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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of responses

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: 18 August 2023

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



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also available in
Welsh**

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Introduction

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. The proposed bans were 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](#).

Consequently, the Welsh Government introduced its Environmental Protection (Single-use Plastic Products) (Wales) Bill in the Senedd Cymru on 20 September 2022. The Bill was subject to the Senedd scrutiny process; further details of the Committee evidence sessions and debates can be found on the Senedd [website](#).

On 6 December 2022 the Senedd voted overwhelmingly in favour of the Bill and it received Royal Assent on 6 June, thus becoming an Act. The Act and its explanatory notes are available at [Legislation.gov.uk](https://legislation.gov.uk).

Section 5 of the Act makes it a criminal offence for a person to supply or offer to supply (including for free) certain single-use plastic products to a consumer in Wales. The offence is a summary offence and so is triable in the Magistrates' Court. If a person is found guilty of the offence, the Court may impose an unlimited fine.

Whilst this is an effective deterrent, we believe local authorities in Wales, as the regulator, should also have access to civil sanctions that are flexible, proportionate and ensure the protection of the environment and human health when tackling non-compliance.

To help achieve this, powers were included in section 17 of the Act to enable Welsh Ministers to introduce regulations that provide civil sanctions for the offence in section 5. This power corresponds to that in Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (c.13) ("RESA"). To establish an alternative enforcement regime to support the bans, Welsh Ministers have agreed to use the powers in section 17 and guidance will be provided to support the use of civil sanctions.

To ensure our proposals achieve the appropriate balance between providing a flexible enforcement regime and securing compliance, we sought views on our proposed approach to civil sanctions. Our consultation focus included the technical and operational aspects of using civil sanctions. The consultation outlined our preferred approach to the use of civil sanctions and the rationale for the proposals. The consultation ran from 17 April to 9 June 2023.

We would like to thank everyone who responded to the consultation. It is not the intent, nor would it be possible, to reflect every comment received in this report. The purpose is to give an overview of the responses, an indication of the kinds of issues and concerns raised in relation to the proposals.

There were a total of 31 responses to the consultation. These include full and partial responses, where some questions were left unanswered.

The consultation response forms were available in Welsh and English and with individuals able to respond in their preferred language. Responses were split between the two languages as follows:

Welsh	0
English	31
Total	31

Respondents were able to respond using the Welsh Government's consultation webpage or download a response form and submit it to a designated electronic mailbox. An overview of the split in these responses is included below and we have also recorded the number of responses that were submitted via the webpage in error (no text or details were included in the response).

Responses submitted online	20
Responses submitted via email	11

A breakdown of the type of respondent is provided below:

Type of organisation	Number of responses
Local Authority/ Local Authority representative group	5
Town or Community Council	1
Public Sector	1
Citizen	15
Academia	2
Charitable organisation	2
Professional body/ Industry representative	4
Community organisation	1

Consultation responses

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

Q1				
	Y	N	Unsure/ Neither yes or no	No answer
Numbers	26	1	0	4
Percentage	84%	3%	0%	13%

Respondents were overwhelmingly in favour of the use of compliance notices, with only one respondent disagreeing. This respondent disagreed with all the proposals in the consultation, stating that changing behaviour was a more effective approach than enforcement action.

Of those who provided support, most felt that compliance notices were a useful first step in a graduated compliance process. It was noted this approach provided an opportunity for people to take positive action to address any non-compliance and potentially removed the need for any further action. One respondent, a local authority, highlighted that this approach was considered an effective enforcement tool when monitoring compliance with COVID-19 restrictions. Another respondent felt this approach was an important means of raising awareness, particularly if a head office of a business was located outside of Wales and were unaware of the bans.

The Federation of Small Businesses were broadly supportive of the proposal, adding that any timeframes specified in compliance notices should be “realistic and achievable”. Reference was also made to the “*Think Small First*” model which provides that smaller businesses are considered from the outset rather than as an afterthought when policies were made. Another respondent highlighted the challenges faced by smaller businesses and suggested greater support was needed to ensure they were ready in advance of the bans.

A response from the University of Manchester highlighted the need for compliance notices to be accessible and easy to understand, for example in different languages and formats. The microbead ban regulations were cited as an example of good practice. Another respondent expressed support on the proviso their use was monitored and escalated if there were further breaches.

Example responses

“Yes. Compliance notices are a formal record of the alleged breach and would clearly set out the breach and timeframe for compliance with the trader. This would be a suitable first step in a graduated compliance process and may negate the need for further enforcement action, saving both traders and enforcers time and resources. Compliance notices were an effective tool used by many local authorities during the Covid-19 pandemic, and regulatory services such as Environmental Health and Trading

Standards Services are familiar with the use of such notices under other legislation, e.g. food law". **Anonymous**

"They are a preliminary way to address an issue under civil sanctions and have worked in other regulatory areas". **Chartered Institute of Waste Management Cymru.**

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.

Q				
	Y	N	Unsure/ Neither yes or no	No answer
Numbers	25	1	1	4
Percentage	81%	3%	3%	13%

One respondent, a Welsh local authority, agreed to their use however suggested fixed monetary penalties (with an amount set at a national level) was a preferable approach. It was argued fixed penalties would be easier to administer and help achieve a more consistent approach across Wales. Concerns were raised that if individual local authorities could impose differing levels of penalties across Wales, this could potentially result in numerous judicial challenges. This would place an unnecessary burden on regulatory services as they would divert resources to defending against any legal action. Another benefit of national fixed penalty levels put forward by this respondent was that it could result in potential savings when operating back-office processes, highlighting the benefits experience through the implementation of the parking civil enforcement regime.

Several respondents acknowledged the potential for inconsistencies with variable penalties, however it was suggested this could be avoided if their use was accompanied by clear guidance and training. Trading Standards Wales and several Welsh local authorities were in favour of variable penalties. These responses noted such an approach would enable enforcement action to be taken in proportion to the scale of the offence and size of the business. Other respondents acknowledged the use of variable monetary penalties offered a more proportionate approach, with the Federation of Small Businesses in particular stating that fixed penalties often disproportionately disadvantaged smaller businesses. A common sentiment expressed by respondents was the ability to issue larger fines to large corporations would help to act as a deterrent.

With regards to the provision of guidance, several highlighted the need for clear advice on how local authority enforcement officers would determine the wider environmental impacts from any offence.

Example responses

Within reason. As long as there has been a period where guidance is provided to help the businesses make the changes needed. Individual

Yes however there should be clear structured guidance and training for regulators on the application of monetary penalties to ensure consistency across Wales. Anonymous

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).

Q3				
	Y	N	Unsure/ Neither yes or no	No answer/ comment
Numbers	18	7	1	5
Percentage	58%	23%	3%	16%

Respondents were broadly in favour of no maximum limit being set for variable monetary penalties, with several respondents noting that any monetary penalties should align with the court penalty (an unlimited fine). Again, respondents felt this would ensure any penalty was proportionate to both the breach and the business size and scope.

Others suggested the size of the business should be factored into setting the penalty limit, with possible caps on fine amounts or a sliding scale depending on the business. For example, the University of Manchester recommended an unlimited variable penalty amount for larger corporations but a specific limit for small and medium sized businesses. This limit could be based on a percentage of revenue from the sale of banned products. Another respondent suggested a limit should be set at no more than 10% of declared annual profit, noting that anything higher than this could impact trade. Concerns over potentially disproportionate and inconsistent fines adversely affecting smaller businesses was also raised by the Federation of Small Businesses.

A response from one local authority favoured a sliding scale, noting that such an approach was taken with COVID-19 restrictions regulations where penalties were doubled for subsequent breaches. It was suggested that, coupled with guidance on penalties linked to business size, this would be a more effective way to determine penalties. The response also suggested monetary penalties could be based on the non-domestic rateable values, a similar system used for setting fee levels under the Licensing Act 2003 i.e. Band A: None to £4,300, Band B: £4,301 to £33,000 etc. Another respondent stated that any limit should be in line with similar environmental policy monetary penalties.

Example responses

“Yes Unless the costs are high for users of plastic there’s no incentive for them to change”. **Individual**

“Yes, monetary penalties should be proportionate and reasonable to the level of the non-compliance but should have the ability to align with court penalties for worst case scenario’s”. **Monmouthshire County Council**

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

Q4				
	Y	N	Uncertain	No answer/ comment
Numbers	18	5	1	7
Percentage	58%	16%	3%	23%

Only a small proportion of respondents were opposed to our exclusion of fixed monetary penalties in our regulations. Of those who wanted fixed monetary penalties it was argued their use would allow for the establishment of nationally agreed values to avoid any confusion with businesses and regulators alike. One respondent felt the use of fixed penalties would prove to be an additional deterrent for specific breaches.

Of those who agreed with the decision not to include fixed monetary penalties, most favoured the variable approach and the flexibility this offered when considering breaches on a case-by-case basis.

Example responses

“CIWM Cymru agrees that fixed penalties are not appropriate given the broad range in the size of businesses affected, and the range in possible offences”. **Chartered Institute of Waste Management Cymru.**

No. Legislation must have financial teeth! **Individual**

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

Q5				
	Y	N	Answered neither yes nor no	No answer
Numbers	23	2	0	6
Percentage	74%	7%	0%	19%

Only two respondents disagreed with the use of stop notices, with one local authority suggesting they were unnecessary and would only complicate the process of dealing with offences. Another respondent, voicing the same opposition to other questions, argued that changing behaviour was a more effective approach than enforcement action.

Others were more supportive of the proposal, backed their inclusion in the regulations and noted they would provide an effective deterrent. One respondent suggested stop notices would help to support behaviour change and allow businesses to amend practices before further enforcement action was needed.

Several respondents caveated their support with additional comments and observations. This included Trading Standards Wales and several local authorities who agreed with their use if they were accompanied by clear guidance, especially in determining how non-compliance would present a ‘significant risk’ and ‘serious harm’ to the environment. These responses also highlighted there were additional costs associated with revisiting a business premise to ensure they had complied with the requirements of the stop notice and to issue a completion certificate which would need to be factored into any Impact Assessment.

The Federation of Small Businesses indicated that stop notices were preferential to immediate monetary penalties for smaller businesses, noting there were often constraints on their ability to navigate legislation. As with responses to other questions, the issue of proportionality and fairness was considered important, noting that an order for a business to stop trading altogether should only be used as a last resort.

Example responses

“No. They are unnecessary. Rather than simplifying civil sanctions, they are over complicating what could be a relatively straightforward process for dealing with breaches. Local government regulators are familiar with using Improvement Notices, Prohibition Notices, Closure Notices, Remedial Action Notices, etc., and already adopt a "hierarchy of enforcement" approach to enforcement i.e. businesses are often given written advice for minor breaches in order to try and achieve future compliance without the need to take formal enforcement action. Depending on the nature and type of non-compliances detected, other enforcement action, ranging from formal written warnings to prosecution are available depending on the circumstances of each case and the

seriousness of the alleged breaches. Therefore, introducing a Notice of Intent and Completion Certificates is unnecessary". **Anonymous**

"We agree with the inclusion of stop notices, especially regarding serious and significant breaches with immediate risk to public health and/or the environment.

The use of stop notices allows for greater enforcement flexibility by acting as an additional preventative measure, taking into account the consideration of the wider impacts from the offence. The responsibility to check and issue completion certificates must lie with the Local Authority, and ideally be issued within a set time period, and this should be stipulated clearly in the stop notice". **University of Manchester.**

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

Q6				
	Y	N	Answered neither yes nor no	No answer
Numbers	23	2	1	5
Percentage	74%	7%	3%	16%

Most respondents agreed with the inclusion of enforcement undertakings in our regulations, with only two respondents disagreeing. As with stop notices, one local authority respondent noted these enforcement tools had been available for over 20 years and were rarely used relative to prosecutions. Instead, the respondent suggested a compliance notice, coupled with the prospect of gradually increasing fixed monetary penalties, would be preferable as it would be a relatively simple enforcement regime to administer.

Those in favour often suggested enforcement undertakings provided a useful means of dealing with businesses who were willing to engage in resolving a breach or potential breach. It was felt this was a more pragmatic approach and allowed businesses to resolve any non-compliance voluntarily without the need for more punitive measures. The Federation of Small Businesses argued this would help smaller businesses who may not have the legal or administrative capacity to deal with other enforcement actions. Their response also highlighted the need for regulators to work with smaller businesses should an enforcement undertaking be issued so they were aware such an option was available. Additional information would also be needed so that the businesses understood what an enforcement undertaking would entail and the timescales for complying with the requirements.

As with responses to other questions, the need for guidance and financial support to help regulators undertake this type of enforcement action was also raised.

Example responses

*‘Yes however how will local authority regulators be financially supported to ensure that there is appropriate resource and capacity available to deliver informative education to support their effectiveness.’ **Anonymous***

*“Yes. The purpose of the regulation is to encourage better business practices - therefore it makes sense to implement enforcement undertakings. There should however, be a mechanism to appeal”. **British Beauty Council***

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

Q7				
	Y	N	Answered neither yes nor no	No answer
Numbers	22	0	2	7
Percentage	71%	0%	6%	23%

No respondents disagreed with the proposal, with six not answering the question. Two respondents did not specifically answer the question, with one stating they did not know and the other used their response to voice views on how any regulations needed to account for smaller businesses.

Of those who were in favour, only a small number provided any rationale to support their response. One respondent agreed that an appeals mechanism was important and necessary, welcoming the proposal to use the First Tier Tribunal (FTT). However, it was noted that most local government regulators in Wales were only familiar with the appeals mechanisms via the Magistrates Courts and suggested training would be required to support regulators in this area. The response also recommended an option be provided for an “initial appeal” that could be lodged with the local authority. It was felt this would help reduce need to use the FTT route. Other responses echoed calls of guidance and training for the appeals process to ensure a consistency in approach amongst regulators.

The Federation of Small Businesses generally welcomed the provisions of an appeals process although reiterated previous calls for greater consideration of smaller businesses when enforcing the bans or other similar regulatory measures.

Example responses

“Yes, provided the mechanism is efficient and speedy. There is no point in appeals taking years to consider - the illegal actions will continue in secrecy. Human nature”.

Individual

“Yes, however, given the ability to appeal against a penalty amount, guidance for consistency in approach in determining such penalty amounts is welcomed”.

Newport City Council

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

Q8				
	Y	N	Answered neither yes nor no	No answer
Numbers	19	3	5	4
Percentage	61%	10%	16%	13%

Three respondents disagreed with the statement that the approach was reasonable and proportionate, commenting that it was overly complex and prone to inconsistency. One respondent argued that tougher fines and more rigorous enforcement was needed. Another three responses neither agreed or disagreed with the question, however they did recommend further consideration was given to simplifying any enforcement regime and identify ways of reducing complexity. Two of these respondents noted that many regulators were unfamiliar with the intricacies of civil sanctions and, therefore, prone to not utilising the range of tools available. The other, the Federation of Small Businesses, highlighted that such complexities were also challenging for small businesses and ran the risk of regulators being inconsistent in their approach.

Of those in support, limited justification was provided with most simply agreeing with the question. One respondent, the University of Manchester, welcomed the ability for businesses to self-identify and self-correct any breaches of the law, noting that this approach encouraged willing compliance and opportunities for learning. It added that blanket fines and enforcement was not appropriate given the complexities of plastic waste recycling. The response suggested that the exact types of single-use plastic products must be clearly identified to help minimise any potential confusion amongst businesses.

Example responses

‘The wide range of sanctions available could be seen to make the process more complex, and increase the potential for lack of consistency in approach across regulators. Paragraph 73 suggests that there will be overall business compliance, and thus limited need for sanctions – whilst this would be the desired outcome for regulators, it can mean that the regulator does not get familiar enough with the intricacies of the sanctions as they apply to the Bill. If there is the potential for simplification, consideration would be welcomed.’ **Caerphilly County Borough Council**

“No. In our view, the proposed enforcement approach and regime is overly complicated. Although element of "Polluter pays" is welcome where appropriate”. **Anonymous**

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?

The majority of respondents were unable to provide detailed evidence to help assess costs, with most either providing general observations or not responding to the question. Of those who provided a response, several references were made to the need to determine the number of premises in Wales likely to be impacted by the bans and for the costs to local authorities to be calculated accordingly. For example, Newport County Council gave a rough estimation of potential non-compliance action in their area:

'Newport has approximately 3,000 known businesses. An estimated proportion of those businesses liable under the Bill would be 60% – therefore 1,800 potentially liable businesses. Applying a 'rule of thumb' 80/20 compliance model, it is estimated that approximately 360 businesses would require some form of extra intervention. Further applying the 80/20 compliance model, it is estimated that approximately 72 businesses may require civil sanction enforcement action'.

Monmouthshire County Council added that any regulatory impact assessment would need to acknowledge that such estimated rates of compliance may not be reflective of the position elsewhere in Wales and any funding provisions would need to allow for this. Another local authority, Ceredigion County Council, suggested the costs required to operate the Civil Parking enforcement regime may provide as suitable working model.

A response from the University of Manchester suggested any assessment should also take into account costs being incurred on other stakeholders in the plastics supply chain. Reference was made to unpublished research the University had undertaken which highlighted *"tensions among stakeholders in determining who should be responsible for the cost of necessary infrastructural changes to meet such fiscal or legislative requirements"*.

Example responses

*The number of premises liable in relation to the Bill, would determine the likely demands on regulators, based on an estimated proportion of compliance. **Trading Standards Wales.***

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.

Most respondents felt there would be no adverse impact on the Welsh language, with many citing existing legal requirements in relation to bilingual communication and documentation. Ceredigion County Council noted the importance of regulators having the ability to enforce the provisions of the legislation effectively in either Welsh or English, with any appeal at the First Tier Tribunal also being held in Welsh if the appellant so wished.

One respondent felt there would be a positive impact as the use of bilingual material to inform businesses of the bans would allow Welsh language businesses to convey these changes in Welsh and encourage its wider use.

No respondents thought there would be a negative impact.

Example response

'In terms of influence on the Welsh language the enforcement regime may be considered as neutral. There are existing legal requirements in relation to local authorities and bilingual communication.' **Newport City Council**

"Neither as long as both is provided throughout to support access". **Anonymous**

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:

Respondents were provided with the opportunity to provide wider views and comments on the proposals. An overview of these responses is provided below.

Local authority resources and enforcement capacity

Trading Standards Wales requested further engagement with the Welsh Government on the Bill, specifically in relation to the additional costs of enforcement. Similar concerns on costs were raised by Penarth Town Council noting the proposals presented '*additional administrative capacity...within local authorities which are already under severe strain*'. The respondent did however welcome the focus on engaging collaboratively with businesses to help educate and raise awareness to help ensure compliance. The Campaign for the Protection of Rural Wales (Brecon & Radnor Branch) also raised concerns about enforcement, highlighting specific issues with enforcement capabilities in Powys due to limited funding and expertise. They suggested that the Welsh Government provide local councils with additional funding, appropriate training and ongoing guidance to improve effectiveness of any enforcement. Reference was also made to the apparent low enforcement levels in Scotland following the introduction of their bans.

Waste management and alternative products

The University of Manchester provided additional comments highlighting the complexities of dealing with single-use plastic waste and the need to improve existing waste management regimes. It was also noted that there needed to be a balance in the levels of monetary penalties used, if too high this may drive an increase in manufacturing of other, potentially more environmentally damaging materials and if too low then "*this could lead to avoidance of investments in infrastructure that could make existing plastics system more circular*". The comment ended by noting that overall, the proposals were appropriate and proportionate.

The Chartered Institute of Waste Management commented that plans were needed to ensure any benefits of the bans were not "*outweighed by a reduced focus in other areas of waste and resources management*.' They also suggested any fine receipts should benefit waste and resource related causes.

One respondent suggested that providers of alternative items be provided with support in order to offer their products at the same price as current single use plastic items. Additional support was also required to those producing the banned products to shift to alternatives.

Definition of plastic

The Federation of Small Businesses shared concerns around the definition of plastic and polymers in the legislation, especially how it captures compostable, biodegradable and bio-based plastics. It was noted similar definitions were being used elsewhere in the UK for other legislation (for example the Plastic Tax and Extended Producer Responsibility scheme for packaging) and how this could adversely impact of finding innovative solutions to plastic packaging. They requested the Welsh Government re-consider this definition to avoid the potential negative impacts this may have on Welsh eco packaging manufacturers.

Lack of Easy Read and Impact Assessment

The Children's Commissioner for Wales expressed their disappointment over the absence of an easy read or children and young people's version of the consultation, noting environmental matters were a concern for young people. Concerns were also raised about the absence of a Children's Rights Impact Assessment.

General comments

Some respondents used this section to provide supportive comments and welcomed the proposals. One respondent felt that punishments for businesses should be harsher and another suggested that manufacturers should also be covered. Another suggested providing guidance on where to buy affordable sustainable alternatives.

The Association of Convenience Stores broadly agreed with the proposals, however the response noted that a hierarchy of sanctions should be adopted with only the most severe of actions being used to deal with repeat offenders. Furthermore, it suggested consideration should be given to other non-penalty measures to achieve high rates of compliance. For instance, guidance designed to help businesses understand the bill should be published well ahead of go-live. Additionally, details on timelines for the ban should be agreed upon with a strong lead time to allow businesses sufficient time to prepare.

Government response and next steps

We welcome the responses to our consultation and for the broad level of support given to our proposals. Several opposing views and concerns were expressed by respondents which we will carefully consider and reflect on whether changes are required when making our regulations. The experience shared by those with first-hand experience undertaking enforcement action and of using civil sanctions is invaluable. Similarly, the views of bodies representing businesses have also provided an alternative perspective of those striving to comply with any new laws. We will continue to engage with these sectors as we progress with the implementation of the bans.

Once all responses have been considered a Government Response will be published on our website.

Our intention is that the regulations come into force in October 2023.

This date may be subject to change depending on the resources available and the required legislative processes.