

# UN Legal Research on Plastics: Plastic Bags, Microbeads, Single Use plastics. Country Report: Ireland

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## 1. The Scope of the Research

UN Environment is seeking to create three targeted reports to provide a global overview of the progress of countries in passing laws and regulations that limit the manufacture, import, sale, use and disposal of selected plastic products which end up as marine litter. This report is in relation to Ireland. The report will focus on national laws that address production, retail, consumer use and post use or disposal of a variety of items focusing on single-use plastic bags and other single use items, microbeads and other micro-plastics in personal care, cosmetics and home products

The report examines these categories:

- Plastic bags sold at point of sale to consumers;
- Micro-plastics in personal care and cosmetics and home products including microbeads and cotton swabs
- Single-use plastic items, including bottles, disposable tableware, plastic stirrers, straws, utensils, and cups;

## 2. The Jurisdictional Mandate/Legal Authority to regulate each type of plastic.

Ireland is an EU Member State, a parliamentary democracy and constitutional republic. In Ireland, Plastic Bags, Single Use Plastic and Micro-plastics could be regulated either by primary laws made by the Legislature (a bicameral Parliament with a law-making process that can be slow and cumbersome) or by secondary laws made by the relevant Minister, under powers created under existing legislation (a faster process than primary legislation but a much more limited one).

In terms of government departmental responsibility, the regulation of environmental pollution, plastic, and marine plastic/litter is difficult as since 2016 it crosses several departmental briefs, over the [Department of Communication, Climate Action and the Environment](#) (DCCA), the [Department of Housing, Planning and Local Government](#) (DPLG) (responsible for some Marine issues and Marine Spatial Planning) and the [Department of Agriculture, Food and the Marine](#) (DAFM). This division means three different Government Ministers with responsibility in this area, currently Denis Naughten T.D., Michael Creed T.D. and Eoghan Murphy T.D.

Under this level waste compliance and enforcement is managed between the [EPA](#) (Environmental Protection Agency) and local authorities. There are 31 [local authorities](#). Water services are managed and provided by a State owned private utility, [Irish Water](#).

Additionally, cosmetic products are regulated by the [HPRA](#) (Health Products Regulatory Authority) which is designated with responsibility for monitoring compliance of cosmetic products with appropriate standards. The HPRA are under the auspices of a fourth department, the Department of Health.

The only plastic specific measure currently in force relevant to this study is the [Plastic Bag Levy](#), which imposes a charge on consumers of 22 cents for plastic bags at point of sale. The regulation of Plastic Bags remains with the Department of Communications, Climate Action and the Environment for the moment. This measure has been extremely effective reducing plastic bag usage. This measure was effected by a combination of primary (the Waste Management Act 1996 as amended) and secondary legislation (S.I. 605 of 2001 & S.I.167 of 2007).

There are no legal bans/restrictions on plastic bag, or any measures addressing single-use plastic (other than plastic shopping bags), and microbeads in the areas of manufacture, production, sale, export or import<sup>1</sup>. While there are no disposal measures specific to plastic bag, single-use plastic or microbeads, they fall within the general waste management framework in Ireland, and come under anti-dumping and litter laws which prohibit their disposal outside of regulated facilities.

## 3. The Plastic Bag Levy

Since the 4<sup>th</sup> March 2002, a levy, called the Environmental Levy, has applied to the supply of plastic shopping bags by retailers. The levy is currently 22 cents per plastic bag and must be charged to consumers by retailers at point of sale. The retailers are responsible for maintaining records on the

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<sup>1</sup> Verified through text based research, searches on [www.irishstatutebook.ie](http://www.irishstatutebook.ie) and through due diligence consultation with NGO's and Government Departments.

number of levies imposed and returning these and the levy collected to the Revenue Commissioners (State tax collection authority). It is a criminal offence to fail to comply with the legislation<sup>2</sup>.

The legislation grounding the Plastic Bag Levy is contained within two pieces of secondary legislation, S.I. 605 of 2001<sup>3</sup>, the Waste Management (Environmental Levy) (Plastic Bag) Regulations, 2001 as amended by S.I. 167 of 2007<sup>4</sup>, the Waste Management (Environmental Levy) (Plastic Bag) (Amendment) (No. 2) Regulations 2007.

These are based on powers created in primary legislation - Section 72 of the Waste Management Act 1996 as inserted by section 9 of the Waste Management (Amendment) Act, 2001<sup>5</sup>.

There are gaps remaining in this regime. Exempt bags, which are of a light gauge (225mm in width (exclusive of any gussets), by 345mm in depth (inclusive of any gussets), by 450mm in length, (inclusive of any handles), and are used in supermarkets for containing food, fruit or meat are outside of this framework, as are bags costing more than 70 cents. These light gauge bags are in daily use in large volumes in supermarkets and shops around Ireland.

Since the introduction of the levy, the consumption of plastic bags subject to the levy is estimated based on the levy returns from the sale of plastic bags. The total number of bags supplied by retailers subject to the levy is obtained from the Revenue Commissioners and this figure is divided by the population to obtain an estimate of the number of bags per person.

Using these estimates the consumption of plastic bags amounted to 21 bags per capita per year in the year following the introduction of the levy. An analysis of receipts during 2006 – 2007 found that the number of bags per capita had begun to increase slightly to 33 bags per capita in first half of 2007. To ensure the impact of the levy on the environment remained positive, the levy was increased to 22 cent from 1st July 2007 (under SI 167 of 2007) and receipts indicate that the usage began to decline again to an estimated 18 bags per capita in 2010. It has fallen in the intervening years and for 2016 is estimated at 11.5 per capita.

The levies collected contribute to the [Environment Fund](#) where they are only to be used for environmental projects related to waste reduction and disposal.

The Environment Fund (EF) was established under s.74 of the Waste Management Act 1996 as amended by the Waste Management (Amendment) Act 2001, the Protection of the Environment Act 2003, and the Environment (Miscellaneous Provisions) Act 2011. The legislation was brought in on the 17 July 2001 under the Waste Management (Amendment) Act 2001. From 2016 this measure came under the remit of the Department of Communications, Climate Action and Environment (DCCAE) in 2016 following the transfer of departmental functions from the then Department of Environment, Community and Local Government.

The Environment Fund is made up of three main streams of funding, mandated in s.74(7) of the Waste Management Act 1996 (as amended by section 51 of the Protection of the Environment Act 2003 (27/2003) and section 14(a Environment (Miscellaneous Provisions) Act 2011 (20/2011)<sup>6</sup>) which are a point of sale levy on plastic bags, a levy on landfilling of waste and a levy on the disposal of End of Life Vehicles.

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<sup>2</sup> s.72(9) WMA 1996 as amended

<sup>3</sup> <http://www.irishstatutebook.ie/eli/2001/si/605/made/en/print>

<sup>4</sup> <http://www.irishstatutebook.ie/eli/2007/si/167/made/en/print>

<sup>5</sup> <http://www.irishstatutebook.ie/eli/2001/act/36/enacted/en/html>

<sup>6</sup> <http://www.irishstatutebook.ie/eli/2003/act/27/section/51/enacted/en/index.html>

The objective of increasing recycling rates by driving waste away from landfill contributes to the achievement of national environmental targets under the Landfill Directive 1999/31/EC; Waste Framework Directive 2008/98/EC; Packaging Directive 94/62/EC; the WEEE Directive 2002/96/EC; the End of Life Vehicles Directive 2000/53/EC and the Batteries Directive 2006/66/EC.

The collection of the levy is undertaken by the [Revenue Commissioners](#) (the Irish tax collection authority) under a service level agreement with this Department. They have responsibility in relation to collection and for ensuring that business is aware of their obligation in relation to making returns. Revenue also undertakes audits and risk based assessments to investigate cases where an undeclared liability might exist.

#### 4. General Waste Law Measures Regulating Disposal

There are no specific measures regulating the disposal in particular of plastic bags, single-use plastics or microbeads. However there is a complex general waste management framework in place in Ireland governing the disposal of solid waste, capturing the disposal of these types of plastics within it. There is also a number of anti-dumping and litter law measures that prohibit unauthorised disposal of waste which would include these types of plastic within their framework.

There is a complex interlocking system of EU directives dealing with waste and emissions such as the Waste Framework Directive (Directive 2008/98/EC on waste), the Integrated Pollution Prevention and Control Directive (1996/61/EC), the PCB/PCT Directive (Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls), the Sewage Sludge Directive (Directive 86/278/EEC) on the use of sewage sludge in agriculture, the Landfill Directive (Directive 1999/31/EC on the landfill of waste), the Directive on the incineration of waste (Directive 2000/76/EC of 4 December 2000), the Packaging Waste Directive (Directive 94/62/EC on packaging and packaging waste), the End-of-Life Vehicles Directive (Directive 2000/53/EC on end-of-life vehicles), the Directive on waste electrical and electronic equipment (the WEEE Directive 2012/19/EU).

These directives are implemented in Ireland by measures such as the Environmental Protection Agency Act 1992, the Waste Management Act 1996, the Waste Management (Amendment) Act 2001, the Protection of the Environment Act 2003, among other legislation. Several statutory instruments deal with specific aspects of EU Directives.

For example the European Union (Waste Electrical and Electronic Equipment) Regulations 2014 (S.I. No. 149 of 2014)<sup>7</sup> which are Irish regulations to implement the new European Directive on waste electrical and electronic equipment.

Overall responsibility for waste management policy lies with the Department of Communications, Climate Action and Environment.

Waste policy and legislation are implemented largely by the Environmental Protection Agency (who licence waste disposal facilities and monitor compliance with licensing conditions) and individual local authorities (who are responsible for municipal waste collection and disposal and for permitting and monitoring private operators providing these services, as well as enforcement of litter laws).

2012 was the first year in Ireland that the percentage of municipal waste which was recovered (53.9%) exceeded the percentage landfilled (38.2%)<sup>8</sup>.

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<sup>7</sup> <http://www.irishstatutebook.ie/eli/2014/si/149/made/en/print>

There are no rules requiring mandatory recycling of plastic municipal waste. The Waste Management Act 1996, in s.21A (as inserted by European Communities (Waste Directive) Regulations 2011 (S.I. No. 126 of 2011), reg. 7)<sup>9</sup> sets out the Waste Hierarchy that prioritises prevention, reuse and recycling.

The Landfill Levy, which is a charge of €75 per tonne of landfilled waste has been largely successful at reducing generally the amount of waste going to landfill, indirectly encouraging recycling of all recyclable waste, which would include recyclable plastic bags and single use plastics. The Landfill Levy is used contribute towards the Environment Fund. This measure was introduced in 2001, and can be found in section 74 of the Waste Management Act 1996 as amended by s.11 of the Waste Management (Amendment) Act 2001. The details are contained in the secondary legislation, Waste Management (Landfill Levy) Regulations 2015 (S.I. No. 189 of 2015). Progress towards Irelands various waste recovery and reuse targets is monitored and the latest report was issue in November 2017 entitled "[Progress towards EU waste recycling, recovery and diversion targets](#)"<sup>10</sup>.

There issue of micro-plastics would potentially captured within the requirements of the Water Treatment regulations and standards. Ireland has a complex set of laws dealing with different water bodies water quality, reflecting the approach to water bodies at EU level. However examination for example drinking water quality legislation, shows that monitoring for micro-plastic is not yet standard even for drinking water<sup>11</sup>.

This is also the case for water bodies like groundwater, surface water, river water and coastal water.

There is potential for micro plastic to be dealt with within the Industrial Emissions Directive framework, in terms of licensing emission limits, and through Environmental Impact Assessment Laws for development, but so far no specific reference is made to them in the legal framework.

There are laws preventing unauthorised disposal of waste generally, outside of licensed facilities. These do not mention plastic specifically but they do by default prevent unauthorised disposal of plastic bags or single use plastics.

The Litter Pollution Act 1997<sup>12</sup> as amended defines as litter any item that would be defined as waste within the meaning of the Waste Management Act 1996 when disposed in anywhere other than receptacles provided for the purpose. It mandates a system of on the spot fines by litter wardens and criminal prosecutions of minor and serious nature. However concerns have been raised with the effectiveness of the system<sup>13</sup>.

As regards unauthorised disposal of waste in general Part IV and V of the Waste Management Act 1996 (as inserted by the European Communities (Waste Directive) Regulations 2011 (S.I. No. 126 of 2011), reg. 16(a))<sup>14</sup> create a regime of permits and waste licences (identical to IPPC/IED licences) for those who wish to hold, move, collect or dispose of waste. Holding, moving, collecting or disposing of waste otherwise than in accordance with these requirements is a criminal offence with a broad

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<sup>8</sup> <http://www.askaboutireland.ie/enfo/irelands-environment/waste-management/disposal-of-waste/>

<sup>9</sup> <http://www.irishstatutebook.ie/eli/2011/si/126/made/en/print>

<sup>10</sup> [http://www.epa.ie/pubs/reports/waste/stats/EPA\\_Progress%20towards%20EU%20targets\\_Nov17.pdf](http://www.epa.ie/pubs/reports/waste/stats/EPA_Progress%20towards%20EU%20targets_Nov17.pdf)

<sup>11</sup> See S.I. No. 122/2014 - European Union (Drinking Water) Regulations 2014

<http://www.irishstatutebook.ie/eli/2014/si/122/made/en/pdf>

<sup>12</sup> <http://www.irishstatutebook.ie/eli/1997/act/12/enacted/en/html>

<sup>13</sup> <http://www.thejournal.ie/dublin-city-council-e650000-annually-illegal-dumping-3250345-Feb2017/>

<sup>14</sup> <http://www.irishstatutebook.ie/eli/2011/si/126/made/en/pdf>

range of penalties from fines of €5,000 and up to 12 months in prison for minor offences, to fines of up to €15 million and 10 years in prison for serious breaches.

### Marine Litter Laws

There is a framework law under the Marine Strategy Framework Directive (Directive 2008/56/EC) which is the transposing measure for this EU directive. The relevant transposing measure is S.I. No. 249/2011 - European Communities (Marine Strategy Framework) Regulations 2011<sup>15</sup>, and this has been amended by S.I. No. 265/2017 - European Communities (Marine Strategy Framework)(Amendment) Regulations 2017<sup>16</sup>.

However these transposing measures are by way of secondary legislation. This type of legal instrument is very limited in that transposing measures made in this way must stay firmly within the letter of the original EU law measure. This means that the law sets a framework for combatting marine pollution but is not specific and does not mention or address plastics specifically. It mandates that the State ensure “Good Environmental Status” of marine waters, and take steps to avoid litter pollution and monitoring of contamination in general. Further specific measures are planned under this legislation but as yet they have not been implemented.

Ireland is also party to OSPAR Convention which concerns international cooperation on the protection of the marine environment of the North-East Atlantic. Work is being done under the Convention to develop an international approach to the issue of Marine Litter in general and microbeads in particular<sup>17</sup>. Ireland is co-leading work under the convention with Germany to address single-use plastic marine litter prevention.

Finally, there are plans at EU level to address micro-plastics through the REACH Chemical Regime<sup>18</sup>.

## 5. Other measures covering plastics outside the categories mentioned above

### a) Producer Responsibility for Packaging Waste

There is a legal framework designed to divert commercial waste from landfill towards recycling/recovery.

These are the European Union (Packaging) Regulations 2014, S.I. No. 282/2014<sup>19</sup>, as amended by the European Union (Packaging) (Amendment) Regulations 2015, S.I. No. 542/2015<sup>20</sup>. These Regulations replace the Waste Management (Packaging) Regulations 2007 as amended and are designed to promote the recovery and recycling of packaging waste. They are intended, in particular, to facilitate the achievement of the targets for the recovery of packaging waste established by Directive 94/62/EC on packaging and packaging waste as amended by European Parliament and Council Directive 2004/12/EC of 11 February 2004 amending Directive 94/62/EC on packaging and packaging waste, so that by 31st December 2008 certain targets would be met, including a minimum of 60% of packaging waste recycled/recovered, and 22.5% by weight of plastic packaging recycled.

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<sup>15</sup> <http://www.irishstatutebook.ie/eli/2011/si/249/made/en/pdf>

<sup>16</sup> <http://www.irishstatutebook.ie/eli/2017/si/265/made/en/pdf>

<sup>17</sup> <https://www.ospar.org/documents?v=34422>

<sup>18</sup> <https://echa.europa.eu/-/echa-to-consider-restrictions-on-the-use-of-oxo-plastics-and-microplasti-1>

<sup>19</sup> <http://www.irishstatutebook.ie/eli/2014/si/282/made/en/print>

<sup>20</sup> <http://www.irishstatutebook.ie/eli/2015/si/542/made/en/print?q=packaging>

The Regulations impose obligations on producers who supply packaging (i.e. packaging material, packaging or packaged products) to the Irish market. An exemption from certain obligations is available to major producers (defined by turnover thresholds) who participate in a packaging waste recovery scheme operated by an approved body (the REPAK voluntary scheme).

The Regulations provide that a producer may not supply packaging or packaged products to the Irish market unless the packaging concerned complies with specified essential requirements as to its nature and composition.

[Repak](#) is a not-for-profit packaging recycling scheme funded by contributions from more than 2,000 participating member companies. Repak subsidises the recovery and recycling of packaging waste collected by Repak approved 'Registered Recovery Operators'. Repak approved Recovery Operators consist of waste management companies and Local Authorities that provide waste management services to the commercial and/or domestic sectors.

However none of these measures would conventionally encompass the types of plastic examined in this report.

#### b) Farm Plastic Deposit Refund Scheme

The S.I. No. 341/2001 - Waste Management (Farm Plastics) Regulations, 2001<sup>21</sup> (as amended by the S.I. No. 396/2017 - Waste Management (Farm Plastics) (Amendment) Regulations 2017) and effectively these regulations mean that a levy is charged on all farm plastics sold and this is used to assist in the recovery of the plastics.

## 6. Proposed Measures

#### a) The Prohibition of Micro-Plastics Bill 2016

The Government currently have a legislative proposal for a piece of primary legislation banning the manufacture, sale or import of micro-plastics in cosmetics, and making it a criminal offence to do so. The Bill entitled "Prohibition of Micro-Plastics Bill 2016"<sup>22</sup> is at the third stage of the legislative process in the Dail (primary House of Parliament) and has been referred to a Committee for review as is usual at this stage. There appears to be cross party support for the measure<sup>23</sup>. It is impossible to predict the timeframe the progress of this Bill will take, and whether it will ever become legislation.

#### b) Waste Reduction Bill 2017

The "Waste Reduction Bill 2017"<sup>24</sup> contains proposals to tackle single-use plastic in the categories outlined in this report. It consists of a ban on disposable non-compostable tableware and a deposit and return scheme for drinks cups. This Bill also is reported to have cross-party support<sup>25</sup>.

This Bill is also at third stage in the Dail and is under review by a Committee<sup>26</sup>. Again it is impossible to predict when or even if this proposal will mature into effective legislation.

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<sup>21</sup> <http://www.irishstatutebook.ie/eli/2001/si/341/made/en/print>

<sup>22</sup> <http://www.oireachtas.ie/documents/bills28/bills/2016/10216/B10216d.pdf>

<sup>23</sup> <http://www.thejournal.ie/government-microbeads-3359333-Apr2017/>

<sup>24</sup> <https://www.oireachtas.ie/documents/bills28/bills/2017/8017/b8017d.pdf>

<sup>25</sup> <https://www.irishtimes.com/news/politics/rare-cross-party-cooperation-on-new-waste-reduction-bill-1.3150717?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fnews%2Fpolitics%2Frare-cross-party-cooperation-on-new-waste-reduction-bill-1.3150717>

## 7. Enforcement/Compliance Mechanisms

The Revenue Commissioners (tax collection authority) are empowered to enforce the Plastic Bag Levy and have extensive powers in relation to search and seizure of books and records. They can also initiate criminal prosecution of those who do not comply with their obligations under the relevant legislation.

The EPA are responsible for waste licensing and compliance/enforcement for waste disposal as well as Industrial Emissions licensing, and compliance monitoring and enforcement in relation to same. The Local Authorities are responsible for enforcement of Municipal Waste Management and for litter and illegal dumping law enforcement, through their litter wardens and prosecution powers. Both the EPA and Local Authorities have a broad range of enforcement powers at their disposal from administrative sanctions and fines, to criminal prosecution.

## 8. Key Gaps in regulation or Exemptions found

There is a distinct lack of plastic-specific measures in the Irish legal framework. There are no regulation in most areas covered by this report. There are no measures in relation to single use plastics and microbeads, although there are laws are in the early stage of the legislative process in both these areas.

The only identifiable measure was the Plastic Bag levy. However there are gaps within this regime in the form of broad category exemptions.

Exempt bags, which are of a light gauge and are used in supermarkets for containing food, fruit or meat are outside of this framework, as are bags costing more than 70 cents. These light gauge bags are in daily use in large volumes in supermarkets and shops around Ireland. These exemptions can be found in Regulation 5 of Waste Management (Environmental Levy) (Plastic Bag) Regulations, 2001<sup>27</sup>.

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<sup>26</sup> <https://www.irishtimes.com/news/environment/waste-reduction-bill-meets-resistance-at-environmental-hearing-1.3359263>

<sup>27</sup> <http://www.irishstatutebook.ie/eli/2001/si/605/made/en/print>