

Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021

DRAFT Guidance

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A - Purpose of this Document

1. This is the Scottish Government's DRAFT guidance document for the implementation of the Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021 (the Regulations). A FINAL version of the document will be produced before the Regulations come into force on 1 June 2022, after considering any feedback received on this DRAFT version.

B - Key information

2. The European Union's Directive 2019/904 on the reduction of the impact of certain plastic products on the environment (generally referred to as the Single-Use Plastics Directive, or SUPD) was adopted in 2019. Although the UK is no longer a member of the EU, the Scottish Government's aim is to match or exceed the standards set by the Single-Use Plastics Directive.
3. The Regulations implement, in Scotland, measures under Article 5 of the SUPD¹. Article 5 requires EU member states to prohibit the placing on the market of specified single-use plastic products. Article 5 also lists single-use plastic cotton buds and oxo-degradable plastic products, which are not included in the Regulations. The Scottish Government has already made the Environmental Protection (Cotton Buds) (Scotland) Regulations 2019, which ban the supply and manufacture of plastic stemmed cotton buds. In relation to oxo-degradable plastic products, the Scottish Government has consulted on banning the supply and manufacture of these products. This is a complex and rapidly changing area and as such the Scottish Government is currently collecting further information before taking a final decision.
4. The Regulations come into force on 1 June 2022, and make it an offence to manufacture and to supply, in the course of business, the following items:
 - single-use expanded polystyrene beverage cups including their covers and lids;
 - single-use expanded polystyrene beverage containers including their caps and lids;
 - single-use expanded polystyrene food containers;
 - single-use plastic cutlery including forks, knives, spoons and chopsticks;
 - single-use plastic plates; and
 - single-use plastic beverage stirrers.

The Regulations also make it an offence to supply in the course of a business:

- single-use plastic straws (where the straws are supplied to an end-user); and
- single-use plastic balloon sticks.

5. Single-use plastic straws and single-use plastic balloon sticks are subject to exemptions, which allow them to be supplied in particular settings and circumstances. Further information about these exemptions can be found in the

¹ [EUR-Lex - 32019L0904 - EN - EUR-Lex \(europa.eu\)](#)

sections below. Businesses should ensure they have reviewed the implications of this when managing stock levels and to ensure they understand when these items can be used.

6. A person or business who commits an offence under the Regulations is liable on summary conviction for a fine of up to £5,000.
7. This guidance document supports the interpretation of the Regulations. The EU has also produced guidance² on the implementation and interpretation of the SUPD as a whole (the EU SUPD Guidance). The EU SUPD Guidance, whilst relating to the entire SUPD, is relevant to these Regulations in parts. The relevant sections are identified throughout **in red**. This guidance document takes precedence over the EU SUPD Guidance.
8. The United Kingdom Internal Market Act 2020 (the Internal Market Act) was passed by the UK Parliament, and received Royal Assent on 17 December 2020. The Scottish Parliament withheld consent for the Act. The Act established a market regime for the UK which introduces market access principles for goods in the UK, including the mutual recognition principle for goods. The mutual recognition principle for goods provides that goods which have been produced or imported into one part of the UK, and which can be sold or supplied there without contravening any relevant requirement, can be sold in any other part of the UK, free from any relevant requirements which would otherwise apply. The Regulations and this Guidance will require to be read in light of the application of the Internal Market Act.
9. Therefore the prohibition of supply of the listed single-use plastic products in the Regulations will not apply to any products which are produced or first imported into another part of the UK, and which can be lawfully supplied in that part of the UK. The Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020 prohibit the supply in the course of a business of single-use plastic straws (with exemptions) and plastic drink stirrers in England, which would need to be taken into account in determining which products may be supplied in England.
10. The Scottish Government is in discussion with the UK Government and other devolved administrations through the Resources & Waste Common Framework to explore how best to manage policy divergence in this area, including how the Internal Market Act impacts on this.

C - Restrictions on Manufacture and Supply

11. The Regulations prohibit the manufacture of single-use plastic cutlery, plates, and beverage stirrers, and single-use food containers, cups and other beverage containers made from expanded polystyrene. The manufacture of single-use plastic straws and

² https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2021.216.01.0001.01.ENG

balloon sticks is not prohibited to enable them to be supplied under the conditions of the exemptions.

12. Subject to the application of the Internal Market Act, the Regulations prohibit the supply of the listed items “in the course of a business”, except where an exemption applies. This means businesses, including individuals operating a business, cannot supply the items as part of their business activities. This would include selling the items or distributing the items by another means, such as providing for free. It is an offence to supply, offer to supply or have in possession for supply the items listed, except where an exemption applies.
13. It is an offence for businesses in Scotland to supply these items to other businesses and to individuals, regardless of where those businesses or individuals are located. Businesses based outside of Scotland would commit an offence if they supplied the items to customers in Scotland.
14. For example:
 - retailers and wholesalers cannot sell the items, whether online or in shop premises;
 - cafes, bars, restaurants and hotels cannot provide the items to their customers or guests; and
 - a business cannot provide its employees with the items as part of catering facilities or coffee machines.

D - Coming into force date

15. The Regulations were laid before the Scottish Parliament on 11 November 2021, and will come into force on 1st June 2022.
16. The over 6 month-period between laying and coming into force is intended to allow businesses time to prepare for the new restrictions. This period will allow businesses, including wholesalers and other suppliers of these products, to use up their existing stocks.

E - Products covered by the Regulations

17. The Regulations apply to the following products, which are defined in regulation 2:

Single-use expanded polystyrene beverage cups

Cups for beverages including their covers and lids that are:

- made wholly or partly of expanded polystyrene; and
- single-use.

Single-use expanded polystyrene beverage containers

Beverage containers, including their cap or lids that are:

- made wholly or partly of expanded polystyrene; and
- single-use.

Section 4.4.2 of the EU SUPD guidance document provides further information on what types of covers and lids for single-use expanded polystyrene beverage cups and containers are covered by these regulations. See [Annex A](#) for more information.

Single-use expanded polystyrene food containers

Food containers that are made wholly or partly of expanded polystyrene, and single-use. Receptacles such as boxes, with or without a cover, used to contain food which:

- is intended for immediate consumption, either on-the-spot or as take-away;
- is typically consumed from the receptacle;
- is ready to be consumed without any further preparation, such as cooking, boiling or heating.

Including food containers used for fast food or other meal ready for immediate consumption, except beverage containers, plates and packets and wrappers containing food.

18. The restrictions apply if the item is provided:

- separately at the point of sale, alongside or filled with food, or
- if they are sold empty with the intention that they are subsequently used to contain or be served with food.

Single-use plastic cutlery including forks, knives, spoons and chopsticks

Cutlery that is:

- designed and intended for eating or serving food, including forks, knives, spoons, chopsticks and other similar utensils;
- made wholly or partly from plastic; and
- single-use.

Single-use plastic plates

Plates that are:

- made wholly or partly of plastic; and
- single-use.

19. See section H - What products are included in the SUP plates definition? of this document for more detail on what constitutes a single-use plastic plate.

Single-use plastic beverage stirrers

An implement that is:

- designed and intended for stirring beverages;
- made wholly or partly from plastic; and
- single-use.

Single-use plastic straws

Straws that are:

- made wholly or partly from plastic; and
- single-use.

20. The Scottish Government has also included several targeted exemptions to the prohibition on the supply of straws, to maintain access for those who need single-use plastic straws to eat or drink independently or where necessary for medical needs . Further information can be found below in section I - What exemptions are included in the regulations? section of this document.

Single-use plastic balloon sticks

A stick, including its mechanisms, that is:

- designed and intended to be attached to and to support balloons;
- made wholly or partly from plastic; and
- single-use.

21. There is an exemption for sticks to be attached to balloons for industrial or other professional uses and applications that are only distributed to persons acting in the course of a business. Further information can be found below in section F - What exemptions are included in the regulations?

What does single-use mean?

22. A single-use product is a product that is not conceived, designed or placed on the market to accomplish, within its life span, multiple trips or rotations by being returned to a producer for refill or re-used for the same purpose for which it was conceived.

Section 2.2.3 of the SUPD guidance document provides further information on the characteristics of a re-usable product, see [Annex D](#) for further information.

23. Items that are designed to be used multiple times, such as reusable plastic cutlery, are *not* included in the Regulations.
24. Product design characteristics can help to determine whether a product should be considered as single- or multiple-use. Whether a product is conceived, designed or placed on the market for reuse, can be assessed by considering the product's

expected functional life, i.e. whether it is intended and designed to be used several times before final disposal, without losing product functionality, physical capacity or quality, and whether consumers typically conceive, perceive and use it as a reusable product. Relevant product design characteristics include material composition, washability and reparability, which would allow multiple trips and rotations for the same purpose as for which the product was originally conceived. For a receptacle, which is packaging, its reusable nature can be determined in accordance with the essential requirements under Directive 94/62/EC on packaging and packaging waste, which was implemented in the UK by the Packaging (Essential Requirements) Regulations 2015, including any declaration attesting to the conformity of the packaging with those essential requirements and related standards.

25. The table below provides some examples of the products referred to above in the context of these restrictions.

Product	Examples of items that are banned	Examples of items not banned
Single-use expanded polystyrene beverage cups	Cups made entirely or partly from expanded polystyrene, a foamed plastic sometimes known as Styrofoam.	Any other beverage cup made from other plastics, or materials with or without a plastic lining or coating.
Single-use expanded polystyrene beverage containers	A beverage container includes beverage bottles and composite beverage packaging made from expanded polystyrene.	Beverage bottles and beverage packaging (such as drinks cartons) made from other plastics or materials.
Single-use expanded polystyrene food containers	Food containers, with or without a lid, made entirely or partly from expanded polystyrene containing a hot or cold meal, dessert or snack which doesn't require further preparation and is intended for immediate consumption, either on-the-spot or take-away. For example, expanded polystyrene clamshell containers typically used for takeaways.	Food containers made from a different plastic or material with or without plastic lining or coating. Fish boxes or meat trays, frozen meals or other food not intended for immediate consumption either on-the-spot or takeaway, of any material type. Food containers containing food that requires further preparation such as cooking, boiling or heating.
Single-use plastic cutlery including forks, knives, spoons and chopsticks	Forks, knives, spoons and chopsticks and other similar	Plastic spoons which are provided for use with medicines.

	<p>utensils such as single-use plastic sporks.</p> <p>Single-use plastic cutlery attached to or integrated into food packaging.</p>	
Single-use plastic plates	<p>Single-use plastic plates made wholly from plastic or partially from plastic such as plastic-lined paper plates. See section H below for further detail.</p>	<p>Reusable plastic plates, i.e. those that are either designed, conceived or placed on the market to accomplish, within their life span, multiple trips or rotations.</p> <p>Single-use plates made from materials other than plastic.</p> <p>Single-use plastic food containers (other than those made of Expanded Polystyrene).</p>
Single-use plastic beverage stirrers	<p>Single-use plastic stirrers made wholly or partially from plastic.</p>	<p>Plastic stirrers that are either designed, conceived or placed on the market to accomplish, within their life span, multiple trips or rotations.</p> <p>Single-use stirrers made from other materials.</p>
Single-use plastic straws	<p>Single-use straws that are wholly or partially made from plastic, e.g. plastic-lined or coated paper straws.</p> <p>Single-use plastic straws attached to or integrated into food packaging are included in the restriction.</p>	<p>Single-use plastic straws that are required to facilitate independent living or for medical purposes. See section I on exemptions for further information.</p>
Single-use plastic balloon sticks	<p>Single-use plastic balloon sticks that are distributed to consumers or persons not acting in the course of a business, for example balloon sticks to be attached to balloons</p>	<p>Reusable plastic balloon sticks.</p> <p>Single-use plastic balloon sticks which are for attaching to balloons for industrial or other</p>

	handed out to guests at a birthday party.	professional use and which are only distributed to persons acting in the course of business e.g. business to business, for research, industrial, professional decoration, and that are not distributed to consumers.
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In some cases it may be difficult to identify which category a product falls under. Further information on differentiating between products is provided in section 4.5 of the EU SUPD Guidance. This information has been reproduced in [Annex B](#).

What materials are covered by the restrictions?

26. The following materials are covered by these regulations:

Plastic

27. Plastic is defined as a material consisting of a polymer as defined in Article 3(5) of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)³, to which additives or other substances may have been added, and which can function as a main structural component of final products, with the exception of natural polymers that have not been chemically modified.

28. This includes plastic which is recyclable or non-recyclable and plastic which is labelled compostable or biodegradable. Compostable plastic is not always labelled as being plastic so you should ask your supplier if unsure.

29. Biodegradable/bio-based plastics are considered to be plastic under the Regulations. Currently, there are no widely agreed technical standards available to certify that a specific plastic product is properly biodegradable in the marine environment in a short timeframe and without causing harm to the environment.

Section 2.1 of the EU SUPD Guidance provides further detailed information on this definition of plastic, see [Annex C](#) for more information.

30. The Regulations apply to the single-use products listed if they are wholly or partially made from plastic. Therefore, items which are plastic-lined or coated such as a paper plate with a plastic lining or coating, are within the scope of the Regulations.

³ <https://www.legislation.gov.uk/eur/2006/1907/article/3>

Expanded polystyrene

31. The Regulations apply to single-use plastic cups, beverage containers and food containers made of expanded polystyrene (EPS), a lightweight foamed plastic sometimes known as Styrofoam. This includes extruded polystyrene (XPS) which is considered a sub-category of EPS. Single-use plastic beverage cups, containers and food containers made from other types of plastic are not included in these Regulations.

What products are included in the SUP plates definition?

32. The Regulations apply to single-use plastic plates. In line with the EU SUPD Guidance, these items are considered to be predominantly flat dishes which typically have slightly bevelled or raised perimeters to stop food rolling off or spilling from them. These items are sold without a lid, regardless of whether they are covered, e.g. by foil or film, at the point of sale. They are designed/used for consuming or serving food at the point of sale and are not suitable for transporting food away. When assessing if the Regulations apply to a product, the definition above should be considered rather than relying on the name that the product has been given by manufacturers or distributors.
33. The Regulations apply to single-use plates, which are made entirely from plastic, as well as those made partially from plastic, such as paper plates with a plastic lining.
34. As per above Annex B, it can be difficult on occasion to differentiate between product categories, including identifying whether a particular product is a plate or food container. Guidance is included below to assist with this question.
35. Per the section above, food containers covered by the Regulations are single-use and made wholly or partly of expanded polystyrene. They are receptacles such as boxes, with or without a cover, used to contain food which:
 - is intended for immediate consumption, either on-the-spot or take-away,
 - is typically consumed from the receptacle, and
 - is ready to be consumed without any further preparation, such as cooking, boiling or heating.
36. Including food containers used for fast food or other meal ready for immediate consumption, except beverage containers, plates and packets and wrappers containing food.
37. These food containers typically contain single-serve portions of food, however the restrictions still apply if they are sold empty with the intention that they are subsequently used to contain or be served with food.

38. The EU SUPD Guidance provides an illustrative example to differentiate between plates and food containers (Table 4-12)⁴. It is reproduced below. Note that per section E - Products covered by the Regulations above, only EPS food containers are covered by these regulations.

Single-use plastic plate	Single-use plastic food container
Indicators indicating that the receptacle is a plate:	Indicators indicating that the receptacle is a food container:
Dish sold without a lid, regardless of whether it is covered e.g. by foil or film, at the point of sale	Receptacles such as boxes sold with or without a lid
Used to serve or eat food from, but presence of food is not required at the moment of purchase	Able to contain food
While being predominantly flat, typically it has a slightly bevelled or raised perimeter to stop food rolling or spilling off it	May facilitate transport of food
Printed information including contents, ingredients or weight are usually not present.	Receptacle usually sold with printed information regarding contents, ingredients and often product weight

F - What exemptions are included in the regulations?

39. There are exemptions relating to two single-use plastic products, single-use plastic straws and single-use plastic balloon sticks.

Balloon sticks

40. The ban on the supply of single-use plastic balloon sticks does not apply to the supply of single-use plastic balloon sticks for attaching to balloons which have industrial or other professional uses and applications that are only distributed to persons acting in the course of a business. This is in line with the requirements of the SUPD. Industrial or professional use of balloons includes for research and professional decoration.

41. Therefore, this exemption applies where balloon sticks are supplied business to business for a professional use, such as to an events company to decorate an event, provided the balloon sticks are not to be distributed to any consumers, such as the attendees at the event. Balloon sticks which are supplied by businesses to consumers or are distributed to consumers at a private event are not considered professional or industrial use and are therefore subject to the restrictions in the Regulations.

⁴ [Commission notice — Commission guidelines on single-use plastic products in accordance with Directive \(EU\) 2019/904 of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment \(europa.eu\)](#)

Straws

42. Straws are a vital accessibility aid for many people, who rely on single-use plastic straws to eat and drink independently. Other options such as paper or reusable straws are not always suitable or safe. There are targeted exemptions in the Regulations for the purpose of enabling independent living, social inclusion and equal participation or if the straws are required for medical purposes.
43. The following establishments are able to supply single-use plastic straws for those who need them:
- **Catering establishments.** Where a single-use plastic straw is requested, catering establishments will still be able to provide it to a customer alongside drinks or food. See below for further information.
 - **Pharmacies.** Single-use plastic straws can be purchased by those that need them, or on behalf of someone that needs them. See below for further information.
 - **Care homes, prisons or other places of detention, schools, and premises for early learning and childcare, day care or childminding.** Single-use plastic straws can be purchased by these establishments and supplied to individuals using these facilities who require them.
44. Furthermore, the following uses are also subject to an exemption and so single-use plastic straws can be supplied where they are:
- **A medical device** which is an approved medical device under the Medical Devices Regulations 2002
 - **Used for medical purposes.** This means for the purposes of preventative medicine, medical diagnosis, medical research and the provision of medical care and treatment.
 - **Supplied for use in the course of a support service which provides personal care or personal support.** “Personal care” and “personal support” have the meanings given in paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010, and “support service” has the meaning given in paragraph 1 of schedule 12 to the Public Services Reform (Scotland) Act 2010.
- This exemption means single-use plastic straws can be supplied to and provided by any person providing care giving or similar services outside of a formal care home setting. In addition, a carer (whether or not a professional) may purchase single-use plastic straws from a pharmacy.
- **Packaging** such as straws used to package granular medicines. This does not include straws which are attached to packaging, such as single-use plastic straws attached to drinks cartons, which are subject to the restriction.
45. The following sections set out the requirements associated with these exemptions, but the Scottish Government has also produced further guidance to help businesses

maintain access to single-use plastic straws for those who need them, and ensure that the exemption is implemented in a way that respects equalities interests and the dignity of those who need to access single-use plastic straws. The single-use plastic straws toolkit available on the Zero Waste Scotland website provides further guidance on this matter and the points below.

How should catering establishments supply single use plastic straws?

46. Catering establishments, such as restaurant, canteens, clubs and cafes, can provide single-use plastic straws together with food and drink that is ready for consumption without further preparation. This can include vehicles or fixed and mobile stalls. The catering establishment must:
 - Not offer or provide the straws unless requested; and
 - Keep straws in a place where customers cannot help themselves and where the straws are not visible to customers.
47. This exemption has been included as straws are a vital accessibility aid, and it is important that they remain accessible to those who need them. Businesses should continue to comply with the duty to make reasonable adjustments under the Equality Act 2010. It is important to note that customers do not need to provide proof of need when requesting straws.
48. On-site third-party catering establishments such as cafes and canteens located within a hospital that serve prepared food to customers should apply the same approach as the other catering establishments listed above.
49. As noted above, Zero Waste Scotland has published further guidance on these matters in the form of a single-use plastic straws.

How should pharmacies supply single-use plastic straws?

50. Retail pharmacy businesses can supply single-use plastic straws at a registered pharmacy with a physical premises, online or through another distance selling arrangement. The registered pharmacy must:
 - keep the straws in a place which is not visible or accessible to customers, such as behind the counter;
 - not offer or provide single-use plastic straws unless the customer has requested them – although see paragraph 53 below.
51. Single-use plastic straws must not be advertised to customers by the pharmacy. This restriction does not prevent straws being displayed for sale on the pharmacy's website.
52. Straws which are medical devices or for use for medical purposes (see paragraph 44 for further information) may be offered to customers who have not requested them. This exception is to enable pharmacy staff to recommend the use of straws to customers for medical purposes.

53. There is no requirement for customers to provide proof of need when requesting straws.

How should other premises supply single-use plastic straws?

54. Straws can be supplied in care homes, prisons, schools and premises for early learning and childcare, day care or childminding. The purpose of these exemptions is to enable straws to be provided in these establishments for the purpose of enabling independent living, social inclusion and equal participation.

Where can these listed businesses purchase straws from?

55. The Regulations restrict the supply of single-use plastic straws to end users only. This is to allow a supply chain of single-use plastic straws. This means, for example, a wholesaler can supply single-use plastic straws to any of the businesses or premises subject to the exemptions (listed above) for the purposes of maintaining access for those who need single-use plastic straws.
56. For all the other items, except for balloon sticks, the restriction applies to supplying those items to both a business and an end-consumer. For balloon sticks, as set out at paragraph 40 there are exemptions which enable the supply for industrial or other professional uses and applications that are only distributed to persons acting in the course of a business.

G - Enforcement

57. Enforcement work will be undertaken by local authority enforcement officers. Enforcement officers will be authorised by local authorities to exercise powers in the Regulations in order to determine whether an offence is being committed. This includes the power to enter premises to investigate. The full powers are contained in Regulation 15.
58. Enforcement officers will report cases to the Crown Office and Procurator Fiscal Service, who are responsible for prosecuting the offences in the Regulations.
59. If an offence is committed by a body corporate or a Scottish partnership or other unincorporated association, and it is proved that it was committed with the consent or connivance of a particular individual, such as a director or manager, or was attributable to their neglect, then that individual also commits an offence, and may be prosecuted.
60. There is a defence of due diligence to the offences – where a person is charged with an offence under these Regulations, it is a defence for them to show that they took all reasonable precautions and exercised all due diligence to prevent the offence being committed.
61. A person or business convicted of an offence may be liable for a fine of up to £5,000.

H - Further Information

62. Further information on the Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021 and guidance on application of the relevant measures can be found in:

- The Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021; and
- Single-Use Plastic Straws Toolkit available on the Zero Waste Scotland website.

Annexes

Annex A – Covers, Caps and Lids

63. The following is reproduced from section 4.4.2 of the EU SUPD Guidance and provides further clarification on what types of covers, caps and lids are covered by the EU SUPD. The information provided below covers products from all Articles of the EU SUPD and therefore only the definitions relevant to single-use expanded polystyrene beverage cups, including their covers and lids and single-use expanded polystyrene beverage containers, including their caps and lids apply for these regulations.
64. The Directive refers to caps and lids as closures for beverage containers and beverage bottles, whereas for cups for beverages the Directive refers to lids and covers.
65. Caps, lids and covers close beverage containers with the objective to retain its contents. They are used in combination with beverage containers, beverage bottles, and cups for beverages to ensure that the liquid product contained does not overflow and can be transported. The Directive does not provide a clear definition, nor does any existing EU legislation or technical standards. Nevertheless, the following guidance can be used to define them:
66. **Caps:** closures that are fitted onto beverage containers or beverage bottles, for example, in order to prevent the contained liquid from leaking (also after for example a lid has been removed) and to allow for safe transportation. Caps are currently typically of screw or hinged snap types. Screw caps can be flat top, which is the most common form, or be the base support for e.g. a drinking spout generally termed a sports cap. Sports caps can in turn be either of the push-pull shutter or flip-top types which by nature are designed to remain attached to the beverage container. This type of cap will often include a tamper-evident feature.
67. **Lids:** plastic or composite material that include plastic films sealed onto beverage containers, beverage bottles and cups for beverages. They can be peeled or torn-off. Once such a lid is removed on first opening by a consumer it cannot be placed back on the product. Lids can also refer to certain larger diameter or non-round caps.
68. **Covers:** Closure used on cups for beverages which protect the liquid contained but generally do not provide a complete seal. They can be re-placed on the product after having been removed without losing their closure function. Some covers may have a tamper-evident feature, which is considered part of the closure assembly.

Annex B - Differentiation between certain (related) product categories

69. The following is reproduced from section 4.5 of the EU SUPD Guidance and provides further guidance on the differentiation between different but related product categories.
70. Beverage containers, plates and packets and wrappers containing food are excluded from the products considered as single-use plastic food containers under Point (2) of Part A, point (1) of Section I of Part E, and point (1) of Part G of the SUPD Annex. In some cases, the packaging shape may raise doubts as to whether the product is a food container, or a beverage container, or even other type of packaging covered by the Directive, such as packets, wrappers, beverage cups or plates.
71. The sections below provide further guidance for the differentiation between different but related product categories.

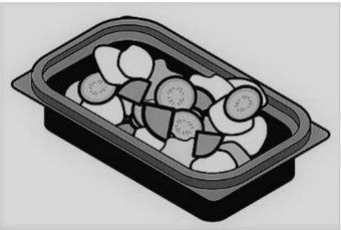

Key elements to distinguish between beverage containers, beverage bottles and cups for beverages

72. The Directive does not draw a clear distinction between beverage containers, beverage bottles (a subcategory of beverage containers) and cups for beverages (which do not constitute beverage containers). However, the following generic characteristics relevant to this Directive can be made:
- In accordance with Part C, point (3) of Section I of Part E and point (3) of Part G of the Annex, beverage containers are 'receptacles with a capacity of up to 3 litres, including their caps and lids, used to contain beverages'. Recital 12 also indicates that composite beverage packaging is to be seen as beverage container, not as beverage bottle.
 - Beverage bottles are beverage containers with a narrow neck or mouth and with a capacity of up to 3 litres, including their caps and lids, used to contain beverages, excluding composite beverage packaging, as per differentiation made in the Directive with beverage containers.
 - Cups for beverages are typically round, usually bowl-shaped drinking vessels with or without a cover or a lid, sold empty or containing beverages. As also explained in Recital 12, cups for beverages are a separate category of single-use plastic products for the purposes of the Directive.
73. The key element for distinguishing between the three product categories is their shape. The table below provides illustrative examples of beverage containers, beverage bottles, and cups for beverages that indicate the shape-related elements to be considered for the classification of these product categories.

Key elements to distinguish plates from food containers

74. Point (2) of Part A, point (1) of Section I of Part E and point (1) of Part G of the Annex to the Directive exclude beverage containers, plates and packets and wrappers containing food from the product category of food containers for the purpose of the Directive.
75. Plates refer to dishes from which food is eaten or served, whereas food containers are receptacles such as boxes, with or without a cover, used to contain food.
76. The table below provides some illustrative examples of how to distinguish between a single-use plastic food container and plate.

Illustrative example to differentiate between food containers from plastic plates

Single-use plastic food container	Single-use plastic plate
<p>Indicators indicating that the receptacle is a food container:</p> <ul style="list-style-type: none"> — Receptacles such as boxes sold with or without a lid — Able to contain food — May facilitate transport of food — Receptacle usually sold with printed information regarding contents, ingredients and often product weight 	<p>Indicators indicating that the receptacle is a plate:</p> <ul style="list-style-type: none"> — Dish sold without a lid, regardless of whether it is covered e.g. by foil or film, at the point of sale — Used to serve or eat food from, but presence of food is not required at the moment of purchase — While being predominantly flat, typically it has a slightly bevelled or raised perimeter to stop food rolling or spilling off it — Printed information including contents, ingredients or weight are usually not present. 

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Annex C – The Definition of Plastic

77. The following is reproduced from section 2.1 of the EU SUPD Guidance and provides further technical information on the definition of plastic used for the Regulations.
78. The definition of plastic is provided in point (1) of Article 3 of the SUPD, per paragraph 27 above:
79. “‘plastic’ means a material consisting of a polymer as defined in point (5) of Article 3 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council (3), to which additives or other substances may have been added, and which can function as a main structural component of final products, with the exception of natural polymers that have not been chemically modified’.
80. According to Recital 11, point (1) of Article 3 of the Directive refers to the definition laid out in Regulation (EC) No 1907/2006 (hereafter the ‘REACH Regulation’) and adds further elements to introduce an adapted and thereby separate definition.
81. Recital 11 explicitly points to paints, inks and adhesives as polymeric materials, which are excluded from the scope of the Directive and not considered to fall under the definition of plastic in point (1) of Article 3. Consequently, a final (otherwise) non-plastic product to which they are applied is not a single-use plastic product under this Directive. Several of the terms and concepts used in point (1) of Article 3 and Recital 11 require further clarification. The following sections provide guidance on the key terms, notably:
- Polymer.
 - Can function as a main structural component of final products.
 - Natural polymers that have not been chemically modified.

Polymer

82. Point (1) of Article 3 of the Directive refers to the definition of polymer in point (5) of Article 3 of the REACH Regulation, which reads as follows:
83. ‘Polymer: means a substance consisting of molecules characterised by the sequence of one or more types of monomer units. Such molecules must be distributed over a range of molecular weights wherein differences in the molecular weight are primarily attributable to differences in the number of monomer units. A polymer comprises the following:
- A simple weight majority of molecules containing at least three monomer units which are covalently bound to at least one other monomer unit or other reactant.
 - Less than a simple weight majority of molecules of the same molecular weight.

84. In the context of this definition a “monomer unit” means the reacted form of a monomer substance in a polymer.’
85. To complement the definition of polymer in the REACH Regulation, additional guidance is given in the European Chemicals Agency (ECHA) Guidance for polymers and monomers (4) (hereafter referred to as ‘the ECHA Guidance’):
86. ‘A polymer, as any other substance defined in Article 3(1) [of REACH], can also contain additives necessary to preserve the stability of the polymer and impurities deriving from the manufacturing process. These stabilisers and impurities are considered to be part of the substance.’

Can function as a main structural component of final products

87. Point (1) of Article 3 of the Directive defines plastic as ‘a material (...) which can function as a main structural component of final products’. The aspect of the capability to function as a main structural component of final products concerns the definition of plastic and not the definition of a single-use plastic product. Therefore, in the context of the definition of plastic this criterion is to be understood as a generic concept. As point (1) of Article 3 does not specify or restrict in any way the type of final product, nor the amount of the polymer, in principle, a wide range of polymers can function as a main structural component of final products.

Natural polymers that have not been chemically modified

88. Polymers that meet the following two conditions laid down in point (1) of Article 3 are exempt from the Directive: (i) they qualify as natural polymers and (ii) they meet the requirement of having not been chemically modified. These terms are further clarified in Recital 11:
89. ‘Unmodified natural polymers, within the meaning of the definition of “not chemically modified substances” in point 40 of Article 3 of Regulation (EC) No 1907/2006..., should not be covered by this Directive as they occur naturally in the environment. Therefore, for the purposes of this Directive, the definition of polymer in point 5 of Article 3 of Regulation (EC) No 1907/2006 should be adapted and a separate definition should be introduced’ [Emphasis added].
90. ‘Plastics manufactured with modified natural polymers, or plastics manufactured from bio-based, fossil or synthetic starting substances are not naturally occurring and should therefore be addressed by this Directive. The adapted definition of plastics should therefore cover polymer-based rubber items and bio-based and biodegradable plastics regardless of whether they are derived from biomass or are intended to biodegrade over time’ [Emphasis added].

Natural Polymer

91. The term natural polymer is defined in the ECHA Guidance as follows:
92. 'Natural polymers are understood as polymers which are the result of a polymerisation process that has taken place in nature, independently of the extraction process with which they have been extracted. This means that natural polymers are not necessarily "substances which occur in nature" when assessed according to the criteria set out in Article 3(39) of the REACH Regulation.' [Emphasis added]
93. Point (39) of Article 3 of the REACH Regulation defines substances which occur in nature as follows:
94. 'Substances which occur in nature: means a naturally occurring substance as such, unprocessed or processed only by manual, mechanical or gravitational means, by dissolution in water, by flotation, by extraction with water, by steam distillation or by heating solely to remove water, or which is extracted from air by other means.' [Emphasis added].
95. In view of the above, the terms natural polymer and naturally occurring substance are two distinct terms and should not be confused. A key distinction relates to the extraction methods allowed. The scope of the natural polymer refers to a broader group that is independent of the method used to extract the substance from nature. Furthermore, point (39) of Article 3 of the REACH Regulation is not directly referred to in the Directive. A consequence of this distinction and applying the definition from the ECHA Guidance is, for example, that cellulose and lignin extracted from wood and corn starch obtained via wet milling meet the definition of natural polymer.
96. Another key distinction is whether the polymerisation process has taken place in nature or is the result of an industrial process involving living organisms. Based on the REACH Regulation and the related ECHA Guidance, polymers produced via an industrial fermentation process are not considered natural polymers since polymerisation has not taken place in nature. Therefore, polymers resulting from biosynthesis through man-made cultivation and fermentation processes in industrial settings, e.g. polyhydroxyalkanoates (PHA), are not considered natural polymers as not being the result of a polymerisation process that has taken place in nature. In general, if a polymer is obtained from an industrial process and the same type of polymer happens to exist in nature, the manufactured polymer does not qualify as a natural polymer.

Not Chemically Modified

97. Recital 11 of the Directive explains that the term not chemically modified substances should be read in accordance with point (40) of Article 3 of the REACH Regulation, which states:

98. 'not chemically modified substance: means a substance whose chemical structure remains unchanged, even if it has undergone a chemical process or treatment, or a physical mineralogical transformation, for instance to remove impurities.' [Emphasis added]
99. The terms have not been chemically modified in point (1) of Article 3 of the Directive, with regard to natural polymers, are to be interpreted as follows: the decision whether a polymer has been chemically modified in its production or not should take into account only the difference between the ingoing and the resulting polymer, disregarding any modifications which might have taken place during production processes, as those are not relevant for the properties and the behaviour of the polymer used and eventually potentially released into the environment.
100. This means that, for example, regenerated cellulose, e.g. in form of viscose, lyocell and cellulosic film, is not considered to be chemically modified, as the resulting polymers are not chemically modified compared to the ingoing polymer. Cellulose acetate is considered to be chemically modified given that, compared to the ingoing natural polymer, the chemical modifications of cellulose during the production process remain present at the end of the production process.
101. Where changes in the chemical structure of a polymer result from reactions that are only taking place during the extraction process of a natural polymer (e.g. wood pulping process to extract cellulose and lignin), these are not considered to result in a chemical modification of the natural polymer in the meaning of point (1) of Article 3 and Recital 11 of the Directive. Therefore, paper material resulting from the wood pulping process is not considered to be made of chemically modified natural polymers. This interpretation is also in line with the Impact Assessment accompanying the European Commission's proposal for this Directive (hereafter, 'the Impact Assessment'), in which paper-based products without plastic lining or coating have been identified as available, more sustainable, alternatives to single-use plastic products.

Annex D – Single-Use Plastic Products

102. The following is reproduced from section 2.2.3 of the EU SUPD Guidance and provides further information on the definition of single-use plastic products.

103. In accordance with point (2) of Article 3 of the Directive, a single-use product is a product that is not conceived, designed or placed on the market to accomplish, within its lifespan, multiple trips and rotations by:

- Being returned to a producer for refill or
- Reused for the same purpose for which it was conceived.

104. The Packaging and Packaging Waste Directive⁶ provides useful guidance to identify products that are placed on the market as packaging complying with these conditions and thus not considered single-use, in particular, through the definition of reusable packaging and the relevant part of the essential requirements on reusable packaging. Under point (2a) of Article 3 of the Packaging and Packaging Waste Directive reusable packaging means ‘packaging which has been conceived, designed and placed on the market to accomplish within its lifecycle multiple trips or rotations by being refilled or reused for the same purpose for which it was conceived’. By analogy, the definition of reusable packaging provides useful guidance on reusability of non-packaging single-use plastic products because similar principles apply also to non-packaging items, e.g. regarding the intention to be reused and the possibility to recondition, clean, wash, repair the item whilst maintaining its ability to perform its intended function.

105. In accordance with point (2) of Annex II to the Packaging and Packaging Waste Directive, which sets out the essential requirements for packaging, reusable packaging should, among others, have physical properties and characteristics which enable a number of trips or rotations in normally predictable conditions of use. Detailed conditions for compliance with these requirements are specified in the European harmonised standard EN 13429:2004 Packaging – Reuse. The requirements listed in that standard for considering the reusable nature of packaging include:

- Intention that the package is reused (i.e. purposely designed, conceived and placed on the market);
- Design of the package enables it to accomplish a number of trips or rotations;
- The package can be emptied/unloaded without significant damage, and without risk to the integrity of the product, and health and safety;
- The package can be reconditioned, cleaned, washed, repaired, whilst maintaining its ability to perform its intended function;
- Arrangements are in place to make reuse possible, i.e. a re-use system is set up and operational.

⁶Directive 94/62/EC on packaging and packaging waste, which was implemented in the UK by the Packaging (Essential Requirements) Regulations 2015.

106. Where the plastic products listed in the Annex to the Directive are not placed on the market as packaging, further considerations have to be taken into account in order to determine if they are for single- or multiple-use. For example, where the same type of item that is generally placed on the market as non-reusable plastic packaging is also sold empty to final consumers (such as plastic cups or food containers), it is appropriate to consider it a single-use plastic product.
107. Operational reuse systems for refill or reloading are essential to make use of reusable items and such systems could include postal or courier packaging or drop-boxes in store. In a functioning refill system, the product's functionality, physical capacity and quality are not modified by the producer and/or distributor between refills. It is also noted that reuse systems for the service of food and drinks implemented and managed effectively by operators may provide a more consistent assurance in that the reusable items (e.g. cups, containers and cutlery) are properly sanitized to guarantee hygiene, protect public health and ensure customer and employee safety.



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