

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith /
Climate Change, Environment and Infrastructure Committee
Bil drafft Diogelu'r Amgylchedd (Cynhyrchion Plastig Untro) (Cymru)/
Draft Environmental Protection (Single-use Plastic Products)(Wales) Bill
SUP_30
Ymateb gan Sefydliad Materion Cymreig / Evidence from Institute of Welsh Affairs

Senedd Climate Change, Environment, and Infrastructure Committee consideration of the Draft Environmental Protection (Single-use Plastic Products) (Wales) Bill

Contribution from the IWA

5th September 2022

The advantages and disadvantages of using a Bill rather than secondary legislation to introduce a ban

Although secondary legislation may deliver a timelier delivery of a ban and reduce the use of Senedd time, we believe that this matter requires full scrutiny through the primary legislative process.

Additionally, should the Bill result in legal challenge as a result of the United Kingdom Internal Market 2020, having the ban laid out in well scrutinised primary legislation should improve the usefulness of such a challenge in firming up this area of the UK constitution.

Whether the provisions of the draft Bill will deliver the policy intention

We have concerns over the resourcing of local authorities to enforce on the new offence created through the Bill. Although it is likely that many outlets will follow any new legislation, some will not for whatever reason.

However, we do not wish to see enforcement action unless deliberate and repeated breaches are made. To support this, provision should be made within the Bill for a minimum introductory period prior to the sections creating the offence coming into force.

Whether there are any potential barriers to the implementation of the draft Bill's provisions (including the United Kingdom Internal Market Act 2020)

The United Kingdom Internal Market Act 2020 (UKIMA) and its principles of 'mutual recognition' are likely to significantly reduce the ability of the Welsh Government to make effective law with regards to the regulation of goods and services.

There is still some uncertainty about how the UKIMA will operate in practice, with the Office for the Internal Market still in its infancy and with the Supreme Court not yet having made substantive judgements in the Welsh Government's challenge (having ruled the challenge was too early and practical examples were needed).

However, it would appear that the UKIMA will have the practical impact of spreading the minimum regulatory standard in any one of the UK's four constituent nations to the other three - significantly reducing the ability of the Welsh Government to create regulation over-and-above that existing in Scotland, England, and Northern Ireland. This risks a practical impact in most cases of ensuring English market rules are applied to Wales.

The Welsh Government has stated its intention to use the Single Use Plastics Bill as a practical example to test the practical impact of the the UKIMA on devolved competencies, and the IWA supports this move due to its strong concerns about the effect of the UKIMA on Wales' ability to take its own path in devolved areas if its citizens vote for it.

Whether the powers in the draft Bill for Welsh Ministers to make subordinate legislation are appropriate

The nature of the use of single use plastic products and the development of suitable replacements are constantly evolving. We do not believe that it would be good use of Senedd time to amend primary legislation in order to add or remove prohibited single use plastic products or exemptions from the Schedule. Therefore, we agree with the powers provided through Section 3.

With regard to Section 17, we believe that it is important for civil sanctions to be consistent and proportionate across all offences created through Welsh law. Therefore, we agree with the ability for penalties to be set through regulations.