



Safety on Learner Transport (Wales) Measure 2011

2011 nawm 6

A Measure of the National Assembly for Wales to make provision about safety on transport provided or otherwise secured by local authorities or governing bodies of maintained schools for the purpose of ensuring the attendance of children at places where they receive education or training; and for connected purposes.

This Measure, passed by the National Assembly for Wales on 22 March 2011 and approved by Her Majesty in Council on 10 May 2011, enacts the following provisions:—

1 Requirement for seat belts on buses used for learner transport

After section 14 of the Learner Travel (Wales) Measure 2008 insert—

“Safety on learner transport

14A Requirement for seat belts on buses used for learner transport

- (1) A relevant body must ensure that every bus used for the learner transport it provides or otherwise secures is one that has a seat belt fitted to every passenger seat.
- (2) A person who provides learner transport secured by a relevant body must ensure that every bus used for such transport is one that has a seat belt fitted to every passenger seat.
- (3) A person who fails to comply with subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) It is a defence to show that the failure to comply with subsection (1) or (2) was justified by exceptional circumstances.

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- (5) Nothing in this section is to be interpreted as setting technical standards for a vehicle's construction or equipment which differ from the standards that would or might otherwise apply to that vehicle by virtue of any enactment or directly applicable requirement of European Union law.
- (6) In this section—
- “bus” means a motor vehicle constructed or adapted to carry more than eight seated passengers in addition to the driver;
- “enactment” means any of the following, whenever passed or made—
- (a) an Act of Parliament;
 - (b) subordinate legislation made under an Act of Parliament;
 - (c) a provision of any such Act or subordinate legislation;
- “seat belt” means a belt intended to be worn by a person in a vehicle and designed to prevent or lessen injury to its wearer in the event of an accident to the vehicle.”.

2 Further provision as to descriptions of vehicle that may be used for learner transport

After section 14A of the Learner Travel (Wales) Measure 2008 insert—

“Safety on learner transport

14B Further provision as to descriptions of vehicle that may be used for learner transport

- (1) Regulations may make further provision to—
- (a) require a relevant body to ensure that only prescribed descriptions of vehicle are used for the learner transport it provides or otherwise secures;
 - (b) require a person who provides learner transport secured by a relevant body to use only prescribed descriptions of vehicle;
 - (c) provide for criminal offences and penalties for breaches of requirements imposed under this section.
- (2) Regulations under paragraphs (a) and (b) of subsection (1) may describe vehicles by reference to a vehicle's construction, equipment or other characteristics.”.

3 Recording visual images or sound on learner transport

After section 14B of the Learner Travel (Wales) Measure 2008 insert—

“14C Recording visual images or sound on learner transport

- (1) Regulations may—
- (a) require prescribed arrangements to be made for recording visual images or sound of events occurring on the learner transport provided or otherwise secured by a relevant body;

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- (b) make provision about the use, storage and retention of visual images or sound recorded on learner transport provided or secured by a relevant body;
 - (c) provide for criminal offences and penalties for breaches of requirements imposed under this section.
- (2) Regulations under subsection (1) may (among other things) confer powers or duties on any of the following—
- (a) a relevant body;
 - (b) a person who provides learner transport secured by a relevant body.
- (3) Regulations under subsection (1) may not authorise or require recording to be carried out in a manner that is calculated to ensure that persons who are subject to it are unaware that it is or may be taking place.”.

4 Safety risk assessment of learner transport

After section 14C of the Learner Travel (Wales) Measure 2008 insert—

“14D Safety risk assessment of learner transport

- (1) Regulations may require a relevant body to carry out safety risk assessments of the learner transport it provides or otherwise secures.
- (2) Regulations under subsection (1) may—
- (a) impose requirements as to the nature of the assessment to be carried out;
 - (b) require the production and publication of reports;
 - (c) prescribe the form and manner of publication;
 - (d) prescribe the frequency of assessments.”.

5 Driver training

After section 14D of the Learner Travel (Wales) Measure 2008 insert—

“14E Driver training

- (1) Regulations may require a relevant body that provides or otherwise secures the provision of learner transport to ensure that drivers of vehicles used for such transport have completed prescribed training to a prescribed standard.
- (2) Training and standards may be prescribed by reference to a document published, as specified in the regulations, by the Welsh Ministers.
- (3) In this section “training” means training about safety on learner transport and working with children.”.

6 Supervisors on learner transport

After section 14E of the Learner Travel (Wales) Measure 2008 insert—

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“14F Supervisors on learner transport

- (1) Regulations may make provision for the supervision of learners using learner transport provided or otherwise secured by a relevant body.
- (2) Regulations under subsection (1) may (among other things)—
 - (a) confer powers or impose duties on a relevant body;
 - (b) make provision about training for persons supervising learners.”.

7 Civil sanctions

- (1) After section 14F of the Learner Travel (Wales) Measure 2008 insert—

“14G Civil sanctions

Schedule A1 has effect.”.

- (2) The Schedule to this Measure has effect.

8 Enforcement authority

After section 14G of the Learner Travel (Wales) Measure 2008 insert—

“14H Enforcement authority

- (1) Regulations may appoint a person or body (including the Welsh Ministers) to be an enforcement authority.
- (2) More than one person or body may be appointed as an enforcement authority.
- (3) Regulations may confer powers or impose duties on an enforcement authority to enforce provision made by section 14A and by regulations under sections 14B and 14C and Schedule A1 and may (among other things)—
 - (a) confer power on an enforcement authority to authorise a person (referred to in this Measure as an “inspector”) to exercise the powers in sections 14I and 14J,
 - (b) make modifications to any enactment applying to the enforcement authority, or
 - (c) provide for any such enactment to apply, with or without modifications, for the purposes of section 14A and regulations under sections 14B and 14C, this section and Schedule A1.
- (4) References in this Measure to an enforcement authority are references to a person or body appointed under this section and include a person appointed by an enforcement authority.
- (5) In this section “enactment” includes—
 - (a) an enactment whenever passed or made,
 - (b) an enactment comprised in a Measure or Act of the National Assembly for Wales, and

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- (c) provision contained in subordinate legislation within the meaning of the Interpretation Act 1978 (including subordinate legislation made under a Measure or Act of the National Assembly for Wales).’.

9 Power of entry

After section 14H of the Learner Travel (Wales) Measure 2008 insert—

“14I Power of entry

- (1) This section applies to—
 - (a) a vehicle or any premises owned or controlled by a relevant body;
 - (b) a vehicle or premises falling within subsection (2).
- (2) A vehicle or premises falling within this subsection are those—
 - (a) which are used, or proposed to be used, by any person in connection with the provision of learner transport provided or otherwise secured by a relevant body, or
 - (b) which an inspector reasonably believes to be so used, or proposed to be so used.
- (3) An inspector may at any reasonable time—
 - (a) detain a vehicle;
 - (b) enter a vehicle or premises.
- (4) But the power in subsection (3) does not include the power to enter premises used wholly or mainly as a private dwelling.
- (5) An inspector exercising any power conferred under subsection (3) or section 14J must, if so required, produce some duly authenticated document showing the inspector's authority to do so.’.

10 Power of inspection

After section 14I of the Learner Travel (Wales) Measure 2008 insert—

“14J Power of inspection

- (1) An inspector who detains a vehicle or enters a vehicle or premises under section 14I may—
 - (a) inspect the vehicle or premises;
 - (b) inspect, take copies of and remove from the vehicle or premises any documents or records relating to the provision of learner transport;
 - (c) inspect any other item and remove it from the vehicle or premises.
- (2) The power in subsection (1)(b) includes—
 - (a) power to require any person holding or accountable for documents or records kept on the vehicle or premises to produce them, and
 - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a legible form which can be taken away.

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- (3) The power in subsection (1)(b) does not include power—
 - (a) to require a person to produce any document or record in respect of which a claim to legal professional privilege could be maintained in legal proceedings, or
 - (b) to take copies of such a document or record or to remove it.
- (4) In connection with inspecting any such documents, an inspector—
 - (a) may obtain access to, and inspect and check the operation of, any computer and associated apparatus or material which he or she considers is or has been in use in connection with the documents, and
 - (b) may require a person within subsection (5) to afford him or her such reasonable assistance as may be required for that purpose.
- (5) A person is within this subsection if he or she is—
 - (a) the person by whom or on whose behalf the computer is or has been used, or
 - (b) a person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material.
- (6) An inspector detaining a vehicle or entering a vehicle or premises may require any person to afford him or her such facilities and assistance with respect to matters within the person's control as are necessary to enable him or her to exercise powers under section 14I or this section.
- (7) Any person who without reasonable excuse—
 - (a) obstructs an inspector exercising any power under section 14I or this section, or
 - (b) fails to comply with any requirement imposed under this section,
 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.

11 Power to require provision of information

After section 14J of the Learner Travel (Wales) Measure 2008 insert—

“14K Power to require provision of information

- (1) An enforcement authority may at any time require any person specified in subsection (2) to provide it with any information, documents, records or other items—
 - (a) which relate to the provision of learner transport, and
 - (b) which the enforcement authority consider necessary or expedient to have for the purpose of its functions as the enforcement authority.
- (2) The persons referred to in subsection (1) are—
 - (a) a relevant body;
 - (b) any person who provides learner transport secured by a relevant body.
- (3) The power in subsection (1) includes, in relation to information, documents or records kept by means of a computer, power to require provision of them in a legible form which can be taken away.

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- (4) The power in subsection (1) does not include power to require the provision of information, documents or records in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- (5) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.

12 Offences: liability of officers and partners

After section 14K of the Learner Travel (Wales) Measure 2008 insert—

“14L Offences: liability of officers and partners

- (1) Where an offence under section 14A, 14B or 14C committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate, regulations may provide for the officer to be liable as well as the body corporate itself.
- (2) Where an offence under section 14A, 14B or 14C committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the partnership, regulations may provide for the partner to be liable as well as the partnership itself.”.

13 Regulations: consultation

After 14L of the Learner Travel (Wales) Measure 2008 insert—

“14M Regulations: consultation

The Welsh Ministers must consult each local authority and such other persons as they consider appropriate before making any regulations under sections 14B to 14F, section 14H or 14L or Schedule A1.”.

14 Interpretation

After section 14M of the Learner Travel (Wales) Measure 2008 insert—

“14N Interpretation of sections 14A to 14K

- (1) This section applies for the purposes of sections 14A to 14K.
- (2) Each of the following is a “relevant body”—
 - (a) a local authority;
 - (b) a governing body of a maintained school.
- (3) “Learner transport” means transport to facilitate the attendance of a child at any relevant place where he or she receives education or training; but it does not include transport provided for the purpose of travel during the day between relevant places or between different sites of the same institution.

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- (4) The act of making any of the following arrangements is not to be considered, by itself, as providing or otherwise securing the provision of learner transport.
- (5) The arrangements mentioned in subsection (4) are—
 - (a) arrangements to pay the whole or any part of a person's reasonable travelling expenses;
 - (b) arrangements to pay allowances in respect of the use of transport.
- (6) The Welsh Ministers may by order amend subsection (3) so as to omit the words from “but it does not include” to the end of the subsection.”.

15 General provisions about orders and regulations

- (1) Section 27 of the Learner Travel (Wales) Measure 2008 (orders and regulations) is amended as follows.
- (2) In subsection (2)—
 - (a) in paragraph (a), after “or” insert “ classes of case or different purposes or ”;
 - (b) after paragraph (a) insert—
 - “(aa) make provision subject to specified exemptions or exceptions;”;
 - (c) in paragraph (b), after “cases” insert “ or classes of case ”.
- (3) In subsection (3), omit “or 8” and insert “ , 8, 14B, 14C, 14D, 14E, 14F, 14H or 14L or Schedule A1 ”.
- (4) After subsection (4) insert—
 - “(4A) In the application of subsection (4) to regulations made under sections 14B to 14F, section 14H or 14L or Schedule A1 the reference to “this Measure” in subsection (4) is to be interpreted as a reference to the Safety on Learner Transport (Wales) Measure 2011.”.
- (5) In subsection (7)—
 - (a) in paragraph (d) omit “or”;
 - (b) after paragraph (d) insert—
 - “(da) regulations under section 14B, 14C, 14D, 14E, 14F, 14H or 14L or Schedule A1, or
 - (db) an order under section 14N(6).”.

16 Commencement

- (1) Section 1 comes into force on 1 October 2014.
- (2) The remaining provisions of this Measure come into force at the end of a period of two months beginning on the day on which this Measure is approved by Her Majesty in Council.

17 Short title

This Measure may be cited as the Safety on Learner Transport (Wales) Measure 2011.

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SCHEDULE

(introduced by section 7)

CIVIL SANCTIONS

Amendments to Learner Travel (Wales) Measure 2008

After section 29 of the Learner Travel (Wales) Measure 2008 insert—

“SCHEDULE A1

(introduced by section 14G)

CIVIL SANCTIONS

Civil sanctions

- 1 (1) Regulations may make provision about civil sanctions for breaches of safety regulations.
- (2) For the purposes of this Schedule a person breaches safety regulations if, in such circumstances as may be prescribed, the person—
 - (a) fails to comply with a requirement made by or under the safety regulations, or
 - (b) obstructs or fails to assist an enforcement authority.
- (3) In this Schedule—

“civil sanction” means—

 - (a) a fixed monetary penalty (see paragraph 2),
 - (b) a discretionary requirement (see paragraph 4),
 - (c) a stop notice (see paragraph 7), or
 - (d) an enforcement undertaking (see paragraph 11);

“safety regulations” means regulations made under section 14B or 14C.

Fixed monetary penalties

- 2 (1) The regulations may make provision conferring on an enforcement authority the power by notice to impose a fixed monetary penalty on a person who breaches safety regulations.
- (2) The regulations may only confer such a power in relation to a case where the enforcement authority is satisfied on the balance of probabilities that the breach has occurred.
- (3) For the purposes of this Schedule a “fixed monetary penalty” is a requirement to pay to an enforcement authority a penalty of an amount specified in or determined in accordance with the regulations.
- (4) The regulations may not provide for the imposition of a fixed monetary penalty in excess of £5,000.

Fixed monetary penalties: procedure

- 3 (1) Provision under paragraph 2 must secure that—
 - (a) where an enforcement authority proposes to impose a fixed monetary penalty on a person, the enforcement authority must serve on that person a notice of what is proposed (a “notice of intent”) that complies with sub-paragraph (2),

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- (b) the notice of intent also offers the person the opportunity to discharge the person's liability for the fixed monetary penalty by payment of a specified sum (which must be less than or equal to the amount of the penalty),
 - (c) if the person does not so discharge liability—
 - (i) the person may make written representations and objections to the enforcement authority in relation to the proposed imposition of the fixed monetary penalty, and
 - (ii) the enforcement authority must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
 - (d) where the enforcement authority decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with sub-paragraph (4), and
 - (e) the person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it.
- (2) To comply with this sub-paragraph the notice of intent must include information as to—
- (a) the grounds for the proposal to impose the fixed monetary penalty,
 - (b) the effect of payment of the sum referred to in sub-paragraph (1)(b),
 - (c) the right to make representations and objections,
 - (d) the circumstances in which the enforcement authority may not impose the fixed monetary penalty,
 - (e) the period within which liability to the fixed monetary penalty may be discharged, which may not exceed the period of 28 days beginning with the day on which the notice of intent was received, and
 - (f) the period within which representations and objections may be made, which may not exceed the period of 28 days beginning with the day on which the notice of intent was received.
- (3) Provision pursuant to sub-paragraph (1)(c)(ii) must include provision for circumstances in which the enforcement authority may not decide to impose a fixed monetary penalty.
- (4) To comply with this sub-paragraph the final notice referred to in sub-paragraph (1)(d) must include information as to—
- (a) the grounds for imposing the penalty,
 - (b) how payment may be made,
 - (c) the period within which payment must be made,
 - (d) any early payment discounts or late payment penalties,
 - (e) rights of appeal, and
 - (f) the consequences of non-payment.
- (5) Provision pursuant to sub-paragraph (1)(e) must secure that the grounds on which a person may appeal against a decision of the enforcement authority include the following —
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable.

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Discretionary requirements

- 4 (1) The regulations may make provision conferring on an enforcement authority the power by notice to impose one or more discretionary requirements on a person who breaches safety regulations.
- (2) The regulations may only confer such a power in relation to a case where the enforcement authority is satisfied on the balance of probabilities that the breach has occurred.
- (3) For the purposes of this Schedule a “discretionary requirement” means—
- (a) a requirement to pay a monetary penalty to an enforcement authority of such amount as the enforcement authority may determine, or
 - (b) a requirement to take such steps as an enforcement authority may specify, within such period as the enforcement authority may specify, to secure that the breach does not continue or recur.
- (4) In this Schedule—
- “variable monetary penalty” means a requirement referred to in sub-paragraph (3)(a);
 - “non-monetary discretionary requirement” means a requirement referred to in sub-paragraph (3)(b).
- (5) The regulations must, in relation to each kind of breach of safety regulations for which a variable monetary penalty may be imposed—
- (a) specify the maximum penalty that may be imposed for a breach of that kind, or
 - (b) provide for that maximum to be determined in accordance with the regulations.
- (6) The regulations may not permit discretionary requirements to be imposed on a person on more than one occasion in relation to the same act or omission.

Discretionary requirements: procedure

- 5 (1) Provision under paragraph 4 must secure that—
- (a) where an enforcement authority proposes to impose a discretionary requirement on a person, the enforcement authority must serve on that person a notice of what is proposed (a “notice of intent”) that complies with sub-paragraph (2),
 - (b) that person may make written representations and objections to the enforcement authority in relation to the proposed imposition of the discretionary requirement,
 - (c) after the end of the period for making such representations and objections, the enforcement authority must decide whether to—
 - (i) impose the discretionary requirement, with or without modifications,
 - or
 - (ii) impose any other discretionary requirement that the enforcement authority has power to impose under paragraph 4,
 - (d) where the enforcement authority decides to impose a discretionary requirement, the notice imposing it (the “final notice”) complies with sub-paragraph (4), and
 - (e) the person on whom a discretionary requirement is imposed may appeal against the decision to impose it.
- (2) To comply with this sub-paragraph the notice of intent must include information as to—
- (a) the grounds for the proposal to impose the discretionary requirement;

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- (b) the right to make representations and objections;
 - (c) the circumstances in which the enforcement authority may not impose the discretionary requirement;
 - (d) the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice of intent is received.
- (3) Provision pursuant to sub-paragraph (1)(c) must include provision for circumstances in which the enforcement authority may not decide to impose a discretionary requirement.
- (4) To comply with this sub-paragraph the final notice referred to in sub-paragraph (1)(d) must include information as to—
- (a) the grounds for imposing the discretionary requirement,
 - (b) where the discretionary requirement is a variable monetary penalty—
 - (i) how payment may be made,
 - (ii) the period within which payment must be made, and
 - (iii) any early payment discounts or late payment penalties,
 - (c) rights of appeal, and
 - (d) the consequences of non-compliance.
- (5) Provision pursuant to sub-paragraph (1)(e) must secure that the grounds on which a person may appeal against a decision of the enforcement authority include the following—
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;
 - (d) in the case of a non-monetary discretionary requirement, that the nature of the requirement is unreasonable;
 - (e) that the decision was unreasonable for any other reason.

Discretionary requirements: enforcement

- 6** (1) Provision under paragraph 4 may include provision for a person to pay a monetary penalty (a “non-compliance penalty”) to an enforcement authority if the person fails to comply with a non-monetary discretionary requirement imposed on the person.
- (2) Provision under sub-paragraph (1) may—
- (a) specify the amount of the non-compliance penalty or provide for that amount to be determined in accordance with the regulations, or
 - (b) provide for the amount to be determined by the enforcement authority or in some other way.
- (3) If the regulations make provision within sub-paragraph (2)(b), they must, in relation to each kind of failure for which a non-compliance penalty may be imposed—
- (a) specify the maximum penalty that may be imposed for a failure of that kind, or
 - (b) provide for that maximum to be determined in accordance with the regulations.
- (4) Provision under sub-paragraph (1) must secure that—
- (a) the non-compliance penalty is imposed by notice served by the enforcement authority, and

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- (b) the person on whom it is imposed may appeal against that notice.
- (5) Provision pursuant to paragraph (b) of sub-paragraph (4) must secure that the grounds on which a person may appeal against a notice referred to in that sub-paragraph include the following—
- (a) that the decision to serve the notice was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unfair or unreasonable for any reason (including, in a case where the amount of the non-compliance penalty was determined by the enforcement authority, that the amount is unreasonable).

Stop notices

- 7 (1) The regulations may confer on an enforcement authority the power to serve a stop notice on a person.
- (2) For the purposes of this Schedule a “stop notice” is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.
- (3) Provision under this paragraph may only confer such a power in relation to a case falling within sub-paragraph (4) or (5).
- (4) A case falling within this sub-paragraph is a case where—
- (a) the person is carrying on the activity,
 - (b) the enforcement authority reasonably believes that the activity as carried on by that person is causing, or presents a significant risk of causing, serious harm to human health, and
 - (c) the enforcement authority believes that the activity as carried on by that person involves or is likely to involve a breach of regulations made under section 14B by that person.
- (5) A case falling within this sub-paragraph is a case where the enforcement authority reasonably believes that—
- (a) the person is likely to carry on the activity,
 - (b) the activity as likely to be carried on by that person will cause, or will present a significant risk of causing, serious harm to human health, and
 - (c) the activity as likely to be carried on by that person will involve or will be likely to involve a breach of regulations under section 14B by that person.
- (6) The steps referred to in sub-paragraph (2) must be steps to remove or reduce the harm or risk of harm referred to in sub-paragraph (4)(b) or (5)(b).

Stop notices: procedure

- 8 (1) Provision under paragraph 7 must secure the results in sub-paragraph (2) in a case where a stop notice is served.
- (2) Those results are that—
- (a) the stop notice must comply with sub-paragraph (3),
 - (b) the person on whom it is served may appeal against the decision to serve it,

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- (c) where, after service of the notice, the enforcement authority is satisfied that the person has taken the steps specified in the notice, the enforcement authority must issue a certificate to that effect (a “completion certificate”),
 - (d) the notice ceases to have effect on the issue of a completion certificate,
 - (e) the person on whom the notice is served may at any time apply for a completion certificate,
 - (f) the enforcement authority must make a decision as to whether to issue a completion certificate within 14 days of such an application, and
 - (g) the person on whom the notice is served may appeal against a decision not to issue a completion certificate.
- (3) To comply with this sub-paragraph a stop notice must include information as to—
- (a) the grounds for serving the notice,
 - (b) rights of appeal, and
 - (c) the consequences of non-compliance.
- (4) Provision pursuant to sub-paragraph (2)(b) must secure that the grounds on which a person may appeal against a decision of the enforcement authority to serve a stop notice include the following—
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable;
 - (d) that any step specified in the notice is unreasonable;
 - (e) that the person has not breached the regulations and would not have breached them had the stop notice not been served;
 - (f) such other grounds as may be prescribed.
- (5) Provision pursuant to sub-paragraph (2)(g) must secure that the grounds on which a person may appeal against a decision of the enforcement authority not to issue a completion certificate include the following—
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unfair or unreasonable.

Stop notices: compensation

- 9** (1) Provision under paragraph 7 conferring power on an enforcement authority to serve a stop notice on a person must include provision for the enforcement authority to compensate the person for loss suffered as the result of the service of the notice.
- (2) Provision under sub-paragraph (1) may provide for compensation—
- (a) only in prescribed cases;
 - (b) only in relation to prescribed descriptions of loss.
- (3) Provision under sub-paragraph (1) must secure that the person on whom the stop notice is served is able to appeal against—
- (a) a decision by the regulator not to award compensation, or
 - (b) a decision of the regulator as to the amount of the compensation.

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Stop notices: enforcement

- 10** (1) Provision under paragraph 7 conferring power on an enforcement authority to serve a stop notice must provide that, where a person on whom a notice is served does not comply with it, the person is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale, or imprisonment for a term not exceeding twelve months, or both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.
- (2) In the application of this section in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in sub-paragraph (1)(a) to twelve months is to be read as a reference to six months.

Enforcement undertakings

- 11** (1) The regulations may make provision—
- (a) to enable an enforcement authority to accept an enforcement undertaking from a person in a case where the enforcement authority has reasonable grounds to suspect that the person has contravened a restriction or requirement imposed in safety regulations, and
 - (b) for the acceptance of the undertaking to have the consequences in sub-paragraph (4).
- (2) For the purposes of this Part, an “enforcement undertaking” is an undertaking to take such action as may be specified in the undertaking within such period as may be so specified.
- (3) The action specified in an enforcement undertaking must be—
- (a) action to secure that contravention of the restriction or requirement does not continue or recur, or
 - (b) action of a prescribed description.
- (4) The consequences in this sub-paragraph are that, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—
- (a) that person may not at any time be convicted of an offence under safety regulations in respect of the act or omission to which the undertaking relates,
 - (b) the enforcement authority may not impose on that person any fixed monetary penalty which it would otherwise have power to impose by virtue of paragraph 2 in respect of that act or omission, and
 - (c) the enforcement authority may not impose on that person any discretionary requirement which it would otherwise have power to impose by virtue of paragraph 4 in respect of that act or omission.
- (5) The regulations may (among other things) include provision—
- (a) as to the procedure for entering into an undertaking;
 - (b) as to the terms of an undertaking;
 - (c) as to publication of an undertaking by an enforcement authority;
 - (d) as to variation of an undertaking;
 - (e) as to circumstances in which a person may be regarded as having complied with an undertaking;

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- (f) as to monitoring by an enforcement authority of compliance with an undertaking;
- (g) as to certification by an enforcement authority that an undertaking has been complied with;
- (h) for appeals against refusal to give such certification;
- (i) in a case where a person has given inaccurate, misleading or incomplete information in relation to the undertaking, for that person to be regarded as not having complied with it;
- (j) in a case where a person has complied partly but not fully with an undertaking, for that part-compliance to be taken into account in the imposition of any criminal or other sanction on the person;
- (k) for the purpose of enabling criminal proceedings to be instituted against a person in respect of the contravention of the requirement or restriction in the event of breach of an undertaking or any part of it;
- (l) to extend any period within which those proceedings may be instituted.

Combination of sanctions

- 12** Provision may not be made under the paragraphs specified in an entry in column 1 of the following table in relation to the same kind of breach of safety regulations unless the first and second conditions set out in the corresponding entries in columns 2 and 3 are met.

Monetary penalties

- 13** (1) If the regulations confer power on an enforcement authority to require a person to pay a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty under paragraph 6(1), they may include provision—
- (a) for early payment discounts;
 - (b) for the payment of interest or other financial penalties for late payment of the penalty, such interest or other financial penalties not in total to exceed the amount of that penalty;
 - (c) for enforcement of the penalty.
- (2) Provision under sub-paragraph (1)(c) may include—
- (a) provision for the enforcement authority to recover the penalty, and any interest or other financial penalty for late payment, as a civil debt;
 - (b) provision for the penalty, and any interest or other financial penalty for late payment to be recoverable, on the order of a court, as if payable under a court order.

Costs recovery

- 14** (1) Provision under paragraph 4 may include provision for an enforcement authority, by notice, to require a person on whom a discretionary requirement is imposed to pay the costs incurred by the enforcement authority in relation to the imposition of the discretionary requirement up to the time of its imposition.
- (2) In sub-paragraph (1), the reference to costs includes (among other things)—
- (a) investigation costs;
 - (b) administration costs;

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- (c) costs of obtaining expert advice (including legal advice).
- (3) Provision under this paragraph must secure that, in any case where a notice requiring payment of costs is served—
- (a) the notice specifies the amount required to be paid;
 - (b) the enforcement authority may be required to provide a detailed breakdown of that amount;
 - (c) the person required to pay costs is not liable to pay any costs shown by the person to have been unnecessarily incurred;
 - (d) the person required to pay costs may appeal against—
 - (i) the decision of the enforcement authority to impose the requirement to pay costs;
 - (ii) the decision of the enforcement authority as to the amount of those costs.
- (4) Provision under this paragraph may include the provision referred to in paragraph 13(1)(b) and (c) and (2).
- (5) Provision under this paragraph must secure that the enforcement authority is required to publish guidance about how the enforcement authority will exercise the power conferred by the provision.

Appeals

- 15** (1) The regulations may not provide for the making of an appeal other than to—
- (a) the First-tier Tribunal, or
 - (b) another tribunal created under an enactment (within the meaning of section 14H(5)).
- (2) In sub-paragraph (1)(b) “tribunal” does not include an ordinary court of law.
- (3) If the regulations make provision for an appeal in relation to the imposition of any requirement or service of any notice, they may include—
- (a) provision suspending the requirement or notice pending determination of the appeal;
 - (b) provision as to the powers of the tribunal to which the appeal is made;
 - (c) provision as to how any sum payable in pursuance of a decision of that tribunal is to be recoverable.
- (4) The provision referred to in sub-paragraph (3)(b) includes provision conferring on the tribunal to which the appeal is made power—
- (a) to withdraw the requirement or notice;
 - (b) to confirm the requirement or notice;
 - (c) to take such steps as the enforcement authority could take in relation to the act or omission giving rise to the requirement or notice;
 - (d) to remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the enforcement authority;
 - (e) to award costs.

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Publicity for imposition of civil sanctions

- 16** (1) The regulations may make provision enabling an enforcement authority to give a publicity notice to a person on whom a civil sanction has been imposed in accordance with regulations under this Schedule.
- (2) A “publicity notice” is a notice requiring the person to publicise—
- (a) the fact that the civil sanction has been imposed, and
 - (b) such other information as may be specified in the regulations, in such manner as may be specified in the notice.
- (3) The regulations may provide for a publicity notice to—
- (a) specify the time for compliance with the notice, and
 - (b) require the person to whom it is given to supply an enforcement authority with evidence of compliance within such time as may be specified in the notice.
- (4) The regulations may provide that, if a person fails to comply with a publicity notice, an enforcement authority may—
- (a) publicise the information required to be publicised by the notice, and
 - (b) recover the costs of doing so from that person.

Persons liable to civil sanctions

- 17** The regulations may make provision about the persons liable to civil sanctions under regulations under this Schedule and may (among other things) provide for—
- (a) the officers of a body corporate to be so liable as well the body corporate itself, and
 - (b) for the partners of a partnership to be liable as well as the partnership itself, in such circumstances as may be specified.

Guidance as to use of civil sanctions

- 18** (1) Where power is conferred on an enforcement authority by the regulations to impose a civil sanction in relation to a breach of regulations under this Schedule, the provision conferring the power must secure that—
- (a) the enforcement authority must publish guidance about the enforcement authority's use of the civil sanction,
 - (b) the guidance must contain the relevant information,
 - (c) the enforcement authority must revise the guidance where appropriate,
 - (d) the enforcement authority must consult such persons as the provision may specify before publishing any guidance or revised guidance, and
 - (e) the enforcement authority must have regard to the guidance or revised guidance in exercising the enforcement authority's functions.
- (2) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in sub-paragraph (1)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,
 - (b) the circumstances in which it may not be imposed,
 - (c) the amount of the penalty,
 - (d) how liability for the penalty may be discharged and the effect of discharge, and
 - (e) rights to make representations and objections and rights of appeal.

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- (3) In the case of guidance relating to a discretionary requirement, the relevant information referred to in sub-paragraph (1)(b) is information as to—
- (a) the circumstances in which the requirement is likely to be imposed,
 - (b) the circumstances in which it may not be imposed,
 - (c) in the case of a variable monetary penalty, the matters likely to be taken into account by the enforcement authority in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance), and
 - (d) rights to make representations and objections and rights of appeal.

Publication of enforcement action

- 19** (1) Where power is conferred on an enforcement authority by the regulations to impose a civil sanction in relation to a breach of safety regulations, the provision conferring the power must, subject to this paragraph, secure that the enforcement authority must from time to time publish reports specifying—
- (a) the cases in which the civil sanction has been imposed, and
 - (b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged pursuant to paragraph 3(1)(b).
- (2) In sub-paragraph (1)(a), the reference to cases in which the civil sanction has been imposed do not include cases where the sanction has been imposed but overturned on appeal.
- (3) The provision conferring the power need not secure the result in sub-paragraph (1) in cases where the relevant authority considers that it would be inappropriate to do so.

Compliance with regulatory principles

- 20** An enforcement authority must act in accordance with the principles that—
- (a) regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent;
 - (b) regulatory activities should be targeted only at cases in which action is needed.

Review

- 21** (1) The Welsh Ministers must in accordance with this paragraph review the operation of any provision made by them conferring power on an enforcement authority (including themselves) to impose a civil sanction in relation to a breach of safety regulations.
- (2) The review must take place as soon as practicable after the end of the period of three years beginning with the day on which the provision comes into force.
- (3) The review must in particular consider whether the provision has implemented its objectives efficiently and effectively.
- (4) In conducting a review under this paragraph the Welsh Ministers must consult such persons as they consider appropriate.
- (5) The Welsh Ministers must publish the results of a review under this section.
- (6) The Welsh Ministers must lay a copy of a review under this paragraph before the National Assembly for Wales.

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Suspension

- 22** (1) Where provision has been made by the Welsh Ministers conferring power on an enforcement authority other than themselves to impose a civil sanction in relation to a breach of safety regulations, the Welsh Ministers may direct the enforcement authority —
- (a) where the power is power to impose a fixed monetary penalty, not to serve any further notice of intent referred to in paragraph 3(1)(a) in relation to a breach of that kind;
 - (b) where the power is power to impose a discretionary requirement, not to serve any further notice of intent referred to in paragraph 5(1)(a) in relation to a breach of that kind;
 - (c) where the power is power to impose a stop notice, not to serve any further stop notices in relation to a breach of that kind;
 - (d) where the power is power to accept an enforcement undertaking, not to accept any further undertaking in relation to a breach of that kind.
- (2) The Welsh Ministers may only give a direction under sub-paragraph (1) in relation to a breach of safety regulations if they are satisfied that the enforcement authority has failed on more than one occasion—
- (a) to comply with any duty imposed on it under or by virtue of this Schedule in relation to a breach of that kind,
 - (b) to act in accordance with the guidance it has published under paragraph 18 in relation to a breach of that kind, or
 - (c) to act in accordance with the principles referred to in paragraph 20 or with other principles of best practice in relation to the enforcement of a breach of that kind.
- (3) The Welsh Ministers may by direction revoke a direction given by them under sub-paragraph (1) if they are satisfied that the enforcement authority has taken the appropriate steps to remedy the failure to which that direction related.
- (4) Before giving a direction under sub-paragraph (1) or (3) the Welsh Ministers must consult—
- (a) the enforcement authority, and
 - (b) such other persons as they consider appropriate.
- (5) Where the Welsh Ministers give a direction under this section, they must lay a copy before the National Assembly for Wales.
- (6) Where the Welsh Ministers give a direction under this section, the enforcement authority must—
- (a) publish the direction in such manner as the Welsh Ministers think fit, and
 - (b) take such other steps as the enforcement authority thinks fit or the Welsh Ministers may require to bring the direction to the attention of other persons likely to be affected by it.

Payment of penalties into Welsh Consolidated Fund

- 23** Where pursuant to any provision made under this Schedule an enforcement authority other than the Welsh Ministers receives—
- (a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty,
 - (b) any interest or other financial penalty for late payment of such a penalty, or

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(c) a sum paid in discharge of liability to a fixed monetary penalty, the enforcement authority must pay it into the Welsh Consolidated Fund.”.

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