



Department of  
**Agriculture, Environment  
and Rural Affairs**

## **ENFORCEMENT GUIDANCE**

# **CARRIER BAGS CHARGING LEGISLATION IN NORTHERN IRELAND.**

## **SECTION 1: OVERVIEW**

The Single Use Carrier Bags Charge Regulations (Northern Ireland) 2013 (“the Regulations”) were made on 15 January 2013 and came into operation on 8 April 2013<sup>1</sup>.

From that date, all sellers of goods in Northern Ireland had to charge their customers at least 5 pence (“the levy”) for each single use carrier bag supplied new so as to enable goods purchased to be taken away or delivered.

From 19 January 2015, the levy was extended to all carrier bags with a retail price of less than 20 pence.

The levy applies to all carrier bags – not just plastic bags. Some bags are exempt from the requirement to charge.

The Department of Agriculture, Environment and Rural Affairs is responsible for implementing the charging arrangements. Sellers are required to pay the net proceeds of the charge to the Department and they must retain records of the bags that they have supplied.

If the Regulations are breached, the Department can apply a range of monetary and non-monetary penalties (“civil sanctions”). The Department is required to publish guidance about use these civil sanctions – and to have regard to that guidance in exercising its functions. The Department must also consult with appropriate bodies or persons before publishing guidance.

This document is intended to fulfil those requirements. As such:

**Section 2** highlights the key provisions of the Regulations;

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<sup>1</sup> Guidance on Carrier Bags Charging Legislation in Northern Ireland is available at: [https://www.daera-ni.gov.uk/Guidance\\_on\\_Carrier\\_Bags\\_Charging\\_Legislation\\_in\\_NI](https://www.daera-ni.gov.uk/Guidance_on_Carrier_Bags_Charging_Legislation_in_NI)

**Section 3** deals with possible breaches of the Regulations; **Section 4** summarises the Department's proposed approach to administration and enforcement of the carrier bag levy;

**Section 5** outlines the civil sanctions that are available to the Department in enforcing the Regulations;

**Section 6** indicates how the Department will determine the amount of any civil sanctions;

**Section 7** outlines the process for the imposition of civil sanctions;

**Section 8** deals with rights of appeal; and

**Section 9** summarises the principles governing the Department's enforcement activity

## **SECTION 2: KEY PROVISIONS OF THE REGULATIONS**

The Single Use Carrier Bags Charge Regulations (Northern Ireland) (“the Regulations”) became operational on 8 April 2013. From 19 January 2015, the levy was extended by the Carrier Bags Act (Northern Ireland) 2014 to all carrier bags with a retail price of less than 20 pence. The Regulations require sellers to charge customers at least 5 pence for every carrier bag supplied new at a place where goods are sold. Sellers are required to pay the proceeds of the 5 pence levy to the Department.

The requirement to charge the levy applies to a broad range of sellers across Northern Ireland. The levy is not confined to plastic bags – it also applies to bags made from paper, plant-based material or natural starch. However, the Regulations do provide for a number of exclusions from the charge including exemptions on the grounds of patient confidentiality, hygiene and food safety and for the protection of both goods and consumers.

Sellers are required to retain records of the bags issued to which the levy applies, and to make those records available to the Department as required.

The Regulations give the Department specific powers to apply a range of civil sanctions in the event of specified breaches. These issues are discussed in subsequent sections of this document.

### SECTION 3: BREACHES

The Regulations will be breached if a seller fails to:

- charge the levy;
- pay the proceeds of the charge to the Department;
- keep, retain or supply records as required by the Department.

However, the Department recognises that, despite best efforts, a seller may on occasion fail to comply with a particular requirement of the Regulations. In such circumstances, the Department would not normally wish to penalise the seller. The legislation therefore provides that a breach only occurs if the seller has ***failed to take all reasonable steps necessary*** to enable it to comply with its obligations<sup>2</sup>.

The Regulations also provide that:

- giving false or misleading information to the Department; and
- obstructing or failing to assist the Department

constitute breaches of the Regulations; this is only if a seller does so without ***reasonable cause***.

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<sup>2</sup> Section 7 of the Department's Guidance on Carrier Bags Charging Legislation in Northern Ireland provides some examples of what the Department may regard as reasonable steps to achieve compliance. See [https://www.daera-ni.gov.uk/Guidance\\_on\\_Carrier\\_Bags\\_Charging\\_Legislation\\_in\\_NI](https://www.daera-ni.gov.uk/Guidance_on_Carrier_Bags_Charging_Legislation_in_NI)

## **SECTION 4: APPROACH TO ADMINISTRATION AND ENFORCEMENT**

The Department has established a Carrier Bag Levy Team to administer the carrier bag charging arrangements. The Team has lead responsibility for collecting the levy and ensuring that sellers comply with the Regulations.

The Team includes a number of Customer Relations Managers who will monitor compliance and investigate alleged breaches of the Regulations. This will be done mainly through visits to retail premises and the analysis of quarterly returns from sellers.

The Department may take enforcement action against any seller who breaches the requirements of the Regulations without reasonable cause. That said, wherever possible, the Department is keen to work in partnership with sellers to resolve issues voluntarily. The Department anticipates that it will be able to address most breaches, or potential breaches, of the Regulations in this way.

In considering a breach of the Regulations, the Department will assess, on a case by case basis, the course of action that seems most suitable. In reaching a decision on whether formal enforcement action could be appropriate the Department will normally be guided by the following types of considerations:

- whether there is sufficient evidence to show that a breach of the Regulations has occurred;
- the nature and extent of any alleged breach;
- any previous history of compliance/non-compliance;
- the likelihood of rectification and future compliance;
- the actual or potential amount of the loss of revenue to the Department; and
- the course of action that will best serve the public interest.

### **POWERS OF INVESTIGATION**

The Regulations enable the Department to:

- (i) make test purchases;
- (ii) inspect goods;
- (iii) enter premises (other than domestic premises);

- (iv) question a seller or officers or employees of a seller;
- (v) require the production of documents; and
- (vi) require the provision of information.

### **Powers to make test purchases, inspect goods and enter premises**

The Department can use these powers at its discretion to check whether sellers are complying with the Regulations. A Customer Relations Manager could for example, visit a seller's premises to check whether the seller supplies bags and is charging customers properly for every new carrier bag supplied.

Every Customer Relations Manager will carry evidence of their identity and their authority to act on behalf of the Department.

The power to enter premises cannot be used to enter premises that are wholly or mainly used as a private dwelling.

### **Power to question sellers or officers or employees of a seller, power to require the production of documents and the provision of information**

These powers can only be exercised if the Department reasonably believes that there has been a failure to comply with a requirement of the Regulations. This means that these powers cannot be used routinely to check compliance. For example, if the Department wishes to question a seller about how the charge has been applied, it must have reason to believe that that seller has breached the legislation. It is also worth noting that the Department cannot use these powers to compel a seller to produce a document which discloses any communication between a seller and his/ her legal advisor.

### **Dealing with breaches**

In the event of any breaches of the Regulations, the Department can apply a range of "civil sanctions" – which can take the form of monetary and/or non-monetary penalties.

The following is a (non exhaustive) list of factors which may favour the imposition of sanctions:

- evidence of fraud, deception or intent;
- an unwillingness to put things right;
- significant level of negligence;
- ignoring repeated advice or warnings;
- the likelihood of future non-compliance;
- behaviour likely to give unfair commercial advantage; and
- obstruction of Departmental officers.

Conversely the following (non exhaustive) list of factors may weigh against the imposition of sanctions:

- a minor systems failure where the Department is satisfied that real steps have been taken to remedy the failure;
- exceptional, unusual or one-off circumstances that are very unlikely to be repeated and, where, if possible, steps have been taken to prevent reoccurrence;
- a willingness to put things right;
- a commitment to future compliance.

However the Department would stress that each case will be considered on its merits.

Section 5 provides more detail on the civil sanctions that are available to the Department; Section 6 outlines how the Department proposes to use its powers.



## SECTION 5: CIVIL SANCTIONS

### Overview

The Regulations give the Department power to impose two broad types of civil sanctions: fixed monetary penalties and discretionary requirements.

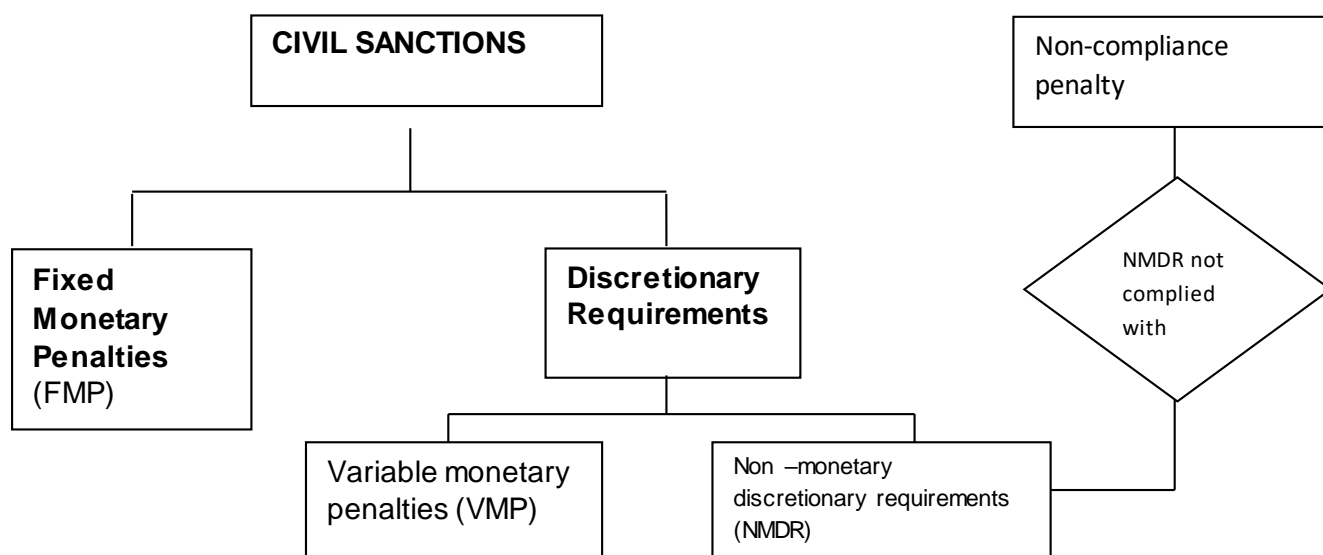
**Fixed monetary penalties** are financial penalties of a set amount.

**Discretionary requirements** fall into 2 categories; one is financial, the other is not. The financial requirements are known as **variable monetary penalties** and the non-financial requirements as **non-monetary discretionary requirements**.

In addition, the Department may impose financial penalties - **non-compliance penalties** - on sellers for failure to comply with non-monetary discretionary requirements which have been imposed.

The diagram below sets out the types of civil sanctions which can be imposed by the Department.

### Types of Civil Sanctions available to the Department



Formal proceedings leading to the imposition of civil sanctions follow the same format as those leading to the imposition of non-compliance penalties. In both instances a notice of intent is served on a seller who is then given the opportunity to make representations to the

Department. If the Department, having considered any representation received, subsequently decides to impose a penalty, a final notice is served.

The Department may recover any enforcement costs incurred in connection with the imposition of discretionary requirements. There is no obligation on the Department to serve a notice of intent before requiring a seller to pay enforcement costs.

The Department may withdraw a notice of intent or final notice at any time. Except in the case of fixed monetary penalties, the Department may also amend a notice so as to reduce the severity of a sanction originally proposed - or to reduce the amount of enforcement costs originally sought from the seller.

If the Department imposes a civil sanction on a seller, it may require the seller to publish that fact, along with information about the type of sanction imposed. If the seller fails to comply with such a requirement, the Department may publish the required details itself and recover the publication costs from the seller. The Department is required to periodically publish reports identifying the cases in which it has imposed civil sanctions.

### **Fixed Monetary Penalties**

A fixed monetary penalty (FMP) is a relatively low level sum that the Department may impose as a penalty for certain breaches of the Regulations. It is a 'stand-alone' civil sanction – this means that it cannot be used in addition to any other sanction.

Once a FMP has been imposed, no other formal enforcement proceedings may be taken against the seller for the same breach (other than to recover any penalty that remains unpaid).

FMPs may be imposed for:

- failing to charge,
- failing to pay the proceeds of the charge to the Department; and
- failing to keep, retain or supply records

if any of these failures arise as a result of a seller failing to take all reasonable steps to enable them to achieve compliance.

**FMPs may not be imposed for:**

- giving false or misleading information to the Department; or
- otherwise obstructing or failing to assist the Department without reasonable cause.

**In addition, the Department may not impose a FMP if:**

- (i) the seller makes an appropriate payment within 28 days from the date on which the notice of intent is served. This payment discharges the seller's liability in relation to the relevant breach;
- (ii) the seller has previously made a payment as outlined in (i) in relation to the same breach;
- (iii) the Department has previously imposed a FMP for the same breach;
- (iv) the Department has previously imposed a discretionary requirement in relation to the same breach;
- (v) the Department is not satisfied on the balance of probabilities that a breach has occurred.

The amounts that may not be imposed as FMPs are set out in the table below:

**Fixed Monetary Penalty Amounts**

<b>BREACH</b>	<b>FIXED PENALTY AMOUNT</b>
Failure to charge or failure to pay the net proceeds of the charge to the Department as a result of the seller failing to take all reasonable steps to enable it to do so	£200
Failure to keep, retain or supply records as a result of the seller failing to take all reasonable steps to enable it to do so	£100

The Regulations provide for an early payment discount of 50% in certain circumstances, and, conversely, for a late payment penalty where the amount of the relevant FMP is increased by 50%.

## **Discretionary Requirements**

Discretionary requirements fall into two categories. Financial discretionary requirements are known as variable monetary penalties (VMPs) and non-financial requirements are termed non-monetary discretionary requirements. Discretionary requirements may be imposed for any breach of the Regulations.

### Variable Monetary Penalties

The Regulations set upper limits for VMPs. Within those limits, the Department has discretion to impose whatever amount it considers appropriate in the circumstances.

The upper limits are set out in the table below:

### **Variable Monetary Penalty Amounts**

<b>BREACH</b>	<b>MAXIMUM VMP</b>
Failing to charge as a result of the seller failing to take all reasonable steps to enable it to do so	£10,000
Failure to pay the net proceeds of the charge to the Department as a result of the seller failing to take all reasonable steps to enable it to do so	£20,000 or 10% of the amount estimated to be due – whichever is the greater
Failure to keep, retain or supply records as a result of the seller failing to take all reasonable steps to enable it to do so	£5,000
Giving false or misleading information to the Department; otherwise obstructing or failing to assist the Department	£20,000

### Non-monetary discretionary requirements

Non –monetary discretionary requirements require a seller to take certain steps to ensure that a breach does not continue or recur. The Department will decide what those steps

should be and the time period within which they must be completed. Examples of steps that might be required include the following:

- Training of relevant staff;
- Changes to record-keeping processes;
- Exertion of more control over the availability of single use carrier bags in-store.

If a seller does not fully comply with a non-monetary discretionary requirement in the time given, the Department may impose a financial penalty (known as a non-compliance penalty).

#### Circumstances in which the Department may not impose a discretionary requirement

The Department may not impose a discretionary requirement if:

- (i) a discretionary requirement has previously been imposed in relation to the same breach;
- (ii) the seller has previously made a payment to discharge liability to a FMP at the notice of intent stage in relation to the same breach;
- (iii) a FMP has previously been imposed in relation to the same breach;
- (iv) the Department is not satisfied on the balance of probabilities that a breach has occurred.

#### **Non-Compliance Penalties**

A non-compliance penalty is a financial penalty which is issued because a seller has not complied with a non-monetary discretionary requirement. The Department may impose a non-compliance penalty even if a VMP was imposed at the same time as the non-monetary discretionary requirement.

If a seller completes the steps required to comply with the non-monetary discretionary requirement within the required time frame, it is not required to pay the non-compliance penalty.

It could be that a seller takes none of the steps required by the non-monetary discretionary requirement or that the seller takes some but not all of the steps. A non-compliance penalty may be imposed in either case and the maximum amount that may be imposed is £5,000.

### **Combination of Sanctions**

Discretionary requirements may be imposed for any breach. They cannot be combined with FMPs. However financial and non-financial discretionary requirements may be imposed for the same breach at the same time. The Department may also impose more than one non-financial requirement at the same time and may do so in combination with a VMP.

The table below sets out details of the sanctions that may be imposed at the same time in relation to the same breach. All sanctions must be imposed at the same time because the Regulations prohibit the imposition of discretionary requirements on more than one occasion for the same breach.

<b>COMBINATION OF DISCRETIONARY REQUIREMENTS</b>		
VMP & FMP		No
Non-monetary discretionary requirement & FMP		No
VMP on its own	Yes	
Non-monetary discretionary requirement on its own	Yes	
VMP & Non-monetary discretionary requirement	Yes	
VMP & two or more non-monetary discretionary requirements	Yes	
More than one VMP		No
More than one non-monetary discretionary requirement	Yes	

### **Enforcement costs**

The Department may require a seller to pay the costs that it has reasonably incurred in relation to imposing discretionary requirements. These include investigation costs,

administration costs, and the costs of obtaining expert advice, including legal advice. The Department must provide a detailed breakdown of its enforcement costs if requested by the seller to do so. The seller is not liable to pay any of the Department's costs if they can show that the Department incurred the costs in question needlessly.

The Department cannot recover the costs of imposing FMPs.

### **Appeals against civil sanctions**

A seller may ask the Department to reconsider its decision to impose a civil sanction and subsequently also has a right of appeal to an independent tribunal. These issues are addressed in Sections 7 and 8.

## **SECTION 6: CALCULATION OF CIVIL SANCTIONS**

### **VARIABLE MONETARY PENALTIES**

The Regulations establish maximum variable monetary penalties (VMPs) that may be imposed in the event of breaches of the legislation. However in every case where the Department decides to impose a financial penalty it must determine the appropriate amount of that penalty.

The Department believes that the financial penalty to be imposed on a seller should be linked to the number of bags issued by that seller during the period in question. A minimum and maximum amount will apply for each breach.

The methodology for the calculation is set out in the table below. Column 1 specifies the type of breach, while Column 2 states the amount of penalty per thousand bags issued by the seller during the period in question. Columns 3 and 4 set out the minimum and maximum amounts that may be imposed in each instance. The minimum amount has been set by the Department; the maximum amount is specified in the legislation.

## Variable Monetary Penalty Amounts

<b>BREACH</b>	<b>VMP (per 1000 bags issued)</b>	<b>MINIMUM VMP</b>	<b>MAXIMUM VMP</b>
Failing to charge as a result of the seller failing to take all reasonable steps to enable it to do so	£50	£500	£10,000
Failure to pay the net proceeds of the charge to the Department as a result of the seller failing to take all reasonable steps to enable it to do so	£50	£500	£20,000 or 10% of the amount estimated to be due – whichever is the greater
Failure to keep, retain or supply records as a result of the seller failing to take all reasonable steps to enable it to do so	£30	£300	£5,000
Giving false or misleading information to the Department or otherwise obstructing or failing to assist the Department	£50	£500	£20,000

Where the bag circulation figures for the period in question are not available, the number will be estimated using data from previous quarter(s). Alternatively, it will be based on figures relating to premises deemed to be of an equivalent size and type. In every instance, the Department will explain how the penalty amount has been calculated.

The Department proposes that this methodology will be used in most instances to calculate the amount of the VMP. However the Department reserves the right to impose a lesser or greater amount – subject to the requirements of the Regulations - where it believes that the particular circumstances of a case make such adjustment appropriate. Where the Department decides to make such an adjustment, it will provide the seller with an explanation of its reasons for doing so.



## **PROVISION FOR INCLUSION OF INTEREST PROVISION**

The Department also believes that, where appropriate, the VMP that is imposed should reflect any benefit that is derived by the seller from non-compliance (or denied to the Department). With this in mind, the Department may, at its discretion, impose a VMP which reflects the amount of interest which would have accrued to the seller given that the net proceeds of the charge were not paid to the Department on time. An amount to reflect such interest may be calculated by reference to the period that has elapsed from the date on which payment was due. The rate of interest may be based on the Bank of England base rate +2%.

It should be noted that the total VMP, including any element to reflect interest may not in any case exceed the maximum amount specified in the table above.

The following examples set out how the methodology will work in practice.

### **WORKED EXAMPLES**

1. A seller who is estimated to have issued 8,000 bags in a specific quarter (in the absence of reliable information) fails to meet the requirement to charge and a breach is deemed to have occurred.

Based on £50 for each thousand bags, the calculated penalty is £400 (£50 x 8). However the amount payable in this instance is increased to £500 - in line with the minimum VMP for this breach.

Failure to charge the levy may also attract a notional interest charge to nullify any benefit derived by the seller (or denied to the Department). In this case, the notional interest charge would be £10<sup>3</sup> (based on £400 bag levy revenue), taking the total penalty to £510.

2. A seller who issues 250,000 bags in a specific quarter fails to keep records and a breach is deemed to have occurred.

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<sup>3</sup> Assuming one year's interest at 2.5% - where the Bank of England base rate is 0.5%.

Based on £30 for each thousand bags, the calculated penalty is £7,500 (£30 x250). This is above the maximum VMP of £5,000; the amount payable is therefore capped at £5,000.

3. A seller who issues 40,000 bags in a quarter provides false or misleading information to the Department and a breach is deemed to have occurred. Based on £50 for each thousand bags, the calculated penalty is £2,000 (£50 x 40). This is above the minimum of £500 and below the maximum of £20,000 – the amount payable therefore remains at £2,000.

## **NON-COMPLIANCE PENALTIES**

The Regulations also allow the Department to impose a non-compliance penalty in the event of failure by a seller to comply with a non-monetary discretionary requirement.

In determining the amount of any non-compliance penalty, the Department will normally use the same methodology as for calculating the Variable Monetary Penalties. The calculation will be based on an amount of £30 per thousand bags issued, subject to a minimum of £300 and a maximum of £5,000.

## **SECTION 7: PROCESS FOR IMPOSING CIVIL SANCTIONS**

Formal proceedings for imposing civil sanctions follow a set process. This generally involves two formal stages – initial notification and final determination. This is outlined further below.

### **NOTICE OF INTENT**

The Department will inform a seller before imposing a fixed monetary penalty (FMP), a discretionary requirement or a non-compliance penalty. This will be done by issuing a notice of intent (NOI). A NOI is not a final decision to impose the sanction. Rather,

it is intended as formal notification of the Department's intention to impose that sanction.

The information that is contained in the NOI will vary, depending on the type of sanction that is being imposed. Full details are included in the Regulations. Typically however, the NOI will outline the reasons for imposing the sanction, the right to make representations and objections to the Department and the 28 day period in which such representations and objections must be made.

Where the NOI relates to a FMP, the NOI will set out how a seller may choose to discharge their liability immediately by paying 50% of the penalty amount. If this amount is paid in accordance with the requirements of the NOI, the Department will take no further action.

Where the NOI relates to a non-monetary discretionary requirement, it will set out the remedial action the Department requires the seller to take and the timescale within which this must be completed.

As set out above, on receipt of a NOI, the seller will always have the right to make representations and/or objections to the Department. The Department will consider these representations before finally deciding whether to formally impose the relevant sanction and may decide not to do so if it considers that it would not be appropriate. For example, having considered the seller's representations, the Department may conclude that the seller has taken all reasonable steps to comply with the Regulations.

However if the Department decides to issue the relevant sanction, it will do so by issuing a final notice (or a non-compliance notice, in cases involving a non-compliance penalty).

## **FINAL NOTICE**

The service of a final notice will mean that the relevant sanction has been imposed and must be paid in full or complied with within the time period specified in that notice. The final notice shall include:

- The grounds for imposing the penalty;
- The Department's response to any representations or objections made following the notice of intent;
- The amount of the penalty, or, where the sanction is a non-monetary discretionary requirement, the steps which the seller must take to rectify the breach;
- The date by which payment must be made or the required steps must be taken;
- Where a payment is required, how to make that payment;
- The right of appeal; and
- The consequences of failing to comply with the notice.

Final notices which relate to fixed monetary penalties or to variable monetary penalties must also contain information relating to an early payment discount or a late payment penalty (see below).

The Department may withdraw or amend a notice of intent, a final notice or a non-compliance notice at any time. Before doing so, the Department will, where possible, consult the seller.

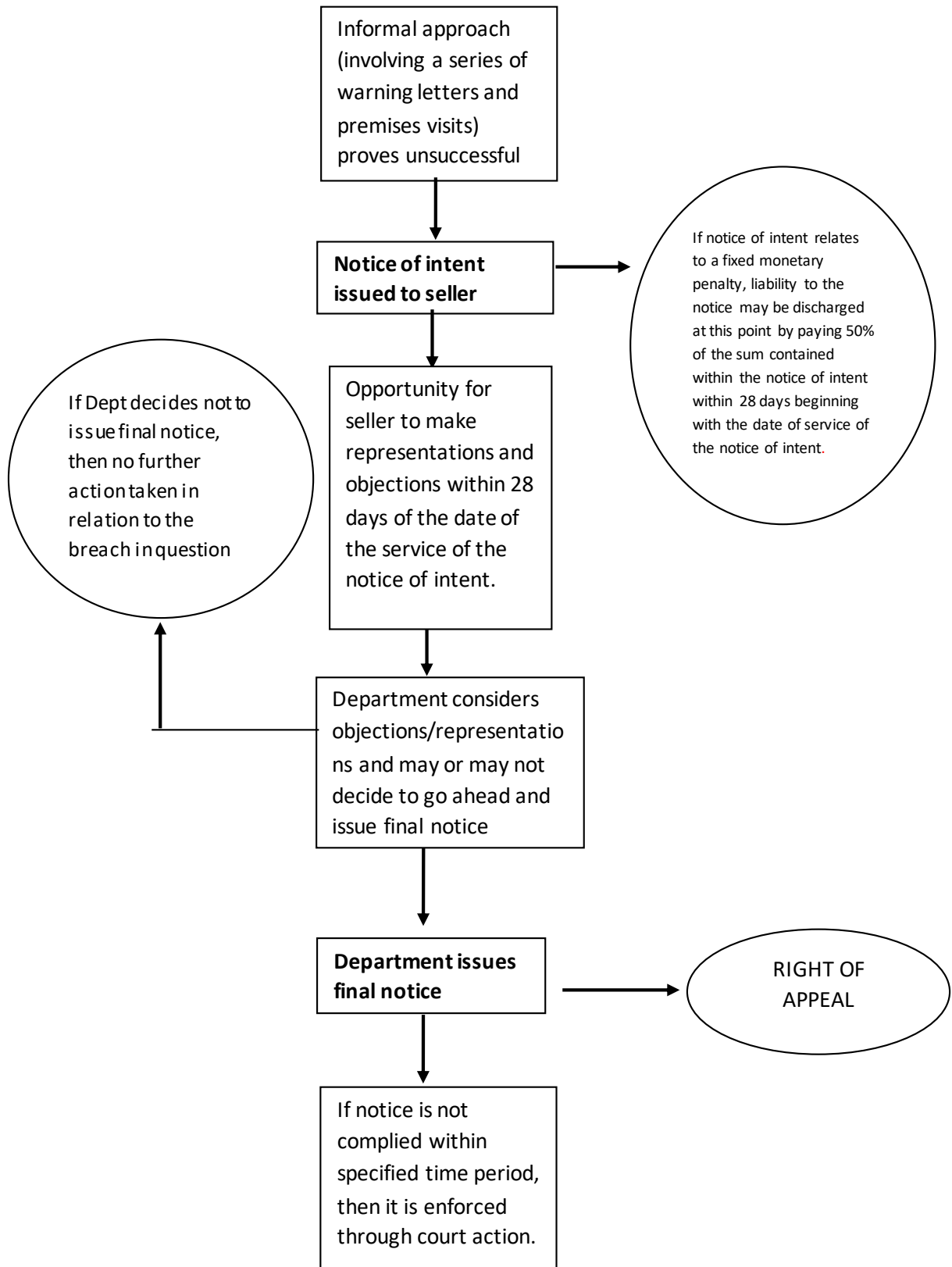
Fixed monetary penalties and variable monetary penalties must be paid within 56 days of the date on which the final notice imposing the penalty was served. In both instances, early payment discount means that only 50% of the amount is payable IF payment is made within 28 days of the date on which the final notice was served. If a fixed monetary penalty or a variable monetary penalty is not paid within the specified 56 day time period, then the amount of the penalty will increase by 50%.

Failure to comply with a final notice or a non-compliance notice may result in the Department taking court action against the seller to recover the unpaid penalty.

The diagram below sets out the general chain of events that will be set in motion if informal discussions with a seller fail to resolve a situation in which a breach or a

potential breach of the legislation occurs and the formal enforcement process is initiated.

### The Enforcement Process



## **SECTION 8: RIGHTS OF APPEAL**

The Regulations give sellers the right to appeal against:

- the imposition of a fixed monetary penalty, discretionary requirement or non-compliance penalty;
- a requirement to pay enforcement costs or the amount of any such costs.

There is no right of appeal against a notice of intent to impose a fixed monetary penalty, discretionary requirement or non-compliance penalty – although sellers do have the right to make representations and objections to the Department (See Section 7).

The grounds on which an appeal may be brought against any particular decision of the Department are set out in the Regulations - and are intentionally very broad. This is so as not to limit the potential grounds of appeal. However that is not to suggest that an appeal without merit should be brought or could succeed.

Appeals should be made to the General Regulatory Chamber of the First-tier Tribunal (FtT). A notice of appeal must be sent to the FtT so that it is received within 28 days of the date on which the notice of the sanction (or other decision) was sent to the seller. The FtT's address is:

**HM Courts & Tribunal Service  
The First-Tier Tribunal (Environment)  
General Regulatory Chamber  
PO Box 9300  
Leicester  
LE1 8DJ**

It is worth emphasising that appeal hearings will be organised in Northern Ireland.

The legislative framework for the operation of the FtT is contained in The Tribunal Rules, (The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009<sup>4</sup>.

The overriding objective of the Rules is to enable the FtT to deal with cases fairly, justly and proportionately. In instances where the FtT needs to determine whether or not a breach has been committed, the burden of proof will rest with the Department. This means that it will not be for the seller to prove that it did not breach the Regulations, it will be for the Department to prove on the balance of probabilities that the seller did.

The FtT may decide not to proceed if it considers that there is no reasonable prospect of the seller's case, or any part of it, succeeding. The Rules also allow the Tribunal to award costs against a party, but only where a party has acted unreasonably in bringing, defending or conducting the proceedings.

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<sup>4</sup> [www.legislation.gov.uk/uksi/2009/1976/contents/made](http://www.legislation.gov.uk/uksi/2009/1976/contents/made)

## SECTION 9: PRINCIPLES OF ENFORCEMENT

The Department is committed to being open and clear about its approach to administration and compliance.

Sellers are entitled to expect staff in the Carrier Bag Levy Team to:

- be courteous and helpful;
- identify themselves by name, and produce ID if requested;
- conduct visits and investigations in line with the principles of good enforcement practice - accountability, proportionality and consistency (see below for further information);
- give clear and straightforward advice;
- clearly distinguish between what sellers must do to comply with the Regulations and what is recommended best practice;
- notify sellers if the matter is to be referred for legal proceedings to recover unpaid penalties;
- maintain confidentiality except where the Department has a legal obligation to disclose information;
- if requested, advise sellers of the procedures for making a complaint, an objection or representations; and
- provide a contact point for further advice and information.

As already outlined in Section 4, the Department, where possible, is keen to work with sellers to resolve issues voluntarily. The Department therefore intends to educate and work in partnership with retailers to achieve full compliance with the requirements of the legislation. In most circumstances formal enforcement proceedings will only be initiated where these types of informal approaches have failed.



All enforcement action will be fair and reasonable with due regard being paid to the Enforcement Concordat<sup>5</sup>.

The Department will follow the key principles of proportionality, consistency, transparency, accountability and targeting.

### **Proportionality**

The Department will seek to ensure that its enforcement action appropriately reflects the nature of the breach. In practice, this means that the Department will consider how far a seller has fallen short of the requirements of the Regulations. A major breach will result in more severe punitive measures than a minor breach. Action taken will also reflect the efforts that a seller has taken to comply with the legislation.

### **Consistency**

The Department will aim to be consistent in the advice it provides and in the manner in which it responds to breaches of the Regulations. However, this does not mean that all cases will be treated in exactly the same way. While consideration will be given to the way in which similar cases have been handled, the Department will also take the circumstances of an individual case into account and this may result in a different approach being adopted. All decisions regarding enforcement action will be impartial.

### **Transparency**

The Department will aim to make sellers fully aware of what is required of them and what they can expect from the enforcement process. The need for a transparent approach also means that all decision making processes in terms of enforcement action taken (or not taken, in certain instances) will be documented and explained, as the need arises.

### **Accountability**

The Department is subject to scrutiny by the Northern Ireland Audit Office and is accountable to the Public Accounts and Environment Committees of the Northern

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<sup>5</sup> <https://www.gov.uk/government/publications/regulators-code>

Ireland Assembly. The Regulations require the Department to publish reports detailing cases in which civil sanctions have been imposed.

### **Targeting**

The Department's enforcement activities will be directed primarily at those sellers who are perceived to be in breach of the Regulations. The Department will use various methods to determine this including regular visits to premises by the Customer Relations Managers, complaints from members of the public, complaints from other statutory agencies and comparisons of the information submitted to the Department by different sellers.

Enforcement action will be directed against the person responsible for the breach as defined by the legislation. For a definition of a "seller" see Section 3 of the general guidance document on the Regulations.<sup>6</sup>

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<sup>6</sup> [https://www.daera-ni.gov.uk/Guidance\\_on\\_Carrier\\_Bags\\_Charging\\_Legislation\\_in\\_NI](https://www.daera-ni.gov.uk/Guidance_on_Carrier_Bags_Charging_Legislation_in_NI)