

## **Guidance on how Kingston Council uses civil and criminal sanctions to regulate the ban on Single Use Plastic.**

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This guidance is issued by The Royal Borough of Kingston Council and the London Borough of Sutton Shared Environmental Service, Regulatory Services, and primarily concerns enforcement of the various legislation that has been published concerning the banning of Single Use Plastic.

[The Environmental Protection \(Plastic Plates etc. Polystyrene containers \(England\) Regulations 2023](#)

[The Environmental Protection Plastic straws, cotton buds and stirrers \(England\) Regulations 2020](#)

[The Environmental Protection \(Microbeads\) \(England\) Regulations 2017](#)

[The Single Use Carrier Bag Charges \(England\) Order 2015 \(as amended\)](#)

You should also read the information to retailers on GOV.UK to find out what the restrictions and responsibilities are in relation to each piece of legislation.

### **Who is responsible for enforcement In England?**

Local Authorities are responsible for making sure that businesses do not breach the controls on the sale and use of Single Use Plastic (SUP) whether it be e.g. plastic drinks stirrers, microbeads in cosmetics or plastic cutlery. Where a business has entered a Primary Authority partnership with a single local authority (the 'primary authority'), they can obtain advice from their primary authority on complying with the provisions of the legislation that affects them, and this advice will be respected by all local authorities. Where a business does not have a Primary Authority partnership they can still contact their local authority for business advice.

The primary authority will be notified of any enforcement action under the various legislation that is proposed by a local authority against the business, and may 'block' an enforcement action that is inconsistent with advice that it has given the business. Further information on Primary Authority is available at

<https://primaryauthorityregister.info/par/index.php/business-support>

## **How we investigate possible breaches and what action we can take:**

Information on the Kingston and Sutton Shared Environment Service Regulatory Services enforcement policy can be found on the related documents section of Let's Talk: It identifies the range of criminal and civil remedies that are available to us as regulators. It also indicates how we engage with our businesses and when we are likely to take a particular action when we find a non compliance with the relevant legislation.

The legislation that controls the use of SUP in England allows for a variety of enforcement actions to be taken. Below are the actions available to us and their definitions.

**Fixed monetary penalties** A Fixed Monetary Penalty (FMP) is a low-level fixed fine that can be imposed as a penalty. Any sums received by us in the form of: a fixed penalty charge, a variable monetary penalty or a non-compliance penalty under these Regulations, any interest or other financial penalty for late payment of such a penalty, or a sum paid in discharge of liability to a fixed monetary penalty must be paid into the Treasury Consolidated Fund.

Businesses that are cooperative will usually not be given an FMP.

Financial penalties cannot be combined with any other sanction. Once an FMP has been imposed, no other formal enforcement proceedings can be used against the business for the same issue (other than to recover any penalty that remains unpaid). They can't be imposed for giving false or misleading information or otherwise obstructing or failing to assist an investigation. If this happens then we use variable monetary penalties instead.

**Variable monetary penalties** A Variable Monetary Penalty (VMP) (also called a monetary discretionary requirement) is a higher fine. It aims to remove the benefit of breaking the rules and deter future non-compliance. If an FMP cannot be imposed, or if a business continues to break the rules, we can impose a VMP up to a set limit. More than 1 VMP cannot be imposed for the same issue at the same time.

**Compliance notices** A compliance notice (also called a non-monetary discretionary requirement) corrects a specific issue and tells a business the steps it must take to fix it. If the business is uncooperative in informal discussions, we may go straight to issuing a compliance notice with a VMP. We may issue a compliance notice without a VMP if the rules continue to be broken after we have issued an FMP. More than 1 compliance notice can be issued with or without a VMP. Compliance notices cannot be issued with FMPs.

**Non-compliance penalties** A Non Compliance Penalty (NCP) is a fine that we can impose when a business does not complete all of the steps required by a compliance notice by the completion date. It replaces a compliance notice. We can impose it even if a VMP was imposed at the same time as the compliance notice. The procedure for doing so is the same as that for other civil sanctions. The business does not have to pay an NCP if it completes the steps required by the compliance notice within the time specified for paying it.

**Stop Notice** is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

A case falling within this sub-paragraph is a case where the regulator reasonably believes that—

- (a) the person is carrying on the activity;
- (b) the activity as carried on by that person is causing, or presents a significant risk of causing, serious harm to the environment (including the health of animals); and
- (c) the activity as carried on by that person involves or is likely to involve the commission of an offence

The regulations prescribe what should be written in the Stop Notice and provide for a completion certificate to be issued to the person once all of the steps have been completed. A person can appeal against a decision of the regulator not to issue a completion certificate and can claim compensation for unreasonable service, or the refusal by the regulator to issue a completion certificate.

A regulator will provide a completion certificate once the steps have been completed to discharge the responsibility of the person.

**Enforcement undertakings** A regulator may accept an enforcement undertaking given by a person in a case where the regulator has reasonable grounds to suspect that the person has committed an offence under the Regulations.

An “enforcement undertaking” is a written undertaking to take such action as may be specified in the undertaking within such period as may be so specified. If a regulator has accepted an enforcement undertaking, then, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—(a) that person may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates; and (b) a regulator may not impose on that person a variable monetary penalty, a compliance notice or a stop notice in respect of that act or omission.

A regulator will provide a completion certificate once the steps have been completed to discharge the responsibility of the person. The person can appeal if they think the failure to provide the certificate is unreasonable.

If an enforcement undertaking is not complied with, the regulator that accepted the undertaking may either—(a) serve a variable monetary penalty notice, compliance notice, non-compliance penalty or stop notice; or (b) bring criminal proceedings.

If a person has complied partly but not fully with an enforcement undertaking, that partial compliance must be taken into account when considering any criminal or other sanction on the person.

Criminal proceedings for an offence to which an enforcement undertaking relates may be instituted at any time up to six months from the date on which the regulator notifies the person required to comply with that undertaking of that person’s failure to do so.

**Publicity notices** We may give a ‘publicity notice’ to a business when imposing a civil sanction. This informs the public that the business has been given a sanction. A publicity notice states:

- how the business must inform the public about the civil sanction
- how long the business has to comply with the notice
- that the business must provide evidence of compliance with the notice within the time specified.

The business must then publicise the fact that

- a civil sanction has been imposed

- type of civil sanction
- grounds on which the sanction was imposed
- amount of any monetary penalties
- details of any compliance notices

We may publicise this information and recover the costs of doing so from a business if it does not comply with a publicity notice.

**Criminal Offence.** The legislation gives regulators the power to take a person to court where they have evidence to show an offence has been committed. Taking this action would be based on the seriousness of the non compliance and with regard to our enforcement policy.

**How we calculate penalties** We calculate the amount of a VMP or an NCP based on a starting sum, which is linked to the size of the business. We adjust the starting sum up or down to reflect the specific case. For example, if a business has made efforts to comply or reported its own non-compliance, the sum could be lowered. If a business has ignored advice or refuses to comply on principle, the sum could be increased. This is then adjusted by adding an estimation of how much the business has financially benefited from not complying with the rules, to arrive at a final figure.

The occasions we would use a VMP or an NCP are:

For non-compliance or failure to charge or keep records.

For giving false or misleading information or obstructing an investigation which we deem to be a more serious offence; in this case the starting point would be higher.

### **What happens when we take action?**

#### **Notice of intent**

Businesses are first sent a 'notice of intent' if we are going to use a civil sanction against them.

A notice of intent states:

- how much the penalty is
- why the penalty or compliance notice has been given
- what the business must do to avoid the penalty or comply, and how much time it has to do this (in the case of a compliance notice)
- the business' right to make written representations and objections within 28 days
- when Kingston and Sutton Shared Environment Regulatory Services can not impose a penalty
- how to pay the penalty: businesses have 28 days from the date they get the notice of intent to either
- pay the penalty (FMP or VMP)
- make a written representation or objection The 28 day period runs from the date on which the business receives the notice of intent. If the business doesn't pay or comply, after 28 days, we consider any representations or objections made and decide whether to impose the penalty or requirement.

We cannot impose a penalty if:

- the business makes a discharge payment within 28 days of receiving the notice of intent
- the business has previously made a payment in relation to the same issue
- we have previously imposed a discretionary requirement for the same issue
- we are not satisfied that the rules have been broken In the case of a discretionary requirement, we may decide to impose
- the discretionary requirement with or without modifications
- any other discretionary requirement

We cannot propose a fixed monetary penalty instead of a discretionary requirement.

### **Final notice**

We send a 'final notice' if we decide to impose a penalty or discretionary requirement. The final notice states:

- why the penalty and/or discretionary requirement(s) is imposed
- our response to any representations and objections we have received
- steps the business must take and when it must take them (for compliance notices)
- the businesses right of appeal
- the consequences of failing to comply with the notice In the case of a fixed or variable monetary penalty, the final notice states:
- how much the business must pay
- how the business can pay
- that the business has 56 days to pay
- that the business gets a 50% discount if the fine is paid within 28 days
- that the fine increases by 50% if it's late

If a business appeals against a final notice and it fails or the amount of a penalty is changed, it then has 28 days to make any payments.

### **Changes to discretionary requirements we have issued**

We may, at any time:

- withdraw a notice of intent or final notice
- reduce the amount of a monetary penalty or enforcement costs
- change the steps a business must take to comply with a compliance notice We try to speak with the business before taking any of these steps and then write to tell the business about it.

### **How we recover our costs**

We can take action to recover the costs of imposing a VMP or compliance notice including:

- investigation costs
- administration costs
- costs of obtaining expert advice (including legal advice) We cannot take action to recover the costs of issuing an FMP. When recovering costs, we send an 'enforcement costs recovery notice', which states:
- how much the business must pay
- how to pay
- when to pay (within 28 days or more from when the business receives the notice)
- the businesses right of appeal
- the consequences of failure to pay by the due date We must be able to provide a detailed breakdown of the costs.

A business does not have to pay those it can show to have been unnecessary. If an appeal is made against a final notice and it fails, or the amount is changed, a business then has 28 days to make any payments.

### **Appeals against final notices**

A business can appeal against a final notice or an enforcement costs recovery notice by applying to the First-tier Tribunal on any grounds. These include if the penalty or discretionary requirements are based on an error, wrong in law or unreasonable, or if the recovery costs were incurred unnecessarily. The tribunal needs to receive an appeal within 28 days of the notice being sent. The notice is suspended during the appeal. If the First-tier Tribunal finds in favour of Kingston and Sutton Shared Environment Regulatory Services, we do not have to register a claim for the unpaid amount in the courts and can enforce it straight away.

### **How we enforce payments**

We may choose to recover unpaid penalties as a civil debt (by registering a claim in court), or by applying to a court for an order so we can enforce the payment through:

- a warrant of control, allowing a county court bailiff to take control of goods or money to the value of the amount being recovered
- a charging order, placing a charge on property so that the debt due is paid from the proceeds of sale before the debtor receives them
- a third party debt order, requiring a third party to pay the outstanding debt directly to the creditor from the debtor's money Court fees can also be recovered from the debtor.

If you are a retailer or wholesaler who requires more information about any of the pieces of legislation described in this guidance or if you have concerns about banned SUP goods please contact Kingston Council Trading Standards for advice on

[trading.standards@kingston.gov.uk](mailto:trading.standards@kingston.gov.uk)