



**Tithe an
Oireachtais**
Houses of the
Oireachtas

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An Comhchoiste um Thithíocht, Pleanáil agus Rialtas Áitiúil

Tuarascáil maidir le Grinnscrúdú ar an mBille um Thoirmeasc ar
Mhicreaphlaistigh, 2016 [BCP]

Iúil 2018

Houses of the Oireachtas

Joint Committee on Housing, Planning & Local Government

Report on Scrutiny of the Prohibition of Micro-Plastics Bill, 2016 [PMB]

July 2018

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Introduction -

This is the report of the Joint Committee on Housing, Planning and Local Government's detailed scrutiny of the Prohibition of Micro-Plastics Bill 2016 (the Bill).

The Bill was referred to the Select Committee on Housing, Planning, Community and Local Government by order of the Dáil of 4th May 2017.

The Minister for Housing, Planning and Local Government was included in the circulation of a draft of this report, in accordance with Standing Order 141(2), as an *ex officio* Committee Member.

Procedural basis for scrutiny -

At its meeting of 28th March 2018, the Committee agreed to undertake scrutiny of the Prohibition of Micro-Plastics Bill 2016. Private Members Bills referred to Select Committee are subject to the provisions of Standing Order 84A(3)(a) and 141(2) [Dáil], which provides that a Select Committee "*shall undertake detailed scrutiny of the provisions of such Bills ... and shall report thereon to the Dáil prior to Committee Stage consideration ...*" unless the Committee decides in relation to a particular Bill that detailed scrutiny is not necessary.

Paragraph (3) of Standing Order 141(2) permits scrutiny of the Bill in Joint Committee, viz. "*Nothing in this Standing Order shall preclude a Joint Committee from undertaking detailed scrutiny as set out in paragraph (2) and reporting thereon to both Houses prior to Committee Stage consideration of the Bill by the Select Committee*".

Main provisions of the Bill -

The purpose of the Bill is to prohibit the sale and manufacturing of cosmetics that contain plastic microbeads in Ireland. The Bill seeks to enact legislation to make it a criminal offence to manufacture, sell, expose, offer, advertise, keep for sale, import or attempt to import to sell any cosmetics containing microbeads. The overall aim of the bill is to use the proposed legislation to reduce the amount of microbeads entering our seas, therefore reducing marine litter.

In particular the Bill provides for -

- The prohibition of manufacturing or selling of cosmetics containing microbeads;
- To enact legislation to make it a criminal offence to manufacture, sell, expose, offer, advertise, keep for sale, import or attempt to import to sell any cosmetics containing microbeads;
- The reduction of marine litter in the form of microbeads;
- Ensuring responsibility when a corporate body commits an offence by holding any person who has given consent, as well as the company, responsible.

Pre-Committee Stage scrutiny -

On the 12th of October 2017 and the 28th March 2018, the Joint Committee held two sessions scrutinising the Bill. In the first session, the sponsor of the Bill, Seán Sherlock T.D. briefed the Committee on the main provisions of the Bill.

Deputy Sherlock informed the Committee that the Bill provides for the prohibition of microplastics in cosmetics and personal care products. Deputy Sherlock also provided the definition for microplastics referred to in the Bill as "*meaning plastic particles less than 5 mm in diameter*". Deputy Sherlock also acknowledged the Government's intention to legislate in this area and that if this is forthcoming is willing to withdraw or amend this Bill as necessary. Deputy Sherlock stated that "*If the Government is to legislate for this and if we see the heads of a Bill coming from Government, I would be very happy to withdraw or amend my legislation. Until such time as that happens, I hope to keep the Bill on the agenda*". The Deputy also addressed the need to keep this on the agenda due to issues of marine litter and of microplastics entering the food chain.

Senator Grace O'Sullivan stated her support for the Bill, in light of the introduction of her own Micro-plastic and Micro-bead Pollution Prevention Bill in the Seanad in 2016. Her bill also included an obligation for the monitoring of microplastic levels in Irish waters, as well as definitions of both microbeads and microplastics that could assist in the future working of Deputy Sherlock's bill. Senator O'Sullivan also highlighted that during the discussion of her bill in the Seanad that the European legal problems had already been discussed, and that article 36 of the TFEU allowed for exemptions to free market rules on a number

of basis, including protection of the environment and human health. It was with this in mind that then Minister Coveney wrote to EU Commissioner for Environment and the Marine, Mr Karmenu Vella, immediately after the debate on Micro-plastic and Micro-bead Pollution Prevention Bill in the Seanad in November 2016, indicating that Ireland would be moving to ban the sale of products containing them in the future. Senator O'Sullivan went on to acknowledge the release by the European Commission of the plastics strategy "*The Commission is talking about having a new plastics strategy, which includes recommendations for tackling microplastics under the registration, evaluation, authorisation and restriction of chemicals regulation*". The Senator also stated the need for Government to legislate on this issue and the need for an update from the Government on where they are with current legislation. Deputy Sherlock responded with a statement about the impact of the legislation on Single Market affairs.

Deputy Eoin O'Broin T.D. stated Sinn Fein's support for the Bill and mentioned the precedent set by other EU member states who have adopted similar legislation; "*there were already precedents in three EU member states - Great Britain, France and Sweden - where legislation was either passing or the Commission had indicated that it had no objection to legislation passing. In fact, the Commission made it clear earlier last year that the banning of certain types of microplastics in cosmetics could be very consistent with the EU Internal Market rules so there was no automatic assumption*". The ability for the Government to legislate without affecting the Single Market was acknowledged as a previous concern and Deputy Sherlock explained that the Bill had been strengthened on the basis of that concern.

On the 28th of March 2018 the Joint Committee resumed scrutiny of the Bill, along with invited stakeholders Mr. Roger Harrington and Mr. Conall O'Connor from the Department of Housing, Planning and Local Government , Dr. Anne Marie Mahon and Dr. Róisín Nash from Galway-Mayo Institute of Technology, and Dr. Kevin Lynch from the National University of Ireland Galway.

Mr Harrington addressed the problem of marine litter as a persistent problem and acknowledged the legislation currently moving through the Oireachtas to try and combat this. He emphasised the work of the Department of Housing, Planning and Local Government in this area, and re-emphasised the need for a robust definition of micro plastics and the impact of the legislation on the EU Single Market. He stated *"we are very concerned about the confusion between microbeads and microplastics in this proposed legislation as microbeads are only a small subset of microplastics. As has been highlighted in previous Oireachtas debates, a national prohibition of products containing microbeads will have implications for the principle of free movement under the provisions of the Treaty on the Functioning of the European Union. EU Commission approval will be required to obtain derogation from Single Market rules. We are working on the development of a robust justification for our proposed national ban, which will have to be evidence based in tandem with the development of the legislation."*

Dr. Nash from GMIT stressed the bigger issue of marine litter and stated that she believed the proposed legislation was too narrow. Deputy Sherlock responded by stating *"my Bill is a first or a second cut. This is an iterative process and I am not tied to the fact that it should deal only with microbeads. I am quite happy for it to be amended in any way to reflect the realities of the science presented before us"*. The need for the Bill to be a first step in a national plan to combat marine litter was agreed by the Committee and its guests. The Chair stated that *"Deputy Sherlock's Bill remains on our work programme but we will work in tandem with the Department if it has a Bill. We would be happy for the officials to come in at any time that it has the information available. We look forward to further engagement"*.

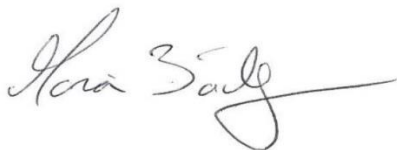
Observations of the Joint Committee -

The Committee in its scrutiny of the Bill and pursuant to Standing Orders, agreed to report to the Houses of the Oireachtas that it has undertaken and completed detailed scrutiny of the Bill. The Committee has made the following observations and conclusions:-

- the Committee notes the broad support expressed for the principle of the Bill and notes also that the Bill passed Second Stage reading;
- the Committee acknowledges the actions at EU level to implement a ban on micro-plastics in the cosmetics industry across member states;
- the Committee notes the narrow scope of the Bill and the need to consider whether the Bill should be expanded in an effort towards a national plan to combat marine litter;
- the Committee recommends that amendments are included to broaden the scope of the Bill in line with observations from stakeholders;
- the Committee recommends that a more definitive definition of micro plastic be added;
- the Committee acknowledges the actions currently in motion at Government level to enact similar legislation and recommend that the sponsor of the Bill and the Department engage further, with a view to ensuring a more robust Bill.

Conclusion –

The Committee concluded that that the Bill proceed to Third Stage consideration and that the proposer of the Bill take account of the observations of the Committee in framing respective amendments to the Bill, in particular in relation to the need to address certain drafting issues arising in the Bill.



Maria Bailey T.D.
Chair
July 2018

Appendix 1 – Committee Membership

Joint Committee on Housing, Planning & Local Government

Deputies

Committee Membership:

Chairperson: Maria Bailey (Fine Gael)

Deputies

Pat Casey (Fianna Fáil) (Vice Chair)

Ruth Coppinger (Solidarity-PBP)

Mattie McGrath (Rural Independent Group)

Darragh O'Brien (Fianna Fáil)

Eoin O Broin (Sinn Féin)

Fergus O'Dowd (Fine Gael)

Senators

Victor Boyhan (Independent)

Martin Conway (Fine Gael)

Jennifer Murnane O'Connor (Fianna Fáil)

Grace O'Sullivan (Green Party)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil of 16 June 2016.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 21 July 2016.
3. Elected Vice Chair on 24 May 2017

Appendix 2 – Terms of Reference of Committee

COMMITTEE ON HOUSING, PLANNING AND LOCAL GOVERNMENT

TERMS OF REFERENCE

a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,
 - (c) Estimates for Public Services, and
 - (d) other mattersas shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements including performance, efficiency and

effectiveness in the use of public monies, and

(f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

(a) matters of policy and governance for which the Minister is officially responsible,

(b) public affairs administered by the Department,

(c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,

(d) Government policy and governance in respect of bodies under the aegis of the Department,

(e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,

(f) the general scheme or draft heads of any Bill,

(g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,

(h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,

(i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,

(j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and

(k) such other matters as may be referred to it by the Dáil from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the

relevant Department or Departments—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,

(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(c) non-legislative documents published by any EU institution in relation to EU policy matters, and

(d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.

(6) The Chairman of the Joint Committee appointed pursuant to this Standing Order, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee.

(7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:

(a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,

(b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

(c) at the invitation of the Committee, other Members of the European Parliament.

b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 84; SSO 70]

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (4) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceannt Comhairle / Cathaoirleach whose decision shall be final.
- (5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

