

Guidance on the Use of Fines, Notices and other Civil Sanctions by the London Borough of Barking and Dagenham When Enforcing the Environmental Protection (Single-use Vapes) (England) Regulations 2024.

Introduction

The London Borough of Barking and Dagenham is a regulator for the purposes of enforcing the Environmental Protection (Single-use Vapes) (England) Regulations 2024 (referred to as the Regulations in this guidance). As a regulator the council is required to publish guidance on the use of the fines, notices and other penalties contained in the Regulations.

This guidance should be read in conjunction with the Regulations and with the London Borough of Barking and Dagenham's enforcement policy:

<https://www.lbbd.gov.uk/sites/default/files/2023-11/LBBD-Enforcement-Policy-2023.pdf>

The Criminal Offence of Supplying a Single-Use Vape.

If a person, as a business, supplies a single-use vape they commit a criminal offence. A single-use vape is a vape which is not intended to be re-used. A legal vape must be refillable and rechargeable and the coil (heating element) must be able to be replaced by the consumer.

The government guidance to the Regulations provides more detail on what each of these terms mean <https://www.gov.uk/guidance/single-use-vapes-ban>

Supply includes giving such vapes away. It is also an offence for a person to offer to supply such vapes or for a person to have them in their possession ready to supply.

In line with our enforcement policy, the London Borough of Barking and Dagenham may take legal action against a person who supplies, offers to supply or possesses for supply a single-use vape.

Legal action may include, but is not limited to, prosecuting someone in the magistrates' court, applying to review a premises licence under the Licensing Act 2003 or using the penalties explained in this guidance.

The criminal offence of failing to comply with an enforcement requirement

If a person without reasonable excuse, fails to comply with any requirement imposed in the exercise of an enforcement officer's powers or otherwise obstructs an enforcement officer in the exercise of powers under the Regulations, they are guilty of an offence. In line with our enforcement policy the London Borough of Barking and Dagenham may take legal action against a person who fails to comply with an enforcement requirement. Legal action may include, but is not limited to, prosecuting someone in the magistrates' court, applying to review a premises licence under the Licensing Act 2003 or using the penalties explained in this guidance.

Publication of Information about Enforcement Action.

Where we use the penalties under these Regulations, we must from time to time publish details of the cases in which the penalties have been used.

Withdrawing or Amending a Notice

Penalties in the Regulations include the use of various notices. The council may at any time withdraw a notice, reduce the amount of any penalty in a notice or change the steps in a notice required to ensure compliance. Where we do this, we will do so in writing.

Fixed Monetary Penalties and Compliance Notices

Where a person commits an offence under these regulations the London Borough of Barking and Dagenham may issue a fixed penalty notice.

This is a fine issued by the council and is a penalty of £200.

Details of how to pay the fine are included in the notices.

When will we issue a fine?

The London Borough of Barking and Dagenham has a zero-tolerance approach to the supply of single-use vapes. Unless there are aggravating circumstances, we will issue a penalty where there is evidence to show that a person has committed an offence under these Regulations, even if it their first offence.

Where there are aggravating circumstances we might take other action, even for a first offence. Examples of aggravating circumstances would include the supply of a single-use vape to a child or if someone commits a second offence or where a person is in possession of a large quantity of single-use vapes.

We will not issue a fine where a business can show it has taken all reasonable steps to avoid committing an offence. We will not issue a fine where we have issued a compliance notice and the business have carried out the tasks detailed in that notice.

When will we issue a Compliance Notice?

This is a notice that we may issue to a person telling them what action they must take to ensure that no further offences are committed. The notice will tell the person how long they have to comply with our instructions. A compliance notice will be used where the authority considers it the most appropriate way to ensure further offences are not committed. Failure to comply with a notice will lead to a person being issued with a fine or the authority may take legal proceedings against them.

Notice of Intent.

If we are considering issuing a fine or a compliance notice on a person we must issue them with a notice of intent. This tells the person what action we propose to take and why we intend to take it. The notice must include either the value of the fine or the details of the action we require the business to take.

A person who is given a notice of intent may offer to put right any damage or compensate another person who has been affected by the offence. This is known as a third-party

undertaking. The London Borough of Barking and Dagenham will consider whether to accept any offer of such an undertaking on a case-by-case basis. We must consider any third-party undertakings made before we issue any final notices.

Rights to Make Representations and Objections.

A person who is issued with a notice of intent has 28 days to make any objections or representations. These should be made in writing to tradingstandards@lbbd.gov.uk. In the case of a fine a person can clear their liability by paying £100 within 28 days of the issue of the notice.

Final Notice.

28 days after we issue the notice of intent, and having considered any objections or representations, we must decide whether or not to issue the fine or compliance notice. The notice will include the grounds for imposing the penalty, the amount to be paid, how payment may be made and the period within which payment must be made. It will also include how to appeal and the consequences of failing to pay the fine or comply with the notice.

Right to Appeal.

The person receiving the final notice may appeal against it if they think we made an error in the facts, we didn't apply the law properly or that our decision was unreasonable. Anyone wishing to appeal a final decision should do so in writing to The First Tier Tribunal General Regulatory Chamber.

Failure to pay the fine or to take the action detailed in the compliance notice will result in consideration of further action. Details of how to pay a fine are detailed in the final notice.

STOP NOTICES

Where the London Borough of Barking and Dagenham consider it appropriate, we may serve a stop notice on any person where we reasonably believe is carrying on an activity that is an offence under these Regulations and which is causing, or where there is a significant risk of it causing serious harm to the environment (including the health of animals). We can also issue a Stop Notice if the activity will involve or will be likely to involve the commission of an offence under Regulations.

The notice must explain the steps required to remove or reduce the harm or risk of harm to the environment. It must also include the reasons why we've issued the notice, how a person can appeal the notice and the consequences of failing to comply with the notice. Failure to comply with a Stop Notice is a criminal offence punishable by up to **2 years** in prison.

Completion Certificates

Once we are satisfied that the person issued with a Stop Notice has taken the steps specified in the notice, we must issue a certificate confirming this. This is called a "completion certificate". Once we have issued this the stop notice ends. A person who has been given a stop notice can ask us for a certificate at any time and we must decide

as to whether to issue one within **14 days**. We must give a written answer to the person if we decide not to issue the certificate.

Appeals Against Stop Notices & Completion Certificates

The person receiving the stop notice may appeal against it if they think we made an error in the facts, we didn't apply the law properly, that our decision was unreasonable or that they had not committed an offence under the Regulations. Anyone wishing to appeal a final decision should do so in writing to The First Tier Tribunal General Regulatory Chamber

Compensation

If the stop notice is later withdrawn or amended by us because the decision to issue it was unreasonable or any step specified in the notice was unreasonable or the person successfully appeals against the stop notice because the issue of the notice was unreasonable, we must compensate that person. If we unreasonably refuse to issue a Completion Certificate, we must also compensate that person.

Appeal against compensation decision

A person may appeal against a decision not to award compensation or the amount of compensation awarded on the grounds that our decision was unreasonable or that that the amount we offer is incorrect.

ENFORCEMENT UNDERTAKINGS

Where we think a person has committed an offence under these Regulations, they can offer to take some action to ensure offences are not committed in the future. They can also offer to act to put right any damage caused to another person or to compensate them for that damage.

They can also offer to correct any damage caused to the environment by their actions. This offer is known as an Enforcement Undertaking. The London Borough of Barking and Dagenham will consider whether to accept any offer of such an undertaking on a case-by-case basis.

If we have accepted an enforcement undertaking, we cannot prosecute for the offence to which it relates, nor can we issue a fine for that offence.

Completion Certificates

Once we are satisfied that the person has taken the steps specified in the undertaking, we must issue a certificate confirming this. This is called a "completion certificate". A person who has given an undertaking can ask us for a certificate at any time and we must decide whether to issue one within **14 days**. We must give a written answer to the person if we decide not to issue the certificate.

Appeals Against a Decision to not Issue a Completion Certificate.

A person may appeal against our decision to refuse a completion certificate if they think we made an error in the facts; we didn't apply the law properly or that our decision was unreasonable. Anyone wishing to appeal a decision should do so in writing to The First Tier Tribunal General Regulatory Chamber.

Non-compliance with an Enforcement Undertaking.

If a person does not take the action agreed in the undertaking, we can either take action to issue any of the other notices in the regulations, we can issue a fine or we can prosecute the person. If a person has complied partly but not fully with an enforcement undertaking, we must consider this before we take any further action.

NON-COMPLIANCE PENALTIES

If a person fails to comply with a compliance notice, a third party undertaking or an enforcement undertaking, the London Borough of Barking and Dagenham may recover any costs from that person by issuing them with a penalty.

We will seek **100%** of all costs incurred by the London Borough of Barking and Dagenham of fulfilling the remaining requirements including any costs of clean up or disposal costs.

Where more than one person has been identified as being responsible for the non-compliance the London Borough of Barking and Dagenham will treat all persons as being jointly and individually liable for all of the costs.

The council must issue the person with a notice which tells them why we are imposing the penalty, the amount to be paid, how payment may be made, the period in which payment must be made and their right to appeal. It must also tell them the consequences of non-payment and the circumstances in which the council might reduce the amount of the penalty.

If the requirements of the compliance notice or the third-party undertaking is complied with before the deadline for payment is reached, then the penalty will be cancelled.

Appeals against non-compliance penalties

A person may appeal against our decision to issue a penalty if they think we made an error in the facts, we didn't apply the law properly, that our decision was unreasonable or that the amount of the penalty was unreasonable. Anyone wishing to appeal a decision should do so in writing to The First Tier Tribunal General Regulatory Chamber.

ENFORCEMENT COST RECOVERY NOTICES

The Council may serve a notice (an "enforcement cost recovery notice") on a person on whom a compliance or stop notice has been served which requires that person to re-pay what it has cost the London Borough of Barking and Dagenham to enforce the law before the notice is issued.

There is no limit on what types of costs apply but they will include investigation costs, administration costs and the costs of obtaining expert advice (including legal advice). We can only recover costs that were necessary for us to enforce the law.

The enforcement cost recovery notice must tell a person how payment may be made, the amount required to be paid, the period in which payment must be made, why the notice has been issued, how a person can appeal and what the consequences of a failure to

comply with the notice might be. The person can ask the council to provide a detailed breakdown of the amount.

Appeals Against Enforcement Cost Recovery Notice.

The person required to pay the costs may appeal against the Council's decision to require them to pay costs or against their decision about the amount of those costs. Anyone wishing to appeal a decision should do so in writing to The First Tier Tribunal General Regulatory Chamber

How we enforce payments.

The London Borough of Barking and Dagenham 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.