



**Tithe an
Oireachtais**
**Houses of the
Oireachtas**

TITHE AN OIREACHTAIS

An Comhchoiste um Thithíocht, Pleanáil agus Rialtas Áitiúil

**Tuarascáil ón gComhchoiste ar Scéim Ghinearálta an Bhille um Thoirmeasc ar
Thóirgí Áirithe ina bhfuil Micreachlocha Plaisteacha, 2018**

Bealtaine 2019

HOUSES OF THE OIREACHTAS

Joint Committee on Housing, Planning & Local Government

**Report of the Joint Committee on the General Scheme of the Prohibition of
Certain Products containing Plastic Microbeads Bill 2018**

May 2019

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PREFACE



On 6th December 2018, the Minister for Housing, Planning & Local Government, Mr. Eoghan Murphy T.D., submitted the *General Scheme of the Prohibition of Certain Products containing Plastic Microbeads Bill 2018*¹ to the Joint Committee on Housing, Planning & Local Government in accordance with Standing Orders for the purpose of pre-legislative scrutiny ('PLS') of the General Scheme.

The Joint Committee agreed to undertake pre-legislative scrutiny of the General Scheme and the Committee has sought to scrutinise the proposed legislation and provide recommendations on areas where it believes change or amendments are warranted. The approach taken by the Committee in reporting on the scrutiny of the General Scheme was not to examine each part of the General Scheme, rather to identify the most critical issues and to focus on these.

The General Scheme contains 16 heads. The proposed Bill aims to prohibit the manufacture, import, export, supply, sale or exposure for sale of certain products that contain plastic microbeads.

The Committee has identified several issues and made recommendations on these issues which are explained in detail in the body of the Report. The Committee has made these recommendations in the hope that they will assist Minister Murphy and Department officials in improving this important piece of legislation.

I would like to express my appreciation to all the witnesses for their contributions and to the members of the Committee for their work on this subject. I hope that this report will help to inform the legislative process and make a valuable contribution to the forthcoming legislation.

A handwritten signature in cursive script, appearing to read 'Maria Bailey'.

Maria Bailey TD
Chair of the Joint Committee
May 2019

¹ https://www.housing.gov.ie/sites/default/files/public-consultation/files/general_scheme_of_the_plastic_microbead_bill_0.pdf

INTRODUCTION

In line with Standing Order 146A the General Scheme of the Prohibition of Certain Products Containing Plastic Microbeads Bill 2018 (the Bill) was referred to the Joint Oireachtas Committee on 6th December 2018 and the Joint Committee decided to undertake pre-legislative scrutiny. The Committee received briefing from Department officials on Thursday, 17th January 2019 and held one PLS meeting on Tuesday, 12th February. The General Scheme of the Bill is comprised of 16 Heads.

The purpose of the proposed legislation is to -

- Reduce the exposure of aquatic fauna and ecosystems to microplastics in the form of plastic microbeads;
- Prevent the discharge of plastic microbeads from detergents, cleaning products, abrasive scouring agents and rinse-off cosmetic products into freshwater and marine environments;
- Protect human health from the potential harm posed by microplastics in the form of plastic microbeads from rinse-off products entering the food chain or water supply;
- Reduce the potential reputational and economic risk that microplastics in the form of microbeads from rinse-off products pose to the tourism and seafood industry;
- Reduce the level of microplastic contamination of sewerage sludge by removing plastic microbeads from rinse-off products from wastewater discharges;
- Reduce the level of microplastic contamination of agricultural fertilizer processed from wastewater sludge by removing plastic microbeads from rinse-off products from wastewater discharges;
- Meet some of the objectives of the OSPAR Regional Action Plan on Marine Litter by tackling an upstream source of primary microplastics;
- Support the aims of the Marine Strategy Framework Directive (MSFD), by taking action towards reaching good environmental status by 2020.

The Bill's key aim is to ban the sale, manufacture, import and export of products containing plastic microbeads. The General Scheme is aligned with a number of other Government commitments aimed at protecting the marine environment. Measures designed with the objective of reducing microbeads and microplastics comply with the Marine Strategy Framework Directive (MSFD)² which requires Member States to reach good environmental status in their marine waters by 2020 at the latest. Ireland, along with other countries, has

² <https://www.housing.gov.ie/water/water-quality/marine-strategy/marine-strategy-framework-directive-msfd%20>

signed and ratified the OSPAR Convention³ which aims through cooperation to protect the marine environment of the North-East Atlantic. Article 46 of the Regional Action Plan on Marine Litter makes specific reference to reducing the impact of primary micro-plastics on the marine environment.

The General Scheme mirrors and surpasses legislation drafted and enacted in other jurisdictions on this subject. A number of other European countries have or are in the process of drafting legislation to address the issue of microplastics in the environment. Furthermore, under the REACH programme⁴, the European Chemicals Agency is reviewing the impact and effect of microplastics and is scheduled to make a recommendation to the Commission in due course.

The General Scheme, as drafted, proposes to introduce measures that go further than many of the existing EU regulations relating to microplastics. In time, and depending on the outcome of the REACH programme, Ireland's legislation will have to align with any amendments or new legislation introduced at EU level.

In the course of its examination, the Committee heard evidence that microbeads and microplastics are negatively impacting on both fresh waterways and the marine environment in Ireland. The Committee is of the opinion that the Government and legislature cannot afford to stand idly by and watch the destruction of the environment. Now is the time to act.

Therefore, the Committee universally supports efforts to reduce the harmful effects of both microbeads and microplastics and welcomes the publication of this draft legislation. The Committee also acknowledges the contributions of both Senator Grace O'Sullivan and Deputy Seán Sherlock in highlighting and furthering debate on the issue of microplastics through the publication of respective private members' legislation. The Committee looks forward to working with the Minister and his officials in facilitating the passage of this important legislation in due course.

³ <https://www.ospar.org/convention>

⁴ <https://www.hsa.ie/eng/Chemicals/REACH/>

PROVISIONS OF THE GENERAL SCHEME

The General Scheme is comprised of 16 heads. Table 1 below shows the general provisions of the 16 heads.

Table 1: Provisions of the General Scheme

Heads	Provisions
Head 1: Short Title and commencement	Standard legislative provision.
Head 2: Interpretation	Standard Legislative provision.
Head 3: Prohibition on the import, manufacture, sale or export of products containing plastic microbeads	<p>Provides for the prohibition of the manufacture, import, export, supply, sale, exposure for sale of certain products containing plastic microbeads including domestic and industrial cleaning products, abrasive scouring agents and rinse-down-the-drain personal care treatment products.</p> <p>The Head provides for prohibiting the use of microbeads which is relatively straightforward as there are a wide array of safe and biodegradable alternatives readily available.</p> <p>It also provides for the prohibition of rinse-off products that contain plastic microbeads.</p>
Head 4: Exceptions	<p>Provides for exemptions from compliance with Section 3 of the Act. Exemptions included in the General Scheme extend to: (i) medicinal products, (ii) veterinary medicinal products, (iii) creams, lotions or gels containing plastic microbeads designed, manufactured and sold solely for the purposes of application to the surface of a person's skin to protect it from the harmful effects of solar ultraviolet radiation; (iv) products containing plastic microbeads used</p>

	<p>to conduct scientific education or research;</p> <p>(v) products containing microbeads to be used as reference material for laboratory analysis as part of Agency’s enforcement activities; (vi) products containing plastic microbeads in transit through the State originating or destined for another EU State or Third Country and where products containing plastic microbeads is not subject to prohibition or restrictions in either of those circumstances; (vii) products containing microbeads exempted under subsection (2) of this section.</p> <p>The Head also provides for the Minister to introduce regulations to exempt an abrasive scouring agent and/or abrasive scouring agents containing plastic microbeads from compliance with Section 3 of this Act where he/she is satisfied that such a agents/agents are necessary for an industrial cleaning process and no substitute agent that does not contain plastic microbeads is reasonably available.</p> <p>The Head also provides for consultation by the Minister with other Ministers and/or agencies when making regulations under subsection (2).</p> <p>The Head provides for the revocation of exemptions granted to abrasive scouring agents on becoming aware that substitutes are reasonably available.</p>
<p>Head 5: Disposal of Plastic Microbeads or products containing plastic microbeads</p>	<p>Provides for the obligations to dispose of plastic microbeads and products containing plastic microbeads in an environmentally safe manner.</p>

<p>Head 6: Functions of the Agency (Environmental Protection Agency) and the Office of the Revenue Commissioners</p>	<p>The Head provides for the EPA to be primarily responsible for compliance, monitoring and enforcement of the prohibition on products containing plastic microbeads under the proposed legislation.</p> <p>The Head also provides for the EPA to appoint authorised persons to carry out inspections.</p> <p>It further provides that the EPA will keep records on the compliance and enforcement of the proposed Bill and provide guidance on the environmentally safe disposal of waste products containing plastic microbeads.</p> <p>The Head provides that the Revenue Commissioners as the authority responsible for the enforcement of the prohibition on importing and exporting of products containing plastic microbeads prohibited under the legislation.</p>
<p>Head 7: Authorised Person</p>	<p>This Head refers to the identification of authorised officers in both the EPA and the Revenue Commissioners when undertaking duties relating to this legislation.</p> <p>The Head requires that an authorised be issued with formal credentials proving their identity that a person can ask to see on demand. It also provides for the removal of authorisation from a person.</p>
<p>Head 8: Powers of the Authorised Person</p>	<p>The Head provides for the powers of an authorised person appointed either by the EPA or the Revenue Commission.</p>

Head 9: Search Warrant	Provides for an authorised person to seek a search warrant to enter private dwellings or to enter premises where the authorised person(s) has been refused entry.
Head 10: Compliance notice	Provides for compliance notices to be issued by authorised persons when an offence is committed under the proposed legislation. The Head also provides for the requirement of the person who has committed an offense to comply with the compliance notice. It also provides for judicial appeals and amendments to compliance notices.
Head 11: Fixed charge notice in lieu of summary offences	Provides for authorised persons to have the power to give an on-the-spot fine of €500 to persons who sell or expose for sale certain products containing plastic microbeads.
Head 12: Other Offences	Provides for a range of additional offences including: (i) changing the labelling on products; (ii) obstructing investigation of offences; (iii) tampering with evidence and (iv) providing misleading information.
Head 13: Penalties	Provides for penalties on the prosecution of offences.
Head 14: Prosecutions	Provides for the prosecution of offences listed under the proposed legislation.
Head 15: Prosecution of Company Officers	Provides for prosecution of company officials, where a company has committed an offence under the proposed legislation.
Head 16: Powers of the Minister	Provides that the Minister may direct the EPA to provide information on, and to review, the enforcement of the proposed legislation. It also provides that associated administrative costs for the proposed legislation be paid out of Voted expenditure.

BACKGROUND

The issue of microplastics and microbeads and their impact on the wider environment has received widespread attention in recent times. Microplastics are small but harmful plastic particles that can damage rivers, lakes, fish and wildlife. Microplastics come from the breakdown of plastic materials and can include:

- Fragments (from litter plastic molding);
- Line and Fibre (from rope, netting or cigarette butts);
- Foam from food containers and packaging and film (from plastic bags and wrappers);
- Production pellets (small pellets used as stock material in manufacturing plastic products)⁵.

Microbeads are a type of microplastic that can be found in lakes and streams. The tiny plastics (usually between 0.0004 – 1.24mm wide) are used in a number of ways including as cleaning or exfoliating agents in cosmetics, soaps or toothpaste. Microbeads do not dissolve and after being rinsed down drains can end up entering the world's waterways in their billions. Microbeads can be mistaken for food and eaten by fish and thus can enter the food chain.

Senator Grace O'Sullivan introduced the *Micro-plastic and Micro-bead Pollution Prevention Bill 2016*⁶ in Seanad Éireann on 27th October, 2016. The purpose of the Bill was to prohibit the sale or manufacture of products containing plastic microbeads, to monitor and report on the levels of micro-plastic and micro-based pollution on Irish coastlines, Irish waters, flora and fauna and at Natura 2000 sites and to provide for related matters.

Subsequently, Deputy Seán Sherlock introduced the *Prohibition of Micro-Plastics Bill 2016* in Dáil Éireann on 29th November, 2016. The purpose of the Bill was to prohibit the manufacture, sale and import of any cosmetic product containing micro-plastics as a raw material, and to provide for related matters.

The Joint Committee on Housing, Planning and Local Government undertook detailed scrutiny of Deputy Sherlock's legislation and published its report in July 2018.

Both Private Members' Bills contributed to the debate about framing legislation to address the environmental challenges posed by microplastics and microbeads. Minister Eoghan Murphy received cabinet approval to draft Government legislation in October 2018 and the Department published its General Scheme on 1 November, 2018. The General Scheme was

⁵ <https://www.ontario.ca/page/microplastics-and-microbeads>

⁶ <https://data.oireachtas.ie/ie/oireachtas/bill/2016/87/eng/initiated/b8716s.pdf>

referred to the Committee on 6th December and this report is the culmination of the Committee's decision to undertake pre-legislative scrutiny of the General Scheme.

PROHIBITION OF MICRO-PLASTICS BILL 2016 – PRIVATE MEMBERS’ BILL

In November 2016, Deputy Seán Sherlock introduced a Private Members Bill (PMB) to Dáil Éireann entitled *Prohibition of Micro-Plastics Bill 2016*⁷. The stated purpose of the PMB was to prohibit the manufacture, sale and import of any cosmetic product containing micro-plastics as a raw material. The Bill was referred to the Select Committee on Housing, Planning & Local Government by order of the Dáil of 4th May 2017. The Committee subsequently undertook Detailed Scrutiny of the Bill and published its report in July 2018⁸. The Committee forwarded a copy of the report to the Minister for Housing, Planning and Local Government for consideration in the context of drafting the General Scheme. A brief comparison of the Committee’s conclusions on the PMB and the General Scheme is provided below.

The Committee made a number of conclusions in its report including:

- That the Committee notes the narrow scope of the Bill [PMB] and the need to consider whether the Bill should be expanded in an effort towards a national plan to combat marine litter;
- That the Committee recommends that amendments are included to broaden the scope of the Bill in line with observations from stakeholders;
- That the Committee recommends that a more definitive definition of micro-plastic be added.

The Committee welcomes that the definition which caused some concern in the PMB has been addressed in the General Scheme. The Committee welcomes movement in this regard in that both a refined definition of “Micro-Plastic beads” and “Plastic” will be published in due course. It is important that these definitions, so fundamental to the purpose and context of the Bill, are published at the earliest opportunity.

The Committee notes that the General Scheme remains focused on primary microplastics and is centred on the cosmetic sector. Primary microplastics are just one element of a much bigger problem. In fact, evidence presented to the Committee suggests that secondary microplastics are the main contributor to environmental pollution.

⁷ <https://data.oireachtas.ie/ie/oireachtas/bill/2016/102/eng/initiated/b10216d.pdf>

⁸

https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_housing_planning_and_local_government/reports/2018/2018-07-12_report-on-scrutiny-of-the-prohibition-of-micro-plastics-bill-2016-pmb_en.pdf

Therefore, the Committee views the proposed legislation as a “good start” but not an end in itself. The Government should be ambitious in incorporating and/or publishing further legislation that seeks to target and prohibit secondary micro-plastics from polluting the environment

SUMMARY OF ENGAGEMENT WITH STAKEHOLDERS

Following the referral of the General Scheme, the Joint Committee agreed to conduct pre-legislative scrutiny. In carrying out its pre-legislative function on this proposed and welcome piece of legislation, the Joint Committee received a briefing in private from Departmental officials on 17th January and heard from the following stakeholders in public session on 12th February:

On 12th February:

- Dr Anne Marie Mahon, Galway-Mayo Institute of Technology;
- Dr Róisín Nash, Galway-Mayo Institute of Technology;
- Dr Kevin Lynch, National University of Ireland-Galway;
- Ms Síobhan Dean, Irish Cosmetics, Detergents and Allied Products Association; and
- Mr John Chave, Cosmetics Europe.

The Committee notes that the legislation goes further in its scope than similar legislation introduced in other European countries such as the United Kingdom, France and Sweden. The draft legislation is also in line with recommendations from the European Parliament's Environment Committee for an EU wide prohibition.

Head 4 specifies exceptions to the legislation. Exceptions include medical products and devices for human and veterinary use, sun screening products, products used for research and products in transit through Ireland. Under the General Scheme, the Environmental Protection Agency is designated as the agency responsible for the enforcement of the legislation. The legislation also provides for fines and penalties – both summary and upon indictment and conviction.

The Committee is aware that the Department has undertaken two public consultations and that based on feedback received, new definitions of “plastic microbead” and “plastic” will be introduced in due course. In addition, EU requirements mean that a notification will be formally submitted to the Commission seeking a derogation from single market rules. The derogation request will most likely be forwarded once the Bill has completed second stage.

Finally, the Committee notes the ongoing developments at EU level (through the REACH initiative) to introduce regulations to restrict intentionally added microplastics in products. Although these restrictions are unlikely to come into force until late 2020 at the earliest, the Committee understands that the Irish legislation will both anticipate and facilitate alignment with final EU restrictions when introduced.

At the outset, both **Dr Mahon** and **Dr Nash** reiterated their support for the Bill. Dr. Mahon's presentation focused on sources and pathways of microplastics in freshwater environments. Funding provided by the EPA in 2015 enabled a study of the pathways to freshwater environments. The study outlined some potential sources of microplastics pollution in freshwater environments and also identified catchments which had potentially high-risk microplastic pollution.

The study also found that industry did emit substantial amounts of microplastics and in particular through waste disposal. The study revealed both accidental emissions but also allowable emissions which occur due to the current lack of regulation of microplastics in industry. Dr. Mahon also highlighted the potential for run-off from accidental spillages from industry either through storm water drains or directly run-off into freshwater.

The study demonstrated a high capture rate within wastewater treatment plants of roughly 90% which could result in these microplastics finding their way back onto land through the spreading of sewage sludge practices. The witness informed the Committee that the remaining 10% ends up in rivers and lakes. Other sources identified as sources of microplastics included both astroturf or artificial pitches and playgrounds. However, indications are that aspects of construction design can dramatically reduce the leakage of microplastics from astroturf pitches.

Further research underway focusing on the potential for microplastics in the freshwater environment to be transferred through the food chain and monitoring the presence of microplastics in rivers has highlighted significant concerns. Preliminary results show that all of the river samples obtained so far contain microplastics. Moreover, the research has yielded that microplastics are present in all of the invertebrate species that have been captured from rivers.

Dr. Nash supplemented the analysis presented to the Committee by specifically referring to the impact of microplastics on the marine environment. She informed members that a series of studies are ongoing and involve monitoring estuaries, bays, inlets and oceans. As with the freshwater environment, Dr. Nash confirmed the presence of microplastics also in the marine samples. As an example, both the blue muscle and common prawn have both recorded low levels of microplastics in their intestinal tracts.

Dr. Lynch informed the Committee that there is a lot of evidence that microplastics are a problem and that they are in the food chain, which gives real cause for concern. He welcomed the publication of the General Scheme believing it to be comprehensive and invoking the precautionary principle which he hoped would prevent additional primary microplastics entering the environment. He also welcomed the clear definition of microbeads

in the General Scheme and stated that overall it appears to be a good Bill with which to proceed.

Ms Dean told the Committee that between 2012 and 2017, the European cosmetics industry phased out as much as 97.6% of plastic microbeads used for exfoliating and cleaning purposes in rinse-off cosmetics and personal care products. Furthermore, the European industry is on track to achieve 100% phase-out of plastic microbeads by 2020. Ms Dean argued that the cosmetics sector is a minor potential contributor with studies referenced estimating a potential contribution of between 0.1% and 2% of total aquatic plastic litter.

Ms Dean argued that the proposed definition of microbeads in the General Scheme is too broad and that clear definitions are required to operate the legislation effectively. Moreover, in her opinion, the General Scheme does not sufficiently take into account the business and consumer impacts resulting from implementation of the legislation.

Mr Chave argued that there is a strong case on Single Market grounds for a European measure and that Ireland should align its legislation with the UK model and pending legislation in Northern Ireland. In his view, the industry could live with that formula and it also has the added incentive of preserving the trade position.

Matters specific to the Heads in the General Scheme are dealt with under the heading – Key Issues with the proposed legislation. However, in the course of the Committee's examination a number of broader issues emerged which are briefly referred to below:

Pathways from freshwater sources to coastal environment:

The witnesses stated that it is not known exactly how plastics transition from land to sea, although it is known that all plastics in the sea originate on land. Further research is required to bridge the gap between freshwater and the marine.

Pathway from treatment of sewage sludge to the environment:

Members expressed concerns about the reuse and recycling of waste which can be used as fertiliser on land. The witnesses confirmed to members that wastewater treatments have an impact on microplastics and exacerbate the problem of pollution. Treatments reduce the size of particles making it easier for microplastics to penetrate more environmental compartments. Members expressed fears that essentially plastic is being dug into the soil.

Eco-toxicology:

Eco-toxicology relates to how plastics might attract other types of chemicals. The witnesses responded to questions from members citing that polymers themselves have inherent chemicals and that microplastics can absorb pollutants in the environment. In this way, the microplastics can and do act as a vector of pollution. Scientists informed the Committee that the microplastics can attract, for example polyaromatic hydrocarbons and transport them and depending on PH readings could result in the release of toxins.

Secondary Microplastics:

The legislation under review refers to primary microplastics in one specific industry. However, the Committee is aware that primary microplastics represent just one part of a much wider problem. Members during the hearings commented on the dangers derived from secondary microplastics including the washing process and breakdown of fibres from synthetic clothes. Tyre abrasions were another significant source of secondary microplastics referenced.

Engagement with Industry:

During the hearings, the Committee heard evidence concerning the difficulties in obtaining data from industry for scientific studies. Witnesses informed the Committee that engagement has taken place between researchers and Irish Water resulting in the conclusion of a restricted disclosure agreement detailing how the data derived from sampling would be managed. Notwithstanding the discussions between both parties, researchers still did not get access to monitor treatment plants representing an industrial output.

The Committee appreciates the sensitivity surrounding commercial operations and company data. However, the Committee also understands the importance attached to scientific research and monitoring of the environment in which sampling is a necessary and valued methodology. The Committee recommends that a mechanism be put in place that enables sampling by professionally qualified scientists and involves monitoring of treatment plants representing an industrial output.

KEY ISSUES WITH THE PROPOSED LEGISLATION

In examining the General Scheme, the Committee have identified areas that are of particular interest and/or where further consideration should be provided. These areas are outlined as key issues within this report.

KEY ISSUE 1: DEFINITION

The Committee notes that the General Scheme provides for a definition of the term Plastic Microbead. The Department has held two public consultations on the proposed legislation. The first public consultation took place in 2017 and received approximately 3,000 responses. The Department held another consultation on the draft Regulatory Impact Assessment associated with the General Scheme in November 2018. The Committee understands that the Department proposes that the definition of “plastic microbead” will be refined and a definition of “plastic” will be added.

The definition in the General Scheme states that: ‘...*“plastic microbead” means any intentionally added synthetic water-insoluble polymer particle that, at the time of manufacture, at its widest dimension is greater than 0.1µm and at its widest dimension is less than or equal to 5mm in size, of any chemical composition, size, shape, density, and function*’.⁹

The Committee regrets that the refined definition of plastic microbead and a definition of plastic which will eventually be added is not contained in the General Scheme. The non-inclusion of the final definitions makes it difficult for the Committee to assess and review the final definition of perhaps the single most important term in the Bill which also lends itself to the title of the legislation. The Committee intends to revisit reviewing the definition when the full legislation is published and Committee stage consideration is scheduled.

That said, the Committee notes the support for progress made in defining the term “plastic microbead” as referenced in the General Scheme. Dr Kevin Lynch, NUI Galway, in evidence to the Committee welcomed the clear definition of microbeads in the Bill which is inclusive of all plastic particles in the size range. Dr Lynch stated that the new definition marks progress, is now clearly defined and it makes it easy to understand what exactly the Bill covers. In particular, Dr Lynch highlighted that although microbeads are spherical, the classification in the proposed legislation includes anything within a certain size range, so it is not just anything with a spherical shape, but any shape within that size range. Thus by definition, other different shapes in that size range are captured.

⁹ Head 2 Interpretation in General Scheme of the Prohibition of Certain Products Containing Plastic Microbeads Bill 2018.

The Committee welcomes the extension of the definition to include both spherical and other shaped products that have the potential to pollute the environment.

The Committee takes note that industry representatives have communicated concerns in regard to the definition as outlined. Ms. Siobhan Dean informed members that the proposed definition is too broad and would prevent Irish companies manufacturing rinse-off cosmetics and detergent products that would otherwise be permitted in other EU countries. Also, Ms. Dean said that the legislation in its current guise would remove many products on the Irish market until they were reformulated.¹⁰

Ms. Dean highlighted a technical issue by referring to concerns industry has with the specific definition of microbead used in the text which states “synthetic water-insoluble polymer”. Ms. Dean emphasised that all plastics are polymers but not all polymers are plastics. Accordingly, Industry believes that the definition as drafted and the scope of the definition needs to be refined. Indeed the view of Industry is that Ireland should align itself with UK legislation and pending legislation in Northern Ireland when agreeing on defining the term plastic microbead.

Mr. Chave stated that the UK definition is broader than the US definition and all of the other definitions currently in place in the European Union and that the industry could probably live with that. Mr. Chave argued that aligning with the UK model also had added attraction in that it would preserve the trade position.

The Committee considers that Ireland should take the lead in drafting legislation that provides for the implementation of the strongest possible protections for the environment in relation to microbeads and microplastics. The Committee requests that Government communicate such legislative change to industry at the earliest opportunity to enable transition to the new requirements and to facilitate the reformulation of products.

Recommendations

The Committee recommend that:

- The Minister publishes the refined definition of “plastic microbead” and the definition of ‘plastic’ as a matter of priority.
- In the interim, the Committee welcomes the wide-ranging definition in place in the General Scheme and that any new definition would continue to incorporate the classification encompassing both spherical and other shapes within the particular size range.
- That Industry is notified of legislative changes in good time to facilitate transition to any new requirements relating to products that contain microbeads and microplastics.

¹⁰ In this regard, reference was specifically made that detergents like opacifiers and encapsulated fragrances could be captured in the legislation under the current definition.

KEY ISSUE 2: EXCEPTIONS

Head 4 specifically refers to exceptions and featured in discussions between the Committee and witnesses. Exceptions to the legislation apply in a number of instances and include:

- Medical or Veterinary products;
- Sun screen skin products with UV filters;
- Products used by institutions, hospitals or laboratories to conduct scientific education or research;
- Products used as a reference material for laboratory analysis as part of Agency's enforcement activities;
- Products in transit through the State dependent on whether or not a prohibition is in place in the jurisdictions to which the products are travelling and from which they originated.

Members sought further clarification in respect of the proposed exemptions and expressed concerns that the exemptions as drafted may be too broad in scope and queried whether other jurisdictions also allowed for similar circumstances.

Briefing provide to the Committee stated that the exemptions were devised to some extent with health protection measures in mind and that those exemptions referring to medical devices are narrow in scope and apply to human medical devices. Microbeads can be used in medical devices but are not used to any significant degree.

Similarly, the exemption applying to sunscreen is a precautionary measure and is linked to the fact that Ireland has one of the highest incidences of melanoma (skin cancer) in the world. Whilst a specific exemption is made in the General Scheme, the Committee has been informed that a sunscreen product that contains microbeads has yet to be identified.

Furthermore, the exemption relating to transit of products containing microbeads and involving other EU states and Third Countries has been specifically inserted to satisfy freedom of movement obligations.

The exemption referring to suntan lotions attracted significant attention. Members felt it strange that despite the fact that there are no products on the Irish market that fulfil that function and which contain microplastics or microbeads, an exemption was still provided for in the General Scheme. As microbeads do not add anything to the medical value of suntan lotions and are purely cosmetic, it was felt that the inclusion of an exemption might act as a perverse incentive to companies to add such agents to suntan products.

Both Dr Lynch and Dr Nash alluded to the exemption as a possible loophole in the legislation. The scientists suggested it may leave something of a loophole whereby products that do not currently have sun protection factor might suddenly get it to keep the microbeads. Instead, it was put to the Committee that the focus and emphasis should be on encouraging producers at design stage to consider alternatives, rather than leaving a potential loophole in the legislation.

Industry representatives took a slightly different approach highlighting that the key ingredient for an ultraviolet filter is the ultraviolet filter. In any case, the representatives suggested that natural alternatives do exist to replace microbeads in such products such as kernels and cellular lotions and that industry is conscious of the public desire for phase-out of microbeads. The inference is that industry is attentive to these demands and will respond accordingly.

Recommendations

The Committee recommend that:

- The rationale provided for most exemptions in the General Scheme is logical and is framed in the wider context of health protection measures or compliance with freedom of movement obligations.
- The Minister and his officials review the decision to provide a specific exemption to suntan lotion(s) on the grounds that no such products have been identified in Ireland to contain microbeads and that industry representatives have confirmed to the Committee that natural alternatives are available.

KEY ISSUE 3: FIXED CHARGE NOTICE IN LIEU OF SUMMARY OFFENCES

The General Scheme under Head 11 (Fixed charge notice in lieu of summary offences) provides for authorised persons to have the power to give an on-the-spot fine of €500 to persons who sell or expose for sale certain products containing plastic microbeads.

In the course of the Committee's examination, reference was made that the summary penalty may be too low. However, the Committee supports and considers it necessary that a third sanction is provided for which is that individual members of a board of directors can be held accountable.

Recommendation

The Committee recommend that:

- The Minister review the summary penalty provided for in the General Scheme with a view to benchmarking against similar penalties applied in other jurisdictions for comparative breaches.
- The penalty and sanction directly holding individual members of a board of directors accountable be retained and published as part of the final Bill.

KEY ISSUE 4: PENALTIES

The General Scheme under Head 13 (Penalties) provides that a person guilty of an offence under this Act shall be liable – (a) on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months, or both and (b) on conviction on indictment to a fine not exceeding €3,000,000 or imprisonment for a term not exceeding 2 years or both. The Committee supports the provision for such penalties and that they be incorporated into the final text of the Bill when published.

Recommendation

The Committee recommend that:

- The provision for penalties on the prosecution of offences is sufficient and that they be incorporated into the final text of the Bill when it is published in due course.

RECOMMENDATIONS

The Committee recommends that:

- The Minister publishes the refined definition of “plastic microbeads” and the definition of ‘plastic’ as a matter of priority.
- In the interim, the Committee welcomes the wide-ranging definition in place in the General Scheme and that any new definition would continue to incorporate the classification encompassing both spherical and other shapes within the particular size range.
- That Industry is notified of legislative changes in good time to facilitate transition to any new requirements relating to products that contain microbeads and microplastics.
- The rationale provided for most exemptions in the General Scheme is logical and is framed in the wider context of health protection measures or compliance with freedom of movement obligations.
- The Minister and his officials review the decision to provide a specific exemption to suntan lotion(s) on the grounds that no such products have been identified in Ireland to contain microbeads and that industry representatives have confirmed to the Committee that natural alternatives are available.
- The Minister review the summary penalty provided for in the General Scheme with a view to benchmarking against similar penalties applied in other jurisdictions for comparative breaches.
- The penalty and sanction directly holding individual members of a board of directors accountable be retained and published as part of the final Bill.
- The provision for penalties on the prosecution of offences is sufficient and that they be incorporated into the final text of the Bill when it is published in due course.
- That a mechanism be put in place that enables sampling by professionally qualified scientists and involves monitoring of treatment plants representing an industrial output.
- That the Minister consider expanding the scope of the General Scheme or publishing related legislation that seeks to prohibit the impact of secondary microplastics polluting the natural environment.
- That the Minister proceeds to publish the final Bill as a matter of priority to facilitate its legislative passage through the Houses of the Oireachtas.

APPENDIX 1 – ORDERS 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 Ceann 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.

APPENDIX 2 – COMMITTEE MEMBERSHIP

Deputies: Maria Bailey – Chair (FG)
Mick Barry (Solidarity-PBP)
Pat Casey – Vice Chair (FF)
Darragh O'Brien (FF)
Mattie McGrath (IND) – Rural Independent Technical Group
Eoin Ó Broin (SF)
Fergus O'Dowd (FG)

Senators: Victor Boyhan (IND)
Martin Conway (FG)
Jennifer Murnane O'Connor (FF)
Grace O'Sullivan (GP)

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 3 – LIST OF WITNESSES

❖ **Galway-Mayo Institute of Technology (GMIT)**

Dr. Anne Marie Mahon

Dr. Róisín Nash

❖ **National University of Ireland Galway (NUIG)**

Dr. Kevin Lynch

❖ **Irish Cosmetics, Detergents and Allied Products Association**

Ms. Siobhán Dean

❖ **Cosmetics Europe**

Mr. John Chave

APPENDIX 4 – LINKS TO MEETING TRANSCRIPTS

[Meeting of 12 February 2019](#)

APPENDIX 5 – LINKS TO SUBMISSIONS & OPENING STATEMENTS

- ❖ [Dr Anne Marie Mahon and Dr Róisín Nash](#)
- ❖ [Dr Kevin Lynch](#)
- ❖ [Irish Cosmetics, Detergents and Allied Products Association](#)