

Carl Sargeant AC / AM  
Y Gweinidog Cyfoeth Naturiol  
Minister for Natural Resources



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref P-04-547  
Ein cyf/Our ref MB/CS/1351/15

Williams Powell AM  
Chair Petitions Committee  
Ty Hywel  
Cardiff Bay  
Cardiff  
CF99 1NA

30<sup>th</sup> March 2015

Dear Bill

Thank you for your invitation to give oral evidence on the petition brought forward by Friends of Barry Beaches to ban polystyrene fast food and drinks packaging.

Litter, in all its forms, is a matter that I take very seriously and it is a problem that the Welsh Government is committed to tackling. I recognise that the littering and disposal of polystyrene fast food and drinks packaging, or any type of fast food packaging is a problem that can have a detrimental impact on the local environment and, in particular, the marine environment. My officials have been pro-active in working with a wide range of stakeholders including local authorities to address this problem through awareness raising, education and engagement, and to understand how well the current legislative regime is being used.

There is currently a suite of enforcement tools in place to enable local authorities to tackle the issue of littering in their area. For example, the *Environmental Protection Act (EPA) 1990* provides a range of powers to allow local authorities to deal with those who undertake an environmental crime. Amongst these are powers to issue *Fixed Penalty Notices* of £75 to people who are caught littering.

In addition, the more recent *Anti-social Behaviour, Crime and Policing Act (ASBCP) 2014* introduced a range of new powers for local authorities to design more effective solutions to address problems such as litter that are encountered locally. From October 2014 local authorities have been able to issue *Community Protection Notices (CPNs)* to both individuals and owners or occupiers of premises, where they are satisfied that an individual or body is behaving in a way that has a persistent or continuing detrimental effect on the quality of life of those in the locality. These wide reaching powers allow local authorities to require the person to whom a CPN is issued, to stop doing specified things, to do specified things, or to take reasonable steps to achieve specified results. Failure to comply with a CPN is an offence, and a fixed penalty notice may be issued where there is non compliance.

Furthermore the ASBCP Act 2014 also provides local authorities with the power to make a *Public Spaces Protection Order* (PSPOs). PSPOs are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life; and therefore local authorities could use this power to impose conditions on the use of that area, which apply to everyone.

In terms of managing and reducing waste packaging, the *Packaging (Essential Requirements) Regulations* place responsibility on those packing or filling products to meet specific requirements. This includes minimising the volume and weight of packaging to permit reuse or recovery. The trading standards departments of local authorities are responsible for enforcing the regulations within their areas.

In considering whether the Welsh Government could tackle this problem by bringing forward primary legislation to ban polystyrene packaging, consideration does need to be given as to whether better use of the current legislation would in fact achieve this aim.

It is by no means certain that an outright ban of polystyrene packaging would resolve this issue alone, nor is it certain that such a course of action would be within the legislative competence of the National Assembly. Measures to protect the environment and combat the effects of waste and litter are ostensibly within the legislative competence of the National Assembly, under *paragraph 6 (Environment) of Schedule 7 to the Government of Wales Act 2006* ("GoWA 2006"). However, depending on the detailed policy intentions behind the ban, and on other factors, including likely impact, there is an argument that an outright ban affecting economic interests of businesses in Wales, could amount to a violation of *Article 1 of the First Protocol to the European Convention on Human Rights*, on grounds of proportionality. There is also a possibility that such a proposal could have the effect of interfering with the free movement of goods, which is one of the fundamental freedoms of the internal market, thus contravening provisions of the *Treaty on the Functioning of the European Union*. If either of these hurdles could not be overcome, it would put the provision outside Assembly competence by virtue of *s.108(6)(c) of GoWA 2006*.

Consequently, a comprehensive and detailed legal analysis of any proposal to bring forward such legislation would be required before a decision could be reached as to whether or not such a proposal was within Assembly competence. Part of that analysis, particularly in relation to the EU dimension, would be a consideration of domestic powers that are already available to tackle the problem.

For this reason I feel that it is important for the Welsh Government to consider alternative interventions other than banning one specific type of packaging, and in order to determine the most appropriate methods of intervention further research and evidence is required.

Therefore, in addition to the ongoing initiatives and programmes currently supported by the Welsh Government to reduce the impacts of littering, we have commissioned *Keep Wales Tidy* (KWT) to produce a research paper specifically on polystyrene litter and its effect on the environment. Furthermore, we have also provided funding to KWT to undertake a 'Coast Care' pilot to gather information on all types of coastal littering in Wales, to identify priority areas for improvement, and to work with community groups to understand and create lasting behaviour change around littering, whilst promoting good practices in beach management.

I expect to receive the findings of both this research paper and the Coast Care pilot shortly and this evidence will be used to inform further practical actions that can be taken to

complement the current suite of legislative and non legislative interventions that are already in place across Wales to tackle this problem.

Until I have seen the wider evidence in this matter I do not feel that I will be in a position to provide further comment on the petition to ban polystyrene. I therefore decline your invitation to give evidence at the Petitions Committee.

Yours sincerely

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

**Carl Sargeant AC / AM**  
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