

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_06

Ymateb gan Ffederasiwn Busnesau Bach / Evidence from Federation of Small
Businesses

Single Use Plastics Bill

Consultation response: Climate Change, Environment & Infrastructure Committee

September 2022

About FSB

FSB Wales is the authoritative voice of businesses in Wales. It campaigns for a better social, political, and economic environment in which to work and do business. With a strong grassroots structure, a Wales Policy Unit and dedicated Welsh staff to deal with Welsh institutions, media and politicians, FSB Wales makes its members' voices heard at the heart of the decision-making process.

SMEs comprise the vast majority of enterprises in Wales (99.4%) and so policy-making must be rooted in a 'Think Small First' approach. The proposals to ban single use plastics are no exception.

As an organisation, FSB has been clear in its support for the transition towards a low carbon, and environmentally sustainable economy. In general, our approach to environment policy starts from the following principles:

- 1) Small businesses recognise and support the broad, long-term objectives of climate change and environmental sustainability policies.
- 2) Small businesses want to do the right thing and play their part.
- 3) A long-term, strategic approach to environmental policy making is far better than a short-term, reactive approach.
- 4) Policy solutions must be evidence led.
- 5) The impact of policies on small businesses must be understood in granular detail.
- 6) Small businesses should be given adequate time to adapt to new requirements.
- 7) Those small businesses that are particularly impacted, or least able to adapt, should be identified and provided with additional support/time to adapt.

We believe that approaches to environmental policy should follow the above principles. By doing so, we can ensure SMEs are properly brought in to the transition towards a low carbon and sustainable economy, and help to translate our ambitions into practice.

Introduction

Small businesses support ambitions to stamp out the use of harmful single-use plastic items. The majority are proactively upping their recycling efforts, and a significant share are assessing alternatives to plastic wherever possible. Among smaller retailers, close to half are exclusively using packaging that's recyclable, reusable, or compostable.

The success of this flagship policy in achieving its aspiration will be in the implementation, and in being part of a wider strategy that seeks to mitigate impacts and support SMEs – including microbusinesses and the self-employed who have less capacity and capabilities – to deal with the transition, while strengthening support for the Net Zero agenda in Wales. Conversely, an ineffective process that does not engage and align to business needs could undermine credibility. Early intervention is not as important as effective evidence-based intervention.

FSB Wales believes that the most effective incentives for spurring change must be rooted in the positive aspects these proposals enable, such as driving investment in innovation where replacement materials are concerned, recycling infrastructure, and awareness-raising.

Current economic climate

While the aspirations of the proposals are welcomed, it is salient for policy-makers to recognise the scale of the difficulties that businesses across Wales are currently experiencing. Surging operating costs, a high tax burden and struggles to fill vacancies are threatening the futures of tens of thousands of small firms and sole traders across the Wales.

While the consumer prices rate of inflation bursting through 10% is eye-watering, producer input prices are up by more than double that figure and this will filter through, pushing up the cost of living even more. The cost of doing business crisis has worsened to the point that confidence is now lower than during last year's disrupted festive trading season.

This context does not negate the importance of action on the need to transition away from single use plastics, but rather seeks to demonstrate the intensity of the challenges that small business owners – across sectors and geographies – are experiencing. Heightening the burden of doing business therefore – regardless of how well-intentioned – must only be done if SMEs are effectively engaged and supported throughout.

Whether a Bill is needed to introduce a ban on commonly littered singleuse plastic items;

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

FSB Wales notes the use of legislation as a vehicle to facilitate the proposals.

To bolster publicity and clarity, a single Bill outlining the clear scope and ramifications makes for a better way for communicating the expectations and new legal situation for SMEs, particularly those smaller businesses with less capacity to be up to date on legal developments.

To ensure the most benefit from a single Bill, it is important that it sits alongside a proactive engagement and support strategy targeting SMEs, in providing clearer communication.

Given that the Bill makes clear provisions and indicates intention for future amendments to include more plastics, is also important that the process by which this happens provides a full impact assessment, mitigation of any risks, and that it is on an evidence-led basis, with full scrutiny and accountability to such changes by the Senedd, Committees, and stakeholders, with a timeline to secure this.

For businesses to play their part properly, it is important that policy is developed on a rational basis that provides time for understanding impact and ensuring we are all moving forward together.

The danger of the Bill is that the discussion for transition becomes merely the 'ban' and regulation, rather than a positive story for opportunities for businesses, and aligned with economic agenda.

As such, the wider aims should be clear from the outset in introducing the Bill. The legislation should also be part of a strategy that:

- recognises the challenges and limits of SMEs and ways to ensure best delivery of the policy, ensuring a clear strategic approach
- balances the need for clarity and the legal complexity, including any cross-border divergences
- provides clarity on legal liability across supply chains, and in cross border trade
- balances the need for SMEs to be given a lead-in time and grace period ahead of strict enforcement
- ensures enforcement is geared towards support to becoming compliant in the first instance, including managing complex supply chain issues
- guards against compliant SMEs being undercut by cheaper costs of illegal trade
- possesses awareness that many affected in micro businesses and self-employment should be viewed in 'hard to reach' in communications and so there is a risk of non-compliance

As such, ensuring a well-publicised Bill should aim at more clarity and more publicity for the changes involved, but this needs to be aligned with all the above aims.

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

Yes, in terms of addressing the need to limit use of single use plastics.

However, its success will also depend on implementation. Ensuring that appropriate activity around compliance, communication, advice, and support takes place will prove central to achieving the aspiration.

There is a need to ensure the financial mitigation, awareness of the asymmetrical impact of regulation upon smaller firms and self-employed – this is not only in terms of awareness but also in terms of access to scarce resources. As such, there remains some danger that it will succeed in the

ban but not in providing strategy toward supply chain management of alternatives. We note that during times of scarcity of materials during Covid-19 – through, for example, access to laptops, plasterboard and wide range of building materials at different times – the result was that larger companies could buy in bulk to hoard the materials while SMEs struggled to access any.

With a larger demand for non-single-use plastic, it is important to consider the maturity of supply alternative materials and of sources, home and abroad – with emphasis on access to those markets also.

An approach that seeks to shape market opportunities to these proposals – putting in place finance to scale innovation already in place in Wales, as well as developing skills and competitive companies – would help ensure the Bill supports an enabling strategy that is built alongside the formal regulation.

This is where an economic mission ‘making markets’ approach from Welsh Government and state bodies, skills sector and finance can ensure that the economic vision sits alongside the social and environmental aspects of the policy and not as a separate passive after effect.

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

Small businesses are keen to play their part in adopting sustainable practices on the journey to net zero, but often don’t have the deep pockets and dedicated specialists enjoyed by their larger counterparts. Thus, they can find identifying and taking the necessary steps a challenge.

To prepare for products no longer being available, government must ensure businesses are aware of alternative, affordable products – replacement items must not be significantly more than expensive than those being restricted.

Alternative products must also be widely available for businesses when any new regulations come into force. As demand increases for the more sustainable products, supply must keep pace. There cannot be a period of time where small businesses are unable to get the products that they need for their business to function as normal.

FSB Wales has expressed concerns to the Welsh Government around the interactions between the UK Internal Market Act 2020 and the draft Bill, specifically around the risk for legal challenge and subsequent uncertainty for Welsh businesses. The Welsh Government’s position is that they do not accept the UK Internal Market Act has restricted the Senedd’s ability to legislate in the manner it purports to do so.

However, the experiences within this policy area in Scotland over recent months may provide some reassurance. The UK Government has affirmed that:

“The UK Internal Market (UKIM) Act 2020 protects the ability for people and business to trade freely with each other across the UK. However, in some circumstances, the need for UK-wide

regulations is balanced with the recognition that these rules should not unreasonably frustrate the policy aims of individual governments. One recent example of this concerns single-use plastics, like straws and cotton buds.

*Following a request from the Scottish Government, ministers from the UK Government and the devolved governments, and civil servants operating under the provisional Resources and Waste Common Framework, considered the case for an exclusion to the UKIM Act that would ensure that single-use plastics that are banned in Scotland cannot be sold there. **Ministers across the four governments, given their shared ambition to tackle plastic pollution across the UK, agreed that an exclusion in this case would be appropriate, and the legislation to make this happen is now under development.** This demonstrated that the Common Framework will help to ensure that the Scottish Government's environmental policy aims are not undermined by UK-wide regulation."*

While a consensus has emerged for this policy ambition, some divergence is anticipated among the types of single use plastics that are banned in respective parts of the UK. The logistics of how this could work in practice – including any potential liability in cross-border trade on this basis – remains unclear.

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

The process concerns for introducing new plastics / materials are notable, as Ministers would possess the power:

- '(a) to add a product to, or remove a product from, column 1 of the Table in paragraph 1;
- (b) to add an exemption to, or remove an exemption from, column 2 of the Table in paragraph 1, or to amend an exemption in that column;
- (c) to add a definition to, or remove a definition from, paragraph 2, or to amend a definition in that paragraph.'

While this power may be appropriate and necessary, as this is an area where amendments and amendments are likely to be needed, it is vital that these powers are scrutinised in their use, and that a role for the Senedd and stakeholders are made clear. It is uncertain whether 'take into account their duty (a) to promote sustainable development under section 79(1) of the Government of Wales Act 2006 (c. 32), and (b) to carry out sustainable development under the Well-being of Future Generations (Wales) Act 2015' would require a full impact assessment and mitigations in terms of economic impact on SMEs, for example.

Given that the bill makes clear its intention for future amendments to include more plastics, is also important that the process by which this happens provide for full impact assessment, mitigation of any risks, and that it is on an evidence-led basis, with full scrutiny and accountability to such changes

by the Senedd, Committees, and stakeholders, with appropriate timelines to secure and consider this evidence. This may not necessarily be on the face of the Bill, but it is very important that the process of amending the bill or introducing new significant aspects that impact on businesses and the market ensure this be in place.

We have been concerned that the process for introducing new materials is in danger of not providing the time or clarity for consultation, impact assessments and accountability necessary. As such, the role for accountability is vitally important to ensure any Ministerial powers used are scrutinised in full and are done on fully evidenced basis.

It is noticeable in this respect that the draft Bill includes – but ‘is not limited to’ – adding ‘wet wipes,’ and removal of exemptions ‘including but not limited to exemptions in respect of cups, takeaway food containers and lids for these products that are not made of polystyrene.’ Including these specific examples in the Bill presumably is designed to show intention for their inclusion in the eventual Bill or subsequent interventions.

It is important that – with businesses as the sector that will need to understand these regulations and implement them at a time of significant pressure on the cost of doing business – that businesses of all sizes understand what is expected of them, that they know where support is available to navigate through a complex area of divergent regulation, and that the policy development process ensures that the delivery of the legislation is a success. Doing this first should not be at the expense of doing this well.

It is also important in the context of potential for wider divergence through expansion of materials that there is certainty for future in relation to other polities in the UK and certainty in the context of the application of the internal Markets Act in the future.

Whether there are any unintended consequences arising from the draft Bill.

The financial implications of the draft Bill (including for businesses and consumers).

There are possibilities for unintended consequences and for financial implications. As such, the response to these uncertainties should not be policy inertia, but in ensuring a full strategic approach to implementation, communication, and engagement in the way we have outlined, including for SMEs who are generally disproportionately impacted by regulatory change, and to ensure mitigations in place.

Areas for analysis of impact that could benefit from further investigation and mitigation include, but are not limited to:

- Assessment of where scarcity of recyclable materials may have a disproportionate impact on smaller businesses – during the Covid-19 pandemic when materials were scarce, bigger businesses were able to stockpile materials in ways not possible for smaller businesses.
- The impact on additional burden at a time when businesses face significantly increased costs from multiple directions. We are also concerned about the potential cost implications of these measures for the consumer, especially in the current context of a cost-of-living and inflationary crisis.

- The means by which small business with less capacity can identify the correct supply chains.
- Clarity as to whether there will be a grace period and lead-in time, and assurance that enforcement should be aimed at supporting towards encouraging compliance, rather than punitive.
- Sources of information that the Welsh Government could draw on to assess the progress of the policy once implemented.
- How the Welsh Government legislation aligns with or deviates from the coming UK legislation, and what publicity and support measures will be in place to help businesses with limited capacity to navigate any complexity.

Conclusion

Our research has consistently demonstrated that small businesses are supportive of the Government's aims to create a circular economy and reduce the use of harmful single use items. Many SMEs are proactively upping their recycling efforts, and a big share are assessing alternatives to plastic wherever possible.

At the same time, small businesses across the country are trading in difficult circumstances. Confidence is shaky, costs are rising, margins are being squeezed, cashflow is tight and supply chain disruption and labour shortages persist.

Welsh Government needs to proceed at an appropriately sensitive pace given this difficult landscape, ensuring that at all stages, the needs of smaller businesses are considered with appropriate support alongside a demonstrable evidence-based approach

Furthermore, it is imperative therefore that any regulatory changes during these economically uncertain times, particularly those related to environmental and health outcomes, do not make trading viably even more difficult.