the Royal Pharmaceutical Society (RPS) both supported the exemption for carrier bags when "supplied in accordance with a prescription issued by a health professional" or with a "pharmacy medicine (where it is not supplied in accordance with a prescription issued by a health professional)". The RPS said that, whilst pharmacies are encouraged to use "paper bags or other more environmentally friendly alternatives wherever possible," the exemption is necessary to ensure medicines' safety and patient confidentiality. However, Friends of the Earth Cymru say this exemption "isn't needed and should be removed," highlighting research it has undertaken in this area.

92. Megan Thomas (Disability Wales) said she agreed with the exemptions for plastic straws in particular circumstances as they can be used "as a medical device for many disabled people to be able to eat and drink safely." She explained that:

"Disposable, bendy plastic straws in particular are very useful, as they have a number of properties that allow them to be safe for disabled people to be able to eat and drink. So, for example, they are very soft, so if you bite down on them, you're unlikely to injure yourself, you're unlikely to cut yourself on the edge. They can be moulded to a particular shape and, for hygienic purposes, the disposable nature of them is very useful for—people have difficulty with washing reusable straws. And they are also very cheap and relatively easily available."

93. She went on to say that Disability Wales had some concerns that the exemption for straws allowed them to be provided to a person if the provider "reasonably believes" the person requires them for health or disability reasons. She said this would not be workable for disabled people with hidden impairments and should not lead to disabled people being questioned about their conditions or feeling as if they are under scrutiny.

94. She added that further consideration should be given to whether exemptions were desirable for other single-use plastic items that are used in medical or care facilities, for example, plastic cutlery, disposable cutlery, and disposable plates.

Sections 3 and 4 – Power to amend the list of prohibited products

95. Section 3 grants the Welsh Ministers regulation-making powers to amend the list of prohibited single-use plastics by adding, removing, or amending a product from column 1, an exemption from column 2, or a definition.

96. Section 4 details duties relating to sustainable development and reporting in respect of the powers to amend. This includes a requirement for the Welsh Ministers when deciding whether to make the amendments in section 3, to take into consideration their duty to promote and carry out sustainable development. In the report, which the Welsh Ministers are required to publish under section 79 (2) of the Government of Wales Act 2006, they must explain their consideration of whether to exercise the power in section 3.

Is the approach appropriate?

97. DCWW and WEL said this approach will ensure Ministers can react to emerging issues and make future changes efficiently and effectively. CIWM Cymru Wales “assumes” any changes will be consulted on, however the ACS, FPA, AVA, Benders Paper Cups and Seda highlight there is no requirement for Ministers to seek advice/consult stakeholders when exercising this power:

“Welsh Ministers should not be able to make subordinate legislation without the requirement of evidence or consultation with industry experts. To do so would have unintended consequences and may create confusion.”

98. Similarly, Denbighshire County Council says it is essential that “adequate consultation takes place with stakeholders”. The FSB said:

“...it is vital that these powers are scrutinised in their use, and that a role for the Senedd and stakeholders are made clear.”

99. Several stakeholders called for a regular review of the banned items and exemptions. The RPS said this would ensure “environmentally friendly alternatives are always used in the first instance.” KWT highlighted it would allow Ministers to “react in good time to new and emerging threats”.

100. The BPF said any changes should be based on a full Life Cycle Analysis (LCA) “as switching to alternative materials does not always have the best environmental outcome”. Caerphilly County Borough Council also highlighted the:

"Need to undertake an independent comprehensive life cycle analysis on the single use sector and assess the energy balance /logistics of product change."

101. Megan Thomas (Disability Wales) told the Committee that:

"the most important thing moving forward in terms of future exceptions is how the Welsh Government would be working with disabled people's organisations and disabled people directly to ensure that this isn't having an adverse impact. Something that we would like to see is specific commitments to working with those groups and to working with most affected groups on future exemptions."

The Minister's evidence

102. The Minister confirmed that the definition of plastic in the Bill was aligned with the EU directive. She said that:

"it could be said that the wording of the directive, which is 'something wholly or partly made of plastic', is wider than the deliberately longer and more descriptive wording that we've used in the Bill...But, we don't think, in practice, in the real world, that there's much of a difference between the two."

103. The Minister said the Welsh Government would "be putting comprehensive guidance out to help businesses, consumers and local authorities understand the various legal definitions in the Bill". She said that the guidance and associated engagement would be developed "collaboratively, and we'll undertake it in advance of the legislation coming into effect so that everybody is very clear".

104. On the issue of whether a "multipack" of single-use plastics would not be captured by the ban, the legal adviser accompanying the Minister said:

"we think that if a court would accept that a single-use plastic fork is caught by the offence, it would be an odd interpretation to arrive at to say that a pack of 50 wouldn't be caught."

105. He explained that under section 5(8) of the Bill, "where there's a genuine dispute about whether an item is a single-use plastic product, there is provision for that; there's scope for the defendant to raise evidence of that to make it a triable issue".

106. In response to a question about how a local authority could be expected to know whether a plastic product had been manufactured to be used once, the legal adviser accompanying the

Minister explained that “in some cases, it will be self-evident, but I think there is provision for us to work with local authorities, enforcement authorities, to provide guidance, and I would imagine that would include that sort of issue”.

107. In relation to oxo-degradable plastics, the Minister said:

“Oxo-degradable plastics were included in the initial consultation, and we specifically asked a question on whether that type of plastic should be banned. The consultation acknowledged our original research had got limited information on that, and we sought further views and evidence. So, we intend to bring that ban in by the end of the Senedd term, but it is a complex area still being researched, and we'd be very interested to see what evidence the committee comes up with on that as well.”

108. In response to a question on whether wet wipes containing plastics should be included on the list of banned items, the Minister said she was “committed to getting wet wipes onto this list” but explained that:

“The big issue with wet wipes, I'm afraid, is the labelling. So, currently, plastic content in wet wipes is not required by law. So, it's actually not possible to tell at the point of consumption whether your wet wipe has or hasn't got plastic in it. Product labelling is not devolved to Wales, so we'll be working with the UK Government to try to get them to get the product labelled.”

109. The Minister referred to compostable carrier bags and said that they “can still only be used once as a carrier bag, so they're a single-use product. And we don't want them in the conventional recycling streams actually—they're a bit of a nuisance. So, we'd much rather shift people on to multi-use products and things that are designed for a long life”.

110. In reference to the power to amend the list and the reporting requirement in Section 4(2) in relation to any consideration by Welsh Ministers of whether to amend the list of banned items or exemptions, the Minister said:

“that consideration will then be informed by expert advice, discussions with stakeholders and so on, but we'll be required to report, under the Government of Wales, as part of our normal reporting, whether or not we are going to add or not. It's in the negative as well, so we'll be required to report that we don't plan to add anything. I particularly wanted that, because I wanted any Government to have its feet held to the fire to consider whether there are things that should be banned, and to carry on having to put the

research and effort into the continuing process of adding things to this list, where that's appropriate."

111. The Minister went on to say that she would be putting "an advisory panel in place for single-use products, and that will regularly review all our policy, and we'll put appropriate mechanisms in place to involve stakeholders to develop and deliver the proposals".

Our view

On the **definitions** used in the Bill, we agree that it is difficult to ensure absolute clarity and there will always be issues. We also agree with stakeholders that the alignment of the definitions is important. We believe that any further clarification of the definitions can be achieved through guidance, and we welcome the Minister's commitment to do so. As we have stated previously, the Bill should be amended to include provision for guidance to be made on this and other matters.

Stakeholders suggested to us that there might be issues around the **definition of single-use** and questioned whether multipacks of single-use items could be used to circumvent the ban. We raised this issue with the Minister and were satisfied with her response.

Several stakeholders believed that **manufacturing and supply** of the items should be banned. This would align with the approach taken in Scotland. The Welsh Government has omitted manufacturing from the Bill, but we do not believe has adequately explained its reasons for doing so. We note the argument that has been put forward that businesses should not be prevented from supplying single-use plastics to businesses outside Wales. However, the extent of the impact on Welsh businesses is unclear from the RIA accompanying the Bill, which says that twelve businesses with sites in Wales may be directly or indirectly affected by the legislation, either because they produce banned items or alternatives. Furthermore, the RIA suggests that some of those businesses producing single-use plastics may already have changed their approaches in response to existing bans on single-use plastics in Scotland and England. This omission does not reflect our ambitions to be a globally responsible country. We would be grateful for an explanation from the Minister why manufacturing was not included.

In terms of items that **should be included on the list**, we agree that the Minister should aim to include wet wipes on the list of banned items. In doing so, she should consider the impact of a proposed ban on certain settings where wet wipes are used for the prevention of infection. In the meantime, the Welsh Government should consider how it can encourage or educate the public about the problems for the sewerage system arising from people flushing products that should not be flushed. This would apply to non-plastic wet wipes. On oxo-degradable plastics,

we would be grateful for updates on the Welsh Government's research in this area and further information on the Minister's intentions on a ban or exemptions for such products.

We note the comments from stakeholders on the **exemptions** to the ban and that they should be minimal. Disability Wales gave us food for thought about the potential unintended consequences of measures in the Bill and underlined the importance of ensuring that representative groups should be involved in the development of proposals at an early stage.

We note the concerns that the **exemption for straws** allows them to be provided to a person if the provider "reasonably believes" the person requires them for health or disability reasons and what this will mean in practice. We cannot have a situation where disabled people in Wales feel they are under suspicion. This must be addressed in guidance to suppliers, awareness raising with suppliers and members of the public, and through training of suppliers.

In terms of the **process for adding items or exemptions** to the list of banned single-use plastics, we are satisfied that the affirmative procedure will provide an appropriate level of scrutiny in this case. However, we echo the comments by stakeholders about the need to ensure that meaningful consultation is conducted in advance of the introduction of any changes. We welcome the Minister's commitment that an advisory panel will be established to review the policy and that stakeholders will be involved in the development of proposals.

Recommendations

Recommendation 9. The Minister should explain why the Bill does not ban manufacturing single-use plastics in Wales.

Recommendation 10. The Minister should explain her intentions for oxo-degradable plastics in relation to the Bill.

Recommendation 11. As part of its consideration of whether to include wet wipes on the list, the Welsh Government should consider how it can encourage or educate the public about the problems for the sewerage system arising from people flushing products that should not be flushed. This would apply to non-plastic wet wipes. It should also consider the impact on certain settings where wet wipes are used for the prevention of infection.

Recommendation 12. The Minister should prepare guidance explaining how suppliers should apply the exemptions for straws arising from health conditions or disabilities. People with health conditions or disabilities should not be placed under scrutiny as a result of this provision. In particular, the guidance should answer the question of how it is expected that a supplier can come to "reasonably believe" that a person needs the straw for disability reasons.

Recommendation 13. The Minister should bring forward amendments at Stage 2 to require a full and public consultation before regulations are brought forward to amend the Schedule.

5. The offence and enforcement

Offence

112. Section 5 creates the offence of supplying a prohibited single-use plastic product. It lists descriptions of a person not permitted to supply a prohibited single-use plastic product to a consumer in Wales (e.g. corporate bodies/sole traders). It also describes the meaning of supply – in this case, selling, providing free of charge, or offering to sell or provide free of charge. It includes a description of "accountable" persons, for example, employees or agents.

113. Section 6 provides that a person guilty of an offence under Section 5 is liable on summary conviction to a fine.

114. On 20 September, the Minister wrote to the Committee to set out that, amongst other things, she would propose amendments to section 5 of the Bill at Stage 2:

"to ensure that the offence "offering to supply" a single-use plastic product cannot be interpreted such as to capture actions that we did not intend to capture. In particular, these changes clarify that this offence may only be committed on premises in Wales. In doing this, we also want to take the opportunity to make it clearer that a person who is outside Wales would commit an offence if they "supply" a prohibited single-use plastic product to a consumer who is in Wales (for example through an online or mail order sale)."

Are the sanctions appropriate?

115. In response to a question about whether the sanctions for the offences set out in the Bill are proportionate, Brett John (FSB) said they appeared to be "consistent with the sanctions that are enforceable elsewhere" and added:

"I've emphasised throughout this session that it's not about how we can punish those businesses, but how we can help this change happen with them, rather than to them, so, clearly, that's the priority from our perspective."

Enforcement

116. Section 7 relates to enforcement by local authorities. Local authorities will have powers to investigate complaints, bring prosecutions and take other steps to reduce the incidence of offences under Section 5 in its area.

117. Sections 9 to 12 relate to the power of entry. Under Section 9, an authorised officer of a local authority may enter premises at any reasonable time if they have reasonable grounds for believing an offence has been committed, or to ascertain whether an offence has been committed. This does not apply in relation to premises used wholly or mainly as a dwelling. They must not enter the premises by force and must show documentary evidence if asked to do so. Section 10 relates to the power of entry for dwellings. It provides that a Justice of the Peace may issue a warrant to enable an authorised officer to enter premises used wholly or mainly as a dwelling in certain circumstances. Entry may be obtained by force if needed.

118. Section 13 relates to powers of inspection and confers powers on authorised officers entering premises to do various things to find out whether an offence has been committed. Officers can carry out inspections and examinations of premises, require the production of items on the premises, inspect them, and take samples or items. The officer may also require information and help from any person, but the person is not required to answer questions or produce any document which they would be entitled to refuse to answer or produce during court proceedings in England or Wales.

Local authorities and enforcement

119. The WLGA, CIWM Cymru Wales, Newport City Council, Flintshire County Council and Caerphilly County Borough Council expressed concerns about a lack of resources and capacity within local authorities to effectively enforce the ban. Will Henson (IWA) told the Committee he had:

"concerns in terms of the resourcing of local authorities in enforcing this. I think that, given the availability of items on the internet, given the availability of the items that will be in stock, if we continue right down the line and England doesn't ban further items but Wales does, they can be very easily accessible, and it's going to be down to local authorities to make sure that outlets are complying."

120. Caerphilly County Borough Council stated that "there is no spare capacity" and Flintshire County Council cautioned:

"Without additional resources being made available to Local Authority for enforcement, the expectations of the public will not be met and behaviour change may not happen."

121. Judith Parry (WLGA) highlighted that the legislation provides that local authorities 'may' undertake enforcement action, rather than placing a duty on it to do so. She said this meant

that "there are going to be local authorities that see that as a choice not to enforce because of their dwindling resources".

122. Newport City Council said that trading standards teams would lead the enforcement response, "which would have a detrimental impact on the teams' resources". It highlighted the successful implementation of the Minimum Unit Pricing for alcohol legislation where:

"...funding was provided to local authority trading standards departments over a period of a few years, after which it became business as usual and could be absorbed by the teams. Funding was phased to allow for officer training, guidance visits and then targeted enforcement visits."

The Minister's evidence

123. In response to a question about the enforcement provisions and the capacity of local authorities, the Minister said:

"To start off with, we're going to talk about education and engagement with retailers and business representatives before enforcement; we're learning this from our carrier bag experience, really. So, there'll be a whole period where what the local authority officers are doing is explaining to people what the law is, rather than immediately going straight to, 'We're going to fine you,'"

124. The Minister explained that because of this process, "we think that, like the single-use carrier bag, there'll be almost no enforcement in the end by local authorities, other than people who are taking a deliberate stand rather than people who just don't understand it". The Minister did, however, go on to say that "if we're wrong, then we'll obviously work with the WLGA to make sure that it is resourced properly".

125. In reference to the Welsh Government's proposed amendments at Stage 2 to clarify that suppliers from outside Wales would be committing an offence if they were to supply a banned single-use plastic to someone in Wales, the Minister explained that:

"section 17 of the Bill enables us to make regulations providing for civil sanctions to be made in respect of criminal offences created under section 5, and the intention is that Welsh Ministers will exercise that power to ensure civil sanctions are available to local authorities as an alternative to criminal sanctions for the offence of supply, basically. So, an offence can only be committed when a product is supplied to a consumer in Wales. We recognise that there are all kinds of practical steps in enforcing the offence in respect of

distance selling. If you're buying something on the internet, it's very difficult. But the primary purpose of this Bill is to encourage a change in behaviour rather than resulting in numerous convictions."

Our view

We are satisfied that the **offence and the associated sanctions** are appropriate. Again, we must emphasise the need to ensure that suppliers are aware of the items that are banned and the alternatives that would be acceptable. We note the Minister said there would be a period of "engagement and education" to help suppliers understand their obligations. The Minister expects this to be delivered by local authorities. Based on the evidence we received, we are not convinced that this is a realistic expectation. The Minister must engage with local authorities urgently to ascertain how this might be achieved. If necessary, the Welsh Government must ensure that financial support is provided to local authorities to conduct this work.

Furthermore, many stakeholders raised concerns about the **capacity of local authorities** to effectively enforce the ban. We share these concerns. We were particularly concerned to hear that some local authorities may choose not to take enforcement action because of a lack of capacity. We note the Minister's comments that there is currently no plan to provide local authorities with additional financial support for enforcement action. The Minister has also said she expects the need for enforcement action to reduce to almost nothing over time. Nevertheless, we expect the Welsh Government to engage with local authorities on this matter, to ensure that sufficient resources are available to deal with enforcement issues early after the introduction of the ban.

Finally, the Minister has committed to bringing forward amendments at Stage 2 to make it clearer that **suppliers outside Wales** will commit an offence if they supply a prohibited single-use plastic product to a consumer who is in Wales. This will be achieved by ensuring civil sanctions are available to local authorities. The Minister conceded that, in effect, this is a largely symbolic gesture and is not likely to be enforced. Nevertheless, we have concerns about this provision. In particular, it is unclear how a supplier outside Wales will be expected to know that they will be committing an offence if they supply certain single-use plastics to a person in Wales. This measure will only be effective as a deterrent if the potential offender is aware of it. The Minister should explain how the Welsh Government will address this issue.

Recommendations

Recommendation 14. The Minister must explain what engagement she has had with local authorities about their capacity to deliver "engagement and education" to suppliers.

Recommendation 15. The Minister must explain what support, financial or otherwise, the Welsh Government will give to local authorities to deliver the "engagement and education" of suppliers.

Recommendation 16. The Minister must explain what support, financial or otherwise, will be made available to local authorities for enforcement action, particularly in the first year.

Recommendation 17. The Minister must explain how she will ensure that suppliers outside Wales are aware that they will be committing an offence if they supply a person in Wales with a banned single-use plastic item.