

Explanatory Memorandum to the Environmental Protection (Single-use Plastic Products) (Civil Sanctions) (Wales) Regulations 2023

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Group and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Environmental Protection (Single-use Plastic Products) (Civil Sanctions) (Wales) Regulations 2023.

I am satisfied that the benefits justify the likely costs.

Julie James MS

Minister for Climate Change

7 November 2023

PART 1

1. Description

- 1.1. The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 (asc 2) (“the Act”) aims to address the environmental damage caused by the use and disposal of single-use plastic products (‘SUPP’) in Wales. The Act is intended to accelerate the shift in consumer behaviour away from SUPP towards greater re-use and will encourage businesses in Wales to lead the way in developing more sustainable alternatives. The Welsh Government recognises that some access will still be required for certain SUPP for medical purposes or to allow people to eat and drink safely. The Act, therefore, includes appropriate exemptions to support independent living, social inclusion and equal participation for people.
- 1.2. The Environmental Protection (Single-use Plastic Products) (Civil Sanctions) (Wales) Regulations 2023 (‘the Regulations’) provide that a local authority, as regulator, may impose civil sanctions in relation to the offence under section 5 (offence of supplying prohibited single-use plastic product) of the Act.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1. None.

3. Legislative background

The offence and enforcement

- 3.1 Section 17 of the Act enables regulations providing for civil sanctions to be made in respect of criminal offences created under section 5 of the Act. This power corresponds to that in Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (c. 13) (‘RESA’).
- 3.2 Part 3 of RESA enables the Welsh Ministers to make regulations to confer alternative civil sanction powers for the enforcement of certain criminal offences. The civil sanctions available under RESA are fixed monetary penalties, discretionary requirements (including variable monetary penalties and compliance notices), stop notices and enforcement undertakings. They are an alternative to, rather than a replacement for, criminal conviction especially for minor breaches of regulatory requirements.
- 3.3 These Regulations are being made under section 17(2) of the Act.
- 3.4 These Regulations are being made in accordance with the draft affirmative procedure pursuant to section 21(3) of the Act.

4. Purpose and intended effect of the legislation

Background

4.1. These Regulations provide that a local authority, as regulator, may impose civil sanctions in relation to the offence under section 5 of the Act. The civil sanctions are fixed monetary penalties, variable monetary penalties, compliance notices, stop notices and enforcement undertakings. The Regulations make provision for the procedure for applying these civil sanctions and set out an appeal mechanism. They provide that guidance must be prepared and consulted on relating to the use of civil sanctions, and for the publication of information on the enforcement action taken by local authorities.

Purpose of regulations - enforcement and introduction of civil sanctions

- 4.2. An aim of the Regulations is to assist local authorities to ensure compliance with the Act and prevent harm to the environment. The Welsh Government acknowledges many businesses comply with existing environmental regulations and most strive to do so. We also recognise that many local authorities often seek to resolve any breaches of the law through constructive compliance dialogue.
- 4.3. The provision of civil sanctions is intended to provide local authorities with additional tools where this dialogue has been unsuccessful but a move to criminal sanctions is considered disproportionate. By providing a range of civil sanctions, local authorities will be able to adopt a graduated approach to encourage businesses to comply with their obligations under the Act.
- 4.4. Whilst enforcement of the prohibitions can be undertaken without the introduction of these Regulations (as the Act provides for a criminal sanction), this limits the enforcement options available for local authorities. Offering a more flexible, proportionate approach will ensure a more effective mechanism to deal with offences, helping to support education and behavioural change amongst businesses. It also reduces the need for prosecutions, where they are not considered to be in the public interest, helping to free up essential enforcement resources.

Approach elsewhere in the UK

- 4.5. In October 2019, the Scottish Government introduced [The Environmental Protection \(Cotton Buds\) \(Scotland\) Regulations 2019](#) to prohibit the manufacture and sale of plastic stemmed cotton buds in Scotland.

- 4.6. In 2020, the UK Government introduced [The Environmental Protection \(Plastic Straws, Cotton Buds and Stirrers\) \(England\) Regulations 2020](#) which prohibit persons from supplying or offering to supply certain plastic items in the course of a business in England.
- 4.7. In 2021, the Scottish Government introduced [The Environmental Protection \(Single-use Plastic Products\) \(Scotland\) Regulations 2021](#) which prohibit the manufacture and the supply of certain SUPP in the course of a business in Scotland.
- 4.8. In 2022, the UK Government held a consultation to ban several other SUPP. The consultation and its summary of responses were published on their [website](#). In response to the consultation, the UK Government introduced legislation banning the supply of SUP plates, trays, bowls, cutlery, balloon sticks, polystyrene food and drinks containers, including cups, in England, from 1 October 2023. [The Environmental Protection \(Plastic Plates etc. and Polystyrene Containers etc.\) \(England\) Regulations 2023](#).
- 4.9. The bans will be enforced principally through civil sanctions set out in regulations using powers in Part 3 of RESA. This is consistent with the approach to enforcement taken in [The Environmental Protection \(Plastic Straws, Cotton Buds and Stirrers\) \(England\) Regulations 2020](#). Enforcement authorities are expected to apply civil sanctions in the first instance; however, a failure to comply with a civil sanction, or repeated breaches, may result in authorities' pursuing a criminal prosecution.

5. Consultation

- 5.1. Section 17(4) of the Act applies consultation duties in RESA to the Regulations:

Section 60(1) and (2) of the 2008 Act (consultation) apply to regulations under subsection (1) as they apply to an order under Part 3 of that Act.

- 5.2. To inform the type of civil sanctions needed to achieve compliance with our prohibitions of SUPP, we considered the approaches taken in similar environmental protection regulations in Wales. These were primarily [The Single Use Carrier Bags Charge \(Wales\) Regulations 2010](#) ('SUCB Regulations') and [The Environmental Protection \(Microbeads\) \(Wales\) Regulations 2018](#) ('microbeads Regulations').
- 5.3. Consideration was also given to the approach adopted in England in relation to the [Environmental Protection \(Plastic Straws, Cotton Buds and Stirrers\) \(England\) Regulations 2020](#).

The Single Use Carrier Bags Charge (Wales) Regulations 2010

5.4. In relation to the SUCB regulations and associated civil sanctions, local authorities are provided with the ability to either issue a fixed monetary penalty (FMP) with an early payment discount and late payment penalty; a variable monetary penalty (VMP) which has a maximum limit with an early payment discount and late payment penalty; or a compliance notice. These sanctions are used to deal with breaches of the regulations when either a seller fails to charge for a SUCB or fails to keep, retain, supply and publish records.

5.5. The amount that can be imposed for FMPs is set at £200 for failing to charge and £100 in relation to record keeping. With regards to VMPs, the amount is determined by the regulator, however the maximum amount is set at £5,000 for failing to charge or keep records and £20,000 for giving false information or failing to assist or obstructing an administrator.

The Environmental Protection (Microbeads) (Wales) Regulations 2018

5.6. The civil sanctions used to enforce the microbeads regulations included VMPs, compliance notices, stop notices and enforcement undertakings.

5.7. The level of the VMP is determined by the regulator, however there was a maximum amount of £5000 for non-compliance with the prohibition and a higher penalty of £20,000 for providing false or misleading information, or obstructing an enforcement officer.

Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020

5.8. Whilst environmental protection is a devolved matter, we also considered the approach taken elsewhere in the UK. In England, regulations were introduced in 2020 to prohibit persons from supplying or offering to supply certain plastic items in the course of a business. To enforce these regulations a similar approach was adopted to that provided under the microbeads regulations i.e. VMPs, compliance notices, stop notices and enforcement undertakings.

Proposed waste recycling regulations

5.9. The Welsh Government is currently developing regulations that will require businesses, the public sector, and third sector organisations to separate out their waste for recycling, much as domestic households

already do. The consultation is available [here](#) and further information [here](#).

- 5.10. The consultation (which ended on 15 February 2023) proposed that Natural Resources Wales ('NRW') enforce all the requirements except for the ban on the disposal of food waste to sewer, and that local authorities enforce the ban on the disposal of food waste to sewer from non-domestic premises. The proposed enforcement regime includes civil sanctions.
- 5.11. In addition, local authorities have existing powers, under section 33ZB of the Environmental Protection Act 1990, to issue fixed penalty notices which may be used where they have reason to believe a person has committed a waste deposit offence.
- 5.12. The waste regulations will use a suite of civil sanctions to enforce compliance, as provided for in RESA, similar to those used by existing environmental protection regulations. If a person fails to comply with a civil sanction, criminal proceedings may be brought against the offender.
- 5.13. The civil sanctions proposed for the waste regulations are FMPs, VMPs and stop notices. The proposed level of FMPs is £300 or £500, depending on the nature of the offence.
- 5.14. The regulator will determine the level of the VMP, reflecting the circumstances of the offence. Guidance will be published for their use. It will include information about the circumstances in which a VMP is likely to be imposed, and the matters likely to be considered by the regulators in determining the amount of the penalty. Before serving a VMP, the regulator may require the offender to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of the offence.
- 5.15. In addition to the above, consideration was also given to a [review](#) of civil sanctions for environmental offences undertaken in 2015. This reported that the use of civil sanctions deterred non-compliance, provided an effective and fair way of enforcement, reduced the risk of environmental harm and prevented harm from occurring or continuing to occur. However, some concerns were raised regarding the complexity of the civil sanctions and the need for further training for local authorities.

Provision of SUPP guidance and communication campaign

- 5.16. As previously noted, our intention is for local authorities and businesses to work together to resolve issues voluntarily wherever possible, with education and guidance being the first line of response.
- 5.17. To help support compliance, guidance will be provided for businesses and those affected by the prohibitions. It is anticipated that local authorities will take this guidance into account when formulating their own enforcement policy in relation to the offence under section 5 of the Act. This policy will then be communicated via separate enforcement guidance (developed independently of the Welsh Government).
- 5.18. A communication campaign will also be undertaken prior to the commencement of the bans, with messaging focussed primarily on small and medium sized businesses.

Civil sanctions consultation approach

- 5.19. As the consultation focused on the technical and operational aspects of the use of civil sanctions, it was anticipated the consultation would be of interest to a specialist audience only. Consequently, the consultation period was eight weeks, rather than the usual 12 weeks, to reflect the specific nature of the subject matter.
- 5.20. The consultation on the proposed policy approach for the Regulations was held from 17 April to 9 June 2023. These proposals were developed considering the existing regulations outlined above, (including how comparable those offences were to the offence under section 5 of the Act) and how the different civil sanction regimes operated. Based on these considerations, the consultation proposed the following be made available for the offence under section 5 of the Act:
- Discretionary Requirements – VMPs or Compliance notices
 - Stop notices
 - Enforcement undertakings
- 5.21. Respondents were asked whether the above approach was considered proportionate, if they agreed with the exclusion of FMPs and for their views on the proposed appeals mechanism.

Consultation responses – Overview

- 5.22. The consultation was drawn to the attention of key stakeholders including protected characteristics groups, local authorities, the

Welsh Local Government Association (WLGA), retailers and the food and drink sector.

- 5.23. There were 31 responses to the consultation and the full summary of responses can be found [here](#).
- 5.24. The Secretary of State for Environment, Food and Rural Affairs (a statutory consultee) was consulted separately.
- 5.25. There was overwhelming support for our proposed approach, with most respondents agreeing to the inclusion of compliance notices (84%), VMPs (81%), stop notices (74%) and enforcement undertakings (74%).
- 5.26. Whilst most respondents were in favour of using VMPs, one local authority opposed them in favour of using FMPs (with an amount set at a national level). The respondent argued fixed penalties would be easier to administer and help achieve a more consistent approach across Wales. Concerns were raised that if individual local authorities could impose differing levels of penalties across Wales, this could potentially result in numerous judicial challenges.
- 5.27. However, the consensus was that VMPs offered a more proportionate and flexible approach, with any inconsistencies being addressed through supporting guidance. Consequently, most respondents opposed the use of FMPs.
- 5.28. As part of our consultation with the Secretary of State and subsequent discussions with UK Government officials, it was noted changes were proposed to the type of financial penalty being made available to regulators in England. The previous regulations, Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020, included VMPs, compliance notices, stop notices and enforcement undertakings. However, new proposed regulations to prohibit SUP plates, bowls, cutlery, balloon sticks, polystyrene cups and food containers would contain provisions for FMPs rather than VMPs as an enforcement option.
- 5.29. Additionally, there were proposals to amend the Environmental Protection (Microbeads) (England) Regulations 2017 (again to provide for FMPs instead of VMPs).
- 5.30. The rationale for these proposed changes is based on discussions between the UK Government and the Association of Chief Trading Standards Officers. There was a preference amongst enforcement officers for FMPs when dealing with these types of environmental offences. It was suggested they found them less resource intensive to use.

- 5.31. Whilst there was overwhelming support for using VMPs in our consultation, we also acknowledge the concerns raised by some respondents about VMPs. We also note the benefits of maintaining a consistent enforcement approach between England and Wales given the cross-border nature of businesses. However, we believe that there should be provision for both VMPs and FMPs rather than replacing one with another. This is based, in part, on the different approaches being taken in Wales compared to England, mainly that our legislation covers a broad range of products with the ability to add more.
- 5.32. By providing both VMPs and FMPs we believe this will allow Local Authorities to choose the most appropriate sanction route depending on the scale of the offence/size of the business.
- 5.33. With regards to not setting a maximum limit for VMPs, there was broad support for this approach. Of the 23% who disagreed, some of those respondents suggested a sliding scale depending on the business size and we anticipate this is how local authorities will enforce this sanction. To ensure consistency with the absence of a fine limit for a criminal conviction, a similar approach will be adopted in relation to VMPs.
- 5.34. No respondents opposed our proposed appeals mechanism using the First Tier Tribunal.
- 5.35. The majority of respondents (61%) agreed our overall proposed approach was reasonable and proportionate.
- 5.36. No adverse impacts on the Welsh language were identified.
- 5.37. The consultation requested further evidence to help support the development of the Regulatory Impact Assessment. No significant additional information was received.

Post consultation

- 5.38. The consultation and the summary of responses are available on the Welsh Government [consultation web page](#).
- 5.39. Following consideration and analysis of all responses, our proposals were amended to include the use of FMPs. Given this proposed change in policy, an additional consultation was undertaken between 21 August and 4 October to seek further views on the inclusion of FMPs and the amount at which they would be set. Details of this additional consultation are outlined below.
- 5.40. The Welsh Government has also worked with businesses, manufacturers, public sector groups, communities and protected characteristic groups to develop comprehensive guidance to support

the implementation and enforcement of the Act. This has included communication materials to help raise awareness of the prohibited products and how to access alternatives.

Additional consultation on proposals to make civil sanction regulations under the Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 – Fixed Monetary Penalties

- 5.41. Following our initial consultation on ‘Enforcing bans and restrictions on certain single-use plastic products’ (see above) we sought further views on a new proposal that emerged from the responses to that consultation. This proposal was to include FMPs in the suite of civil sanctions to be made available to local authorities to enforce the offence under section 5 of the Act.
- 5.42. As the consultation sought views on this narrower subject, a focused consultation was undertaken between 21 August to 4 October. The consultation sought views as to whether people agreed with the inclusion of FMPs and if so, whether they agreed the amount should be set at £200.
- 5.43. We received 37 responses in total. In relation to our question as to whether FMPs should be included, 73% of respondents agreed. A large proportion of those who supported this approach offered no specific reasoning, often just stating the view they felt FMPs would help act as a deterrent. Several respondents advocated their use because they considered FMPs to be a “straightforward and efficient method” for dealing with offences, especially when part of a wider enforcement strategy. Of those who disagreed with their inclusion (24%), most did so on the grounds they were opposed to use of any enforcement action or believed the use of financial penalties amounted to a tax. Others felt such laws were unnecessary interference by the government or that compliance should be sought through other means (for example through education).
- 5.44. With regards to whether people agreed with the FMP being fixed at £200, views varied. Of the 49% who opposed, 14% were opposed to any financial penalty and another 8% felt the amount was too high but did not offer an alternative figure. Two responses from the waste industry suggested the amount should be set at £300 to ensure parity with other Welsh Government regulations being developed on business recycling.
- 5.45. Those respondents who supported the proposal of £200 often did so on the basis they felt this amount was a reasonable and proportionate level for the offence.

Post consultation

- 5.46. Following consideration and analysis of all responses, we proceeded with the inclusion of FMPs in our regulations and, given the lack of consensus from those who opposed our approach, set the amount at £200.
- 5.47. The consultation and the summary of responses are available on the Welsh Government [consultation web page](#).

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

6.1 Two options have been considered in this Regulatory Impact Assessment (RIA), proceed with the prohibitions utilising criminal sanctions only (the status quo/ do nothing option) or introduce an alternative enforcement regime using civil sanctions (**preferred approach**). Whilst local authorities will often speak to businesses to educate and raise awareness to bring them into compliance, this is not considered a viable, long-term enforcement approach on its own and, therefore, has not been included as a separate option in this assessment.

Option 1: Rely on criminal sanctions only (Status quo/ Do nothing)

6.2 This is the baseline option and as such there are no additional costs associated with this option beyond those factored into the [Explanatory Memorandum of the Act](#).

6.3 The Act provides for a criminal sanction (section 6) which means anyone suspected of committing an offence under section 5 of the Act can be tried in a Magistrates' Court. If a person is found guilty of the offence, the Court may impose an unlimited fine.

6.4 While enforcing criminal sanctions may be necessary where a breach of the prohibition is judged to be deliberate or significant in scale, there may be occasions where a more proportionate approach is required, for example when dealing with a first offence by a small business. On such occasions a potential criminal record for the business owner may not be appropriate, particularly if the breach is minor and considered unintentional. Pursuing these types of prosecutions may also place additional burdens on local authorities and the court system.

6.5 Keeping the status quo – that is, having criminal sanctions as the only enforcement option - would not allow for this more flexible approach to enforcing compliance. This would also lead to minor offences requiring prosecution, placing a potential burden on both local authorities and the court system.

Option 2: Introduce civil sanctions through Regulations (Preferred approach)

6.6 Regulations adding civil sanctions to the suite of enforcement tools available to local authorities will increase their options and prevent unnecessary criminalisation of citizens.

6.7 The range of civil sanctions proposed gives Trading Standards officials (and their equivalent) the opportunity to take a nuanced approach to enforcement, tailoring their response to the severity of the offence. Using any of the sanctions included in our proposals is likely to have some direct effects. The additional impact of using the sanctions will depend in any individual case on what would otherwise have been used. The costs, for example, may be higher or lower than the mechanism that would otherwise have been used. The overall impact of introducing these sanctions also clearly depends on how often and how appropriately they are used.

7. Costs and benefits

7.1 As part of our policy development process we are required to assess the costs of introducing these Regulations on business and local authorities (as regulators of the bans). A [full RIA](#) was undertaken for the Act and this considered the impacts of implementing a ban in Wales. Our civil sanctions consultation was unable to identify any further information which would add or significantly amend these original calculations. Therefore, this RIA draws upon those initial assumptions and has been updated, where possible, to reflect any additional costs or benefits from introducing civil sanctions.

7.2 It should be noted the impacts of the bans in the RIA were often discussed in terms of non-monetised or unquantified costs and benefits due to limitations of available data.

Welsh Government – Administrative costs and benefits

7.3 There are no additional costs to the Welsh Government from introducing these Regulations. Guidance to support the enforcement of civil sanctions will be developed by local authorities and no specific communication campaign will be developed on the use of civil sanctions. Monitoring of enforcement and decisions on its implementation will also fall to local authorities.

7.4 As the civil sanctions and appeals mechanism broadly mirrors that in use in England, we have not identified any additional costs associated with the justice system that will fall on the Welsh Government. Previous similar environmental legislation (the single use carrier bag charge and ban on microbeads) have not resulted in any cases being brought before courts. Whilst this legislation is not directly comparable, it has shown that through sufficient awareness raising, guidance and providing support to sellers, high compliance rates can be achieved.

7.5 The wider costs associated with improving compliance were outlined in the RIA for the Act. This assessment estimated an initial implementation cost for the Act of £500,000 to the Welsh Government in developing

bilingual guidance, running a communication campaign to support the introduction of legislation and staff costs associated with its implementation.

7.6 As these Regulations relate to the enforcement of the bans themselves rather than managing oversight of the policy, no additional costs will be incurred, or savings made.

Local authorities – Costs and benefits

7.7 This proposal will introduce civil sanctions which will provide authorised officers of local authorities with alternative enforcement tools to tackle non-compliance. The proposal places no obligation on local authorities to exercise these powers or to prosecute for the original offence.

7.8 However, it is anticipated that if local authorities choose to use civil sanctions, they will incur some small set-up costs for staff training and developing a suitable form of enforcement notice. There are also likely to be costs associated in dealing with non-compliance.

Training costs

7.9 Local authorities will need to develop enforcement guidance for their authorised officers, provide staff training and develop suitable forms of enforcement notice.

7.10 We assume all 22 Local Authorities in Wales will incur a one-off administration cost to familiarise themselves with the new powers. In 2022 the Association of Chief Trading Standards Officers carried out research to determine the full cost recovery rate for officers within Trading Standards. This was not a salary rate, however it was inclusive of employment and non-employment on-costs. The figure for Wales was slightly lower than for England and calculated at £70.85 p/h.

7.11 Using a central assumption of 90 minutes per local authority the proposed changes could involve a one-off transitional familiarisation cost of £106 per officer, per local authority.

Non-compliance costs

7.12 The local authority Trading Standards Department (or equivalent) is already responsible for enforcing over 100 pieces of primary legislation and many more regulations and orders. There may be additional legal costs for local authorities in the cases of non-compliance.

7.13 Local authorities often respond to intelligence from other agencies, businesses or complaints from the public; that is, their activity often directly relates to complaints made and intelligence received. Once non-compliance is identified, we would expect the trader to be

provided with advice to achieve compliance. As previously noted, it is only when advice and information is ignored, or repeated mistakes are made, that we would expect enforcement tools to be used. However, inspecting premises and providing advice will have associated costs.

- 7.14 In response to our consultation, Newport County Council provided a rough calculation of potential non-compliance in their area:

'Newport has approximately 3,000 known businesses. An estimated proportion of those businesses liable under the Bill would be 60% – therefore 1,800 potentially liable businesses. Applying a 'rule of thumb' 80/20 compliance model, it is estimated that approximately 360 businesses would require some form of extra intervention. Further applying the 80/20 compliance model, it is estimated that approximately 72 businesses may require civil sanction enforcement action'.

- 7.15 Other examples of rates of non-compliance, particularly during the early stages of new regulations, include the SUCB charge. Introduced in October 2011, by February 2013 it was recorded that 25 complaints had been received from consumers. All were investigated and 9 of these were deemed justified. Four complaints were received from businesses about other businesses; two were justified. One hundred and forty-one requests for advice have been received from businesses regarding their obligations. Eleven requests for advice have been received from consumers regarding the regulations. The number of enforcement contacts made with businesses were 127. This includes proactive inspections, test purchases, reactive visits as a result of complaints received or letters of advice issued.

- 7.16 While these estimations indicate there will be a potential for local authorities to incur costs ensuring compliance, other factors also need to be considered. This includes existing voluntary action undertaken by the retail and catering sector, for example WRAP's Plastic Pact, to remove the banned products from their supply chain. In addition, with bans already being implemented across the European Union, Scotland and England, the supply of these products will become exhausted as non-compliant stocks cease to be manufactured.

- 7.17 As local authorities will not be required to proactively identify non-compliance and potentially combine investigations with other enforcement activity, it is difficult to determine exact costs. Based on evidence gathered for the recycling regulations it was estimated a local authority inspection could take three hours at circa £70.85 per hour (with on costs). At the higher end of the scale (as suggested by Newport Council with an estimated 72 businesses requiring enforcement action) this would result in costs of £15,303 per local authority (we have assumed this would occur in the first year of the prohibitions coming into force as business will adapt and comply with the law). At the lower end of the scale (as based on the carry bag

evidence which indicates an average of six businesses requiring enforcement action), this would result in costs of £1,275 per local authority.

Benefits to local authorities

- 7.18 An effective and efficient enforcement regime will help improve compliance, which in-turn will reduce costs to local authorities associated with clearing litter. There are also wider indirect benefits on local authority service provision, for example social services, from an improved local environment quality.
- 7.19 In 2017, a [UK Parliament paper](#) estimated clean-up costs of £70m per annum for all litter in Wales. [Stat Wales](#) reports a net cost of £53m, which encompasses sweeping and removal of litter from land, litterbins etc. However, this excludes highways, countryside, schools and other services, and so the £70m estimate is considered more representative of the total clean-up cost. A proportion of the total clean-up cost is attributed to the products in the ban based on terrestrial litter surveys. However, any small reduction in litter volumes is unlikely to translate to cost savings as street cleansing efforts are likely to require the same resources to maintain the frequency of clean-up activities.
- 7.20 The wider environmental benefits of the bans and benefits to local authorities are also difficult to measure. Research identified during the development of the Act found that living and working in a less littered environment contributed to improvements in mental and physical health. This in turn led to greater engagement and appreciation of the local environment, for example through exercise and community volunteering. This benefit is however difficult to measure and our research was unable to quantify a monetary estimate for this.

Business – cost and benefits

Compliance costs to business

- 7.21 The majority of businesses are expected to comply with the provisions in the Act and will, therefore, not incur any additional costs as a result of these Regulations. To assist with compliance, Welsh Government has developed guidance and communication materials so that business owners understand the requirements of the Act.
- 7.22 Those businesses who are found to have been providing SUPP prohibited under the Act can expect an intervention from local authority enforcement teams. In the first instance, this is likely to be in the form of education/awareness raising. However, these Regulations provide local authority officers with the power to issue civil sanctions

in cases of more serious or repeated non-compliance. Where a civil sanction is issued, the business will incur the cost of the sanction itself and/or any costs associated with appealing against the sanction. The number of businesses who incur a sanction, the scale of those sanctions and the likelihood of appeal are not known at this stage and so aggregate costs cannot be quantified.

- 7.23 As previously noted, the overall costs of businesses complying with the prohibitions was covered by the Act's Explanatory Memorandum. This looked at a broad range of costs associated with the prohibitions, including estimating the costs in terms of the food service businesses switching from plastic to non-plastic products, training staff and ensuring compliance. This was estimated to cost £300k. The Explanatory Memorandum for the Act also provided a summary of the producer and consumer trends which are expected to support the movement away from SUPP.
- 7.24 Existing evidence suggests that whilst larger businesses and franchises have been able to make a successful shift away from SUPP, there is a higher potential impact on smaller businesses. It was noted these types of businesses often operate in a highly competitive market and are very price-sensitive, thus any compliance costs were likely to be disproportionately higher. The number of smaller businesses who may incur a penalty, the scale of those penalties and the likelihood to appeal is not known at this stage and so aggregate costs cannot be quantified.
- 7.25 We believe the approach we have adopted provides local authorities with flexible and proportionate sanctions, for example the ability to issue compliance notices. If issued by the local authority, a compliance notice will give small businesses a chance, and the necessary guidance, to rectify any non-compliance. We believe enforcement, where appropriate, should aim to support rectifying any unintentional non-compliance before any further action is taken.
- 7.26 Similarly, the provision of variable monetary penalties will allow local authorities to take account of the business and scale of the non-compliance when dealing with a breach of the law.

Benefits to business of compliance

- 7.27 The ability of local authorities to utilise a range of enforcement tools is likely to benefit those businesses who typically comply with regulations. This will help create a more level playing field, as those companies with a less desirable approach to compliance will also need to spend to replace their existing SUPP.

Summary of preferred option

- 7.28 The preferred option is **Option 2**. Criminal prosecution may, in certain circumstances, be considered disproportionate to the offence, with the cost and resources better utilised elsewhere. By providing an alternative mechanism, civil sanctions, the Welsh Government has provided local authorities with a more flexible toolkit for enforcement action.
- 7.29 As local authorities and businesses will already be required to familiarise themselves with the bans, we have not identified significant additional costs beyond those calculated in the initial RIA.

Specific impact tests

Welsh Language

- 7.30 No direct positive or adverse impact on the Welsh Language was identified during the consultation process. All guidance and supporting documentation related to the civil sanctions will be made available bilingually. Any correspondence with local authorities and businesses will take into account language needs and be made available bilingually as requested. The new powers will be implemented by individual local authorities and provisions will be in place to ensure the necessary paperwork is made available bilingually.

Children's Rights

- 7.31 A specific Impact Assessment was undertaken for the Act and updated to reflect the introduction of new enforcement powers. No conflict with UNCRC has been identified and there are no negative impacts on children and young people. Indirectly, the positive impacts on children from this legislation would be any likely health and wellbeing benefits from any improvement in the surrounding local environmental because of a reduction in SUPP contributing to litter.

Privacy

- 7.32 No personal data has been kept by the Welsh Government as part of this process. Individual local authorities who use and issue the civil sanctions will have their own processes in place to deal with data protection.

Justice Impact Assessment

- 7.33 A Justice Impact Assessment has been undertaken as part of the legislative development process and no significant impacts on the HM Courts & Tribunal system were identified. The enforcement and

implementation of these powers are similar to those made available in England.

7.34 The new powers are intended to offer enforcement officers with an alternative enforcement tool to criminal prosecution.

8. Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

9. Post-implementation review

9.1 There will be a post-implementation review of the Act no later than five years after it came into force; that is, by 2028. It is expected that the review will assess the effectiveness of the policy in achieving its objectives of supporting action to tackle the climate and nature emergency, reducing the littering of SUPP, the wasteful use of resources and adapting consumer behaviour to more sustainable alternatives.

9.2 The impact of these Regulations will be covered by the review of the Act.