

Draft Environmental Protection (Microbeads) Regulations 2018

Consultation under Article 32(3) of the Waste and Contaminated Land
(Northern Ireland) Order 1997

DAERA is seeking views on the draft Environmental Protection (Microbeads) Regulations 2018 in compliance with Article 32(3) of the Waste and Contaminated Land (Northern Ireland) Order 1997.

The draft Regulations are available in **Appendix 1**.

Background

DAERA has developed draft legislation to ban the sale and manufacture of rinse off personal care products containing microbeads in Northern Ireland. The legislation, the Environmental Protection (Microbeads) Regulations 2018, would be made under powers contained at Article 32 of the Waste and Contaminated Land (Northern Ireland) Order 1997. This gives the Department powers to prohibit the use, supply or storage of injurious substances or articles.

A UK-wide consultation on the policy ran from December 2016 to February 2017. A copy of the consultation is available from <https://www.daera-ni.gov.uk/consultations/proposals-ban-use-plastic-microbeads-cosmetics-and-personal-care-products-uk-and-call-evidence-other> and a copy of the Government Response is available from <https://www.daera-ni.gov.uk/publications/synopsis-responses-consultation-proposals-ban-use-microbeads-cosmetics-and-personal-care-products>

What are microbeads?

Microbeads are small plastic particles used in many cosmetics and personal care products such as face scrubs and toothpastes. These are washed down the drain but are too small to be filtered out in sewage treatment systems and so enter our rivers and seas.

Why are microbeads being banned?

A single shower is estimated to result in 100,000 plastic particles entering the sewage system. Once microplastics have been released into the marine environment it is not possible to remove them and it is unlikely that the impact on individual marine life can be reversed.

There is emerging evidence that the microbeads or the chemical contaminants they transport can harm marine animals and the wider aquatic environment. Microbeads are being banned to protect the aquatic environment and to reduce the risk and severity of impacts of microplastics, including economic impacts, food security and human health.

There are suitable non-plastic alternatives to microbeads in cosmetics and a number of businesses have already taken voluntary actions to phase out their use. The ban will also help support the cosmetics industry by providing a level playing field, ensuring that all companies meet the same standards.

Where will the ban apply?

The ban will ultimately apply through-out the UK. The ban on manufacture came into force in England on 9 January 2018 and the ban on the sale became effective on 19 June 2018. The ban on both the manufacture and sale of rinse off cosmetics containing microbeads came into force in Scotland on 19th June while both bans became effective in Wales on 30th June 2018.

When will the ban become effective in Northern Ireland?

DAERA intends that both bans will be effective in Northern Ireland from 1 October 2018, although this will be subject to obtaining the necessary approvals.

Who will be affected by the legislation?

Business who either manufacture or sell rinse-off personal care products such as shower gels, soaps, beaded hand cleaners, shampoos, conditioners, shaving gels, toothpaste, mouthwash, teeth whitening products, and so on. Please note this is not an exhaustive list.

Market research undertaken across council areas suggests that there are no business using or distributing cosmetic products containing microbeads in Northern Ireland.

Please contact DAERA MarineStrategy@daera-ni.gov.uk if you think the ban will impact on your business.

How will the ban be enforced?

DAERA proposes that the ban is enforced by council Environmental Health Officers on behalf of the Department as part of their consumer protection function.

What will the ban mean?

The draft Environmental Protection (Microbeads) Regulations 2018 make it an offence to use plastic microbeads as an ingredient of a rinse-off personal care product. The Regulations also make it an offence to supply or offer to supply any rinse-off personal care products containing microbeads. Both offences are punishable on summary conviction (tried in a magistrates court), to a fine not exceeding level 5 on the standard scale; or on conviction on indictment (at the Crown Court), to a term of imprisonment not exceeding 2 years.

The draft Regulations also make failure to provide information an offence. This offence is punishable on summary conviction to a fine not exceeding the statutory maximum; or on conviction on indictment, to a term of imprisonment not exceeding 2 years, or to a fine or to both.

How do I respond?

Please make representations (comments) to either:

MarineStrategy@daera-ni.gov.uk ; or

Marine Strategy and Licensing Team
First Floor,
Klondyke Building
Gasworks Business Park
Belfast
BT7 2JA

2018 No.**ENVIRONMENTAL PROTECTION****The Environmental Protection (Microbeads) Regulations (Northern Ireland) 2018**

Made - - - - - ***
Coming into operation - 2018

The Department of Agriculture, Environment and Rural Affairs, in exercise of the powers conferred by Article 32(1), (2)(b) and (c) and (6) of the Waste and Contaminated Land (Northern Ireland) Order 1997(1), makes the following Regulations.

In accordance with Article 32(3) of that Order, the Department has published a notice indicating the effect of these Regulations and has taken into consideration the representations made to it in accordance with the notice.

Citation and commencement

These Regulations may be cited as the Environmental Protection (Microbeads) Regulations (Northern Ireland) 2018 and shall come into operation on 2018.

Interpretation

In these Regulations—

- “authorised person” means a person authorised under regulation 4(1);
 - “the Department” means the Department of Agriculture, Environment and Rural Affairs;
 - “microbead” means any water-insoluble solid plastic particle of less than or equal to 5mm in any dimension;
 - “plastic” means a synthetic polymeric substance that can be moulded, extruded or physically manipulated into various solid forms and that retains its final manufactured shape during use in its intended applications;
 - “rinse-off personal care product” means any substance, or mixture of substances, manufactured for the purpose of being applied to any relevant human body part in the course of any personal care treatment, by an application which entails at its completion the prompt and specific removal of the product (or any residue of the product) by washing or rinsing with water, rather than leaving it to wear off or wash off, or be absorbed or shed, in the course of time;
- and for this purpose—
- (a) a “personal care treatment” means any process of cleaning, protecting or perfuming a relevant human body part, maintaining or restoring its condition or changing its appearance; and
 - (b) a “relevant human body part” is—
 - (i) any external part of the human body (including any part of the epidermis, hair system, nails or lips);

(1) S.I. 1997/2778 (N.I. 19)

- (ii) the teeth; or
- (iii) mucous membranes of the oral cavity; and

“supply”, in relation to a rinse-off personal care product, means supply by way of sale or its presentation as a promotional prize or gift in the course of a business.

Offences and penalties

—(1) A person who, in the manufacture of any rinse-off personal care product, uses microbeads as an ingredient of that product is guilty of an offence.

(2) A person who supplies, offers to supply any rinse-off personal care product containing microbeads is guilty of an offence.

(3) A person guilty of an offence under paragraph (1) or (2) is liable—
on summary conviction, to a fine not exceeding level 5 on the standard scale; or
on conviction on indictment, to a term of imprisonment not exceeding 2 years.

(4) A person who fails, without reasonable excuse, to comply with a requirement to provide information imposed under regulation 4(2) is guilty of an offence and is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- on conviction on indictment, to a term of imprisonment not exceeding 2 years, or to a fine or to both.

Enforcement

—(1) The Department shall, for the purpose of Article 72(1) of the Waste and Contaminated Land (Northern Ireland) Order 1997, determine whether an offence under regulation 3(1) or (2) has been committed and may authorise in writing a person to exercise any of the powers in Article 72(2) for that purpose.

(2) An authorised person [or any district council] may, for the purposes of these Regulations, by notice in writing served on any person require that person to furnish such information specified in the notice as the authorised person [or, as the case may be, the council] reasonably considers is needed, in such form and within such period following service of the notice, or at such time, as is so specified.

Sealed with the Official Seal of the Department for Agriculture, Environment and Rural Affairs on ***



A senior officer of the Department of Agriculture,
Environment and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prohibit the use of microbeads as an ingredient in the manufacture of rinse-off personal care products and the sale of any such products containing microbeads.

Regulation 3 creates an offence for a breach of the prohibition on the manufacture and sale of such products or to provide information when required.

Regulation 4 gives persons authorised under these Regulations the power to obtain information.