

STATES OF JERSEY



DRAFT SINGLE-USE PLASTICS ETC. (RESTRICTIONS) (JERSEY) LAW 202- (P.61/2021): COMMENTS

**Presented to the States on 15th July 2021
by the Environment, Housing and Infrastructure Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

In June 2020, the States Assembly adopted [P.64/2020](#), ‘Banning the Sale of Single-Use Carrier Bags’, which sought to reduce waste, increase reuse and support Jersey’s Carbon Neutral Strategy by removing single-use bags and setting a minimum price for ‘bags for life.’ The aim of the proposition was to encourage a ‘bring your own bag’ culture and to support a change in consumer behaviour away from single-use consumption and disposal. The Proposition called for the Council of Ministers to bring forward draft legislation by February 2021 to give effect to the proposition, including provision for an implementation period of up to six months before the prohibition and minimum price came into force.

Subsequently, [P.61/2021](#), the Draft Single-Use Plastics etc. (Restrictions) (Jersey) Law 202- (hereinafter the ‘draft Law’) was lodged on 8th June 2021 by the Minister for Infrastructure and scheduled for debate on 20th July 2021. If adopted, the draft Law will provide a mechanism to significantly reduce the use of single-use plastic bags as well as single-use paper bags and an opportunity to extend the legislation to other avoidable single-use plastics in the future. Moreover, it will provide a mechanism for the continued sale of bags for life (plastic and paper) at the minimum price specified within the draft Law.

Minister for Infrastructure’s Amendment to the draft Law

As a result of feedback from the retail industry, the Minister for Infrastructure lodged an Amendment to the draft Law on 7th July 2021. If adopted, the Minister’s Amendment would extend the lead-in period for the enforcement of the draft Law from six to twelve months.

Panel briefing and hearing

The Panel received Officers for a briefing¹ on the draft Law on 15th June 2021 to explore the matter further. The Panel also questioned the Minister for Infrastructure on the draft Law during its Public Quarterly Hearing on 6th July 2021².

Consultation

During the briefing, the Panel was advised the draft Law had been informed by consultation with local traders and by collaborative working across a number of Government departments. As a result of the consultation process, three categories of bags had been identified to be banned including lightweight plastic carrier bags (between 15 to 50 microns in thickness), very lightweight plastic carrier bags (less than 15 microns in thickness and if not meeting the compostable standard) and paper carrier bags (with a weight of 50gsm – 170 gsm). It was emphasised that paper carrier bags had been included to ensure that they would not become an alternative to plastic carrier bags.

With regard to paper bags, the Panel questioned why paper bags could not be used instead of plastic bags, noting that they would be compostable. It was highlighted that

¹ [Briefing Minutes – EHI Panel – 15th June 2021](#)

² [Transcript – Quarterly Public Hearing with the Minister for Infrastructure – 6th July 2021](#)

paper bags had a larger environmental footprint than plastic bags and that, through banning paper bags, sustainable choices were being embedded in society. It was explained that if the switch was made to paper bags, Jersey would be open to environmental criticism as it would not promote a positive change. It was emphasised that the intention was to encourage a behavioural change so that consumers would bring their own bags. It was noted that this approach had been mirrored in the UK. It was emphasised that the aim was not to swap out one type of packaging for another, but to promote a behavioural change and to reduce the negative impact on the environment.

As outlined in P.61/2021, the consultation was a requirement of P.64/2020 to set a minimum price for the bags for life. During the briefing, the Panel questioned whether the set minimum price of 70p was changeable and raised concern that it would need to be adaptable to respond to changes in inflation. It was noted that the price could be updated as required. The Panel asked whether a price point of £1 had been considered for the bag for life. It was explained that it had and that only a few retailers had opted for that price point during the consultation process. It was explained that the 70p price point had been decided upon as it had aligned with the research that had been undertaken by Greenpeace. In addition, the optimum price had also matched the outcome from the consultation process.

The Panel questioned what would inhibit retailers from increasing the value of items being sold by 70p and then providing the bag for free to encourage sales. It was noted that there would be ways in which retailers could utilise tools to encourage the sale, however, noted that the legislation would require the retailer to charge for the bag they supplied to the consumer.

The Panel raised concern that through stipulating the retail price for carrier bags that potentially their cost price could rise to align with the retail price, to make it more profitable for the supplier. It was explained that the Government would not be able to control or influence the cost price of the carrier bags. However, that local wholesalers did not solely supply to the local market and although they would be free to alter the price of the bags they sold; they would want to remain competitive within the market. It was highlighted that aspect could mitigate the risk that the Panel had raised. The Panel asked if the wholesalers were content with the draft Law and was informed that they were supportive of it and that some wholesalers were also considering a take back service for traders.

The Panel notes that various industry exemptions would be applied to bags that would be used to contain uncooked fish and fish products, prescription medicine and appliance, live fish or other aquatic creatures as well as goods in transport (such as at an airport, on a plane or ship, for example). The Panel is pleased to note that the introduction of these exemptions was informed by the consultation process, demonstrating the importance of consulting with industry at an early stage and in order to fully understand any industry-specific requirements and practicalities.

The Panel was informed that paper bags for life differed from paper gift bags. Noting that gift bags would still be readily available for purchase, it was highlighted that clear guidance would be required to distinguish these as having the sole purpose of gift wrapping and not to transport goods by the consumer from the point of purchase.

Impact of the draft Law on traders and consumers

The Panel was informed that traders would be required to ensure compliance within six months* of the adoption of the Law. It was explained that consumers would no longer be provided with free single-use plastic carrier bags and single-use paper carrier bags and would be charged the minimum set price of 70p for purchasing a bag for life.

The Panel was informed that a communications plan would be undertaken to support traders and consumers with the process and to facilitate familiarity with the changes in advance of the legislation coming into effect. It was noted that the draft Law allows for an implementation period of six months* before the legislation would come into force. The Panel noted that the implementation period would be important to ensure that the appropriate messaging was supplied to traders and shoppers and highlighted that the messaging should be simple.

The Panel was informed that enforcement of the Law would primarily be carried out by Officers from Customs and Immigration and Environmental and Consumer Protection. It was explained that the enforcement would be pragmatic, and that support would be provided to traders through clear technical guidance. It was noted that Officers would be able to issue a Notice as required which could result in a Level 2 fine of £1000 being charged for non-compliance. The Panel noted that the fine for non-compliance of £1000 was not high for a trader and questioned whether it may be too low. It was explained that if the fine was not adequate it would have been picked up by the Law Officers' Department, so it was believed to be suitable according to their scale of penalties.

The Panel explored this aspect further during a public quarterly hearing with the Minister for Infrastructure on 6th July 2021 and asked the following of the Minister.³

The Connétable of St. Brelade:

Minister, we understand that a level 2 penalty fee for non-compliance of plastic bag regulation requirement, as set out in the draft law, would be £1,000. Could you expand on how the penalty is determined from the scale of penalties, which is in the law, and why this particular level is deemed appropriate for the low value item?

Head of Sustainability and Foresight:

So we took advice from the law officers who, of course, peg similar types of infringements with other pieces of legislation and so they will have determined that based on the broad spectrum of fines that could ultimately be imposed or other enforcement action. So, of course, things like enforcement notices always go first. We would always prefer to see people comply, particularly if they have made a mistake in non-compliance and, of course, fines and court are always the last resort because the environment has lost by that point. It would have been advised based on the plethora of other legislation they would have compared against and that is the advice that we received.

* Extended to twelve months, subject to adoption of the Minister's Amendment

³ [Transcript – Quarterly Public Hearing with the Minister for Infrastructure – 6th July 2021](#)

Referring to P.64/2020, the Panel noted that the original proposition had called for the profits from the bags for life to be given to charitable causes and asked if that would still be the case. It was explained that aspect had been withdrawn by the Council of Ministers as it was their view that the retailer should have the freedom to choose.

During the public quarterly hearing, it was noted that it was agreed that retailers could keep the money from the sale of the bags. It was also explained that would provide an incentive to retailers to ensure the correct bags were being sourced and would facilitate the enforcement and compliance of the Law.

Resource and cost implications

The Panel was informed that the highest cost implications would arise during the first year of the Law coming into effect. It was explained that the higher cost was primarily due to the prerequisite for additional resourcing for the implementation and communications that would be required in the first year. However, the cost in the second year would be approximately half of that of the first year and was to cover the additional resource that would be required within the Environmental and Consumer and Protection Team. It was noted that the funds for the first year would be funded through the Contingency Fund through the Treasury Department and that any subsequent funding would be allocated within the next Government Plan. This was reiterated during the Panel's public hearing with the Minister on 6th July 2021.⁴

Monitoring of performance

It is the Panel's understanding that consideration has been given to how the performance of the Law could be managed in order to monitor the success of the Law. However, it was noted that traders, in the main, had suggested that they would not want to share data for the purpose of monitoring the performance of the Law. It was highlighted that it would therefore be difficult to quantitatively report on the success of the withdrawal of single-use bags and the introduction of minimum set priced bags for life. It was anticipated that in the absence of any empirical data that the success could be measured through the behaviour change of consumers.

The Panel raised this at its public hearing with the Minister for Infrastructure on 6 July 2021, as it wanted to obtain further clarity on the approach that would be followed to monitor the performance of the Law and asked the following.⁵

The Connétable of St. Brelade:

We understand that insofar as is practical there will be some level of performance management to enable the success of the implementation of the draft law. Could you talk us through how this will be evaluated and also whether, for transparency, statistics relating to performance management will be made publicly available at regular intervals on gov.je?

⁴ [Transcript – Quarterly Public Hearing with the Minister for Infrastructure – 6th July 2021](#)

⁵ [Transcript – Quarterly Public Hearing with the Minister for Infrastructure – 6th July 2021](#)

Head of Sustainability and Foresight:

That is a good question, thank you. I do not have a detailed answer on that because it is not my team that will be doing the enforcement action. The environmental health team certainly do carry out performance management and time recording and all of those things that you would expect...

The Panel emphasised the importance of a monitoring scheme to determine whether the Law was functioning as intended. [See Recommendation 1 on page 8]

Extending the legislation to other single-use items

It is understood that the intention, in the longer term, is to extend the legislation to other single use items and that the draft Law had been drafted to enable this. The Panel was informed that during the consultation, in the main, traders had been supportive of this intention.

Although supportive of the potential inclusion of further items in the future, the Panel raises its concern that the necessary infrastructure is not in place for the disposal of compostable items (as alternatives to single-use plastics). The Panel highlighted that it had been made evident during the lockdown period resulting from the Covid-19 pandemic that the infrastructure was not available to handle the increased packaging that had accumulated from takeaways, including disposable paper cups. [See Recommendation 2 on page 8]

During the Panel's public quarterly hearing with the Minister for Infrastructure on 6th July 2021, the Panel pursued an understanding regarding the waste strategy and asked⁶:

The Connétable of St. Brelade:

Do you consider there to be any disadvantages to introducing the draft law without this overarching waste strategy in place? ... Do you think one goes with the other?

The Minister for Infrastructure:

I think it moves in tandem with our general direction. I do not think there is any disjoining there. We are all heading in the same direction, we all know we want to reuse, recycle as much as we possibly can. The whole world is going in that direction and we are happy to follow suit or indeed lead the way at times.

The Panel asked why dog waste bags were not required to be compostable. It was explained that if the bag was compostable, the bag would be composted with its contents and that dog waste was not suitable for composting.

The Panel asked if the Law would allow for excessive packaging to be banned to either reduce or eliminate packaging where it was not required. It was explained that the legislation would allow for other items to be added to the list of banned items, however, that a balance would need to be achieved. It was explained that some aspects would be

⁶ [Transcript – Quarterly Public Hearing with the Minister for Infrastructure – 6th July 2021](#)

achievable through changes that would be made to global standards, like excessive packaging, rather than locally. It was noted that paper cups could be addressed locally.

It was the Panel's view that the community should be encouraged to purchase local produce and to provide their own packaging to reduce the requirement for packaging locally. Noting that supermarkets would be required to abide by strict packaging requirements for health and safety purposes, the Panel emphasised that supporting local suppliers in that manner could be a positive approach for reducing the requirement for packaging at a local level.

The Panel questioned what the status regarding single-use plastic bags was in the UK. It was explained that in May 2021 a 10p charge had come into effect on single use carriers in the UK. Regarding Wales, it was noted that legislation similar to Jersey's had been adopted regarding single use plastic and paper bags in 2011. It was explained that France had introduced legislation in 2016 and that Alderney was in a similar position to Jersey. Guernsey's current status was unknown. It was explained that Greenpeace had sought to align all cost points to a minimum price set to ensure that a level playing field for all could be achieved.

Subsequent to the briefing received, the Panel sought to further explore retailers' views and comments regarding the draft Law and approached Jersey Business, Jersey Chamber of Commerce and the Jersey Hospitality Association to request their views. The Panel received a submission⁷ from Jersey Business on 30th June 2021.

Submission: Jersey Business

The submission received by Jersey Business details that many retailers were appreciative of the Government's consultation process and welcomed the dynamic routes that had been used to obtain the views of retailers including an information video, imagery of items as well as an online survey. However, it was also the view that the consultation would have benefited from early interactive discussion with a diverse group of retail businesses, to determine the variety of bags currently in use and the practicalities of the proposed changes especially regarding luxury bag users who were left uncertain as to whether the ban would apply to the bags they used.

Retailers welcomed many of the changes that had resulted from the consultation process, including the specification for a paper bag for life as well as the industry exemptions applied to the draft Law. However, it is the view of retailers that further clarity is required regarding the specification of a recyclable paper bag for life in respect of the different components of the bag under the draft Law. *[See Recommendation 3 on page 8]*

Within their submission, a particular industry concern regarding the six-month period that would be allowed for retailers to use up any non-conforming bags was highlighted. It was noted, in light of the Covid-19 pandemic and the forced closure of non-essential retail, that an unusually large volume of stock had remained and would otherwise need to be disposed of if it was not possible to use it up within the allowable six-month period provided by the draft Law.

⁷ [Submission – Jersey Business Retail](#)

As a result of further discussions between retailers and the Department for Infrastructure, Housing and Environment, retailers had been advised that an Amendment would be lodged to extend the lead-in time from the six months proposed by the draft Law. The retailers welcomed the proposed Amendment to the draft Law which would provide the additional time for retailers to use up any non-conforming bags.

During the Panel's public hearing with the Minister for Infrastructure on 6th July, the Minister confirmed that he would be bringing an Amendment to the draft Law as a result of representations received from retailers regarding the six-month lead-in period. It was explained that some retailers would not find issue with the six-month period, however, that others would find it challenging to comply with the Law within that period. It was highlighted that it was the intention of retailers to transition as soon as was possible, however, that some retailers would require longer than the proposed six months due to the volume of stocks they currently hold.⁸ The Panel notes the Minister lodged his proposed Amendment on 7th July 2021.

In their submission, Jersey Business noted their desire to communicate the full scope and impact of the changes to businesses through Jersey Business, Chamber of Commerce and the Jersey Hospitality Association, in order to clarify what is required from the retail industry well in advance of the regulation coming into force. [*See Recommendation 4 below*]

Recommendations

Recommendation 1

The Minister for Infrastructure should outline in his response to the Panel, further details of the plans for the intended monitoring and performance management of the draft Law, in order to ascertain if it is operating as intended. The Minister's response should be sent to the Panel within 6 weeks of presentation of these Comments.

Recommendation 2

The Minister for Infrastructure should instruct the Department for Infrastructure, Housing and Environment to investigate feasibility and viability (including options) for the resourcing and implementation of the required infrastructure for the disposal of compostable single-use items. The outcome of this feasibility work should be reported back to the States Assembly prior to the 2022 election.

Recommendation 3

The Minister for Infrastructure should ensure that further clarity is provided regarding the specification of a recyclable paper bag for life in respect of the different components of the bag under the draft Law. This should be provided before the Law comes into force.

Recommendation 4

The Minister for Infrastructure should ensure that open lines of communication must be maintained with retailers through Jersey Business, Jersey Chamber of Commerce, and the Jersey Hospitality Association to ensure that the full scope and impact of the changes can be communicated by retailers and to clarify what would be required of the retailers well in advance of the Law coming into force.

⁸ [Transcript – Quarterly Public Hearing with the Minister for Infrastructure – 6th July 2021](#)

Conclusion

The Panel is supportive of the draft Law and believes it will make a positive contribution to Jersey's Carbon Neutral Strategy. The Panel is also pleased that the Minister and the Department for Infrastructure, Housing and Environment have taken on board the views of retailers by the inclusion of specific exemptions in the draft Law. Additionally, that the Minister has brought forward the Amendment to the draft Law to address retailers' concerns regarding the six-month lead in period for the Law.

The Panel intends to follow-up, in writing, with the Minister for Infrastructure in relation to the recommendations made and whether these are accepted or not. The Minister's response will be made publicly available on the States Assembly website.

Finally, the Panel wishes to thank the Minister and his Department for their efforts to bring forward this important piece of legislation and for their engagement with stakeholders and the Panel. The Panel also wishes to thank Jersey Business for its written submission which has made a valuable contribution to its review of the draft Law.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments were submitted to the States Greffe after the noon deadline as set out in Standing Orders 37A as the deadline had moved following the change to the start date of the States Assembly meeting.