Guidance: The Environmental Protection (Microbeads) (England) Regulations 2017

June 2018

Contents

1. Introduction

It is estimated that around 12.2 million tonnes of plastic makes its way into the global oceans each year. Plastic pollution is one of the biggest challenges facing the marine environment today. Microbeads are one source of plastic pollution. These tiny pieces of plastic are added to products such as shower gels, toothpaste and face scrubs. They are washed down the drain and can end up in the marine environment. Microbeads are an avoidable source of plastic pollution, and in many cases natural alternatives are available.

On 3rd September 2016 the UK Government announced its intention to ban the manufacture and sale of rinse off personal care products containing microbeads. The Environmental Protection (Microbeads) (England) Regulations 2017 Statutory Instrument is available to view on legislation.gov.uk, along with the accompanying Explanatory Memorandum. The ban on manufacture came into force on the 9th of January 2018. The ban on sale will come into force on the 19th of June 2018.

The Environmental Protection (Microbeads) (England) Regulations 2017 is a piece of secondary legislation made under the powers in the Environmental Protection Act 1990 and the Regulatory Enforcement and Sanctions Act 2008. The Secretary of State has designated Local Authorities as the Regulator and the provision has been made for the use of civil sanctions as an alternative to criminal sanctions.

This guidance document is issued by Norfolk County Council and concerns enforcement of the ban.

2. Scope

The Regulations make it an offence to:

- use microbeads in the manufacture of any rinse-off personal care product
- supply, or offer to supply, any rinse-off personal care product containing microbeads

The ban applies in England.

Plastic is defined as a synthetic polymeric substance that can be moulded, extruded or physically manipulated into various solid forms and which retains its final manufactured shape during use in its intended applications.

A microbead is defined as a water-insoluble solid plastic particle of less than or equal to 5mm in any dimension.

The ban extends to all rinse off personal care products containing microbeads, regardless of the purpose for which they are added. It is not limited to microbeads added for exfoliating or cleansing purposes.

A rinse off personal care product means any substance, or mixture of substances, manufactured for the purpose of being applied to any relevant human body part in the course of any personal care treatment, by an application which entails at its completion the prompt and specific removal of the product (or any residue of the product) by washing or rinsing with water, rather than leaving it to wear off or wash off, or be absorbed or shed, in the course of time.

Rinse-off personal care products for the purpose of this ban include, but are not limited to: shower gels, body washes, intimate washes, liquid soaps, solid soaps, beaded hand cleaners, bath foams, bath bombs, bath oils, shampoos, conditioners, conditioning mousses, hair masks, hair serums, hair dyes, face and/or body masks, face washes and cleansers, rinse-off face serums, make up removers, scrubs and exfoliators manufactured for use on the face, lips, hands, feet, or any other part of the body. Also included are shaving gels, shaving creams, toothpaste, mouthwash, teeth whitening products, in-shower and rinse off fake tan products, depilatory creams and gels, hair bleaching creams, skin lightening creams and nail polish remover.

3. Identifying a microbead

Microbeads are commonly produced from a range of compounds, many of which are also used legally in rinse-off products in formats that are not solid and water insoluble. Only solid, water-insoluble plastic particles are affected by the ban. Regulators may need to use a range of evidence to determine if a product contains or is likely to contain microbeads. The following suggestions of ways to identifying potentially non-compliant products are intended to be a guide for the regulator to use to assist their regulatory activities.

Consider likely problem countries of origin

Non-compliant products may enter the UK market following importation from other countries. The Regulations do not ban the importation of these products per se, but as the sale is banned, Local Authority Trading Standards (LATS) at borders should inform the LATS responsible for the destination of the goods as they may be able to prevent the sale of the products.

As of December 2017, the following countries have, or are in the process of introducing their own microbead bans: USA, France, New Zealand, Sweden, Taiwan, Canada, South Korea and the Netherlands.

As intelligence is gathered at the borders, the country of origin of imported non-compliant products could be circulated by the regulator to help raise awareness of the issue. This may also be done when specific products are identified.

Consider likely products

An extensive list of personal care products which may contain microbeads is given in section 2: Scope. From discussion with representatives of the cosmetics industry, we have been advised that it is likely that face scrubs, shower gels and toothpastes will be key products to look out for. Glitter has also been highlighted as a substance that may be included in rinse-off personal care products. If glitter falls within the definition of a microbead and plastic given in the Regulations it will also be included in the ban.

Visual test

As stated in the definition, a microbead is equal to or less than 5mm, although the majority are 1mm or less. Microbeads on the upper end of this scale may be visible to the naked eye. There may be a large number of microbeads in a product which could give it a granular appearance. The colour of these particles should be considered; some natural exfoliators may be the same size as microbeads which limits the usefulness of visual identification. In some cases microbeads are bright colours, while natural exfoliators such as silica have a more neutral appearance. The visual check is limited by size as well as material. Microbeads may be present but too small to identify.

Feel test

Similar to the visual test, a feel test may successfully identify microbeads which are big enough to be felt. If the texture of the product between the fingers is not smooth then it may be that microbeads are present. This technique is limited by the fact that some microbeads may be too small to feel and that solid particles of non-plastic materials may also be present.

Ingredient list

In some cases an ingredient list will be a useful tool. An exhaustive list of all plastics used in rinse-off personal care products does not exist, but there are some ingredients which have been highlighted through engagement with the cosmetics industry. Polyethylene and polyethylene terephthalate are two plastic ingredients which microbeads may be made from. Considerations must be given to the state of the material. Due to available evidence, the scope of the ban is limited to solid plastic microbeads. Ingredients lists may indicate a plastic is present, but it must be both solid and water-insoluble to be included in the scope of the ban.

Product information file

The product information file may provide details of any microbead include in the product. This should be consulted if available.

Chemical testing

Local Authorities may contact materials testing labs to determine the possibility of testing samples for plastic.

4. Enforcement and sanctions

Who is responsible for enforcement?

In England, Local Authorities[1] are responsible for making sure that businesses comply with the ban on manufacture and sale of rinse-off personal care products containing plastic microbeads.

For the purpose of enforcement, the regulator is the Local Authority with responsibility for the location where the product was manufactured or supplied. The microbead ban is set out in secondary legislation under the Environmental Protection Act 1990. Subsequently, the provision of Primary Authority applies.

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 requirements of the microbead ban, and this advice will be respected by all local authorities. The primary authority will be notified of any enforcement action under the microbead ban 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://www.gov.uk/guidance/local-regulation-primary-authority

How can we investigate?

The regulator must investigate in accordance with the Regulations.

The regulator will also have regard to the Regulator's Code when exercising their responsibilities in this area. A copy of the Regulator's Code is available here - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

When exercising powers of investigations the regulator must also act in accordance with the codes of practice issued under Section 48 of the Protection of Freedoms Act 2012 and Section 66 of the Police and Criminal Evidence Act 1984.

It is suggested that the regulator may investigate:

- At the same time as inspecting manufacturers or importers of cosmetic products using powers in the Cosmetic Regulations/CRA15
- At the same time as carrying out retail visits, e.g. as part of a regional market surveillance project on cosmetic products

[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.

- In response to a consumer complaint or referral from another Local Authority
- As a result of a referral or intelligence

What actions can we take?

The regulator must work in accordance with the enforcement policy of the Local Authority they work for. In addition to the options listed in their Local Authority's enforcement policy, regulators are able to take the described actions or civil sanctions while enforcing the microbead ban. This guidance details the criminal and civil sanctions relevant to these Regulations.

The Regulations create a **criminal sanction** for non-compliance with the ban which can result in prosecution. As an alternative to prosecution **civil sanctions** can be imposed in response to unlawful activity. **Non-statutory options** are also available to the regulator. The regulator should give consideration to the recommendations given in the Regulator's Code when deciding which enforcement action to take.

Civil Sanctions available: Variable Monetary Penalties, Compliance Notices, Enforcement Undertakings and Stop Notices.

Non-compliance penalties are also available for use if compliance notices or third party undertakings (TPU) are not complied with. For a description of TPUs see Annex 2.

For detailed enforcement and sanctions guidance see Annex 1.

Annex 1: Detailed enforcement and sanctions guidance

Detailed Enforcement Options

Option 1: Non-Statutory Approaches

The regulator may give a warning or provide advice to the business in question. A warning is a written notification that states that the regulator believes that an offence has been committed. This type of non-statutory option provides the offender with the opportunity to correct their actions without escalation to civil or criminal sanctions.

Warnings may be given as:

- a warning letter; or
- a site warning that is normally issued on-site or otherwise as a result of a compliance visit to a permitted site or activity.

It will be recorded and may, in the event of further non-compliance, influence the subsequent choice of sanction.

Option 2: Civil Sanctions

If the regulator considers a civil sanction to be the most appropriate approach they have the option of using Variable Monetary Penalties (VMPs), Compliance Notices (CNs), Stop Notices (SNs) or accepting Enforcement Undertakings. Civil sanctions can be used alone or in combination. The permitted combinations are outlined in table 1. This table also outlines the procedures for each civil sanction. The actions the First-tier Tribunal may take are outlined in Annex 3.

Table 1

	VMP	**CN**	**SN**	**EU**
Combining Civil Sanctions				
VMP	-	✓	✓	X
CN	✓	-	✓	X
SN	X	X	-	X
EU				-
Notice of Intent Issued before service of the Final Notice	✓	✓	X	✓

Representation within 28 days of the receipt of the Notice of Intent	✓	✓	X	-
Representations on service of Final Notice	-	-	✓	-
Appeal to First-tier Tribunal on service of the Final Notice	✓	✓	✓	-
Completion Certificate	-	-	✓	✓
Appeal to First-tier Tribunal if a completion certificate is refused	-	-	✓	✓
Criminal prosecution possible if you fail to comply	X	✓ *	✓	✓

*but not if the CN was combined with a VMP

Table 1: Description of the combinations of civil sanctions possible, and the steps required for each.

<u>Variable Monetary Penalties (VMP)</u>

A VMP is a penalty fine which is used to remove illicit financial benefit achieved through gain or cost avoidance, and to deter future non-compliance. VMPs are proportionate monetary penalties which the regulator may impose for the cases of non-compliance where the regulator decides that prosecution is not in the public interest. They can be used as an alternative to prosecution if:

1. the offence is classed as medium
2. the offence is classed as significant but there are strong mitigating factors
3.

For a VMP to be used the standard of proof required is beyond reasonable doubt.

A VMP may not be imposed on a person on more than one occasion in relation to the same act or omission.

Before serving a notice relating to a VMP on a person the regulator may require the person to provide information for the purpose of establishing the amount of any financial benefit arising as a result of that offence.

Protocol for serving a VMP

Regulator must first serve a notice of intent which must include:

1. the grounds for the VMP (including the offences which are believed to be committed)
2. the amount to be paid along with justification (the amount may not be more than 10% of the annual turnover of the business)
3. the rights of the person to make representation and objections to the regulator within 28 days of the notice being received
4. the circumstances in which the regulator may not impose the VMP
5. the opportunity to propose enforcement undertakings and TPUs

Once the 28 days allowed for representations and objections has passed the regulator must consider any that have been received and decide whether to proceed with notice unchanged change the notice or proceed with any other requirement that the regulator has the power to impose.

When imposing the final notice the regulator must be satisfied that the person would be convicted of the offence which the notice relates too, and may not impose a final notice if they are not.

The regulator must consider any third party undertakings it accepts when deciding whether to serve the final notice or not, and the amount of the VMP it imposes.

The final notice must include:

1. the grounds for imposing the penalty
2. the amount to be paid which may not be more than 10% of the annual turnover of the business
3. how payment may be made
4. the period within which payment must be made (which must not be less than 28 days)
5. the rights of appeal
6. consequences of failing to comply with the notice

When deciding the amount of the VMP the regulator should consider the following aggravating factors:

- degree of blameworthiness
- history of non-compliance
- attitude to the non-compliance (e.g. lack of prompt action to eliminate or reduce the risk of damage resulting from regulatory non-compliance

- foreseeability and the risk of environmental harm
- ignoring earlier advice, guidance and warnings

And the following mitigating factors:

- preventative measures taken in advance of the offence
- co-operation with the regulator
- voluntary reporting of regulatory non-compliance
- restoration undertaken
- attitude to offence and prompt response
- personal circumstances
- other case-specific mitigating factors

A full description of all factors a regulator should consider when setting a penalty amount are outlined in Annex 4. This annex also contains the process for calculating a VMP.

The grounds for appealing against the final notice are:

1. that the decision was based on an effort of fact
2. the decision was wrong in law
3. the amount of the VMP Is unreasonable
4. the decision is unreasonable for any other reason
5. for any other reason

Appeals against VMPs are made to the General Regulatory Chamber of the First-tier Tribunal. Appeals should be made so that they are received by the Chamber within 28 days of the date on which the notice was served.

The notice is suspended during the appeal.

If a VMP is imposed or TPU is accepted then the person may not at any time be convicted of the offence that the VMP relates to.

If an individual does not pay they cannot be prosecuted for the original offence. Instead the debt can be recovered through the civil courts.

Compliance Notices

A Compliance Notice (CN) corrects a specific issue and tells a business the steps it must take to fix it. The notice must ensure that the offender takes action to stop the non-compliance, addresses the underlying causes and comes back into compliance. These are often used where previous advice or guidance to encourage compliance was not been followed and a formal notice is necessary to ensure compliance.

The notice is appropriate when the aim of enforcement is to secure future compliance and prevent harm to the environment. The regulator would be unlikely to use them for offences classified as technical or minor but may do so if its attempts at obtaining voluntary future compliance have been ignored. The regulator may consider their immediate use for offences classified as medium or significant.

The standard of proof require before a compliance notice can be served is beyond reasonable doubt.

If the business or person is uncooperative in informal discussions, a VMP may be issued alongside the CN.

Protocol for serving a CN

Regulator must first serve a notice of intent which must include:

1. the grounds for the proposed compliance notice (including the suspected offences)
2. actions required, why and by when
3. indicators of success
4. the circumstances in which the regulator may not serve a compliance notice
5. how to make representations and objections to the regulator
6. the opportunity to propose Enforcement Undertakings or TPU

The person may make representations and objections to the regulator in relation to the proposed imposition of the compliance notice within 28 days beginning with the day on which the notice was received.

Once the 28 days allowed for representations and objections has passed the regulator must consider any that have been received and decide whether to proceed with notice unchanged, change the notice or proceed with any other requirement that the regulator has the power to impose.

When imposing the final notice the regulator must be satisfied that the person would be convicted of the offence which the notice relates too, and may not impose a final notice if they are not.

The regulator must consider any TPUs it accepts when deciding whether or not to serve the final notice.

The final notice must contain:

1. the grounds for imposing the notice
2. what compliance is required and the period within which it must be completed
3. rights of appeal
4. the consequences of failing the comply with the notice

The grounds for appealing against the final notice are:

- that the decision was based on an error of fact
- that the decision was wrong in law
- in the case of a non-monetary requirement, that the nature of the requirement is unreasonable
- that the decision was unreasonable for any other reason
- any other reason

Appeals against compliance notices are made to the General Regulatory Chamber of the First-tier Tribunal. Appeals should be made so that they are received by the Chamber within 28 days of the date on which the notice was served.

A criminal prosecution may be pursued if:

1. a CN is imposed on a person or a TPU is accepted from a person and no VMP has been imposed
2. the person fails to comply with the CN or TPU

The person is liable to be convicted of the offence for which the compliance notice was served.

Stop Notices

A Stop Notice (SN) is a notice prohibiting a person from carrying on the activity specified in the notice until the person has taken the steps outlined in the notice

The regulator may issue a stop notice if it reasonably believes that:

1. the person is carrying on or is likely to carry on the activity
2. the activity being carried on or likely being carried on is or likely is causing or presents a significant risk of causing serious harm to the environment (including health of animals)
3. the activity that is or likely it being carried on by that person involves or is likely to involve the commission of an offence under this act

SNs are appropriate when the regulator reasonably believes that the person is likely to continue the activity and the aim of enforcement is to stop them. The regulator would be unlikely to issue SNs in response to technical or minor offences but will do so if all attempts at stopping an activity voluntarily have been exhausted. The immediate use of stop notices for offences classified as medium or significant should be considered. If an offence is classified as significant a prosecution is likely to accompany a SN.

A SN can be issued with any other civil sanction, and SNs can also be served in combination with steps leading to a criminal prosecution.

Protocol for serving a Stop Notice

There is no requirement to serve a notice of intent when serving a SN, however a SN must include:

1. the grounds for serving the notice
2. the steps the person or business must take to comply with the notice
3. associated rights of appeal
4. the consequences of non-compliance

The recipient may decide to appeal. The grounds of an appeal are:

- that the decision was based on an error of fact
- that the decision was wrong in law
- that the decision was unreasonable
- that any step specified in the notice is unreasonable
- that the person has not committed the offence and would not have committed it had the notice not been served
- that the person would not by any reason of defence have been liable to be convicted of the offence had the SN not been served
- any other reason

Appeals must be lodged to the First-tier Tribunal within 28 days of the notice being served.

SNs are not suspended during the appeal process.

Completion certificates must be issued by the regulator after the service of an SN if they are satisfied that the person has taken the steps specified in the notice.

Once a completion certificate has been issued the notice ceases to have effect.

The person who received the SN can apply for the completion certificate at any time.

The regulator must give a written notice of the decision of whether to issue a completion certificate within 14 days of receiving the request for the completion certificate.

If the regulator decides not to issue the completion certificate then the person who made the application may appeal. Grounds of an appeal are:

- that the decision was based on an error of fact
- the decision was wrong in law
- the decision was unfair or unreasonable
- that the decision was wrong for any other reason

There are also cases in which a person who is served the SN may be entitled to compensation for loss suffered as a result of the service of an SN or the refusal of a completion certificate. These are when:

- the SN is subsequently withdrawn or amended by the regulator because the decision to serve it was unreasonable or any step specified in the notice was unreasonable
- the person successfully appeals against the SN and the First-tier Tribunal finds that the service of the notice was unreasonable
- the person successfully appeals against the refusal of a completion certificate and the First-tier Tribunal finds that the refusal was unreasonable.

The person is also able to appeal against a decision not to award compensation or the amount of compensation awarded:

- on the grounds that the regulator's decision was unreasonable
- on the grounds that the amount offered was based on incorrect facts
- for any other reason

Non-compliance with an SN is an offence and the persons/business is liable to a summary conviction or conviction in indictment and the associate fine or imprisonment.

On summary conviction the person is liable to a fine or imprisonment for up to twelve months, or both. On conviction on indictment the person is liable to imprisonment for up to two years, a fine, or both.

Enforcement Undertakings

Enforcement Undertakings (EUs) are voluntary proposals presented to the enforcement agency as a means of making amends for non-compliance and its effects. If the regulators accepts the proposals then a legally binding voluntary agreement is entered in between the regulator and the person who made the proposal. The regulator may accept EUs from a person in a case where the regulator has reasonable grounds to suspect that the person has committed an offence.

EUs provide an opportunity to recompense and, if completed, mean that the person can avoid civil or criminal sanctions for that particular case. They will only be accepted if there is reasonable belief that the terms will be delivered. They are unlikely to be accepted if another sanction is being considered or is underway. Once accepted the person cannot be convicted for the offence to which EU relates to, unless there is non-compliance with the EU. They cannot be served in combination VMP, CN or SN.

An EU must specify:

- the action required to ensure that the offence does not reoccur
  or
- the action (including the payment of a sum of money) to benefit any person affected by the offence
  or
- the action that will secure benefit to the environment equivalent to restoration of what has been or is likely to have been damaged or destroyed by the commission of the offence

It must also:

- specify the period within which the action must be completed
- include a statement that the undertaking is made in accordance with the Statutory Instrument
- include the terms of the undertaking
- include information as to how and when the person giving that undertaking is to be considered to have discharged the undertaking

The EU and its timeframe may be altered if both parties agree in writing.

Once the EU has been complied with the regulator must issue a certificate to confirm this.

If the regulator decides not to issue the completion certificate then the person who made the application may appeal.

Grounds of an appeal are:

- that the decision was based on an error of fact
- the decision was wrong in law
- the decision was unfair or unreasonable
- that the decision was wrong for any other reason

The notice is suspended during the appeal. Appeals are made to the First-tier Tribunal.

If the person does not comply with the EU then the regulator may serve a VMP, CN, non-compliance penalty or stop notice. The regulator may also begin criminal proceedings.

If a person partially complies then this must be considered by the regulator when considering the next sanction to impose.

If a criminal proceeding is begun then it must be started within 6 months of the date on which the regulator notified the person who offered the EU that they have failed to comply with it.

Non-Compliance Penalties

A Non-Compliance Penalty (NCP) is a fine that the regulator can impose when a business doesn't complete all of the steps required by a CN or TPU by the completion date. The NCP can be imposed even if a VMP was also imposed for the offence. NCP can be served where there are strong mitigating factors, as failure to comply with a compliance notice or TPU would usually lead to prosecution. NCPs are written notices issued by the regulator that imposes a monetary penalty. The payment of the NCP does not preclude the prosecution of the person or business for the original offence if the person continues their non-compliance, as even once a NCP has been served the TPU and CN are still outstanding.

The person who has been served the NCP does not have to pay if the steps required by the CN or TPU are completed within the time specified for paying the NCP.

The regulator determines the amount of the NCP. It may be up to 100% of the cost of fulfilling the requirements of the CN or TPU. If the notices have been partially complied with then the penalty will be reduced accordingly.

The NCP notice must include:

1. the grounds for imposing it
2. the amount to be paid
3. payment deadline
4. how to pay

5. consequences of failing to pay
6. rights of appeal
7. if appropriate: how payment can be avoided e.g. by a future deadline by which to comply with the original CN or TPU

Appeals can be lodged if the person feels as though the amount is unreasonable.

The grounds for appeal are:

- the decision to serve the notice was based on an error of fact
- the decision war wrong in law
- the decision was unfair or unreasonable for any reason
- the amount of the penalty was unreasonable
- any other reason

If the penalty is not paid the regulator can recover the amount through the civil courts.

The notice is suspended during the appeal.

Option 3 – Criminal Sanctions

The sanction of prosecution is available to the regulator.

If it is decided that a criminal sanction is appropriate the case must be assessed in accordance with the requirements of the Code for Crown Prosecutors before commencing a prosecution.

A criminal sanction should only be pursued if the regulator believes that the circumstances of the offence warrant this response. A prosecution should be pursued if the person does not comply with the SN, CN or EU.

Criminal proceedings may not be brought if more than 3 years have elapsed since the commission of an offence under regulation 3. Information relating to an offence pursuant to regulation 3 must be tried within 12 months of it coming to the knowledge of the prosecutor.

The factors which must be considered when deciding on the type of sanction to carry out are vast. The circumstances of the offence should be considered, as should the outcome that is desired.

Listed are some factors to consider:

- intent: an offence committed wilfully or due to gross negligence is more likely to result in prosecution than one committed by accident or genuine mistake (which may be dealt with by warning, advice, guidance or a civil sanction)
- foreseeability: not taking precautions to avoid a foreseeable breach is likely to result in a civil sanction rather than advice, guidance or a warning
- environmental effect
- nature of the offence
- financial implications
- deterrent effect

- previous history
- attitude of the offender
- personal circumstance
- serious offences: when criminality, gross negligence or reckless behaviour or the seriousness of an offence makes it a topic which is of interest to the public then a prosecution will usually be pursued.
- minor breaches
- repeat offending
- failure to comply with a notice

How we recover our costs

The regulator can take action to recover the costs of imposing a VMP or CN including:

- investigation costs
- administration costs
- costs of obtaining expert advice (including legal advice)

When recovering costs, the regulator should send an 'enforcement costs recovery notice', which states:

- the grounds for the enforcement cost recovery notice
- 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

The regulator 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.

Appeals against enforcement cost recovery notices may be made against:

- the decision of the regulator to impose the requirement to pay costs
- the decision of the regulator as to the amount of those costs
- any other reasons

Appeals are to be made to the First-tier tribunal. The notice will be suspended while the appeals is pending a decision.

How we recover payments

The regulator should recover VMPs and NCPs as if they were payable under a court order.

Contacts

Norfolk County Council Trading Standards, County Hall, Martineau Lane, Norwich, Norfolk, NR1 2DH·
Telephone: 0344 800 8020
Email: trading.standards@norfolk.gov.uk

Annex 2

Third party undertakings

When a person has received a notice of intent to impose a compliance notice or a variable monetary penalty they are able to offer a third party undertaking (TPU). A TPU involves taking actions to benefit a third party affected by the offence. When such an undertaking is offered it is up to the regulator to accept it and how to take the undertaking into account in making its sanctioning decision. TPUs must be offered before the final notice has been imposed. Measures can include directly taking action to reduce harm, or providing compensation.

Annex 3

First-tier tribunal actions

The first-tier tribunal may in relation to the imposition of a requirement or service of a notice under this Schedule –

- withdraw the requirement or notice
- confirm the requirement or notice
- vary the requirement or notice
- take such steps as the regulator could have taken in relation to the act or omission giving rise to the requirement or notice
- remit the decision whether to confirm the requirement or notice or any matter relation to that decision to the regulator

Annex 4

VMP calculations and considerations

The Government has published guidance about how to calculate the amount of a VMP on their website

This document provides details about the calculations, aggravating factors and deductions to consider when calculating a VMP

http://archive.defra.gov.uk/environment/policy/enforcement/pdf/defra-wag-guidance.pdf

See pages 14-26