

Explanatory Memorandum to The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 (Commencement No. 1) Order 2023

This Explanatory Memorandum has been prepared by Climate Change and Rural Affairs 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) (Wales) Act 2023 (Commencement No. 1) Order 2023.

Julie James MS

Minister for Climate Change

3 October 2023

PART 1

1. Description

1.1 The provisions of the Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 ('the Act') that came into force on 7 June 2023, the day after the Act received Royal Assent, are set out in paragraph 4 below. The other provisions of the Act come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument. The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 (Commencement No. 1) Order 2023 ('the Order') is made by the Welsh Ministers and brings other provisions of the Act, also set out in paragraph 4 below, into force on 30 October 2023.

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

2.1. None.

3. Legislative background

3.1. The Welsh Ministers make the Order in exercise of the powers conferred on them by section 22(2) of the Act. Pursuant to section 21(3) of the Act the Order is being made in accordance with the draft affirmative procedure.

4. Purpose and intended effect of the legislation

4.1 The aim of the Act is to address the Welsh Government's concerns around the environmental impact of disposable, unnecessary and commonly littered single-use plastic products. The Act is intended to accelerate a shift in consumer behaviour away from single-use products towards greater re-use and will encourage businesses in Wales to lead the way in developing more sustainable alternatives.

4.2 The Act makes it an offence for a person to supply or offer to supply (including for free), certain single-use plastic products and products made of oxo-degradable plastic to a consumer in Wales and establishes a local authority led enforcement regime. Section 5(2) of the Act provides that offence can only be committed by: a body corporate (including a body exercising any function of a public nature); a partnership; an unincorporated association or a person acting as a sole trader.

4.3 The following provisions of the Act came into force on the day after the Act received Royal Assent: sections 3 (prohibited single-use plastic products: power to amend); 4 (power to amend: duties relating to sustainable development and reporting); 17 (civil sanctions), 21 (regulations), 22 (coming into force) and 23 (short title). The other provisions of the Act come into force on a day appointed by the Welsh Ministers in an order made by

statutory instrument. The Order is made by the Welsh Ministers and brings the following provisions of the Act into force on 30 October 2023:

- a) section 1 (key concepts: “plastic product”, “single-use” and “plastic”);
- b) section 2 (prohibited single-use plastic products);
- c) section 5 (offence of supplying prohibited single-use plastic product);
- d) section 6 (offence: mode of trial and penalty);
- e) section 7 (enforcement action by local authorities);
- f) section 8 (power to make test purchases);
- g) section 9 (power of entry);
- h) section 10 (power of entry: residential premises);
- i) section 11 (power of entry: other circumstances requiring warrant);
- j) section 12 (powers of entry: supplementary);
- k) section 13 (power of inspection);
- l) section 14 (offence of obstruction etc. of officers);
- m) section 15 (retained property: appeals);
- n) section 16 (appropriated property: compensation);
- o) section 18 (offences committed by partnerships and other unincorporated associations);
- p) section 19 (criminal liability of senior officers etc.);
- q) section 20 (interpretation);
- r) paragraph 1 of the Schedule (prohibited single-use plastic products), save for the entries in column 1 and column 2 of the Table for “lids for cups or takeaway food containers”, “carrier bags” and “any product made of oxo-degradable plastic, whether or not— (a) that product appears elsewhere in this table, and (b) the particular type of the product, or the purpose for which that product (or particular type of product) is supplied, would otherwise be exempted by way of an entry in column 2.”;

s) paragraph 2 of the Schedule.

4.4 The Welsh Government aims to introduce the prohibition of the single-use plastic products listed in the Table in the [Schedule](#) to the Act in phases. The Order introduces the first phase of prohibitions – the products that will be introduced in a later phase are mentioned in sub-paragraph (r) above.

4.5 The Table in the Schedule to the Act provides for exemptions that apply in respect of a particular type of product or the purpose for which the product is supplied. These include exemptions for any cup or takeaway food container that is not made from expanded or foamed extruded polystyrene and an exemption for supply of a single-use plastic straw to a person who requires it for health or disability reasons.

5. Consultation

5.1 As the Order commences provisions in the Act, the initial proposals for which were subject to a formal public consultation and the provisions of which were subject to the scrutiny and approval of the Senedd, a consultation for the Order did not take place.

6. Regulatory Impact Assessment (RIA)

6.1 As the Order commences provisions in the Act and a [RIA](#) has been completed for the Act, an RIA is not required for the Order. This accords with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation. Please note section 3.2 of that Code and the exception regarding 'where the subordinate legislation is a commencement order'.