EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL PROTECTION (PLASTIC PLATES ETC. AND POLYSTYRENE CONTAINERS ETC.) (ENGLAND) REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument is being made to restrict the supply of single-use plastic plates, bowls, and trays and ban the supply of single-use plastic cutlery and balloon sticks and expanded and foamed extruded polystyrene (EPS/XPS) food and drink containers, including cups, to prevent pollution of the environment and harm to the health of humans and animals.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 Rebecca Pow, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, has made the following statement regarding Human Rights:

"In my view the provisions of the Environmental Protection (Plastic Plates etc. and Polystyrene Containers etc.) (England) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made principally under section 140 of the Environmental Protection Act 1990 ("the 1990 Act"). Insofar as it includes provision for civil sanctions, this instrument is made under section 62 of the Regulatory Enforcement and Sanctions Act 2008 ("the 2008 Act"). Section 140 of the 1990 Act is specified in Schedule 7 to the 2008 Act for the purposes of Section 62.

6.2 The instrument would, but for the inclusion of provision for civil sanctions, be subject to negative resolution pursuant to section 161 of the 1990 Act. In consequence of the inclusion of civil sanctions, it is subject to affirmative resolution in compliance with section 62(3) of the 2008 Act.

6.3 Defra has previously implemented a ban on the manufacture or supply of rinse-off personal care products containing microbeads under the same powers: the Environmental Protection (Microbeads) (England) Regulations 2017 (S.I. 2017/1312). Defra has also implemented a restriction on the supply of single-use plastic straws and single-use plastic-stemmed cotton buds, and a ban on the supply of plastic drinks stirrers under the same powers: the Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020 (S.I. 2020/971).

6.4 The United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles: Single-Use Plastics) Regulations 2022 (S.I. 2022/857) ("the UKIM Single-Use Plastic Regulations") affect the application of this instrument. The UKIM Single-Use Plastic Regulations create an exclusion from the market access principles of the United Kingdom Internal Market Act 2020 ("the UKIM Act") for legislation so far as it prohibits the sale of single use plastic plates, straws, drink stirrers, stemmed cotton buds, cutlery, chopsticks, balloon sticks, and expanded and extruded polystyrene food and drink containers, including cups.

6.5 Therefore, the market access principles of the UKIM Act will only apply to this instrument in respect of the restriction it introduces to the supply of single-use plastic bowls and trays. Single-use plastic bowls and trays legally produced in or imported into other parts of the United Kingdom (i.e., Scotland, Wales, and Northern Ireland) which meet any relevant requirements for sale there will still be able to be sold in England, notwithstanding the provisions of this instrument, as a result of the mutual recognition principle in the UKIM Act.

7. Policy background

What is being done and why?

7.1 Single-use plastics can have negative effects on the environment if they are littered or discarded incorrectly after their use. Not only do they damage terrestrial and marine life, but there are also costs associated with their clean-up and externality costs imposed on the tourism and fishing industries when they are disposed of incorrectly.

7.2 It is the government's ambition to leave the environment in a better state for the next generation. The government's 25 Year Environment Plan, published in January 2018, outlines the steps that will be undertaken to achieve that ambition, including new measures to eliminate all avoidable plastic waste.

7.3 This instrument bans the supply of single-use plastic cutlery and balloon sticks and EPS/XPS food and drink containers in England.

7.4 The instrument also bans the supply of single-use plastic plates, trays, and bowls to the end-user in England. This ban does not apply to the supply of a single-use plastic plate, tray, or bowl that is packaging as defined in regulation 3 of the Packaging (Essential Requirements) Regulations 2015 (S.I. 2015/1640). For example, this would include a bowl pre-filled with food before sale or a bowl filled with food at the counter of a takeaway.

7.5 This is to avoid confusion with the government's proposals for extended producer responsibility for packaging, which will give producers responsibility for the costs of their packaging throughout its lifecycle. For further details on extended producer responsibility for packaging, please see here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1063589/epr-consultation-government-response.pdf.

7.6 The intention of the restrictions is to help protect the environment for future generations, improve the quality of the environment, and reduce the risk of harm to human health and marine life. This instrument will ensure that single-use plastic plates, bowls, trays, cutlery, and balloon sticks and EPS/XPS food and drink containers, including cups, sold in England are made of more environmentally friendly materials as well as promote the use of reusable alternatives. The restrictions are also intended to increase consumer and business awareness of the environmental harms which single-use plastics can cause when they are incorrectly disposed of.

7.7 This instrument also makes a minor technical amendment to the Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020 (S.I. 2020/971). This is to update the definition of "relevant device" in that instrument to ensure consistency with changes to the Medical Devices Regulations 2002. The definition of a relevant device features in that instrument as there are exemptions to the restriction on the supply to the end user of single-use plastic stemmed cotton buds and single-use plastic straws for single-use plastic-stemmed buds and single-use plastic straws that are relevant devices for use for medical purposes by or under the direction of a health professional.

7.8 This instrument makes amendments to the Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020 and the Environmental Protection (Microbeads) (England) Regulations 2017. These are to amend the civil sanctions provisions in those instruments to provide for fixed monetary penalties instead of variable monetary penalties, in line with the civil sanctions provisions in this instrument.

7.9 These Regulations will come into force on the twenty-fourth day after the day on which they are made.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 Proposals for the restrictions were drawn up following engagement with stakeholders including non-governmental organisations and relevant industry bodies. A public consultation entitled *"Consultation on proposals to ban commonly littered single-use plastic items in England"* was held from 20th November 2021 – 12th February 2022.

10.2 The consultation set out proposals to ban the supply of single-use plastic plates, cutlery, and balloon sticks and expanded and extruded polystyrene food and drink containers, including cups, in England.

10.3 The consultation asked for comments on the proposals, including specific questions on scope, potential exemptions to any ban, timescales for introduction, costs to industry, and any environmental risks of alternatives to these items.

10.4 In total, the consultation received 1,869 responses from a wide range of external partners. In addition, City to Sea, in partnership with 38 Degrees, provided 51,426 responses from members of the public via an online survey. The majority of the public

and non-governmental organisations demonstrated overwhelming support for the proposals, with 95% in favour of all bans. Although responses from businesses varied, only 20% opposed all bans and many highlighted areas for further consideration which were factored into the decision-making processes.

10.5 A copy of the full government response is available from: https://www.gov.uk/government/consultations/single-use-plastic-banning-the-supply-of-commonly-littered-single-use-plastic-items/outcome/summary-of-responses-and-government-response

10.6 In accordance with section 140(6) of the Environmental Protection Act 1990, on 16 January 2023 Defra published a notice in the London Gazette which provided access to a draft of the regulations and sought public representations. This opportunity was additionally publicised via a web link on gov.uk and by email to Defra's network of relevant stakeholders. The period of comment was fifteen days. Responses were received from a small number of respondents representing industry, local authorities, and members of the public. The main issues raised related to guidance on definitions and clarification of items within the scope of the ban. Comments were also received from the Association of Chief Trading Standards Officers on the enforcement provisions.

10.7 In response, the enforcement provisions of the instrument were amended to provide for fixed monetary penalties. To ensure consistency across related legislation, the enforcement provisions were also amended to provide for fixed monetary penalties in the Environmental Protection (Microbeads) (England) Regulations 2017 and the Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020.

10.8 On 21 March 2023 the draft instrument was notified to the World Trade Organisation under the Technical Barriers to Trade Agreement ("TBTA"). No objections have been made pursuant to notification.

11. Guidance

11.1 This instrument will be enforced by local authorities and their trading standards officers in accordance with future published guidance. The legislation will provide for fixed monetary penalties. The guidance will be published by local authorities in advance of this instrument entering into force. The guidance will assist manufacturers, suppliers, retailers and the public in understanding the enforcement and sanctions regime. Defra intends to raise awareness of the new legislation by meeting representatives and providing an explanation to local authorities on what is included in the restrictions and the exemptions.

11.2 Defra will also publish guidance for businesses and the public on gov.uk.

12. Impact

12.1 The net present values of the bans are -£90.2 million for EPS/XPS food and drink containers, -£91.0 million for single-use plastic plates and cutlery and £-0.4 million for single-use plastic balloon sticks.

12.2 There is no anticipated impact from this instrument on charities or voluntary bodies. The impact on businesses is primarily due to impacts on domestic producers of the banned items and the higher price of alternative materials for single-use plastic cutlery, balloon sticks and EPS/XPS food and drink containers. Wholesalers and

hospitality-based businesses are likely to be those that are most affected by the increase in prices in England. It is expected that retailers will pass the majority (60%) of costs onto consumers in the prices charged for substitute materials for the banned items. Under this scenario, there will be a total additional cost to consumers of £32.6m over the 10-year appraisal period for both a ban on EPS/XPS food and drink containers, including cups, and single-use plastic plates and cutlery.

12.3 Two full Impact Assessments (IA) covering EPS/XPS food and drink containers, including cups, and plates and cutlery are published alongside this Explanatory Memorandum.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), there is a lead-in time exceeding 9 months since the announcement of the proposed restrictions in the Government's response to the consultation.

14. Monitoring & review

14.1 This instrument will be subject to regular review. The obligations are set out in regulation 15 and include

- (i) a review of the operation of the provisions in Part 6 (Enforcement and Civil Sanctions) and the Schedule within 3 years from the date on which this instrument comes into force, as required by section 67 of the Enforcement and Sanctions Act 2008; and
- (ii) a review of the regulatory provision (including Part 6 and the Schedule) at least every 5 years from the date this instrument comes into force, as required by the Small Business, Enterprise and Employment Act 2015. The conclusions of such reviews are to be published.

15. Contact

15.1 Maria Alemao at the Department for Environment, Food and Rural Affairs, Telephone: 07741135939 or email: maria.alemao@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Chris Preston, Deputy Director for Resources and Waste, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rebecca Pow, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.