

SL(6)549 – The Environmental Protection (Single-use Vapes) (Wales) Regulations 2024

Background and Purpose

These Regulations prohibit the supply (including for free) of single-use vapes in Wales. The Explanatory Memorandum states that the policy objectives are to:

- Rapidly reduce environmental harm caused by the consumption of critical raw materials and incorrect disposal of single-use vapes in residual waste streams and being littered.
- Encourage wider and more sustainable behaviour change around the consumption of single-use products to tackle the throw-away culture.
- Encourage a shift towards reusable alternatives.

Corresponding regulations are being made for England and Scotland that are intended to be brought into force at the same time as these Regulations.

Procedure

Affirmative.

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

Technical Scrutiny

The following 5 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

In the preamble, section 140(1)(d) of the Environmental Protection Act 1990 is cited as one of the enabling powers upon which these Regulations rely. Section 140(1)(d) enables the Welsh Ministers to make Regulations that prohibit or restrict the storage of any specified item or article to prevent them from causing pollution of the environment and harm to the health of animals. However, these Regulations do not appear to make any provision in relation to the storage of single-use vapes. Therefore, this power does not appear to have been exercised in the making of these Regulations by the Welsh Ministers. The Committee notes that section 140(1)(d) of the Environmental Protection Act 1990 has not been cited in the preamble of England and Scotland's corresponding regulations that rely on the same enabling Act.

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.



Regulation 9(4)(e) includes, as a condition which may give rise to a warrant for entry being granted, the circumstance where an application to enter the premises would defeat the object of the proposed entry. It is not clear what application is being referred to in this context, or to whom it might ordinarily be made when it would not defeat the object of the proposed entry.

3. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulation 10(1)(d), there is a difference between the English and Welsh text. In the English text, it states “sub-paragraph (c)” but in the corresponding place in the Welsh text it states “f (c)”. Therefore, in the Welsh text, there is no word to convey the meaning of “sub-paragraph” and the reference is also incorrect.

4. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

In the Schedule, in paragraph 29(2), the term “costs” is defined but it is not stated where in these Regulations the term bears that meaning. The term “costs” is also used in paragraph 26(2) of the Schedule in a slightly different context. The Committee therefore queries whether paragraph 29(2) should note where the term “costs” bears the meaning given to it in that provision?

5. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Paragraph 29(4) of the Schedule to the Regulations allows a person upon whom an enforcement cost recovery notice has been served to require that the regulator provide a detailed breakdown of the amount. However, there is no information provided as to how that person must go about exercising this right, for example, whether the request has to be in writing and/or has to be within a set timescale. There is also no requirement upon the regulator to provide the information in any set form or timescale. It would assist any person seeking to rely on this provision to have additional information on how to go about it. It is noted that paragraph 29 of the Schedule goes on to require the regulator to provide guidance on this process, but there is no requirement for such guidance to cover these issues.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

6. 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 the preamble, in paragraph (a), it states that the Welsh Ministers consider it appropriate to make these Regulations to prevent the articles specified in them from causing pollution of



the environment and harm to the health of animals. There is no reference to the health of “plants”, which is found in the preamble of the regulations that will apply in England. The prevention of harm to animals or plants along with human health and the environment is noted in section 140(1) of the Environmental Protection Act 1990 as a purpose for exercising the powers found in that section. Clarification is therefore requested as to why “plants” is not included in the preamble to the Regulations.

Welsh Government response

Government response: The Environmental Protection (Single-use Vapes) (Wales) Regulations 2024

Technical Scrutiny point 1: The point is gratefully noted. The main offence introduced by the Regulations can be committed by having single-use vapes in one’s possession for supply. It is envisaged that “having in possession” may take the form of storage of single-use vapes on business premises (e.g. in a locked cupboard in the back of a shop). On this basis, it is considered necessary for the Regulations to cite section 140(1)(d) of the Environmental Protection Act 1990.

Technical Scrutiny point 2: The point is gratefully noted. This is a standard provision used in many environmental SIs and we consider that its meaning is both clear and commonly understood. The Welsh Government does not consider an amendment is required.

Technical Scrutiny point 3: The Welsh Government is grateful to the Committee for identifying this minor equivalence point between the English and Welsh texts. We accept the point raised and will be making the corrections identified in the table annexed to this response prior to the making of the Regulations.

Technical Scrutiny point 4: The point is gratefully noted. In respect of paragraph 29(2) to the Schedule, the Welsh Government considers it is clear from both the heading and text of paragraph 29(1), and from the non-exhaustive list of matters which may be included as “costs”, that “costs” relates to the recovery of costs associated with the service of a stop notice or compliance notice. It is therefore clear that this definition of “costs” is limited to paragraph 29 only. Similarly, the Welsh Government considers that it is clear from the reading of paragraph 26(2) that “costs” has a narrower definition applicable only to paragraph 26 (being those costs incurred in fulfilling the unfulfilled requirements of a compliance notice or a third-party undertaking that has not been complied with). The Welsh Government does not consider an amendment is required, as, in the circumstances, the legal meaning is clear.

Technical Scrutiny point 5: The point is gratefully noted. We will bring this point to the Regulators’ attention, for their consideration as to whether this point should be addressed in guidance.

Merit Scrutiny point 1: The point is gratefully noted. It is well known that littering of single-use vapes can cause harm to animals via ingestion, poisoning and choking hazards. The impact of littering of single-use vapes on plants has generated less research and is therefore less



certain. Section 140(1) of the Environmental Protection Act 1990 states that Regulations may be made where there is a potential for harm to the health of animals *or* plants; it is not necessary for the harm to encompass both. The absence of “plants” from the preamble does not have any practical impact on the operation of the instrument (nor does it lessen any protection that the regime introduced by the SI will nonetheless offer to plants). The Welsh Government will not seek to amend the instrument in respect of this point.

Technical drafting corrections to be made prior to the making of the Regulations

| CORRECTIONS MADE TO THE WELSH TEXT PRIOR TO MAKING | CORRECTIONS MADE TO THE ENGLISH TEXT PRIOR TO MAKING |
|---|---|
| Rheoliadau Diogelu’r Amgylchedd (Fêps Untro) (Cymru) 2024 | The Environmental Protection (Single-use Vapes) (Wales) Regulations 2024 |
| In paragraph 1(1) of the Schedule, in the opening words before paragraph (a), “i” will be inserted before “is-baragraff (2)”. | N/A. |
| In Regulation 10(1)(d), the reference to “f (c);” will be changed to “is-baragraff (c)”. | N/A. |

Legal Advisers

Legislation, Justice and Constitution Committee

25 November 2024

