



## **EXPLANATORY INFORMATION REGARDING DRAFTING OF REGULATIONS UNDER THE *SINGLE-USE AND OTHER PLASTIC PRODUCTS (WASTE AVOIDANCE) ACT 2020* TO EFFECT EXEMPTIONS UNDER THE LEGISLATION**

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The Single-use and Other Plastic Products (Waste Avoidance) Bill 2020 contains a number of provisions that allow for the making of regulations.

The following information outlines regulations that can be made under the legislation, including for enacting exemptions.

### **Exemption making powers**

Clause 15 – allows regulations to be made that exempt persons or products from the operation of the Act, or a specific provision of the Act, and can be subject to limitations and conditions.

Clause 17 – is the general regulation-making power in the Act.

### **Single-use plastic drinking straws**

Clause 15(2) – refers specifically to the making of regulations to exempt the sale, supply or distribution of single-use plastic drinking straws to persons who require them due to disability or medical requirement.

This exemption could be drafted under the general power (Clause 15(1)). However, it is purposely referenced in the Bill under Clause 15(2) to signal the intent for the legislation not to prohibit the sale, supply or distribution of single-use plastic drinking straws to those in the community who rely on them. There are broad parameters for drafting a regulation under this section.

The government proposes to use this section of the Act to develop an exemption that allows access to single-use plastic drinking straws on request due to a disability or medical need, without the need to provide proof.

It is proposed that the regulations prescribe that Clause 7 of the Act does not apply to the sale, supply or distribution of single-use plastic drinking straws, where:

- a) A person has requested them due to a disability or medical requirement, or in order for such persons to otherwise access or obtain them, without the need to provide proof as to the nature of the disability or medical requirement; or
- b) The sale, supply or distribution of single-use plastic drinking straws is undertaken for the purposes of enabling the above access.

This allows people to request single-use plastic drinking straws from any business, without the need to provide proof of their particular need. Supermarkets and other retailers would still be able to sell and supply single-use plastic drinking straws, but as they are supplied ‘on request’, they would be removed from general access (i.e. placed behind counters).

The second part of the proposed exemption allows the distribution of single-use plastic drinking straws to businesses that intend to stock them for the purpose of supplying them to people with a disability or medical requirement.

The government does not propose to force businesses to supply single-use plastic drinking straws. It will be an individual business’ decision to maintain a supply of these products for people who may request them.

The government will undertake communication with businesses to make it clear that supplying single-use plastic straws for the purposes described earlier will not result in an offence, expiation fee or penalty under the legislation, and that staff are not to ask for proof from customers. Businesses will also be advised that the government will not require them to stock single-use plastic drinking straws if they do not wish to do so. However, communications will highlight the need to be inclusive to all members of the community.

If required, the regulations could contain a provision for Authorised Officers to make a determination on the nature of the sale, supply or distribution under b) only. This would allow offences to be applied for the sale, supply or distribution of single-use plastic drinking straws more broadly than for the purposes of the exemption.

## **Other regulation-making powers**

### Prohibited plastic products

Clause 6(1)(h) – allows for other products to be added to the list of prohibited plastic products.

Before a regulation is made to add other products, public consultation must be undertaken as per Clause 6(2).

Clause 6(1) – allows for products to be excluded from the definition.

By excluding a product from the definition of a ‘prohibited plastic product’, the prohibition on sale, supply or distribution will not apply.

The government proposes to draft a regulation under this section to exempt ‘attached items’; products that are attached to another product at the point of manufacture and packaging (e.g. straws attached to fruit-boxes and plastic spoons packaged with yoghurt) and products that are packaged with food ready for consumption (e.g. noodle cups).

### Sale, supply or distribution of prohibited plastic products

Clause 7(6) – allows regulations to specify that a business is, or is not, a business for the purposes of the section

Should it be required, this enables a regulation to be made that exempts a business, or type of business, from selling, supplying or distributing prohibited plastic products.

It also enables a regulation to be made to clarify that a business is considered to be a business for the purposes of this section, should there be any ambiguity.

### Sale, supply or distribution of oxo-degradable plastic products

Clause 10(5) – allows regulations to specify that a business is, or is not, a business for the purposes of the section

Should it be required, this enables a regulation to be made that exempts a business, or type of business, from selling, supplying or distributing oxo-degradable plastic products.

This could be used if there is an unintended consequence of this section (e.g. impacting the sale, supply or distribution of certain types of legitimate compostable products).