

POLICY NOTE

THE ENVIRONMENTAL PROTECTION (MICROBEADS) (SCOTLAND) REGULATIONS 2018

SSI 2018/162

Introduction

1. The above instrument was made in exercise of the powers conferred by section 140(1)(b) and (c), (3)(c) and (d), and (9) of the Environmental Protection Act 1990 (“the Act”). The instrument is subject to negative procedure.

Policy Objectives

2. The instrument makes it an offence to manufacture any rinse-off personal care product which uses microbeads as an ingredient. It also makes it an offence to supply, offer to supply or have in possession for supply any rinse-off personal care product containing microbeads as an ingredient. The aim of the instrument is to protect our marine environment from plastic pollution. It is being introduced in conjunction with the other administrations of the United Kingdom to allow for a UK-wide ban.

Consultation

3. A public consultation entitled “Proposals to ban the use of plastic microbeads in cosmetics and personal care products in the UK and call for evidence on other sources of microplastics entering the marine environment” took place across the whole of the UK from 20th December 2016 to 28th February 2017. The consultation was made publicly available at <https://consult.defra.gov.uk/marine/microbead-ban-proposals/> and publicised in the national media. The consultation asked for comments on proposals for the implementation of a UK-wide ban on the manufacture and sale of cosmetics and personal care products containing microbeads which may cause harm to the marine environment. The consultation also sought to gather evidence on the extent of the environmental impacts of further sources of potential marine plastic pollution, to inform future UK actions to protect the natural environment.

4. A total of 431 responses to the consultation were received, the majority of which supported the ban. Most responses, (289), were from individuals, and the rest from a wide range of organisations including cosmetics companies and associations, environmental charities and campaign groups, academic institutions, local authorities and fishing organisations.

As a result of that consultation the following issues were raised, resulting in the actions stated;

Issue Raised	Result
<p>Scope of ban</p> <ul style="list-style-type: none"> • Restriction of legislation to match that of the US which limits banned products to those used for cleaning or exfoliating. • Focus of legislation to target only plastics known to be harmful • Expanding scope to include ‘stay-on’ products including some make-ups and sunscreen, and the addition of domestic cleaning products. • Maintaining the proposed scope to not include ‘stay-on’ products as reformulation will be an extremely lengthy and expensive process for the industry 	<ul style="list-style-type: none"> • Overall the scope was supported and has remained. • There is insufficient evidence as to the potential harm caused by different types of plastics when they enter the marine environment. A ban of all plastic microbeads therefore demonstrates a precautionary approach.
<p>Timescale</p> <ul style="list-style-type: none"> • There were calls to introduce the bans sooner for environmental protection purposes and some to bring it in later to allow time to extend the bans to more products. 	<ul style="list-style-type: none"> • As the scope was not to change, the agreed timescale of introducing bans in 2018 remained, allowing time for all the Devolved Administrations to draft their own regulations.
<p>Alternative wording</p> <ul style="list-style-type: none"> • Clearer definitions of ‘plastic’ and ‘microbead’ were requested, and some provided alternative definitions. 	<ul style="list-style-type: none"> • Definitions were reconsidered and amendments agreed with industry trade associations.
<p>Exemptions</p> <ul style="list-style-type: none"> • There was a call for exemptions to be made for medical products and for biodegradable plastic products. 	<ul style="list-style-type: none"> • No examples were given or found of effected medical products. However should a product ever be developed then an exemption will be considered. • There are no agreed standards for biodegradable plastics and as such an addition of such an exemption would be inappropriate given that the intention of the legislation is for environmental protection.
<p>Product labelling and/or campaign to ensure relevant products are wiped off with residue going into the bin rather than down the plug hole.</p>	<ul style="list-style-type: none"> • This is something which could be considered for wider use products such as cosmetics, but many of the targeted products are designed for shower use.

<p>Compliance and Enforcement</p> <ul style="list-style-type: none"> • Methods of compliance testing and means of monitoring were suggested, with many stating that the need for monitoring will be low given the industry's move away from plastic microbeads in products already. • Industry self-regulation was suggested, as was Local Authority enforcement by Trading Standard or Environmental Health departments. 	<ul style="list-style-type: none"> • It has been agreed across the administrations that the level of non-compliance is expected to be low. • However, it was felt that enforcement was still needed and the Act allows for Local Authorities to do so. • Scottish Government engaged with Trading Standards Chief Officers of Scotland when developing this legislation.
<p>Cost to industry</p> <ul style="list-style-type: none"> • Industry respondents suggested that there may be an additional cost to developing alternative ingredients for their products. 	<ul style="list-style-type: none"> • There are no affected manufacturers in Scotland.
<p>Consistency with other countries' bans</p>	<ul style="list-style-type: none"> • Our approach has targeted products where there is clear, robust evidence that microbeads reach the marine environment. • We have shared our approach with other countries and encourage them to follow our lead. We are working with OSPAR, other EU Member States, the G7 and other relevant international fora to support the development of wider international bans, which align with the UK ban.
<p>Impact on Imports</p> <ul style="list-style-type: none"> • Few respondents provided suggestions of potential impacts on imports 	<ul style="list-style-type: none"> • many countries, including countries that import cosmetics and personal care products to the UK are either implementing bans of their own or are considering doing so. Therefore we do not consider that there will be a significant impact on imports.

<p>Costs/risks of alternatives</p> <ul style="list-style-type: none"> • suggestions included shells, seeds and kernels, sugar, salt, fruit and seaweed, starches and minerals. • Several respondents commented on the importance of ensuring that any environmental impacts of potential alternatives were carefully considered. 	<ul style="list-style-type: none"> • We agree that it is important for manufacturers to ensure that any alternatives to plastic microbeads should be sustainable.
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5. A full list of consultation respondents who agreed to the release of this information is attached to the consultation report published on the Scottish Government website, <http://www.gov.scot/Topics/marine/marine-environment/litter/Microplastics>, it includes the British Plastics Federation, British Retail Consortium, GlaxoSmithKline, Microbeads coalition (Greenpeace, Marine Conservation Society, Fauna and Flora International, Environmental Investigation Agency), Proctor and Gamble and the Society of Chief Officers of Trading Standards of Scotland.

6. On 22nd December 2017, a public notice of the draft Environmental Protection (Microbeads) (Scotland) Regulations 2018 was placed in the Edinburgh and London Gazette. The notice provided a link to the Regulations and invited representations to be received by 11 January 2018. No representations were made by email or post.

Impact Assessments

A Business and Regulatory Impact Assessment has been completed on the effects of the instrument in Scotland. In addition there is an Impact Assessment of the introduction of the bans across the UK.

No equality issues were raised as part of the consultation process and it is considered that a full Equality Impact Assessment is not required as the products are used indiscriminately across the population.

Financial Effects

There is no financial impact of this policy on the Scottish Government, minimal impact on local government enforcement departments and minimal impact on Scottish industry as there are no known businesses manufacturing affected products in Scotland.

Scottish Government
Marine Scotland Directorate

16 May 2018