

Carrier bag charging: Cambridgeshire County Council Enforcement Guidance

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From 5 October 2015, large businesses with 250 or more employees must charge a minimum of 5 pence (including any VAT) for each single use plastic carrier bag (SUPCB) they supply to customers in England. The 5p charge on single use plastic bags is designed to reduce the number of bags distributed by retailers, the litter associated with them and to encourage reuse of bags.

Small and medium-sized businesses are exempt from the plastic bag charge in England.

This guidance is issued by Cambridgeshire County Council and primarily concerns enforcement of the charge. You should also read the <https://www.gov.uk/carrier-bag-charges-retailers-responsibilities> to find out how businesses must charge and the records they must keep.

Wales, Northern Ireland and Scotland have also introduced a minimum charge of 5p on single-use carrier bags. Their charging schemes are different from the English scheme as they include paper bags and apply to all retailers (including small and medium size businesses). Further information can be found here: <http://gov.uk/carrierbags>

Who is responsible for enforcement

In England, local authorities¹ are responsible for making sure that businesses charge correctly for SUPCBs and keep records.

¹For online deliveries, the SUPCB charge is enforced by the local authority of the area from which the goods are dispatched. If deliveries come from outside England the charge is enforced by the local authority of the area in which the goods are delivered.

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 SUPCB provisions, and this advice will be respected by all local authorities. The primary authority will be notified of any enforcement action under the SUPCB provisions 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 Cambridgeshire County Council's enforcement policy can be found at www.cambridgeshire.gov.uk/trading and then by clicking on 'inspections & enforcement'. In addition to the options listed in our enforcement policy we are able to take the following actions or civil sanctions while enforcing the plastic bags charge.

¹ 1 "local authority" means, in relation to:

- (a) the City of London, the Common Council for the City of London;
- (b) an area in the rest of London, the London borough council for that area;
- (c) the Isles of Scilly, the Council of the Isles of Scilly;
- (d) an area in the rest of England, the county council for that area or where there is no county council for that area, the district council for that area.

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.

Issue	Fixed penalty amount
Failing to charge for SUPCBs	£200
Failing to keep or retain the required records	£100
Failing to supply records	£100
Failing to publish records	£100

They can't 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 deters future non-compliance.

If an FMP can't be imposed, or if a business continues to break the rules, we can impose a VMP up to a set limit.

Issue	Maximum penalty amount
Failing to charge for SUPCBs	£5,000
Failing to keep or retain the required records	£5,000
Failing to supply records	£5,000
Giving false or misleading information to an LA officer	£20,000
Obstructing or failing to assist an LA Officer	£20,000

More than 1 VMP can't 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 can't be issued with FMPs.

Non-compliance penalties

A Non Compliance Penalty (NCP) is a fine that we can impose when a business doesn't 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 doesn't have to pay an NCP if it completes the steps required by the compliance notice within the time specified for paying it.

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 doesn't comply with a publicity notice.

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 benefitted from not complying with the rules, to arrive at a final figure.

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

Businesses (gross/net) profit	Starting sum (VMP/NCP)
>£1,000,000	£5,000
£500,000 - £1,000,000	£4,000
£100,000 - £500,000	£3,000
£20,000 - £100,000	£2,000

<£20,000	£1,000
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For giving false or misleading information or obstructing an investigation:

Businesses (gross/net) profit	Starting sum (VMP/NCP)
>£1,000,000	£20,000
£500,000 - £1,000,000	£16,000
£100,000 - £500,000	£12,000
£20,000 - £100,000	£8,000
<£20,000	£4,000

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 businesses right to make written representations and objections within 28 days
- when a local authority can't 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 can't 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're 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 can't 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 can't 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 doesn't 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 the LA, we don't 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.

Thicker multi reuse plastic bags

If we as enforcers come across a thicker bag than single use plastic bags:

- which are sold for at least 5p,
- replaced for free by the retailer when the customer has worn it out, and
- is clearly designed for reuse

but do not fulfil the size or thickness criteria as stated in Schedule 2 of the Single Use Carrier Bags Charges (England) Order 2015. Then Defra has confirmed that we should treat it as a returnable multiple reuse bag as defined in this Schedule. Examples of these types of bags can be one which has a wavy top so it does not fit the size criteria or it has a thicker handle than 50microns, but the rest of its body is lower than 50microns.