



Llywodraeth Cymru  
Welsh Government

OPEN CONSULTATION

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

Further proposals to make civil sanction regulations under the Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 – Fixed Monetary Penalties.

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# Contents

[Background](#)

[How to respond](#)

[Further information and related documents](#)

[Contact details](#)

[UK General Data Protection Regulation \(UK GDPR\)](#)

[Your rights](#)

[Annex 1: consultation response form](#)

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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](#).
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 which has now received Royal Assent and is an Act. The [Environmental Protection \(Single-use Plastic Products\) \(Wales\) Act 2023 \('the Act'\)](#) is available here.
4. Section 2 (prohibited single-use plastic products) of the Act establishes the concept of a ‘Prohibited single-use plastic product’ and introduces the Table in the Schedule to the Act which lists those products. Section 5 (offence of supplying prohibited single-use plastic product) of the Act makes it an offence for a person to supply or offer to supply a prohibited single-use plastic product to a consumer in Wales. The offence under section 5 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.

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5. The Welsh Government consulted earlier this year on ‘Enforcing bans and restrictions on certain single-use plastic products’. The consultation contained proposals to make civil sanctions regulations under the Act. **The consultation ran between 17 April 2023 and 9 June 2023 and is available here.** The full background to that, and this, consultation, including details of who can commit an offence under section 5 (offence of supplying prohibited single-use plastic product) of the Act, civil sanctions and why enforcement is necessary is set out in that consultation document. The Welsh Government has considered all the responses received and a summary of responses will be published shortly.

## What is this consultation about?

6. Following the consultation earlier this year on ‘Enforcing bans and restrictions on certain single-use plastic products’ we are seeking further views on a new proposal that emerged from the responses to the consultation. The new proposal is that we include Fixed Monetary Penalties (FMPs) in the suite of civil sanctions to be made available to local authorities to enforce the offence under section 5 (offence of supplying prohibited single use plastic product) of the Act.
7. A response to our previous consultation indicated a preference for FMPs for enforcement as they were less resource intensive to use. A FMP does not require the calculation of the penalty that is required when issuing a variable monetary penalty. Therefore, we believe we should include FMPs in addition to Variable Monetary Penalties (VMPs) in the suite of civil sanctions for local authorities. This will provide them with greater flexibility to deal with their enforcement duties under the Act.
8. The power under section 17 (civil sanctions) of the Act enables the Welsh Ministers to make regulations providing for civil sanctions in respect of the

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criminal offence under section 5 (offence of supplying prohibited single use plastic product) of the Act. The power corresponds to that in Part 3 of the Regulatory Enforcement and Sanctions Act 2008 ('RESA'). Part 3 of RESA allows the Welsh Ministers to make regulations to confer powers to use alternative civil sanctions to enforce certain criminal offences. The civil sanctions available under RESA are FMPs, discretionary requirements (including VMPs and compliance notices), stop notices and enforcement undertakings. They are an alternative to, rather than a replacement for, criminal conviction especially for minor breaches of regulatory requirements.

9. A local authority would only be able to impose a FMP when satisfied beyond reasonable doubt that a person had committed the offence under section 5 (offence of supplying prohibited single use plastic product) of the Act. The amount of a FMP would be fixed and set out in the civil sanctions regulations to be made by the Welsh Ministers. The local authority would not be able to exercise discretion in determining the amount of a FMP in any individual case.
10. The use of FMPs would be subject to a set procedure. Before a local authority could impose a FMP it would first issue a 'notice of intent'. The person subject to this notice would then have the opportunity to make written representations and objections against the penalty. Alternatively, the person could choose to discharge their liability for the penalty by paying a discharge payment. Any representations or discharge payment would have to be made within certain time limits. If a discharge payment is made, no further action would be taken against that person. If the local authority chooses to impose the penalty after the time limit, it would issue a 'final notice' setting out certain information such as the grounds for imposing the penalty and how payment may be made.
11. The imposition of a FMP would remove the person's liability to criminal prosecution for the offence under section 5 (offence of supplying prohibited

single use plastic product) of the Act. Similarly, if a person was served with a notice of intent, no criminal proceedings could be taken against them within the time limit in which a discharge payment could be made. Where a person paid a discharge payment, no criminal proceedings could be taken against them in relation to the commission of the offence under section 5 (offence of supplying prohibited single use plastic product) of the Act.

12. Receipts from civil sanctions, such as from the payment of FMP, must be paid into the Welsh Consolidated Fund where the local authority has functions only in relation to Wales.
13. Local authorities will be under a duty to publish guidance about their use of civil sanctions in relation to the enforcement of the offence under section 5 (offence of supplying prohibited single use plastic product) of the Act.
14. As this consultation is seeking views on one new proposal to emerge from the responses to previous consultation, we request that responses to this consultation please be submitted by 25 September 2023.

## Next Steps

15. Following this consultation, we will consider responses and take them into account when preparing the civil sanctions regulations. Once the responses have been considered a Government Response will be published on our website.

## Proposal

16. The proposal is that we include FMPs in the suite of civil sanctions to be

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made available to local authorities, through civil sanctions regulations, to enforce the offence under section 5 (offence of supplying prohibited single use plastic product) of the Act.

## How to respond

Submit your comments by 04 October 2023, in any of the following ways:

- email
- post
- online form

## Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

## Contact details

For further information:

For further information:  
Environment Quality Division  
Welsh Government  
Cardiff  
CF10 3NQ

Email: [singleuseplastic@gov.wales](mailto:singleuseplastic@gov.wales)

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# UK General Data Protection Regulation (UK GDPR)

The Welsh Government will be data controller for Welsh Government consultations and 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. The lawful basis for processing information in this data collection exercise is our public task; that is, exercising our official authority to undertake the core role and functions of the Welsh Government. (Art 6(1)(e))

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. In the case of joint consultations this may also include other public authorities. 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

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legislation and that the Welsh Government may be under a legal obligation to disclose some information.

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.

## Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- 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 UK GDPR, please see contact details below:

Data Protection Officer:  
Welsh Government  
Cathays Park  
CARDIFF  
CF10 3NQ  
e-mail: [Data.ProtectionOfficer@gov.wales](mailto:Data.ProtectionOfficer@gov.wales)

The contact details for the [Information Commissioner's Office](#) are:

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Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF  
Tel: 01625 545 745 or 0303 123 1113

## **Annex 1: consultation response form**

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

### **Question 1**

Do you agree or disagree with the proposal to use fixed monetary penalties?  
Please provide the reasons for your response.

### **Question 2**

If used, we propose to set the amount of the fixed monetary penalty at £200? Do you agree or disagree the penalty should be set at that amount?

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

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

Environmental Protection Division  
Welsh Government  
Cardiff  
CF10 3NQ

Please return your response to [singleuseplastic@gov.wales](mailto:singleuseplastic@gov.wales) or the address above by 04 October 2023.

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