

SL(6)390 – The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 (Commencement No. 1) Order 2023

Background and Purpose

The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 (“the Act”) prohibits the supply of specified single-use plastic products to consumers in Wales, unless an exemption applies. The specified products and relevant exemptions are set out in the Table in the Schedule to the Act.

Sections 3, 4, 17, 21, 22 and 23 of the Act came into force on 7 June 2023, the day after the Act received Royal Assent.

The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 (Commencement No. 1) Order 2023 (“the Order”) brings into force all other provisions of the Act, with the exception of three entries in the Table of prohibited single-use plastic products.

As a result, from 30 October 2023 it will be an offence for a body corporate, a partnership, an unincorporated association or a sole trader to supply, or offer to supply, the following single-use plastic products to a consumer in Wales, unless an exemption applies:

- cups,
- cutlery,
- drink-stirrers,
- straws,
- plates,
- takeaway food containers,
- balloon sticks, and
- cotton buds.

Procedure

Affirmative

The Welsh Ministers have laid a draft of the Order before the Senedd. The Welsh Ministers cannot make the Order unless the Senedd approves the draft Order.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny



The following three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

In accordance with section 21(3) of the Act, the Order is subject to the draft affirmative procedure. It is very unusual for a commencement order to be subject to this level of Senedd scrutiny; the majority of commencement orders are not subject to any Senedd scrutiny procedure.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

According to paragraph 4.4 of the Explanatory Memorandum, Welsh Government intends to introduce the prohibition of the specified single-use plastic products in phases.

The Order brings into force eight of the 11 entries in the Table of prohibited products in the Schedule to the Act. Welsh Government is asked to explain:

- why the prohibitions relating to lids for cups or takeaway food containers, carrier bags and products made of oxo-degradable plastic are not being commenced at this stage,
- when the remaining entries in the Table will be commenced, and
- how many further phases are planned to bring the remaining prohibitions into force?

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The United Kingdom Internal Market Act 2020 (“UKIMA”) contains market access principles which, broadly, ensure that goods which may be sold lawfully in one part of the UK may also be sold elsewhere in the UK, free from any relevant requirements that would otherwise apply to the sale in that other part of the UK. Paragraph 13 of Schedule 1 to UKIMA provides that the market access principles do not apply to legislation so far as it prohibits the sale of certain specified single-use plastic items.

It is noted that the products listed in the entries in the Table brought into force by the Order are the same as the items excluded from the UKIMA market access principles by paragraph 13 of Schedule 1 to UKIMA.

The products listed in the three entries in the Table which are not brought into force by the Order – lids for cups or takeaway food containers, carrier bags and products made from oxo-degradable plastic – are not included in paragraph 13 of Schedule 1 to UKIMA and so do not appear to be covered by the exclusion from the market access principles.

During passage of the Bill that became the Act, this Committee raised concerns about the impact of the UKIMA market access principles on the effectiveness of the Bill’s provisions.



Welsh Government is asked whether it continues to hold the view that the Act will be “*fully effective and enforceable*”¹ when fully commenced.

Welsh Government response

A Welsh Government response is required to the second and third reporting points.

Legal Advisers

Legislation, Justice and Constitution Committee

10 October 2023

¹ [Letter from the Minister for Climate Change to the Legislation, Justice and Constitution Committee, 9 December 2022](#)



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee