

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
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Ymateb gan Richard Caddell / Evidence from Richard Caddell

Climate Change, Environment and Infrastructure Committee, Welsh Parliament

Draft Environmental Protection (Single-use Plastic Products)(Wales) Bill

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In response to the invitation to give oral evidence to the Climate Change, Environment and Infrastructure Committee in respect of the Draft Environmental Protection (Single-use Plastic Products) (Wales) Bill, I would respectfully draw the attention of the Committee to the following issues.

Definitions

1. The Bill defines a plastic product as one for which ‘all or any of the main structural components are made wholly or partly of plastic’. This is an issue that generated considerable interpretive difficulties for the European Union in the development of Directive 2019/904. The EU eventually clarified that there is not a *de minimis* formulation for an item that is ‘partly’ made of plastic and the Welsh legislation would benefit from similarly clarifying this position.
2. The provision of a list of products defined as prohibited single-use plastic products is very welcome, although some concerns may be raised that this will not deter, reduce or otherwise mitigate the use of other plastic products that are prospectively challenging to the environment.
3. The proposed legislation as it currently stands is phrased predominantly in the language of prohibition. There is no evident commitment within the Bill towards awareness raising or broader education as to the desirability of reducing common plastic items more generally.
4. Beyond the list of prohibited items, the concept of ‘single-use’ itself is open to considerable interpretation. A number of plastic products are technically multi-use but

are commonly discarded. During the consideration of the EU's legislation, a number of strange everyday examples became apparent. The plastic wrapping surrounding a loaf of bread could technically be multi-use – the consumer simply fills it with a loaf of bread purchased from a baker. Similarly, a packet of confectionary that comes with a peelable sticker could be filled with more items, but this rarely happens. When a packet of sweets is considered through this definitional lens, the individual wrapping surrounding a mint or boiled sweet is 'single-use' but the packet is 'multi-use' as a consumer could fill it with other sweets. Again, commonly littered items demonstrate that both the single-use and multi-use items are discarded at the same time, undermining the progress that legislation is intended to make.

The role of the UK Internal Market Act 2020

1. The UK Internal Market Act 2020 provides a significant potential impediment to the success of the Welsh legislation. Under the terms of the 2020 Act, the principles of Mutual Recognition and Non-Discrimination are central features, which restricts the ability of one country of the UK to restrict the availability of a product that is otherwise available in another country.
2. Exemptions are available via a circuitous process of negotiating a Statutory Instrument to disapply these principles in particular circumstances and for particular products.
3. This is inevitably a cumbersome and time-consuming process and one that can be highly contentious, even concerning the need to address an issue such as single-use plastic that has popular pan-UK support.
4. The draft Welsh legislation goes beyond the items considered in the recent United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles: Single-Use Plastics) Regulations 2022 – notably in its listing of carrier bags, which are not considered in the Regulation.
5. The process makes it difficult for the Senedd (or similar body) to pivot quickly and reduce the availability of other products, or those that are of particular concern in Wales, but not necessarily in other parts of the UK.
6. The operation of the 2020 Act thereby 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.
7. The prospects for a judicial review of the constraints on Senedd competence in this respect have been limited to those areas in which clear draft legislation exists – the courts will not entertain hypothetical challenges on the basis of legislative intent. This raises the possibility of slowing legislative progress on environmental law-making that diverges from other parts of the UK to address specific Welsh concerns.

Future opportunities

1. In March 2022 UNEA Resolution UNEP/EA5/L23 was adopted by the international community, committing the UN to developing a legally-binding instrument on plastic pollution by the end of 2024.
2. Considerable uncertainty remains in this respect and the Intergovernmental Negotiating Committee will convene its first meeting in late November 2022.

3. The UK's pre-position is for the instrument to be based upon the report, 'Possible elements of a new global agreement to prevent plastic pollution' produced by the Nordic Council of Ministers as a means of framing the negotiations.
4. The Senedd is arguably the most advanced of the national Parliaments in developing a tangible law and policy on plastic pollution and there are thus opportunities to influence the UK negotiating position in this respect, while Welsh legislative concepts such as the wellbeing of future generations could be used as a guide in the early stages of the negotiations.