
WELSH STATUTORY INSTRUMENTS

2019 No. 57

The Equine Identification (Wales) Regulations 2019

PART 6

Civil sanctions

Application

36. This Part applies if an enforcing authority decides, under regulation 35(1), to impose a civil sanction, or a combination of civil sanctions, on an offender.

Compliance notice

37.—(1) An enforcing authority may, by way of serving a written notice (a “compliance notice”) on the offender, require the offender to take such steps as the authority may specify, within such periods as may be specified, to secure that the act or omission giving rise to the offence does not continue or recur.

(2) A compliance notice may not be served if a fixed monetary penalty notice has been served on the offender for the same act or omission.

Non-compliance penalty notice

38.—(1) If an offender fails to comply with a compliance notice, the enforcing authority may, by way of serving a written notice (a “non-compliance penalty notice”) on the offender, require the offender to pay to the authority such sum (the “non-compliance penalty”) as the authority may specify in respect of that failure to comply.

(2) The enforcing authority may determine—

- (a) the amount of the non-compliance penalty, but this must not exceed the amount which corresponds with level 1 on the standard scale; and
- (b) whether any discount is offered in relation to early payment and, if so, the amount of any such discount (but see regulation 41(2)).

(3) If the requirements of a compliance notice are met before the payment period specified in a related non-compliance penalty notice expires, liability to pay the non-compliance penalty is discharged.

Fixed monetary penalty notice

39.—(1) An enforcing authority may, by way of serving a written notice (a “fixed monetary penalty notice”) on an offender, require the offender to pay to the authority such sum (the “fixed monetary penalty”) as the authority may specify in relation to the act or omission giving rise to the offence.

(2) A fixed monetary penalty—

- (a) may only be imposed if it is not reasonably practicable for the enforcing authority to serve a compliance notice; and
 - (b) may not be imposed more than once for the same act or omission.
- (3) The enforcing authority may determine—
- (a) the amount of the fixed monetary penalty, but this must not exceed the amount which corresponds with level 1 on the standard scale; and
 - (b) whether any discount is offered in relation to early payment and, if so, the amount of any such discount (but see regulation 41(2)).

Enforcement costs recovery notice

40.—(1) An enforcing authority may, by way of serving a written notice (an “enforcement costs recovery notice”) on an offender on whom a compliance notice has been served, require the offender to pay the costs incurred by the authority in relation to the compliance notice up to the time of its service on the offender.

- (2) In sub-paragraph (1), the reference to “costs” means reasonably and necessarily incurred—
- (a) investigation costs;
 - (b) administration costs; and
 - (c) costs of obtaining expert advice, including legal advice.

(3) An enforcing authority must provide a detailed breakdown of the costs specified in an enforcement costs recovery notice if requested to do so by the offender.

Information to be provided in or with a notice

41.—(1) If serving a notice, the enforcing authority must ensure that the notice contains, or is served with, the following information—

- (a) the name and address of the offender on whom the notice is served;
- (b) the reasons for serving the notice, including the date of the act or omission giving rise to the offence;
- (c) information as to the steps that the offender must take in response to the notice, including the amount of any penalty that must be paid and the period within which those steps must be completed or any payment made;
- (d) information as to—
 - (i) the right of appeal;
 - (ii) the consequences of an appeal, including notification that the notice is suspended pending final determination or withdrawal of any appeal; and
 - (iii) the consequences of failure to comply with the notice.

(2) If an enforcing authority offers a discount for early payment under regulation 38(2)(b) or 39(3)(b), the authority may not require payment of the full, undiscounted sum described in the notice before the expiry of the period of 28 days beginning with the date on which the notice is served.

- (3) In this regulation, “notice” means—
- (a) a compliance notice;
 - (b) a non-compliance penalty notice;
 - (c) a fixed monetary penalty notice; or
 - (d) an enforcement costs recovery notice.

Withdrawing and re-issuing a notice

42.—(1) An enforcing authority may, at any time, in writing, withdraw a notice served by the authority under this Part.

(2) Paragraph (3) applies to a notice served on an offender under this Part but which is subsequently withdrawn by the enforcing authority before the offender files an appeal against the decision specified in the notice.

(3) The enforcing authority may serve a further notice on the offender for the failure described in the original notice.

(4) A notice may be withdrawn by an enforcing authority, if the enforcing authority determines that the offence to which the notice relates was not committed or that the notice ought not to have been issued to the person named as the person to whom it was issued.

(5) Where a notice requiring payment of a sum (such sum being specified in the notice) has been withdrawn—

- (a) no amount is payable in pursuance of that notice; and
- (b) any amount paid in pursuance of that notice must be repaid to the person who paid it.

(6) In this regulation, “notice” has the meaning given in regulation 41(3).

Appeals

43.—(1) A person may appeal against the following decisions of an enforcing authority—

- (a) a decision, by the service of a notice under regulation 37, to serve a compliance notice on that person;
- (b) a decision, by the service of a notice under regulation 38, to impose a non-compliance penalty on that person;
- (c) a decision, by the service of a notice under regulation 39, to impose a fixed monetary penalty on that person;
- (d) a decision, by the service of a notice under regulation 40, to require that person to pay enforcement costs.

(2) The grounds for appeal are that—

- (a) the decision was based on an error of fact;
- (b) the decision was wrong in law or for any other reason;
- (c) the decision was unreasonable for any reason.

(3) An appeal under this Part is to the First-tier Tribunal.

(4) An appeal under this regulation suspends the effect of the notice appealed against until the appeal is determined or withdrawn.

(5) On appeal the First-tier Tribunal may cancel, confirm or vary the notice appealed against.

Period within which payment is required and power to recover payments

44.—(1) To the extent that a decision to impose a non-compliance penalty, a fixed monetary penalty, or a decision to recover enforcement costs is upheld on appeal, or if the appeal is withdrawn, the penalty or costs must be paid before the expiry of the period of 28 days (“the period in which payment is required”) beginning with the day on which the appeal is determined or withdrawn.

(2) Following the period in which payment is required, an enforcing authority may recover any non-compliance penalty or fixed monetary penalty imposed under this Part, and any enforcement costs recoverable by the authority under this Part—

- (a) as a civil debt; or
- (b) on the order of the court, as if payable under a court order.

Receipts

45.—(1) Subject to paragraph (2) and (3), an enforcing authority may retain sums (“receipts”) paid in respect of enforcement notices served under this Part.

(2) The amount which an enforcing authority may retain under paragraph (1) must not exceed reasonable and necessary costs (“costs”) incurred, in relation to enforcement notices, by the authority in discharging its functions under Parts 4 and 5 and this Part.

(3) If receipts exceed costs, the enforcing authority must pay the excess into the Consolidated Fund.

(4) For the purposes of paragraph (2), costs may include, in relation to enforcement notices—

- (a) investigation costs;
- (b) administration costs; and
- (c) costs of obtaining expert advice, including legal advice.

(5) Upon request from the Welsh Ministers, an enforcing authority must provide to the Welsh Ministers information as to receipts and costs.

(6) In this regulation, “enforcement notices” means non-compliance penalty notices and fixed monetary penalty notices.