

# **Draft Environmental Protection (Single-use Plastic Products and Oxo-degradable Plastic Products) (Scotland) Regulations 2021**

**Discussion Paper**

**March 2021**



**Scottish Government**  
Riaghaltas na h-Alba  
gov.scot

## Overview

We are proposing to introduce market restrictions on single-use plastic items and on all oxo-degradable products as identified in Article 5 of the EU Single Use Plastics (SUP) Directive (EU) 2019/904. We have previously gathered views on our approach to this legislation through a twelve week [Introducing market restrictions on single-use plastic items in Scotland consultation](#).

The next stage of the process is to make the draft regulations available for public comment. We would therefore like to invite comments from stakeholders and the general public on the draft Environmental Protection (Single-use Plastic Products and Oxo-degradable Plastic Products) (Scotland) Regulations 2021.

## Responses on these draft regulations

We are inviting responses on these draft regulations by 13 April 2021. The draft regulations can be found at the end of this document.

Please respond using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond online at <https://consult.gov.scot/environment-forestry/draft-environmental-protection-single-use-plastic/>. You can save and return to your responses during the period 17 March 2021 to 13 April 2021, please ensure that responses are submitted before the closing date of 13 April 2021.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form and send to:

Zero Waste Unit  
Scottish Government  
3H North  
Victoria Quay  
Edinburgh, EH6 6QQ

## Handling your response

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have

to consider any request made to it under the Act for information relating to responses made to this exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>. Please note that no responses to this exercise will be published.

## **Next steps in the process**

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us finalise these regulations.

## **Comments and complaints**

If you have any comments about how this exercise has been conducted, please send them to the contact address above or at [SUPD@gov.scot](mailto:SUPD@gov.scot).

# Draft Environmental Protection (Single-use Plastic Products and Oxo-degradable Plastic Products) (Scotland) Regulations 2021

## Introduction

1. We are seeking views on the draft regulations for introducing market restrictions – effectively a ban – for problematic single-use plastic (SUP) items and all oxodegradable products in line with Article 5 of the EU Single-Use Plastics Directive (EU) 2019/904 (hereafter referred to as the “SUP Directive”).
2. The initial consultation, [Tackling Scotland’s Throwaway Culture: Introducing Market Restrictions on Problematic Single-Use Plastic Items in Scotland](#), was carried out between 12 October 2020 and 4 January 2021. It sought views on the items to be covered by the restrictions, and how the restrictions might be implemented.
3. The full independent consultation analysis report has now been published on the [Tackling Scotland’s Throwaway Culture: Introducing Market Restrictions on Problematic Single-Use Plastic Items in Scotland](#) consultation page alongside individual consultation responses, where permission was granted to do so.
4. The consultation received 2,689 responses, comprising 787 substantive responses and 1,902 campaign responses. There was strong support, among both organisations and individuals, for market restrictions to be introduced on single-use plastics (i.e. single-use plastics supplied in a commercial context). Among individuals, 94% were in favour of a ban on all the items specified in the consultation paper. Among organisations, the proportion in favour of a ban ranged from 76% for single-use plastic plates, to 91% for single-use plastic balloon sticks, and for food and beverage containers made of expanded polystyrene.
5. Full and comprehensive impact assessments will be published alongside the final regulations, building upon evidence and information received throughout the consultation process.

## Background

6. The Scottish Government has committed to meet or exceed the standards set out in the European Union's SUP Directive. Scotland's position remains clear that we aim to uphold the EU's core values and standards.
7. We are still awaiting further detailed guidance and guidelines from the EU Commission which were expected to be published by 3 July 2020. The Commission's guidelines, in consultation with Member States, will include examples of what is to be considered a single-use plastic product for the purposes of this Directive, and clarify the requirements set out in each article. When this further guidance is published we will consider any implications for these draft regulations.
8. The UK Internal Market Act 2020 was recently passed by the Westminster Parliament. It is currently unclear what impact the Internal Market Act 2020 may have on the final version of these Regulations. If lesser standards are applied elsewhere in the UK then it is likely the mutual recognition principle under that Act may impact on our ability to ban or restrict from the Scottish market the supply of such products produced in other nations of the UK, or imported into other parts of the UK. We are therefore continuing to engage with our UK counterparts, but are proceeding for now on the assumption that they will introduce the same or similar restrictions as those required by the SUP Directive.
9. The enabling powers we plan to use to make these regulations are contained in section 140 of the Environmental Protection Act 1990. Before making such regulations, we are required to make a draft of the regulations available for comment.

## Key Considerations

10. Within our consultation paper we proposed that we would meet the demands of the EU Single Use Plastics Directive and also exceed requirements by:
  - Not limiting market restrictions just to the supply but also banning the manufacture of the listed products and oxo-degradable products;
  - Applying market restrictions to single-use plastic bowls, trays and platters as well as plates;
  - Considering additional single-use plastic items to apply market restrictions to.

11. In particular, the analysis of consultation responses and engagement process provided an opportunity to assess evidence and understand implications of the proposals.
12. The consultation showed general support for including a ban on the manufacture of these items and whilst it is not a requirement of the SUP Directive, we have drafted regulations on the basis that manufacture will be prohibited in Scotland (with two exceptions for single-use plastic straws and single-use plastic balloon sticks.)
13. Views expressed during engagement and in consultation responses highlighted that the definition regarding single-use plastic plates, and the inclusion of bowls, should be considered carefully. There were significant concerns raised regarding including 'bowls' in the list of items to be banned due to complexities defining the differences between some bowls and some food containers. Feedback noted that some widely used products could be classed as a 'bowl', or are in fact called 'bowls' but used in the same way that a food container would be for the facilitation of takeaway food or liquid.
14. Food containers are subject to action under Article 4 of the SUP Directive - consumption reduction measures. Based on the feedback from the consultation, we plan to address single-use plastic bowls at that juncture. The Regulations, as drafted, would ban single-use food containers made from Expanded Polystyrene (as per the SUP Directive).
15. Single-use plastic spoons that are used for eating or serving food are within the scope of these regulations; however, single-use plastics spoons that are used for medicines are not covered by these regulations. Medicine spoons fall out with the definition of 'single-use plastic cutlery', so whilst there is no explicit exemption within the draft regulations, spoons (such as those supplied to measure out liquid medicine doses and measuring spoons for measuring out a quantity of powder that may be diluted) are not covered.
16. Additionally, at this time the draft regulations do not include any additional items beyond those specifically proposed in the original consultation. We will consider how to take forward action on further problematic single-use items in due course and utilise evidence offered throughout this process when doing so.
17. We have included targeted exemptions to the offences that will be created by these regulations to support independent living and provide access to single use plastic items where necessary for medical needs, for example for eating and drinking using plastic straws.
18. We will produce full guidance to accompany the final regulations which will explain the scope of the regulations and provide additional detail on how the regulations are to be implemented.

## The Regulations

19. The Regulations ban the supply, in the course of business, and the manufacture of:
  - single-use plastic expanded polystyrene beverage cups
  - single-use plastic expanded polystyrene beverage containers
  - single-use plastic expanded polystyrene food containers
  - single-use plastic cutlery
  - single-use plastic plates (including trays and platters)
  - single-use plastic beverage stirrers
  - all oxo-degradable plastic products.
  
20. The Regulations ban the supply, in the course of a business, to an end user of:
  - single-use plastic straws
  - single-use plastic balloon sticks.
  
21. A person who commits an offence of supplying or manufacturing such products is liable on summary conviction for a fine of up to level 5 on the standard scale (£5,000).
  
22. For products to which exemptions apply (single-use plastic straws and single-use plastic balloon sticks), the manufacture of the items is not banned, and it is only supply to the end-user which is an offence. This is to enable there to be a “supply chain” to ensure products are accessible in Scotland.
  
23. Many people rely on single-use plastic straws to eat and drink independently, and other options such as paper or reusable straws are not always suitable or safe. We have therefore added a number of targeted exemptions to these regulations to ensure that people who need single-use plastic straws to eat and drink independently can continue to access them.
  
24. For straws the exemptions are:
  - Supply by catering establishments and pharmacies (provided certain conditions are complied with, such as the straws being stored out of sight of customers) to ensure there is a supply of straws available for people who need them to eat and drink independently. Where a single-use plastic straw is requested, catering establishments will be still able to provide it to a customer alongside drinks or food at no cost. In a pharmacy, the exemption is in place to allow for single-use plastic straws to be purchased by those that need them, or on behalf of someone that needs them.

- Supply in care homes, prisons, schools, and premises for early learning and childcare, day care or childminding, to ensure there is a supply of straws available for people who need them
  - A medical devices and medical purposes exemption to the supply of straws:
    - which are approved medical devices under the Medical Devices Regulations 2002,
    - for use for medical purposes by or under the direction of a health professional, or
    - by a health professional for medical purposes.
  - Supply of straws that are packaging (on the basis that straws can be used to package granular medicines).
25. Furthermore, the Scottish Government will work with stakeholders, including representatives of equalities groups, to ensure that the exemption relating to single-use plastic straws is implemented in a way that respects equality interests and the dignity of those needing to access single-use plastic straws. This will be represented in the guidance that accompanies the final regulations, in addition to specific communications when the regulations come into force.
26. For balloon sticks, exemptions are in relation to supply of sticks for attaching to balloons which have industrial or other professional uses, such as for weather balloons, in line with the requirements of the SUP Directive.
27. Transitional provisions are included in the draft regulations, lasting 3 months, which allows existing stock obtained before the coming into force of the regulations to be supplied for a 3 month period after the coming into force date.

## Questions

### Question 1

Do you have any comments you would like to make regarding the scope of the provisions proposed in these draft regulations?

### Question 2

Do you have any comments you would like to make regarding the scope of the exemptions to provisions proposed in these draft regulations?

### Question 3

Do you have any other comments on the draft regulations that you would like to make?

Access and respond online at <https://consult.gov.scot/environment-forestry/draft-environmental-protection-single-use-plastic/>.

If you have any questions about this exercise, please send them to [SUPD@gov.scot](mailto:SUPD@gov.scot)



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Discussion Paper**

**RESPONDENT INFORMATION FORM**

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:  
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

**2021 No.**

**ENVIRONMENTAL PROTECTION**

**The Environmental Protection (Single-use Plastic Products and Oxo-degradable Plastic Products) (Scotland) Regulations 2021**

|  |             |
|--|-------------|
| <i>Made</i> - - - -                        | <i>2021</i> |
| <i>Laid before the Scottish Parliament</i> | <i>2021</i> |
| <i>Coming into force</i> - -               | <i>2021</i> |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 140(1)(b) and (c), (2), (3)(c) and (d), and (9) of the Environmental Protection Act 1990<sup>(a)</sup> and all other powers enabling them to do so.

In accordance with section 140(6) of that Act<sup>(b)</sup>, they have published notices in the London Gazette and in the Edinburgh Gazette and have considered the representations made to them in accordance with those notices.

**PART 1**

**Introduction**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Environmental Protection (Single-use Plastic Products and Oxo-degradable Plastic Products) (Scotland) Regulations 2021 and come into force on [ 2021].

(2) These Regulations extend to Scotland only.

**Interpretation**

2. In these Regulations—

- (a) “authorised purpose” means the purpose of determining whether an offence under regulations 3(1), (2) or (3), 5(1), 7(1), or 14(1) or (2) has been or is being committed,
- (b) “end-user” means any person to whom a product is supplied, other than for the purpose of supplying it, in the course of a business, to another person,

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(a) 1990 c.43. Section 140(3)(c) was amended by S.I. 1999/1108. The functions of the Secretary of State under section 140, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act (c.46).

(b) The requirement to consult the Advisory Committee on Hazardous Substances formerly established under section 140(5) of the Environmental Protection Act 1990 was removed by S.I. 2012/1923.

- (c) “enforcement officer” means a person authorised under regulation 17,
- (d) “food containers” means receptacles such as boxes, with or without a cover, used to contain food which is—
- (i) intended for immediate consumption, either on-the-spot or takeaway,
  - (ii) typically consumed from the receptacle, and
  - (iii) ready to be consumed without any further preparation, such as cooking, boiling or heating,
- including food containers used for fast food or other meal ready for immediate consumption, except beverage containers, plates, and packets and wrappers containing food,
- (e) “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(a)</sup>,
- (f) “oxo-degradable plastic” means plastic materials that include additives which, through oxidation, lead to the fragmentation of the plastic material into micro fragments or to chemical decomposition,
- (g) “oxo-degradable plastic product” means a product made wholly or partly from oxo-degradable plastic,
- (h) “plastic” means a material consisting of a polymer as defined in Article 3(5) of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)<sup>(b)</sup>, to which additives or other substances may have been added, and which can function as main structural component of final products, with the exception of natural polymers that have not been chemically modified,
- (i) “single-use”, in relation to a product, means that it is not conceived, designed or placed on the market to accomplish, within its life span, multiple trips or rotations by being returned to a producer for refill or re-used for the same purpose for which it was conceived,
- (j) “single-use expanded polystyrene beverage container” means a beverage container, including any cap or lid, that is—
- (i) made wholly or partly from expanded polystyrene, and
  - (ii) single-use,
- (k) “single-use expanded polystyrene cup” means a cup for beverages, including any cover, cap or lid, that is—
- (i) made wholly or partly from expanded polystyrene, and
  - (ii) single-use,
- (l) “single-use expanded polystyrene food container” means a food container that is—
- (i) made wholly or partly from expanded polystyrene, and
  - (ii) single-use,
- (m) “single-use plastic balloon stick” means a stick, including its mechanisms, that is—
- (i) designed and intended to be attached to and to support balloons,
  - (ii) made wholly or partly from plastic, and
  - (iii) single-use,
- (n) “single-use plastic beverage stirrer” means an implement that is—
- (i) designed and intended for stirring beverages,
  - (ii) made wholly or partly from plastic, and
  - (iii) single-use,
- (o) “single-use plastic cutlery” means cutlery that is—

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<sup>(a)</sup>1994 c.43. Section 2 was amended by paragraph 232(1) of schedule 22 of the Environment Act 1995 (c.25).

<sup>(b)</sup>OJ L 396, 30.12.2006 p1, as last amended by Commission Regulation (EU) 2015/27 (OJ L 24,26.1.2021, p19).

- (i) designed and intended for eating or serving food, including forks, knives, spoons, chopsticks and other similar utensils,
- (ii) made wholly or partly from plastic, and
- (iii) single-use,
- (p) “single-use plastic plate” means a plate, tray or platter that is—
  - (i) designed and intended to be eaten from or for serving food,
  - (ii) made wholly or partly from plastic, and
  - (iii) single-use,
- (q) “single-use plastic straw” means a straw that is—
  - (i) made wholly or partly from plastic, and
  - (ii) single-use, and
- (r) “supply” means supply, whether by way of sale or not.

## PART 2

### Single-use plastic products

#### **Offences: single-use plastic products**

**3.—**(1) A person who, in the course of a business, supplies, offers to supply, or has in their possession for supply, any of the products referred to in paragraph (4) commits an offence.

(2) A person who uses expanded polystyrene to manufacture any of the products referred to in sub-paragraphs (4)(a) to (c) commits an offence.

(3) A person who uses plastic to manufacture any of the products referred to in sub-paragraphs 4(d) to (f) commits an offence.

(4) The products are—

- (a) single-use expanded polystyrene beverage cups,
- (b) single-use expanded polystyrene beverage containers,
- (c) single-use expanded polystyrene food containers,
- (d) single-use plastic cutlery,
- (e) single-use plastic plates,
- (f) single-use plastic beverage stirrers.

(5) A person who commits an offence under paragraphs (1), (2) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **Transitional provision: supply of existing stock of single-use plastic products**

**4.—**(1) A person who, in the course of a business, supplies, offers to supply, or has in their possession for supply any of the products referred to in regulation 3(4) does not commit an offence under regulation 3(1) if—

- (a) the supply, offer to supply or possession for supply occurs within the period of 3 months beginning with [the coming into force date], and
- (b) that person obtained the product before [the coming into force date].

### **Offences: single-use plastic balloon sticks**

5.—(1) A person who, in the course of a business, supplies, offers to supply, or has in their possession for supply, to an end-user, a single-use plastic balloon stick commits an offence.

(2) Paragraph (1) does not apply where the single-use plastic balloon stick is supplied for attaching to balloons for industrial or other professional uses and applications that are only distributed to persons acting in the course of a business.

(3) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Transitional provision: supply of existing stock of single-use plastic balloon sticks**

6. A person who, in the course of a business, supplies, offers to supply, or has in their possession for supply, to an end-user a single-use plastic balloon stick does not commit an offence under regulation 5(1) if—

- (a) the supply, offer to supply or possession for supply occurs within the period of 3 months beginning with [the coming into force date], and
- (b) that person obtained the product before [the coming into force date].

### **Offence: single-use plastic straws**

7.—(1) A person who, in the course of a business, supplies, offers to supply, or has in their possession for supply, to an end-user a single-use plastic straw commits an offence.

(2) Paragraph (1) is subject to the exemptions in regulations 9 to 13.

(3) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level five on the standard scale.

### **Transitional provision: supply of existing stock of single-use plastic straws**

8. A person who, in the course of a business, supplies, offers to supply, or has in their possession for supply, to an end-user, a single-use plastic straw does not commit an offence under regulation 7(1) if—

- (a) the supply, offer to supply or possession for supply occurs within the period of 3 months beginning with [the coming into force date], and
- (b) that person obtained the product before [the coming into force date].

### **Exemption: retail pharmacy business**

9.—(1) Regulation 7(1) does not apply to the supply of a single-use plastic straw by a retail pharmacy business in the cases in paragraph (2), provided that the conditions in paragraph (3) are complied with.

(2) The cases referred to in paragraph (1) are where the single-use plastic straw is supplied to an end-user—

- (a) at a registered pharmacy, or
- (b) by means of online or other distance selling arrangements.

(3) The conditions are that single-use plastic straws—

- (a) must not be advertised to customers by the retail pharmacy business, and
- (b) if supplied at a registered pharmacy—
  - (i) must not be kept in a place where they are visible to customers, or where customers can access them, and
  - (ii) must not be offered or provided to a customer unless the customer has requested them.

(4) The condition in paragraph 3(a) does not prohibit the display of single-use plastic straws for sale on a website or an application through which the retail pharmacy business sells products online.

(5) In this regulation, “registered pharmacy” and “retail pharmacy business” have the meanings given in regulation 8(1) of the Human Medicines Regulations 2012(a).

#### **Exemption: catering establishments**

**10.**—(1) Regulation 7(1) does not apply to the supply by a catering establishment of a single-use plastic straw together with food or drink which is supplied for immediate consumption, provided that the conditions in paragraph (2) are complied with.

(2) The conditions are that the single-use plastic straws—

- (a) must not be kept in a place where they are visible to customers, or where customers can access them, and
- (b) must not be offered or provided to a customer unless the customer has requested them.

(3) In this regulation, “catering establishment” means a restaurant, canteen, club, public house or similar establishment (including a vehicle or a fixed or mobile stall) which supplies food or drink that is ready for consumption without further preparation.

#### **Exemption: other establishments**

**11.**—(1) Regulation 7(1) does not apply to the supply of a single-use plastic straw in a—

- (a) care home,
- (b) school,
- (c) premises used for early learning and childcare, day care of children or child minding, or
- (d) prison or other place of detention.

(2) In this regulation—

- (a) “care home” means accommodation that is provided as a care home service within the meaning given by paragraph 2 of schedule 12 of the Public Services Reform (Scotland) Act 2010(b),
- (b) “child minding” has the meaning given by paragraph 12 of schedule 12 of that Act(c),
- (c) “day care of children” has the meaning given by paragraph 13 of schedule 12 of that Act,
- (d) “early learning and childcare” has the meaning given by section 46 of the Children and Young People (Scotland) Act 2014(d),
- (e) “prison” means—
  - (i) a prison within the meaning of section 43 of the Prisons (Scotland) Act 1989(e),
  - (ii) a young offenders institution within the meaning of section 19(1)(b) of that Act(f), and
- (f) “school” has the meaning given in section 135(1) of the Education (Scotland) Act 1980(g).

#### **Exemption: medical devices and medical purposes**

**12.**—(1) Regulation 7(1) does not apply to the supply of a single-use plastic straw—

- (a) that is a medical device,
- (b) for use for medical purposes by or under the direction of a health professional, or

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(a) S.I. 2012/1916, to which there are amendments not relevant to these Regulations.

(b) 2010 asp 8.

(c) Paragraph 12(e) was amended by S.S.I. 2012/211.

(d) 2014 asp 8.

(e) 1989 c.45. The definition of “prison” was inserted by S.S.I. 2015/39.

(f) Section 19(1)(b) was amended by section 23(1) of the Criminal Justice (Scotland) Act 2003 (asp 7).

(g) The definition of “school” was amended by schedule 3 of the Standards in Scotland’s Schools etc. Act 2000 (asp 6) and the section 2(2) of the Registered Establishments (Scotland) Act 1987 (c.4)

- (c) by a health professional for medical purposes.
- (2) In this regulation—
- (a) “health professional” means—
    - (i) a registered medical practitioner,
    - (ii) a registered nurse or midwife,
    - (iii) a registered dentist within the meaning of section 53 of the Dentists Act 1984(a),
    - (iv) a registered pharmacist or registered pharmacy technician within the meaning of article 3 of the Pharmacy Order 2010(b),
    - (v) a registered dietician, occupational therapist or physiotherapist(c),
  - (b) “medical device” means a medical device within the meaning given in regulation 2 of the Medical Devices Regulations 2002(d), to which Part 2 or Part 3 of those Regulations applies, and
  - (c) “medical purposes” means the purposes of preventative medicine, medical diagnosis, medical research and the provision of medical care and treatment.

**Exemption: packaging**

- 13.**—(1) Regulation 7(1) does not apply to the supply of a single-use plastic straw that is packaging.
- (2) In this regulation, “packaging” has the meaning given by regulation 3 of the Packaging Essential Requirements) Regulations 2015(e).

## PART 3

### Oxo-degradable plastic products

**Offences: oxo-degradable plastic products**

- 14.**—(1) A person who, in the course of a business, supplies, offers to supply, or has in their possession for supply, an oxo-degradable plastic product commits an offence.
- (2) A person who uses oxo-degradable plastic to manufacture an oxo-degradable plastic product commits an offence.
- (3) A person who commits an offence under paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Transitional provision: supply of existing stock of oxo-degradable plastic products**

- 15.** A person who, in the course of a business, supplies, offers to supply, or has in their possession for supply an oxo-degradable plastic product does not commit an offence under regulation 14(1) if—
- (a) the supply, offer to supply or possession for supply occurs within the period of 3 months beginning with [the coming into force date], and
  - (b) that person obtained the oxo-degradable plastic product before [the coming into force date].

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(a) 1984 c.24.  
(b) S.I. 2010/231, to which there are amendments not relevant to these Regulations.  
(c) “Registered”, in relation to a dietician, occupational therapist or physiotherapist, means registered in the register maintained under Article 5 of the Health and Social Work Professions Order 2001 (S.I. 2002/254); see Article 5(5) of that Order.  
(d) S.I. 2002/618, as relevantly amended by S.I. 2008/2936.  
(e) S.I. 2015/1640, to which there are amendments not relevant to these Regulations.

## PART 4

### Offences by bodies corporate and enforcement

#### Offences by bodies corporate

**16.**—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association, and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant individual, or
  - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
  - (i) a director, manager, secretary or other similar officer of the body,
  - (ii) where the affairs of the body are managed by its members, a member,
- (b) in relation to a Scottish partnership, a partner,
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

#### Enforcement

**17.**—(1) A local authority may authorise any person to exercise in its area, for an authorised purpose and in accordance with the terms of the authorisation, any of the powers specified in regulation 18, if that person appears suitable to exercise them.

(2) An authorisation under paragraph (1) must be in writing.

#### Powers of entry and examination etc.

**18.**—(1) The powers which an enforcement officer may be authorised to exercise are—

- (a) to enter at any reasonable time any premises (other than premises used wholly or mainly as a dwelling) which the enforcement officer has reason to believe it is necessary to enter for an authorised purpose,
- (b) when entering any premises under sub-paragraph (a)—
  - (i) to be accompanied by another enforcement officer, and
  - (ii) to bring any equipment or materials required for any authorised purpose for which the power of entry is being exercised,
- (c) on entering any premises under sub-paragraph (a)—
  - (i) to make such examination and investigation as may in any circumstances be necessary,
  - (ii) to take such measurements and photographs and make such recordings as the enforcement officer considers necessary for the purpose of any such examination or investigation, and
  - (iii) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any documents which it is necessary for the enforcement officer to see for the purposes of any such examination or investigation and to inspect and take copies of the document,

- (d) as regards any premises which an enforcement officer has power to enter under sub-paragraph (a), to direct that those premises or any part of them, or anything in them, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of examination or investigation under sub-paragraph (c),
- (e) to take any samples, or cause samples to be taken, of any articles or substances found in or on any premises which an enforcement officer has power to enter under sub-paragraph (a), and to cause any such articles or substances to be analysed or tested,
- (f) in the case of any such sample, to take possession of it and to retain it for so long as is necessary for all or any of the following purposes—
  - (i) to examine it, and subject it to any process or test, or cause it to be examined,
  - (ii) to ensure that it is not tampered with before the examination is completed,
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations.

(2) Except in an emergency, where an enforcement officer proposes to enter any premises and—

- (a) entry has been refused and the enforcement officer apprehends on reasonable grounds that the use of force may be necessary to effect entry, or
- (b) the enforcement officer apprehends on reasonable grounds that entry is likely to be refused and that the use of reasonable force may be necessary to effect entry,
- (c) any entry on to those premises by virtue of paragraph (1)(a) may only be effected under the authority of a warrant by virtue of paragraph (3).

(3) If it is shown to the satisfaction of a sheriff, summary sheriff or justice of the peace on sworn information in writing—

- (a) that there is reasonable ground for entry into the premises for the purpose for which entry is required, and
- (b) that one or more of the conditions specified in paragraph (4) below is fulfilled,

the sheriff, summary sheriff or justice of the peace may by warrant authorise the enforcement officer to enter the premises, in accordance with the warrant and, if need be, by force.

(4) The conditions mentioned in paragraph (3)(b) above are—

- (a) that admission to any premises has been refused,
- (b) that such a refusal is reasonably apprehended,
- (c) that the premises are unoccupied,
- (d) that the occupier is temporarily absent from the premises and the case is one of urgency, or
- (e) that an application for admission to the premises would defeat the object of the proposed entry.

(5) A warrant issued in pursuance of paragraph (3) above continues in force until the purpose for which the entry is required has been satisfied.

(6) Nothing in paragraph (1)(c)(iii) compels the production by a person of any document of which that person would on grounds of legal professional privilege be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

(7) An enforcement officer may only exercise the powers in paragraph (1) if the enforcement officer has reasonable cause to believe that an offence under regulations 3(1), (2) or (3), 5(1), 7(1) or 14(1) or (2) has been or is being committed.

(8) An enforcement officer seeking to exercise a power under paragraph (1) must produce evidence of identity and authority if requested by a person who is, or appears to be—

- (a) a supplier, or employee of such a supplier, of —
  - (i) any products referred to in regulation 3(4)

- (ii) single-use plastic straws,
- (iii) single-use plastic balloon sticks, or
- (iv) oxo-degradable plastic products,
- (b) a manufacturer, or employee of such a manufacturer, of—
  - (i) any products referred to in regulation 3(4), or
  - (ii) oxo-degradable plastic products, or
- (c) the owner or occupier of any premises in which the enforcement officer seeks to exercise the power concerned.

(9) In this regulation—

“document” includes any thing in which information of any description is recorded (by any means) and any part of such a thing, and

“emergency” means a case which it appears to the enforcement officer in question—

- (i) that there is an immediate risk of serious pollution of the environment or serious harm to human health, or
- (ii) that the circumstances exist which are likely to endanger life or health,

and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy.

A member of the Scottish Government

St Andrew’s House,  
Edinburgh

2021

## EXPLANATORY NOTE

*(This note is not part of Regulations)*

These Regulations prohibit the manufacture and the supply in the course of a business of the listed single-use plastic products and oxo-degradable plastic products and come into force on [      ].

Regulation 3 provides that it is an offence for a person to manufacture or, in the course of a business, supply, offer to supply, or have in their possession for supply any of the following products—

- (a) single-use expanded polystyrene beverage containers,
- (b) single-use expanded polystyrene beverage cups,
- (c) single-use expanded polystyrene food containers,
- (d) single use plastic cutlery,
- (e) single-use plastic plates, and
- (f) single-use plastic beverage stirrers.

Regulation 5 provides that it is an offence for a person, in the course of a business, to supply, offer to supply, or have in their possession for supply, to an end-user, single-use plastic balloon sticks, with the exception of sticks for attaching to balloons for industrial or other professional uses.

Regulation 7 provides that it is an offence for a person, in the course of a business, to supply, offer to supply, or have in their possession for supply, to an end-user, single-use plastic straws, subject to certain exceptions. The exceptions are the supply of straws by registered pharmacies (regulation 9), the supply of straws by a catering establishments together with food or drink for immediate consumption (regulation 10), the supply of straws in certain establishments such as schools and care homes (regulation 11), the supply of straws which are medical devices or are for use for medical purposes (regulation 12) and the supply of straws which are packaging (regulation 13).

Regulation 14 provides that it is an offence for a person to manufacture or, in the course of a business, supply, offer to supply, or have in their possession for supply, oxo-degradable plastic products.

A person found guilty of an offence under these Regulations will be liable on summary conviction to a fine not exceeding level 5 on the standard scale (regulations 3(5), 5(3), 7(3) and 14(3)).

Regulations 4, 6, 8 and 15 make transitional provisions allowing for continued supply of existing stock; for the period of 3 months beginning with the date on which the regulations come into force, it will not be an offence for a person to supply, offer to supply or have in their possession for supply a product which they obtained before the coming into force date.

Regulation 16 makes provision for offences by bodies corporate, Scottish partnerships and unincorporated associations.

Regulation 17 provides that a local authority may authorise any person to exercise any of the powers specified in regulation 18.

Regulation 18 provides for enforcement officers to have powers of entry and associated powers to carry out the necessary investigations in order to determine whether an offence has been or is being committed.



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