





Llywodraeth Cymru  
Welsh Government

# Justice System Impact Identification

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Form

Overview

Welsh Government officials are submitting this form

- For assessment by the Ministry of Justice

The Welsh Government's assessment of the impacts of this legislation on the justice system is that it has

- Low potential impact

This is because:

1. Bill Title

- We received overwhelming support to our consultation which proposed to ban the supply of unnecessary, commonly littered single use plastic products. Concern over the environmental impact from plastic pollution was the main reason provided for this support, also that a number of businesses are already voluntarily shifting to alternatives materials.
- This legislation will be accompanied by awareness raising campaigns and the publication of guidance to help support businesses and regulatory bodies in preparing for its implementation. The intention is to provide information which will ensure there is clarity for enforcing officers, suppliers, retailers and members of the public.
- Whilst the Bill creates a Local Authority led enforcement regime, we envisage variable penalty notices and criminal sanctions will be issued as a last resort. Discussions with Local Authorities have indicated Enforcement Officers often seek to engage with businesses before taking formal enforcement action. Only when this approach fails, or a breach of the legislation is judged to be deliberate or significant in scale, will civil sanctions such as compliance notices, stop notices and variable monetary penalties be used. It is important to note the Bill itself will not include a civil sanction regime and such a regime will instead be introduced via secondary legislation made under a specific power in the Bill. Where there is repeated non-compliance with the legislation then enforcement would move to utilise criminal sanctions. A Welsh Government review of civil sanctions for environmental offences in 2015 reported the use of civil sanctions deterred non-compliance, provided an effective and fair way of enforcement, reducing risks of environmental harm and prevent harm from occurring or continuing.
- On the basis of the above, we anticipate the number of cases requiring enforcement action will be minimal.

1.1. Working title of Bill

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

## 2. Policy lead contact details

2.1. Name / Job Title

2.2. Department / office / business area

2.3. Telephone number

2.4. Email address

2.5. a) Date of submission of this form  
2.6. b) When is a response required?

## 3. Additional contact details

3.1. Legal Contact

3.2. Telephone number

3.3. Email address

## 4. General information

4.1. Please provide a) contact details of your lead official for the appraisal of costs or savings and;  
b) the Justice Policy lead if known.

a) Economist  
 b) Head of Justice Policy

4.2. Have you notified the judicial office of your proposals by completing Desk Instruction 7? (please seek advice from your legal advisors)

Yes

No (please explain why)

4.3. In brief, what is your proposal? (no more than half a page) (*This information is provided to help MoJ officials to understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts*).

The Environmental Protection (Single-use Plastic Products) (Wales) Bill (“the Bill”) proposes to make it an offence for a person to supply or offer to supply (including for free), the following commonly littered and unnecessary disposable single-use plastic (SUP) products to a consumer in Wales:

1. plates
2. cutlery
3. drinks stirrers
4. drinking straws (including attached straws)
5. cups made of polystyrene
6. takeaway food containers made of polystyrene (including their lids)
7. plastic-stemmed cotton buds
8. sticks for balloons
9. oxo-degradable products
10. cup lids made of polystyrene
11. plastic single-use carrier bags (SUCBs)

This is the first key step in our phased approach to tackle plastic pollution and is intended to help accelerate the shift in consumer behaviour towards reusable, more easily recyclable and less environmentally harmful alternatives.

Once the legislation is in place, it will be an offence for businesses to supply or offer to supply, to end users in Wales, any of the single use plastic items included in this legislation. There are also some related offences, for example, offence associated with obstructing an enforcement officer.

We intend to introduce a civil sanction regime under secondary legislation made under a specific power in the Bill to be used in the event of non-compliance with the legislation. We propose that Local Authorities will be the regulator to carry out this enforcement role via their Trading Standards or equivalent officers, given their experience in enforcing other similar environmental legislation such as the single use carrier bag charge and the microbeads ban.

Discussions with regulators of other environmental legislation (for example the single use carrier bag charge and microbead ban) has shown education and awareness raising are often considered the first step in encouraging compliance. Where this fails, we believe adopting the use a mix of civil and criminal sanctions, with a range of enforcement options, will allow regulators a greater degree of flexibility depending on the circumstances of the offence. This includes the option for criminal sanction where breach of the ban is judged to be deliberate or significant in scale. Members of the public and retailers will be able to challenge a decision made by appealing through the court system.

4.4. Is this legislative proposal similar in any way to legislation being brought forward in England? If so, please name that legislation and identify below any ways in which the legislation brought forward in Wales will differ.

If the legislation has no substantive difference from that in England, there may be no need to complete all parts of the JSII form.

Same as English legislation

The Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020. These cover items 2-4 of our legislation detailed above.

The UK Government has also [consulted](#) on proposals to ban single use plastic cutlery, plates, balloon sticks, expanded and extruded polystyrene cups, beverage containers and food containers. This closed on the 12th February 2022 and it is anticipated legislation to ban these items will come into force in early 2023 and will cover items 1, 5,6,7, and 8 of our legislation detailed above.

Differs from English legislation

The English legislation includes the civil sanctions regime on the face of the Regulations while the Bill will not include the civil sanction regime. Instead, the civil sanctions regime will be introduced via secondary legislation made under a specific power in the Bill.

4.5. Please specify the name of any other related legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

Related legislation:-

Consequential amendments will be required to the Single Use Carrier Bag Charge (Wales) Regulations 2010 in light of provisions in the Bill relating to single use plastic carrier bags. It's likely that these amendments will be made by way of regulations.

The Civil sanction regime will be introduced via secondary legislation made under a power in the primary legislation.

4.6. Please indicate the anticipated date when a) the legislative changes are expected to come into force and b) the date when the first anticipated impact on the justice system will arise.

- a) The legislation is expected to come into force in Autumn 2023
- b) Following coming into force date

4.7. If altering or introducing an offence, sanction or penalty, which of the following groups will the proposal affect and in what circumstances? (Tick all that apply)

- Individuals
- Private Institutions (e.g. Businesses)
- Public Institutions (e.g. Government Departments)

4.8. Does your legislation only have impact in Wales or are you working jointly with other administrations? Tick all that apply and provide brief details as appropriate, including whether your proposal will create different laws in Wales compared to England, Scotland and / or Northern Ireland.

Please note that, with the exception of the devolved tribunals, the MoJ administers the justice system in England and Wales only. Please talk directly to the MoJ devolution unit if you anticipate your proposal could have an impact on courts or prisons in Scotland or Northern Ireland.

- Wales only
- England
- Scotland
- Northern Ireland
- Other (Please Specify)

The legislation will only apply in Wales. However, England, Scotland and Northern Ireland all have or are intending to ban some of the items included in our legislation. There are currently no equivalent offences being created for items 9 to 11, elsewhere in the UK.

4.9. If your legislation could directly impact visitors to Wales or other people not normally resident in Wales, or if your legislation is significantly different from elsewhere in England, Scotland or Northern Ireland;-

- a) what arrangements have you made to ensure ongoing awareness raising of the different legislative approach on this issue in Wales?
- b) what will be the implications on the enforcement agencies of taking forward action against individuals not usually resident in Wales?

- a) The legislation will broadly reflect legislation being brought into England and Scotland. On this basis, visitors will likely already be used to not being able to access the majority of products included in the legislation. Communication campaigns and awareness raising will be undertaken in advance of the legislation coming into place. This will include guidance for sellers to help inform customers of the changes and that non-plastic alternatives would be available.
- b) Members of the public will not be subject to the sanction, on this basis there will be no requirement for regulatory action against visitors to Wales.

4.10. What are the options under consideration and how does this change the existing situation?

Consider:-

It is expected the enforcement authorities will exhaust pre-civil sanction routes in the first instance before applying civil sanctions. A subsequent failure to comply may result in authorities prosecuting for a criminal offence subject to a fine.

This enforcement regime will be a mix of education, civil and criminal sanctions to encourage compliance. We believe civil sanctions introduced via secondary legislation made under a power in the Bill will provide for a flexible and proportionate approach to enforcement.

4.11. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

Trading Standards or equivalent officers within Local Authorities in their capacity as Regulators will enforce the offences under this legislation.

Appeals against any of the offences created under this Bill can be brought via the courts system.

### Criminal Offences and Civil Penalties and Sanctions

4.12. Which of the following are you creating / amending? (Tick all that apply)

- Civil Sanctions
- Fixed Penalties
- Civil Orders
- Criminal Sanctions
- Criminal Offences
- Other (Please Specify)

#### Offence of supplying or offering to supply a prohibited single-use plastic product.

It will be an offence for a person in the course of businesses to supply or offer to supply, to consumers or end users in Wales, any of the single use plastic products included in this legislation.

A person found guilty of such an offence will be liable on summary conviction to a fine which is not subject to a maximum level on the standard scale.

#### Offence of obstruction

It will also be an offence under the Bill to intentionally obstruct an authorised officer of a Local Authority from exercising their functions under the Bill (which relate to powers of entry and inspection etc.). Any person who fails without reasonable cause to provide the officer with facilities that are reasonably required by the officer to carry out their functions is committing an offence. However, a person is not required to answer any questions or produce any document which they would be entitled to refuse to answer or produce in the course of court proceedings in England and Wales.

A person found guilty of such an offence will also be liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

It is expected the enforcement authorities will exhaust pre-civil sanction actions in the first instance and then apply civil sanctions (to be introduced via secondary legislation made under the Bill) and a failure to comply may result in authorities prosecuting for a criminal offence subject to a fine.



4.13. If you are creating a criminal offence, is it:

- Summary Only (heard before a bench of lay magistrates / judge only)
- Triable Either Way
- Indictable Only (heard before a judge and jury)

In cases where the maximum penalty is to be an unlimited fine, and a triable either way offence is warranted, please explain why a summary only offence is not considered appropriate. This is especially relevant if few, if any, cases are anticipated.

A person found guilty of an offence of supply or offering to supply a prohibited single use plastic product will be liable on summary conviction to a fine which is not subject to a maximum level on the standard scale. This is allowed via section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which removed the £5,000 cap (level 5 on the standard scale), or a cap of any higher amount, on fines that can be handed down by a Magistrates' Court for summary only offences.

4.14. Who will be responsible for the enforcement of your legislative proposal and how will they take this role forward? Will there be an increased / reduced need for enforcement action?

We intend to introduce an enforcement regime to be used in the event of non-compliance with the legislation. We propose that Local Authorities will be the regulator to carry out this enforcement role via their Trading Standards or equivalent officers, given their experience enforcing other environmental Regulations such as the single use carrier bag charge and the microbeads ban. It is anticipated that despite communication campaigns and awareness raising in advance of the legislation being introduced, there will be an initial period of non-compliance requiring enforcement action. Experience with the Welsh regulations referenced above suggests this requirement then decreases as sellers familiarise themselves with the legislation and supporting guidance.

We have consulted with the Welsh Local Government Association on these proposals.

4.15. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

Previous similar environmental legislation (the single use carrier bag charge and ban on microbeads) have not resulted in any cases being brought before courts. Whilst this legislation is not directly comparable, it has shown that through sufficient awareness raising, guidance and providing support to sellers, high compliance rates can be achieved.

It should also be noted in advance of legislation, a large number of retailers<sup>1</sup> have already undertaken voluntary action to remove these items from their supply chain and have shifted to non-plastic alternatives.

In addition to this, retailers have been given almost two years to prepare for compliance, through media attention, a formal public consultation, and targeted consultation exercises of nine of the 11 items included in the legislation. Further, guidance will be published by the Welsh Government and the Regulator to enable the general public to understand the application of this legislation.

On this basis, the Welsh Government is of the view that the risk of non-compliance amongst retailers will be low, however we are unable to provide a specific number.

4.16. Do you expect proceedings to be heard in the Magistrates' Court, the Crown Court, or a Civil Court? What will the proportions be?

Any prosecution for an alleged criminal offence under this legislation will be tried in the Magistrates Court.

We expect the number of proceedings to be minimal.

4.17. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine or custody, please indicate and explain the circumstances which would result in a custodial sentence upon conviction and the proportion of custodial penalties which will be at the maximum level.

This legislation provides that a person found guilty of an offence of supply or offering to supply a prohibited single use plastic product will be liable on summary conviction to a fine which is not subject to a maximum level on the standard scale.

This legislation also provides that a person found guilty of intentionally obstructing an authorised officer of a Local Authority from exercising their functions under the Bill (which relate to powers of entry and inspection etc.) will be liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

However, it is intended that where a Regulator receives a report of a breach of the regulations, or witnesses such a breach through independent proactive investigation, the first action is for the Regulator to explain the regulations to the business and provide a time period to comply with the regulations. If that failed to encourage compliance, then the next step would be for the Regulator to use the sanctions available to them under the Civil Sanctions regime which will be introduced via secondary legislation made under this Bill. If this action still failed to encourage compliance, then only then could business face a fine on summary conviction.

4.18. Please provide details of any proxy or current offences and / or penalties on which the proposed penalties are based. If mirroring / comparing existing legislation, ensure that reference is made to the most recent versions of the legislation (via Westlaw, the online legal research service) as this is not always available online.

The offences set out in this legislation mirror those used in The Environmental Protection (Microbeads) (Wales) Regulations 2018.

4.19. Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>.

This legislation only applies in Wales.

4.20. What will be the short, medium and lifelong implications for an individual found guilty of this offence, and how is this proportionate to the offence created?

Short term implications are that the person found guilty of an offence under this Bill is likely to first face civil sanctions. This civil sanction will not be included on the face of the Bill but will instead be introduced via secondary legislation made under a specific power in the Bill.

Where there is evidence of persistent non-compliance, the regulator can seek to pursue criminal sections. A criminal sanction will only be pursued if the Regulator believes that the circumstances of the offence warrant this response.

4.21. Does this legislation impose any duty on the public sector? If so, please provide your assessment of the likelihood of individuals or businesses taking action against the public sector for non-compliance with this legislation.

Local Authorities Trading Standards or equivalent officers will be the Regulators for the purposes of this legislation, and they will draft and publish guidance to set out how they will carry out these functions.

The decision of the regulator may be subject to Judicial Review.

## 5. HM Courts & Tribunals Service and the Welsh Tribunals Service

### Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

5.1. Do you expect there to be a change in Court or Tribunals process or an increase / decrease in applications / cases to HM Courts and Tribunals Service and / or the Welsh Tribunals through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

A review of the use of Civil Sanctions by the Welsh Government in 2015.

It is possible there could be a slight increase in the cases made to the Magistrates' Court as a result of this legislation.

5.2. Please confirm if the courts / tribunals would be under any duty to inform any regulatory authorities of any convictions made under this offence.

No

Yes (please provide details)

## Appeal Rights

5.3. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service or Welsh Tribunals)?

Appeals against any of the offences created under this Bill can be brought via the courts system.

The Bill will also provide authorised officers of the Local Authority (as the enforcement authority under the Bill) with the following powers to enable them to investigate whether an offence under the Bill has occurred:

- Power to make test purchases – this will enable an authorised officer to make purchases and arrangements and secure the provision of services if the officer considers it necessary for the purpose of the Local Authority's functions under this Act. This permits test purchases for example, to take place.
- Power of entry - enables an authorised officer to enter, at any reasonable time, premises (excluding premises used wholly or mainly as a dwelling) in Wales if the officer has reasonable grounds to believe that an offence under section 2 has been committed in the area of the Local Authority, and the officer considers it necessary to enter the premises for the purpose of finding out whether such an offence has been committed. This power to enter premises does not enable the authorised officer to enter by force. If required, an authorised officer must, before entering the premises, show evidence of their authorisation.
- Warrant to enter a dwelling – this provides that a justice of the peace may issue a warrant to enable an authorised officer to enter a premises in Wales used wholly or mainly as a dwelling in certain circumstances. A warrant may be issued only where the justice of the peace is satisfied on sworn information in writing that there are reasonable grounds to believe an offence has been committed in the area of the Local Authority, and it is necessary to enter the premises for the purpose of establishing whether such an offence has been committed. Entry may be obtained by force if need be.
- Warrant to enter other premises – this provides that a justice of the peace may issue a warrant to enable an authorised officer to enter any premises in Wales (other than premises used wholly or mainly as dwellings which are already dealt with above), in certain circumstances. Entry may be obtained by force if need be.
- Powers of inspection – this confers powers on authorised officers entering premises to do various things so as to find out whether an offence under the Bill has been committed. Officers may carry out inspections and examinations of premises. Officers may also request items, inspect them, take samples from them and/or take the item(s) and/or samples from the premises.

In relation to the above powers, the Bill will enable a person with an interest in anything taken away from the premises by an authorised officer to apply to a Magistrates' Court for an order requesting the release of the property. Depending on the court's consideration of an application, it may make an order requiring the release of the retained property.

The Bill will also provide a right for a person with an interest in anything which has been taken possession of to apply to a Magistrates' Court for compensation. Where the circumstances set out in the Bill are satisfied, the court may order the Local Authority to pay compensation to the applicant.

5.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

No.

### Alternative Dispute Resolution

5.5. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

Yes, the possibility of undertaking alternative dispute resolution procedures will be open to all Local Authorities in their capacity as Regulators. The legislation builds in a 28 day period for representations and objections to the Regulator before a sanction is imposed also.

### Prosecution and Enforcement

5.6. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please identify who will prosecute.

Any prosecution would be undertaken by Local Authorities, specifically Trading Standards or equivalent Officers in their capacity as Regulators.

5.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

### HMCTS Procedural Rules, Sentencing and Penalty Guidelines

5.8. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

No

5.9. Will the proposals require sentencing and / or penalty guidelines to be amended?

## 6. Legal Aid and Court Fees

6.1. What evidence is there that individuals affected by your proposal will be able to secure and afford:

- legal representation and legal advice in order to secure a fair hearing of their case
- associated court fees

What legal costs for a typical case could each party bear and what provisions exist for a party found innocent to recover all or any of their legal costs?

Individuals subject to proceedings will mostly be operating in a commercial capacity. In most circumstances the Welsh Government anticipates they either have insurance to cover legal advice, or the revenue from the business will provide them with enough income to afford the costs associated with proceedings, should they be taken to court.

6.2. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- Criminal
- Civil (including Family)
- Asylum
- Legal aid not available (please provide supporting evidence)

6.3. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

N/A

## 7. Prisons and Offender Management Services

### Impact on HM Prison Services

7.1. Will the proposals result in a change in the number of offenders being committed to custody (including on remand) or probation (including community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and the source for your information.

No – the criminal sanctions available under this Bill are fines on summary convictions.

7.2. Does the proposal create, remove or change an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison / probation service? If so, please provide details, including the expected impact on probationary services.

No

## 8. Main Justice System Impacts Identified

### 8.1. Volumes and Costs or Savings (please lengthen if necessary):-

NB in all cases, assume an average annual figure or make clear if a different timespan is being considered. Where there may be significance variance from average in the first years of implementation, please add additional information in the notes below.

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Criminal Offences and Sanctions					
Civil Penalties					
HM Courts & Tribunals Services					
Welsh Tribunals					

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Legal Aid					
Notes:-					

**8.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):**

Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs or savings p.a. (£) <sup>2</sup> (please provide numeric estimate and min-max range)
n/a					
n/a					
Notes:					

**Please be aware that any costs or savings identified as a result of any changes to the justice system /additional work must be factored in to the financial assessment of your legislation.**

<sup>2</sup> The MoJ publish statistics on "Prison cost per place and cost per prisoner:" - see <https://www.gov.uk/government/statistics/announcements/prison-cost-per-place-and-cost-per-prisoner-2017-to-2018>