EXPLANATORY MEMORANDUM TO

THE UNITED KINGDOM INTERNAL MARKET ACT 2020 (EXCLUSIONS FROM MARKET ACCESS PRINCIPLES: SINGLE-USE PLASTICS) REGULATIONS 2022

2022 No. 857

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument is being made to create an exclusion from the market access principles in Part 1 of the United Kingdom Internal Market Act 2020 ("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 drinks containers, including cups.

2.2 For an explanation of the market access principles, see Sections 7.2 – 7.7 of this Explanatory Memorandum, and for the meaning of 'sale' see Section 6.2.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 In accordance with section 10(9) of the UKIM Act, the Secretary of State has sought the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

3.2 Consent from the Department for the Economy in Northern Ireland has not been provided within the period of one month beginning with the day on which it was sought. In reliance on section 10(10) of the UKIM Act, the Secretary of State may make the regulations without that consent. The Secretary of State in accordance with section 10(11) of the UKIM Act, has published a statement explaining why these regulations have been made without that consent.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Environment, Food and Rural Affairs, Steve Double MP, has made the following statement regarding Human Rights:

"In my view the provisions of the United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles: Single-Use Plastics) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 Part 1 of the UKIM Act establishes two market access principles which apply in relation to the sale of goods, the mutual recognition principle and the non-discrimination principle, discussed in Section 7. Schedule 1 to the UKIM Act sets out exclusions from those principles.

6.2 References to 'sale' in Part 1 of the UKIM Act are to be interpreted in accordance with section 15 of that Act. In particular, they include other forms of supply of goods: see section 15(5) and (6). The reference to the sale of single-use plastic items in paragraph 13 of Schedule 1, as inserted by this instrument, has the meaning given by section 15 (since Schedule 1 is introduced by section 10(1), in Part 1 of the UKIM Act). References to 'sale' in this explanatory memorandum have the same meaning.

6.3 There is existing legislation in England and Scotland that affects the supply of certain single use plastic items.

6.4 The Environmental Protection (Plastic Straws, Cotton Buds, and Stirrers) (England) Regulations 2020 (S.I. 2020/971) restrict the supply of single-use plastic straws and plastic-stemmed cotton buds to the end user in England, with some exemptions. The regulations also ban the supply of plastic drinks stirrers in England.

6.5 The Environmental Protection (Cotton Buds) (Scotland) Regulations 2019 (S.S.I. 2019/271) ban the manufacture and supply of plastic-stemmed cotton buds in Scotland. The Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021 (S.S.I. 2021/410) ban the supply and manufacture of single-use plastic cutlery, plates, beverage stirrers, and expanded polystyrene food and drinks containers, including cups, in Scotland. These regulations ban the supply of single-use plastic straws and balloon sticks in Scotland, with some exemptions, and entered into force on 1 June 2022.

6.6 There is forthcoming legislation that will affect the supply of certain single-use plastic items.

6.7 The UK Government has consulted on proposals to ban the supply of single-use plastic plates, cutlery, balloon sticks and expanded and extruded polystyrene food and drinks containers, including cups, in England from April 2023.

6.8 The Welsh Government is committed to introducing legislation to ban the supply of single-use plastic straws, stirrers, plates (including bowls, trays and platters), cutlery (including spoons, forks, knives and sporks), balloon sticks, plastic stemmed cotton buds, expanded and extruded polystyrene food containers and cups for beverages by the end of 2022.

6.9 The Northern Ireland Protocol requires the supply of single-use plastic plates, cutlery, balloon sticks, drink stirrers, cotton bud sticks, and expanded polystyrene food and drinks containers, including cups to be banned. Articles 2 to 7, Articles 14 and 17 and Parts A, B, C, D and F of the Annex to Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment are included in Annex II of the Northern Ireland Protocol. Article 5 requires the supply of the aforementioned products to be banned, as well as products made of oxo-degradable plastic.

7. Policy background

What is being done and why?

7.1 As stated in Section 2.1, this instrument is being made to create an exclusion from the market access principles in Part 1 of 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 drinks containers, including cups. This follows an agreement reached under the provisional Resources and Waste Common Framework (that has been developed by the Department for Environment, Food and Rural Affairs, the Scottish Government, the Welsh Government and the Department of Agriculture, Environment and Rural Affairs).

Explanations

7.2 The UKIM Act contains two market access principles: mutual recognition and non-discrimination. How the market access principles affect the sale of goods is set out below.

7.3 The principle of mutual recognition means that a good that can be lawfully sold in the part of the UK in which it has been produced or imported into may be sold in any other part of the UK without needing to comply with any relevant requirements applying to the sale in that other part of the UK.

7.4 For example, from 1 June 2022 it has been illegal to sell a single-use plastic plate in Scotland; however, as equivalent legislation has not been introduced at this stage in the rest of the UK, single-use plastic plates legally produced in or imported into other parts of the UK which meet any relevant requirements for sale there can still be sold in Scotland as a result of the mutual recognition principle.

7.5 The principle of non-discrimination means that the sale of goods in one part of the UK should not be affected by directly or indirectly discriminatory relevant requirements towards goods that have a relevant connection with another part of the UK.

7.6 Where European Union rules must be followed in relation to the sale of goods in Northern Ireland because of the Northern Ireland Protocol, the market access principles will not apply to the sale of relevant goods in Northern Ireland.

7.7 The market access principles do not apply where regulatory requirements were in force on 30 December 2020, such as with the Environmental Protection (Plastic Straws, Cotton Buds, and Stirrers) (England) Regulations 2020 and The Environmental Protection (Cotton Buds) (Scotland) Regulations 2019.

7.8 An exclusion from the market access principles means that the market access principles will not apply to 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 drinks containers, including cups.

7.9 For example, from 1 June 2022, it has been illegal to sell a single-use plastic plate in Scotland. The exclusion introduced by this instrument will mean that single-use plastic plates produced in or imported into other parts of the UK cannot be sold in Scotland, regardless of whether there is an equivalent ban in place in the originating part.

7.10 The introduction of this exclusion recognises that the UK Government, the Scottish Government, the Welsh Government and the Northern Ireland Executive share an ambition to tackle plastic pollution. Legislation banning the sale of the single-use plastic items covered by this exclusion will be introduced in England, Wales, Scotland, and Northern Ireland. However, there is a difference in the timing of these bans. See Section 6 for further details.

7.11 As required by section 10(7) of the UKIM Act, the Secretary of State has had regard to the importance of facilitating the access to the market within Great Britain for qualifying Northern Ireland goods. As forthcoming legislation (see Section 6) will remove access to the market for these single-use plastic items in due course regardless of this instrument no issues have arisen that require further attention. Additionally, there are also a range of alternative products available. Finally, a ban on the supply of the specified single use plastic items would not apply to the sale in NI of goods from Great Britain which are required to comply with EU regulations under the requirements of the Northern Ireland Protocol. See Sections 6.9 and 7.6 for further details.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act.

8.2 This instrument does however relate to the implementation of the Northern Ireland Protocol as explained in Section 6.9. It should be emphasised that this instrument is not required to implement the Northern Ireland Protocol and does not affect its implementation. However, it is necessary to refer to the Northern Ireland Protocol to understand the legislative context in Northern Ireland.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 In line with the agreed process for considering UKIM Act exclusions in Common Framework areas, discussions were held with all the devolved governments in line with the process that can be viewed here: https://www.gov.uk/government/publications/process-for-considering-ukim-act-exclusions-in-common-framework-areas/process-for-considering-uk-internal-market-act-exclusions-in-common-framework-areas.

10.2 Following a request from the Scottish Government to introduce an exclusion for all single use items from the market access principles, an exclusion covering the prohibition of the sale of named single use items was agreed and is being taken forward in this instrument. The relevant Interministerial Group (Environment, Food and Rural Affairs) (IMG(EFRA)) meetings are September 2021, December 2021, January 2022, and March 2022 and communiques can be viewed here: https://www.gov.uk/government/publications/communique-from-the-inter-ministerial-group-for-environment-food-and-rural-affairs.

10.3 Public consultation on this exclusion has not taken place because public consultations have taken place in England, Wales, and Scotland that encompassed bans on the supply of the items covered by the exclusion introduced by this instrument.

Furthermore, the consultations conducted by Wales and Scotland began prior to the UKIM Act coming into force. These consultations were all publicly available online consultations.

10.4 The Scottish Government's consultation was carried out from 12 October 2020 to 4 January 2021. This encompassed bans on the supply of single-use plastic plates, trays, bowls, cutlery, balloon sticks, straws, drinks stirrers, and expanded polystyrene food and drinks containers, including cups. The outcome of the Scottish Government's consultation is summarised in the Policy Note published alongside S.S.I. 2021/410.

10.5 The Welsh Government's consultation was carried out from 30 July 2020 to 22 October 2020. This encompassed bans on the supply of single-use plastic plates, bowls, trays, cutlery, balloon sticks, cotton buds, straws, drinks stirrers, and expanded and extruded polystyrene food and drinks containers, including cups. The analysis of responses has not yet been published.

10.6 The UK Government's consultation was carried out from 20 November 2021 to 12 February 2022. This encompassed bans on the supply of single-use plastic plates, bowls, trays, cutlery, balloon sticks, and expanded and extruded polystyrene food and drinks containers, including cups. The analysis of responses has not yet been published.

11. Guidance

11.1 This instrument will affect the application of the Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021 and forthcoming regulations in so far as they prohibit the sale of the items covered by the exclusion. See Section 6 for details of these regulations. Guidance for these regulations will be produced where required.

11.2 Guidance for the Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021 has been provided and can be viewed here: https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2022/06/environmental-protection-single-use-plastic-products-scotland-regulations-2021-guidance2/documents/environmental-protection-single-use-plastic-products-scotland-regulations-2021/environmental-protection-single-use-plastic-products-scotland-regulations-2021/govscot:document/environmental-protection-single-use-plastic-products-scotland-regulations-2021.pdf

12. Impact

12.1 The impact on business, charities, or voluntary bodies is that they must comply with any regulations in each part of the UK prohibiting the sale of the items covered by the exclusion.

12.2 Each administration has produced, or will produce, an impact assessment to accompany their legislation, setting out the detailed impacts of the regulations on businesses.

12.3 The indirect impact on the public sector is the regulatory burden with respect to inspection and enforcement of regulations prohibiting the sale of the items covered by the exclusion. These impacts are indirect as they are directly caused by the regulations that prohibit the sale of the items covered by the exclusion, rather than this instrument. The cost of inspection and enforcement will be considered in impact assessments accompanying individual regulations.

12.4 A full Impact Assessment has not been prepared for this instrument because this instrument does not impose any new requirements. As noted in Section 11.1, this instrument will affect the application of the Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021 and forthcoming regulations in England and Wales that ban the sale of the items covered by the exclusion. Any impacts of these regulations have been considered in the case of the Scottish regulations and will be considered in the case of any forthcoming regulations in England and Wales.

13. Regulating small business

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

13.2 This instrument does not impose any new requirements on small businesses. However, while the exclusion it introduces would apply to any legislation insofar as it prohibits the sale of single use plastic straws, stirrers, cotton buds, plates, cutlery, balloon sticks and expanded and extruded polystyrene food and drinks containers, including cups, that applied to small businesses, it would be the legislation introducing such bans that would impose requirements or restrictions on small businesses.

14. Monitoring & review

14.1 The UKIM Act requires that during the permitted period the Secretary of State must carry out a review of any use that has been made of the powers conferred by sections 6(5), 8(7), and 10(2) of that Act. This instrument is using the power conferred by section 10(2) of the UKIM Act.

14.2 The permitted period is the period beginning with the third anniversary of the passing of the UKIM Act and ending with the fifth anniversary.

14.3 The instrument does not include a statutory review clause and, in line with the requirements of section 28(2)(b) of the Small Business, Enterprise and Employment Act 2015, the Parliamentary Under Secretary of State for Environment, Food and Rural Affairs, Steve Double MP, has made the following statement:

"As the review required by section 13 of the United Kingdom Internal Market Act 2020 of the use of the amendment powers in Part 1 of that Act will encompass this instrument, it is not appropriate in the circumstances for this instrument to make provision for a separate review".

15. Contact

15.1 Mark Wilkes at the Department for Environment, Food and Rural Affairs, Telephone: 07825934356 or email: mark.wilkes@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 The Parliamentary Under Secretary of State for Environment, Food and Rural Affairs, Steve Double MP, can confirm that this Explanatory Memorandum meets the required standard.