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Llywodraeth Cymru  
Welsh Government

Welsh Government  
Consultation Document

## Enforcing bans and restrictions on certain single-use plastic products

Proposals to make civil sanction regulations under the  
Environmental Protection (Single-use Plastic Products)  
(Wales) Act 2023

Date of issue: 17 April 2023  
Action required: Responses by 9 June 2023

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.



**Overview**

We are making the transition to a circular economy to ensure we do not use more than our fair share of the world's resources. Reducing our consumption of problematic single-use plastic products is an integral part of this move. We also aim to have a litter-free Wales. To support this, we need to phase out the use of unnecessary, highly-littered, single-use plastic. We welcome your views on our plans to help achieve this by using civil sanctions to enforce bans and restrictions on a number of commonly-littered, single-use plastic products found in our rivers, in our seas and on our beaches.

**How to respond**

You can respond to this consultation by answering the questions on the form available at [www.gov.wales/consultations](http://www.gov.wales/consultations). You can also submit responses and provide comments by post or email. Contact details are below.

**Further information and related documents**

This document is available at [www.gov.wales/consultations](http://www.gov.wales/consultations). **Large print, Braille and alternative language versions of this document are available on request.**

**Contact details**

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**This document is also available in Welsh**

<https://llyw.cymru/ymgyngoriadau>

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## General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g., a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation. If your details are published as part of the consultation response, then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

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- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:  
Welsh Government  
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CF10 3NQ

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The contact details for the Information Commissioner's Office are:

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## Background

1. The Welsh Government first signalled its intent to ban or restrict the use of several commonly littered single-use plastic products when it consulted on its proposals in October 2020. These bans were being developed in response to growing concerns over the damaging impact of plastic pollution on our wildlife and environment. Over 3,500 responses were received, the majority of which were in favour of introducing the new legislation and many urged the Welsh Government to go further. The consultation and the Welsh Government's response is available [here](#).
2. Consequently, the Welsh Government introduced its Environmental Protection (Single-use Plastic Products) (Wales) Bill ("the Bill") in the Senedd Cymru on 20 September 2022. The Bill was subject to the Senedd Cymru scrutiny process; further details of the Committee evidence sessions and debates can be found on Senedd Cymru's [website](#).
3. On 6 December 2022 the Senedd voted overwhelmingly in favour of the Bill and the Bill is now waiting to receive Royal Assent before it can become an Act. We expect this to happen in June 2023. The Bill is available [here](#).
4. Work is now underway to prepare for the bans to begin this autumn. Once these bans are in place, it will be an offence for a person to supply or offer to supply (including for free) to consumers in Wales the single-use plastic products listed in column 1 of the Table in the Schedule to the Bill.
5. An offence, under Section 5 of the Bill, can only be committed by the following:
  - a body corporate (including a body exercising any function of a public nature);
  - a partnership;
  - an unincorporated association other than a partnership;
  - or a person acting as a sole trader.
6. In the Bill a 'consumer' means an individual acting for purposes that are wholly or mainly outside that individual's trade, business or profession.
7. At present, the Bill only contains criminal sanctions (Section 6) and anyone suspected of committing an offence can be tried in a Magistrates' Court. If a person is found guilty of the offence, the Court may impose an unlimited fine.
8. Whilst this is an effective deterrent, we believe local authorities in Wales, as the regulator, should also have access to effective sanctions that are flexible, proportionate and ensure the protection of the environment and human health when tackling non-compliance.
9. To help achieve this, powers were included in Section 17 of the Bill to enable Welsh Ministers to introduce regulations that provide for civil sanctions to be made in respect of criminal offences created under section 5 of the Bill. This power corresponds to that in Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (c.13) ("RESA").

## What is this consultation about?

### Introducing regulations for civil sanctions

10. To establish an alternative enforcement regime to support the bans, Welsh Ministers have agreed to use the powers available in Section 17 of the Bill and introduce regulations that provide for civil sanctions (i.e. non-criminal) to be made in respect of criminal offences created under section 5 of the Bill. These regulations will come into effect before the bans are implemented and guidance will be provided to support their use.
11. To help develop our civil sanctions policy and the regulations we are seeking your views on our proposed approach. Under Section 17 of the Bill there is a requirement for Welsh Ministers to consult with the following:
  - a) the regulator to which these Regulations relate (Welsh local authorities in this case)
  - b) such organisations as appear to the Welsh Ministers to be representative of persons substantially affected by the proposals, and
  - c) such other persons as the relevant authority considers appropriate.
12. Given the consultation focuses on the technical and operational aspects of using civil sanctions, we anticipate responses will come mainly from local authorities in their role as regulator. Consequently, we have set the consultation period to eight weeks, rather than the usual 12 weeks, to reflect the specific nature of the subject matter.
13. However, to ensure our proposals achieve the appropriate balance between providing a flexible enforcement regime and securing compliance, we welcome views from a wide range of sectors, particularly those required to comply with the law.
14. In this document we will outline our preferred approach to the regulations and the rationale for the decisions we have made. A series of set questions has been included to help focus responses; however we welcome any views and feedback on our proposals.

## Enforcement

### Why is enforcement necessary?

15. The Welsh Government acknowledges many businesses comply with existing environmental regulations and most strive to do so. However, those who disregard the law can either put the environment at risk or even harm it. This in turn can negatively impact our quality of life and undermine law-abiding businesses by giving unfair advantage to those who do not comply.
16. The primary aim of our enforcement proposals is to bring people into compliance with the law and prevent harm from occurring. We recognise that many local authorities often seek to resolve any breaches of the law through constructive compliance dialogue. The provision of civil sanctions is intended to provide local authorities with additional tools where this dialogue has been unsuccessful but a move to criminal sanctions is considered disproportionate. By providing a range of civil sanctions, local authorities will be able to adopt a graduated approach towards requiring the business to comply with its obligations under the Bill.

### Who is the regulator?

17. Section 7 of the Bill provides for enforcement by local authorities.
18. As local authorities have a range of regulatory functions, including those under environmental and consumer legislation, it was agreed they would be the most suitable to enforce the bans. Consequently, the Bill includes a range of powers available to local authorities to help implement the bans. These include:
  - The power to make test purchases (Section 8)
  - The power of entry (Sections 9 to 12)
  - The power of inspection (Section 13)
19. Subsection (2) of Section 7 explains that any reference in the Bill to an authorised officer of a local authority includes any person authorised by the local authority, for example this could be a private enforcement company.

# Proposals

## Civil Sanctions

20. The powers under Section 17 allow for the following civil sanctions to be made available to local authorities:

- **Fixed Monetary Penalties (FMP)** – these are relatively low-level fixed penalties which the regulator may impose for a specified minor offence. An FMP is a standalone civil sanction and cannot be used in conjunction with any other sanction.
- **Discretionary requirements** – this can include the use of Variable Monetary Penalties (VMPs) and compliance notices (CN). VMPs require an offender to pay a monetary penalty of an amount determined by the regulator reflecting the circumstances of the offence. Compliance notices require an offender to take specified steps within a stated period to ensure an offence does not continue or happen again.
- **Stop Notices** – this is a requirement for a person to stop carrying on with an activity described in the notice until it has taken steps to come back into compliance.
- **Enforcement undertakings** - these enable a person, which a regulator reasonably suspects of having committed an offence, to give an undertaking (a promise) to a regulator to take one or more corrective actions set out in the undertaking.

21. To inform the type of civil sanctions which local authorities should have to help achieve compliance with our bans on single-use plastic products, we considered the approaches undertaken for similar environmental protection regulations in Wales. These were primarily the Single Use Carrier Bag Charge (Wales) Regulations 2010 (“SUCB Regulations,” available at [The Single Use Carrier Bag Charge \(Wales\) Regulations 2010](#)) and the Environmental Protection (Microbeads) (Wales) Regulations 2018 (“microbeads Regulations”), available at [The Environmental Protection \(Microbeads\) \(Wales\) Regulations 2018](#)). Consideration was also given to the approach adopted in England in relation to the Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020.

## The Single Use Carrier Bag Charge (Wales) Regulations 2010

22. In relation to the SUCB Regulations and civil sanctions, local authorities are provided with the ability to either issue an FMP (with an early payment discount and late payment penalty); a VMP, which has a maximum limit (with an early payment discount and late payment penalty); or a compliance notice. These sanctions are used to deal with breaches of the regulations when either a seller fails to charge for a SUCB or fails to keep, retain, supply and publish records.

23. The amount that can be imposed for FMPs is set at £200 for failing to charge and £100 in relation to record keeping. With regards to VMPs, the amount is determined



by the regulator but the maximum amount is set at £5,000 for failing to charge or keep records and £20,000 for giving false information or obstructing enforcement.

### The Environmental Protection (Microbeads) (Wales) Regulations 2018

24. The civil sanctions used to enforce the microbeads regulations adopted a broader approach and included the use of a range of Discretionary Requirements (VMPs and compliance notices), enforcement undertakings and stop notices.
25. The level of the VMP is determined by the regulator, however there was a maximum amount of £5000 for non-compliance with the ban, and a higher penalty, given the nature of the offence, of £20,000 for providing false or misleading information, or obstructing or failing to assist an enforcement officer.

### Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020

26. Whilst environmental protection is a devolved matter, we have also considered the approach taken elsewhere in the UK. In England, regulations were introduced in 2020 that banned or restricted the supply of plastic straws, cotton buds and stirrers. To enforce these regulations, a similar approach was adopted to that provided under the Microbeads Regulations i.e. Discretionary Requirements (namely VMPs and compliance notices), stop notices and enforcement undertakings.

### Proposed waste regulations

27. Later this year, the Welsh Government intends to introduce regulations to require businesses, the public sector, and third sector organisations to separate out their waste for recycling, much as domestic households already do. The consultation is available [here](#) and further information [here](#).
28. The consultation (which ended on 15 February 2023) proposed that Natural Resources Wales enforce all of the requirements except for the ban on the disposal of food waste to sewer, and that local authorities enforce the ban on the disposal of food waste to sewer from non-domestic premises. The proposed enforcement regime comprises civil sanctions. Civil sanctions will allow the regulators to distinguish between those who are striving to comply with the relevant legislation and those who disregard the law. This flexibility will enable the regulator to impose a range of sanctions depending on the circumstances of the offence.
29. In addition, local authorities have existing powers, under section 33ZB of the Environmental Protection Act, to issue fixed penalty notices for waste receptacle offences, which may be used where they have reason to believe that a person has committed a waste deposit offence. The regulators may also use powers of entry, search or seizure, or to require information.
30. Natural Resources Wales will regulate all the requirements except for the ban on the disposal of food waste to sewer. Local authorities will regulate the ban on the disposal of food waste to sewer from non-domestic premises.

31. The waste regulations will use a suite of civil sanctions to enforce compliance, as provided for in RESA, similar to those used by existing environmental protection regulations. If a person fails to comply with a civil sanction, criminal proceedings may be brought against the offender.
32. The civil sanctions proposed for the waste regulations are FMPs and VMPs and stop notices (see below for further detail about these processes, for information only). The FMPs will be £300 or £500, depending on the nature of the offence.
33. The regulator will determine the level of the VMP, reflecting the circumstances of the offence. Guidance will be published for their use. It will include information about the circumstances in which a VMP is likely to be imposed, and the matters likely to be taken into account by the regulators in determining the amount of the penalty. Before serving a VMP, the regulator may require the offender to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of that offence.

## Our proposed approach to civil sanctions regulations

34. Following consideration of the above regulations (including how comparable the offences are to our new bans); how these different civil sanction regimes operate, and other enforcement options, we propose the following be made available for the offences in the Bill:

- A. Discretionary Requirements - VMP or compliance notices
- B. Stop notices
- C. Enforcement undertakings

35. RESA allows regulators to use a combination of these civil sanctions for enforcement.

36. An overview of how each sanction works, and our reasons for selecting it, is provided below.

### A - Discretionary Requirements

37. Before a local authority can issue a discretionary requirement (a compliance notice or VMP) the regulator must be satisfied beyond reasonable doubt the person has committed the offence.

### Compliance Notice

38. Where an offence is being or has been committed, we would encourage those who have committed the offence, in the first instance, to discuss with the local authority how they can correct the issue and become compliant. As previously noted in this document, this approach is very much in accordance with that already taken by Welsh local authorities and is supported by the Welsh Government. However, if these discussions cannot resolve the issue, we believe the regulator should be provided with an option of encouraging compliance without the need to issue a monetary penalty (where it is considered appropriate to do so). For such scenarios, we propose to provide local authorities with the ability to serve a compliance notice.

39. A compliance notice is intended to correct a specific issue and will tell a business the steps it must take to fix it. In relation to this offence, it may, for example, result in a local authority issuing a compliance notice that would require a business to remove a prohibited product from their shelves. The compliance notice could set out a specified timeframe in which these steps need to be taken to achieve compliance and to ensure the offence does not continue or re-occur.

<p><b>Question 1. Do you agree with the use of compliance notices? Please explain your position.</b></p>
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## Variable Monetary Penalties (VMP)

40. Whilst under the Bill fines can be imposed for an offence through the courts, we believe where an offence has been committed, the regulator should also be able to impose a monetary penalty under the civil sanctions regime in more serious cases of non-compliance. We believe imposing a penalty removes the benefit of breaking the rules and deters future non-compliance, whilst reducing the burden on the court system.
41. By offering a variable rather than fixed penalty, we believe this will provide local authorities with greater flexibility to deal with any breach of the law. The parameters that we would expect a regulator to consider when setting a proportionate level of penalty are:
- the size of the business;
  - the scale of the offence;
  - the impact on the environment;
  - the level of financial benefit gained from the offence; and
  - any other relevant matters.
42. The amount of a VMP for offences which can only be heard in the magistrate's courts (when dealt with through the criminal system), may not exceed the maximum fine that magistrates could impose. In the case of the Bill, no upper limit has been set. On this basis, there is no requirement to set a limit in relation to the VMP.
43. Given the potential for offences to be committed at varying scales (for example a small independent business will unlikely be supplying a prohibited product at the scale of a large supermarket chain) we also propose not to set a maximum limit in relation to VMPs. We believe this will allow for breaches to be considered on a case-by-case basis and reflect the nature and scale of the offence.
44. By not setting a maximum limit we believe this provides a sufficient deterrent across a range of businesses and helps deliver the Bill's aim of reducing the littering of single-use plastic products, encouraging sellers to consider alternative products, and ultimately protecting our environment.
45. Receipts from civil sanctions – such as from the payment of monetary penalties - must be paid into the Welsh Consolidated Fund where the local authority has functions only in relation to Wales, as is the case with the proposed regulations.
46. We will publish guidance for businesses and would expect local authorities to take that guidance into account in formulating their enforcement policy in relation to the offences under the Bill. Under RESA, local authorities are required to develop separate enforcement guidance for their officers to establish guidelines determining the level of penalty to be applied.

**Question 2. Is the proposal to allow regulators to impose variable monetary penalties reasonable? Please explain your position and, if appropriate, suggest an alternative approach. Please refer to other similar or comparable regimes if appropriate.**

**Question 3. Do you agree there should be no maximum limit set for variable monetary penalties? Please explain your position (and suggest a maximum limit if you think it appropriate).**

**Question 4. Do you agree with our decision not to include fixed monetary penalties in our regulations? Please explain your position.**

47. There are various requirements and processes associated with the use of these Discretionary Requirements. As these are set procedures related to a specific civil sanction, we are not seeking views on this aspect of the regulations. However, for information only, the measures are:

#### **Notice of Intent**

Before imposing a compliance notice or VMP, the regulator will serve a notice of what action they propose – this is a notice of intent.

A notice of intent must include grounds for the compliance notice or VMP, requirements of the compliance notice and, if applicable, the amount of penalty to be paid.

The notice will also give information as to the right to make representations and objections to the regulator within 28 days.

The notice of intent must also permit the person on whom the notice has been served the opportunity to offer an undertaking to benefit any person affected by the offence and for the regulator to take that into account when making its determination - this is known as a third-party undertaking. For example, if a regulator were minded to issue a VMP, the person could offer to pay compensation to a third party affected by their actions. The regulator could then adjust the level of the VMP to take account of this. The regulator can, however, reject an offered undertaking.

## **Final Notice**

Following expiry of the 28-day period for making representations and objections in relation to the notice of intent, the regulator will decide whether to impose the requirements as detailed in the notice of intent. If the regulator decides to proceed then this will be detailed in the final notice.

A compliance final notice will include grounds for the notice, what steps are necessary and timescale in which they should be completed, rights of appeal and consequences of failing to comply with the notice.

A final notice for a VMP will include the grounds for the penalty, the amount to be paid and how to make a payment, the period in which the payment must be made, rights of appeal and consequences of failing to comply with the notice.

## **Non-compliance penalty**

If a person fails to comply with a compliance notice or a third-party undertaking, the regulator may serve a notice imposing a monetary penalty (non-compliance penalty).

The amount of the penalty will be determined by the regulator and will be a percentage of the costs of fulfilling the remaining requirements of the compliance notice or third party undertaking and may, if appropriate, be 100%.

If the requirements of the compliance notice are complied with or a third-party undertaking is fulfilled before the time set for payment of the non-compliance penalty, the penalty would not be payable.

## **B - Stop Notices**

43. In addition to being able to issue compliance notices as an alternative to a monetary penalty, we believe local authorities should also have the ability to issue stop notices. These can be served on a person (including a company) and prohibit that person from carrying out an activity specified in the notice until certain steps have been taken.

44. The local authority must reasonably believe the activity is causing, or there is a significant risk that it will cause, serious harm to:

- human health.
- the environment (including the health of animals and plants).
- the financial interests of consumers.

45. This sanction allows the local authority to act even if they reasonably believe the person is committing, or will commit, an offence by continuing the activity. This is a lower level of proof than other civil sanctions (which require the regulator to believe, beyond reasonable doubt, that an offence has been committed) and gives the local authority greater flexibility to use a stop notice as a preventative, rather than

reactive, sanction. We believe this civil sanction will allow local authorities to take into consideration the wider impacts from the offence, for example increased litter of plastics in the local environment, when deciding whether to act against an offender.

46. It should be noted the test of significant risk of serious harm is deliberately stringent to ensure only the most serious cases are captured, as stop notices effectively give the local authority the power to stop a business from trading altogether.
47. There are various requirements and processes associated with the use of stop notices. As these are set procedures related to a specific civil sanction, we are not seeking views on this aspect of the regulations. However, for information only, the measures are:

### **Contents**

There are requirements as to what a stop notice must set out. These are:

- The grounds for issuing the notice.
- The rights of appeal.
- The consequences of non-compliance.

### **Appeals**

There are several grounds for appealing a stop notice and these include the decision being based on an error of fact and the decision was wrong in law. Further details on appeals can be found in the relevant section of this document.

### **Completion certificate**

The local authority must issue a "completion certificate" once it is satisfied the person has complied with the stop notice. This is an important development as currently there can be problems in obtaining confirmation and sign-off from local authorities to confirm they are satisfied the problem or incident has been resolved. The person can request a completion certificate at any time after a stop notice has been served. The local authority must decide whether to issue a completion certificate within 14 days of the request.

### **Compensation**

The Regulations would need to:

- provide for a compensation scheme for loss suffered by persons served with an unlawful stop notice.
- provide a right of appeal against a decision by a regulator not to award compensation or against the amount of compensation awarded.

The basis on which compensation is to be paid will be set out in the proposed Regulations and is likely to relate to situations where a stop notice was served unnecessarily.

**Question 5. Do you agree with the inclusion of stop notices in our regulations? Please explain your position.**

**C - Enforcement undertakings**

48. Where an offence has been committed, we propose one option would be for the offender to offer to put things right, in this case stopping the supply or the offer to supply a prohibited plastic product, knowing failure to do so will mean prosecution. The promise must be accepted by the regulator to have legal effect. This kind of promise is known as an undertaking.
49. An enforcement undertaking is a legally-binding voluntary agreement offered by an individual, partnership or company to the regulator where the regulator has reasonable grounds to suspect that a specified offence (including an environmental offence) has been committed. Whilst not strictly speaking a sanction, enforcement undertakings are generally referred to as such. A regulator cannot require an enforcement undertaking to be given.
50. The regulator could choose to accept an enforcement undertaking where:
- it is not in the public interest to prosecute; or
  - the offer itself addresses the cause and effect of the offending.
51. In the case of an enforcement undertaking, the offender can agree to take action to ensure an offence does not occur or recur. This action may include paying a sum of money or taking action which will secure benefit to the environment to redress damage caused by the offence.
52. No other civil sanction is imposed or prosecution brought if the regulator accepts the enforcement undertaking and the undertaking is carried out.
53. Under this approach, when the local authority is satisfied an enforcement undertaking has been complied with, they will issue a completion certificate and no further action is taken.
54. However, if an undertaking is not complied with, then the local authority could vary or extend the time for complying with an enforcement undertaking. Other options are serving a VMP, compliance notice, non-compliance penalty or stop notice, or bringing criminal proceedings.
55. In contrast to the other civil sanctions under RESA, there is no right to appeal, because an undertaking is volunteered by the person rather than imposed by the regulator. However, if our regulations require the regulator to issue a certificate to the person on completion of the enforcement undertaking, there will be right of appeal if the regulator refuses to do so.



56. Should this option be adopted, the proposed regulations would set out the procedure for making an undertaking, for its publication and for certification by the regulator that the undertaking has been complied with.

57. We believe including enforcement undertakings in our proposed regulations will enable enforcement officers to work with any offender who wishes to take a proactive approach in addressing non-compliance. This approach is often used where a person realises they have committed a relevant offence and brings it to the attention of the regulator, or where the regulator otherwise suspects that a relevant offence has been committed. It provides for a proportionate measure to deal with non-compliance and allows the person to make the link between the offence and its impact. For example, a business selling a prohibited product may wish to provide a charitable donation to a local community group that picks up litter in the area.

**Question 6. Do you agree with the inclusion of enforcement undertakings in our regulations?  
Please explain your position.**

### Criminal Proceedings

58. The civil sanctions regime outlined above is intended to encourage compliance with the single-use plastic bans. If a person fails to comply with a final notice, stop notice or enforcement undertaking, criminal proceedings may be brought which, if successful, would lead to a fine on summary conviction.

## **Administration and appeals**

59. To support the use of civil sanctions, our regulations will also include the following elements.

### Enforcement cost recovery notices

60. Under the regulations a local authority will be able to serve a notice requiring a person to pay costs incurred as part of an investigation and administration costs, which may include costs of obtaining expert advice (including legal advice).

61. The enforcement cost recovery notice will specify the grounds for imposing the notice, the amount to be paid, how payment must be made and period in which it must be made, rights of appeal and consequences of failure to comply.

### Appeals

62. To ensure the enforcement regime will be used fairly and in accordance with good enforcement principles, and the local authority is accountable for its decisions, an appeals mechanism will be established as part of our regulations.

63. It is proposed appeals will be made to the First-tier Tribunal (FTT). The General Regulatory Chamber of the FTT is the most appropriate as this covers the environment jurisdiction.
64. If a person disagrees with the content within a notice of intent, they will have 28 days to make representations and objections to the regulator.
65. If, following the notice of intent, a final notice or monetary penalty is issued, any appeal would need to be done in writing to the FTT.
66. Appeals would be made to the FTT in relation to the imposition of:
- Final notice (CN or VMP)
  - Stop notice;
  - Non-compliance penalty
67. The appeals mechanism would also allow for appeals to be made for the following reason:
- non-issue of completion certificate in relation to stop notices;
  - non-issue of certificates in relation to enforcement undertaking;
  - compensation decision; or
  - enforcement cost recovery.
68. We intend for appeals to follow the rules and procedures of the FTT General Regulatory Chamber, available on the UK Government [website](#). The FTT rules and procedures provide a 28-day window from the time the civil sanction is received for an appeal to be lodged with it. It is normal practice for the burden of proof in an appeal hearing to lie with the regulator; they will have to prove to the panel their decision was reasonable.
69. Grounds for appeal will include, but may not be limited to:
- decision based on error of fact or wrong in law;
  - decision is unreasonable or unfair;
  - amount of penalty is unreasonable;
  - steps specified in notice are unreasonable or unfair;
  - person has not committed an offence.
70. The FTT may:
- withdraw the requirement or notice;
  - confirm the requirement or notice;
  - take such steps as the regulator could take in relation to the act or omission giving rise to the requirement or notice;
  - remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the regulator;
  - award costs.

**Question 7. Do you agree with our proposals for the appeals mechanism?  
Please explain your position.**

**Question 8. Do you agree this overall enforcement approach and regime  
is reasonable and proportionate? Please explain your position.**

## Costs and Impacts

71. As part of our policy development process we will be required to assess the costs of introducing these regulations on business and local authorities (as regulators of the bans).
72. The Explanatory Memorandum for the Bill, available [here](#), outlines the overall cost of Bill implementation. To gather information about the likely costs and benefits of the Bill, discussions with a sample of stakeholders were held during 2020 as part of the main research and analysis undertaken to support the proposed legislation. Salient points are reproduced below.
73. We consider that a number of factors will drive businesses to be compliant with the new law and, consequently, there will be limited need to use enforcement tools such as civil sanctions to address non-compliance. For example, we are aware that cotton buds are already predominantly sold with non-plastic stems and many catering establishments have moved to paper-based or alternative material straws. Some manufacturers have developed non-plastic alternatives to straws attached to cartons.
74. The bans are mainly expected to shift consumption dramatically toward non-plastic products, and therefore reducing the environmental impact caused by littering the banned items. We also assume that bans will affect the market growth rate, i.e. the total volume of single-use plastic products sold in future years. The markets for single-use plastic straws, cotton buds, stirrers, plates, cutlery and balloon sticks are assumed to be shrinking by 1% per annum, as public awareness of the impact of these products is already relatively high. In many markets, consumers do not think these products are needed.
75. Increasingly, consumers and businesses are looking to reduce consumption or find reusable solutions, despite the perceived convenience of single-use plastic. In other instances, their use is habitual or involuntary, such as receiving a small straw with mixed alcoholic drinks, and increasingly cultural shifts and environmental considerations are reducing use. Under a ban this is assumed to shrink at 2% per annum, due to additional public and media attention.
76. There has been an associated increase in consumers' using reusable products. During stakeholder discussions about the Bill, one major retailer shared that their sales for these types of reusable products had increased 96% from the previous year in their stores. The growth and demand for these products prompted the development of a major plan around reusable products in their stores.
77. Also with regard to the Bill, stakeholders indicated that smaller businesses may be disproportionately affected by a ban, as these operate in a highly competitive market and are very price-conscious. They also pointed out such businesses often have a lack of space for washing facilities to support reusable products. Another stakeholder added the third sector (e.g. community groups, churches, Scouts, etc.) would be disproportionately affected as well, as they have limited financial resources and must often choose the cheapest option available. Despite this, on balance, stakeholders thought the overall impact would be low, due to small unit price

differences between plastic and non-plastic alternatives, and therefore supported the bans.

78. However, during the stakeholder discussions about the Bill, some stakeholders argued that the negative consequences of the bans were more nuanced. For example, many stakeholders raised the issue that an increased reliance on fibre products would increase the use of paper and thus deforestation. Some businesses may therefore make a conscious decision not to abide by the new law.
79. We assume that the establishment of a civil sanctions regime to support the bans will result in some additional costs for local authority enforcement teams (which include trading standards, environmental health and licensing officers).
80. To support the development of the Bill, research was commissioned to help establish the costs of enforcement (this did not distinguish between civil and criminal sanctions). This research assumed £100,000 one-off costs to introduce the bans, incurred in the first year and £100,000 ongoing, annual management (Welsh Government) and enforcement costs (local authority) from the second year of the ban. The assumptions are based in part on the expected scale of markets and stakeholders affected and taking a cost-efficient, light-touch approach to enforcement, similar to that used for other environmental protection regulations.
81. The local authority Trading Standards Department (or equivalent) is already responsible for enforcing over 100 pieces of primary legislation and many more Regulations and Orders. There may be additional legal costs for local authorities in the cases of non-compliance. Businesses can avoid legal costs by ensuring they comply with the bans.
82. Local authorities often respond to intelligence from other agencies, businesses or complaints from the public; that is, their activity often directly relates to complaints made and intelligence received. Once non-compliance is identified, we would expect the trader to be provided with advice in order to achieve compliance. As previously noted, it is only when advice and information is ignored, or repeated mistakes are made, that we would expect enforcement tools to be used. However, inspecting premises and providing advice will have associated costs.
83. Local authorities will need to develop enforcement guidance for their enforcement officials, provide staff training and develop suitable forms of enforcement notice.
84. More detailed estimates of the costs will be provided when the draft Regulations are published.
85. Additional costs may be incurred with any future bans being introduced under the provisions in the Bill to add other products to the schedule. These would be estimated at the time.

**Question 9. Do you have any evidence which we could use to help us assess the costs of administering and enforcing our proposed civil sanctions?**

## Welsh Language Standards

86. We do not want the proposed regulations to have a negative impact on opportunities to use the Welsh language, nor to treat the Welsh language less favourably than English.
87. We would like to know your views on the effects that using civil sanctions to enforce compliance with the Bill's requirements would have on the Welsh language; specifically, on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.
88. We want the proposed policy for using civil sanctions to enforce compliance with the Bill's requirements to have positive effects, or increased positive effects, on opportunities for people to use the Welsh language; on treating the Welsh language no less favourably than the English language; and to have no adverse effects on opportunities for people to use the Welsh language or on treating the Welsh language no less favourably than the English language.

**Question 10. Do you think the enforcement regime could have a positive or negative influence on the use of the Welsh language?  
Please explain your position.**

## **Next steps**

89. Following this consultation, we will consider responses and take these into account when making the regulations (the legislation).
90. Once all responses have been considered a Government Response will be published on our website.
91. Our intention is that the regulations come into force on 9 October 2023.
92. This date may be subject to change depending on the outcome of the consultation and the required legislative processes.



# Annex 1 Consultation response form

Your name:  
Organisation (if applicable):  
E-mail/telephone number:  
Your address:

**Question 1. Do you agree with the use of compliance notices? Please explain your position.**

**Question 2. Is the proposal to allow regulators to impose variable monetary penalties reasonable? Please explain your position and, if appropriate, suggest an alternative approach. Please refer to other similar or comparable regimes if appropriate.**

**Question 3. Do you agree there should be no maximum limit set for variable monetary penalties? Please explain your position (and suggest a maximum limit if you think it appropriate).**

**Question 4. Do you agree with our decision not to include fixed monetary penalties in our regulations? Please explain your position.**

**Question 5. Do you agree with the inclusion of stop notices in our regulations? Please explain your position.**

**Question 6. Do you agree with the inclusion of enforcement undertakings in our regulations? Please explain your position.**

**Question 7. Do you agree with our proposals for the appeals mechanism? Please explain your position.**

**Question 8. Do you agree this overall enforcement approach and regime is reasonable and proportionate? Please explain your position.**

**Question 9. Do you have any evidence which we could use to help us assess the costs of administering and enforcing our proposed civil sanctions?**

**Question 10. Do you think the enforcement regime could have a positive or negative influence on the use of the Welsh language? Please explain your position.**

## Other comments

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to raise them:

Responses to consultations are likely to be made public, on the internet or in a report.  
**If you would prefer your response to remain anonymous, please indicate: Yes/No**

If you would like a paper copy of the consultation document and/or the response form, please email [singleuseplasticbill@gov.wales](mailto:singleuseplasticbill@gov.wales) or write to:

Environmental Protection Division  
Welsh Government  
Cardiff  
CF10 3NQ

Please return your response to [singleuseplasticbill@gov.wales](mailto:singleuseplasticbill@gov.wales) or the address above by **9 June 2023**.