



OFFERYNNAU STATUDOL
CYMRU

WELSH STATUTORY
INSTRUMENTS

2023 Rhif 1289 (Cy. 227)

2023 No. 1289 (W. 227)

**DIOGELU'R AMGYLCHEDD,
CYMRU**

**ENVIRONMENTAL
PROTECTION, WALES**

Rheoliadau Gwahardd Llosgi
Gwastraff Penodedig, neu ei Ddodi
ar Safle Tirlenwi (Cymru) 2023

The Prohibition on the Incineration,
or the Deposit in Landfill, of
Specified Waste (Wales)
Regulations 2023

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn yn gwahardd llosgi mathau penodedig o wastraff, neu eu doddi ar safle tirlenwi. Y mathau o wastraff yw bwyd, cyfarpar trydanol ac electronig bach, cerdyn, cartonau, a thecstilau penodol. Cyflawnir y gwaharddiad drwy ychwanegu mathau penodedig o wastraff at baragraff 1 (gwastraff wedi ei gasglu ar wahân er mwyn ei baratoi i'w aildefnyddio a'i ailgylchu nad yw i'w losgi) o Ran 4 o Atodlen 9 a pharagraff 5A (gwastraff wedi ei gasglu ar wahân er mwyn ei baratoi i'w aildefnyddio a'i ailgylchu nad yw i'w dirlenwi) o Atodlen 10 i Reoliadau Trwyddedu Amgylcheddol (Cymru a Lloegr) 2016 (O.S. 2016/1154). Yn ychwanegol at hyn bydd gwaharddiad rhag doddi gwastraff pren ar safle tirlenwi (pa un a yw'r gwastraff wedi ei gasglu ar wahân ai peidio).

Cyflwynir cyfundrefn sancsiynau sifil i alluogi'r rheoleiddiwr i osod cosbau ariannol penodedig, cosbau ariannol amrywiadwy a chosbau am beidio â chydymffurfio (rheoliad 3 a pharagraffau 1, 11 a 19 o'r Atodlen). Y rheoleiddiwr at ddibenion y Rheoliadau hyn yw Adnoddau Naturiol Cymru ac eithrio mewn cysylltiad â pheiriannau llosgi gwastraff bach pan y rheoleiddiwr yw'r awdurdod lleol ar gyfer yr ardal y mae'r peiriant ynddi.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prohibit the incineration, or the deposit in landfill, of specified types of waste. The types of waste are food, small electrical and electronic equipment, card, cartons, and certain textiles. The prohibition is achieved by adding specified types of waste to Schedule 9, Part 4, paragraph 1 (waste separately collected for preparing for re-use and recycling not to be incinerated) and Schedule 10, paragraph 5A (waste separately collected for preparing for re-use and recycling not to be landfilled) to the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154). In addition to this, there will be a prohibition on the deposit in landfill of waste wood (whether or not separately collected).

A civil sanctions regime is introduced to enable the regulator to impose fixed monetary penalties, variable monetary penalties and non-compliance penalties (regulation 3 and paragraphs 1, 11 and 19 of the Schedule). The regulator for the purposes of these Regulations is Natural Resources Wales save in respect of small waste incineration plants where the local authority for the area in which the plant is situated is the regulator.

Mae'r Rheoliadau hyn yn gwneud darpariaeth ar gyfer y weithdrefn sy'n ymwneud â'r sanctsiynau sifil, gan gynnwys apelau. Mae apelau o dan y Rheoliadau hyn i'w cyflwyno i'r Tribiwnlys Haen Gyntaf.

Mae'r Atodlen i'r Rheoliadau hyn (paragraffau 25 i 27) yn darparu bod rhaid cyhoeddi canllawiau o ran defnyddio sanctsiynau sifil. Rhaid i ganllawiau hefyd gael eu cyhoeddi ynghylch y defnydd o gosbau am beidio â chydymffurfio a hysbysiadau adennill costau gorfodaeth (paragraff 26). Cyn i unrhyw ganllawiau gael eu cyhoeddi, mae'n ofynnol i'r rheoleiddiwr ymgynghori (paragraff 27). Mae'r Rheoliadau hefyd yn darparu ar gyfer cyhoeddi gwybodaeth ynghylch camau gorfodi a gymerir gan y rheoleiddiwr (paragraff 28 o'r Atodlen). Gall y rheoleiddiwr adennill rhai costau gorfodaeth (paragraff 22 o'r Atodlen) yn achos cosbau ariannol amrywiadwy.

Mae'r rheoleiddiwr yn gallu adennill unrhyw gosb ariannol benodedig, unrhyw gosb ariannol amrywiadwy neu unrhyw gosb am beidio â chydymffurfio a osodir ganddo o dan y Rheoliadau ynghyd ag unrhyw gosb ariannol am dalu'n hwyr (paragraff 29 o'r Atodlen).

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, lluniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn. Gellir cael copi oddi wrth: Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ ac ar wefan Llywodraeth Cymru ar www.llyw.cymru.

These Regulations makes provision for the procedure relating to the civil sanctions, including appeals. Appeals under these Regulations are to be put before the First-tier Tribunal.

The Schedule to these Regulations (paragraphs 25 to 27) provides that guidance relating to the use of civil sanctions must be published. Guidance must also be published relating to the use of non-compliance penalties and enforcement cost recovery notices (paragraph 26). Before any guidance is published, the regulator is required to consult (paragraph 27). The Regulations also provide for the publication of information on enforcement action taken by the regulator (paragraph 28 of the Schedule). The regulator is able to recover certain costs of enforcement (paragraph 22 of the Schedule) in the case of variable monetary penalties.

The regulator is able to recover any fixed monetary penalty, variable monetary penalty or non-compliance penalty imposed by the regulator under the Regulations together with any financial penalty for late payment (paragraph 29 of the Schedule).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government at Cathays Park, Cardiff CF10 3NQ and on the Welsh Government website at www.gov.wales.

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The Prohibition on the Incineration,
or the Deposit in Landfill, of
Specified Waste (Wales)
Regulations 2023

Gwnaed 29 Tachwedd 2023

Made 29 November 2023

Yn dod i rym 6 Ebrill 2024

Coming into force 6 April 2024

Mae Gweinidogion Cymru yn gwneud y Rheoliadau hyn(1) drwy arfer y pwerau a roddir gan adran 2 o Ddeddf Atal a Rheoli Llygredd 1999(2) (“Deddf 1999”), adrannau 39, 42, 52 i 55 a 62(2) o Ddeddf Gorfodi Rheoleiddiol a Sanctsiynau 2008(3) (“Deddf 2008”) ac adrannau 9(1) a 9A(1) o Fesur Gwastraff (Cymru) 2010(4) (“Mesur 2010”).

The Welsh Ministers make these Regulations(1) in exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999(2) (“the 1999 Act”), sections 39, 42, 52 to 55 and 62(2) of the Regulatory Enforcement and Sanctions Act 2008(3) (“the 2008 Act”) and sections 9(1) and 9A(1) of the Waste (Wales) Measure 2010(4) (“the 2010 Measure”).

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- (1) Caniateir arfer y pŵer i wneud gorchmynion o dan Ran 3 o Ddeddf Gorfodi Rheoleiddiol a Sanctsiynau 2008 (p. 13) er mwyn gwneud rheoliadau yn rhinwedd adran 39 o Ddeddf Deddfwriaeth (Cymru) 2019 (dccc 4).
- (2) 1999 p. 24. Diwygiwyd adran 2 gan O.S. 2013/755 (Cy. 90); mae offerynnau diwygio eraill ond nid yw'r un ohonynt yn berthnasol. Trosglwyddwyd swyddogaethau'r Ysgrifennydd Gwladol, i'r graddau y maent yn arferadwy o ran Cymru, i Gynulliad Cenedlaethol Cymru, ac eithrio mewn perthynas â chwilio am olew a nwy alltraeth ac elwa arnynt, yn rhinwedd erthygl 3(1) o Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 2005 (O.S. 2005/1958). Trosglwyddwyd swyddogaethau Cynulliad Cenedlaethol Cymru i Weinidogion Cymru gan baragraff 30 o Atodlen 11 i Ddeddf Llywodraeth Cymru 2006 (p. 32).
- (3) 2008 p. 13. Diwygiwyd adrannau 39 a 42 gan baragraff 12 o Atodlen 5 i O.S. 2015/664. Diffinnir “prescribed” yn adran 71(1) o'r Ddeddf honno.
- (4) 2010 mccc 8; mewnosodwyd adran 9A gan adran 67 o Ddeddf yr Amgylchedd (Cymru) 2016 (dccc 3).

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- (1) The power to make orders under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (c. 13) may be exercised to make regulations by virtue of section 39 of the Legislation (Wales) Act 2019 (anaw 4).
- (2) 1999 c. 24. Section 2, amended by S.I. 2013/755 (W. 90); there are other amending instruments but none is relevant. Functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales, except in relation to offshore oil and gas exploration and exploitation, by virtue of article 3(1) of the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Functions of the National Assembly for Wales were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (3) 2008 c. 13. Sections 39 and 42 were amended by paragraph 12 of Schedule 5 to S.I. 2015/664. “Prescribed” is defined in section 71(1) of that Act.
- (4) 2010 nawm 8; section 9A was inserted by section 67 of the Environment (Wales) Act 2016 (anaw 3).

Mae Gweinidogion Cymru wedi ymgynghori yn unol ag adran 2(4) o Ddeddf 1999, adrannau 59(3) a 60 o Ddeddf 2008(1) ac adran 11 o Fesur 2010.

The Welsh Ministers have consulted in accordance with section 2(4) of the 1999 Act, sections 59(3) and 60 of the 2008 Act(1) and section 11 of the 2010 Measure.

Mae Gweinidogion Cymru wedi eu bodloni (yn unol ag adran 66 o Ddeddf 2008) y bydd Cyfoeth Naturiol Cymru ac awdurdodau lleol (sef y rheoleiddwyr at ddiben y Rheoliadau hyn) yn gweithredu yn unol â'r egwyddorion y cyfeirir atynt yn adran 5(2) o'r Ddeddf honno wrth arfer pŵer a roddir gan y Rheoliadau hyn.

The Welsh Ministers are satisfied (in accordance with section 66 of the 2008 Act) that Natural Resources Wales and local authorities (who are the regulators for the purpose of these Regulations) will act in accordance with the principles referred to in section 5(2) of that Act in exercising a power conferred by these Regulations.

Yn unol ag adran 2(8) o Ddeddf 1999(2), adran 62(3) o Ddeddf 2008(3) ac adran 20(3)(4) o Fesur 2010, gosodwyd drafft o'r Rheoliadau hyn gerbron Senedd Cymru ac fe'i cymeradwywyd ganddi drwy benderfyniad.

In accordance with section 2(8) of the 1999 Act(2), section 62(3) of the 2008 Act(3) and section 20(3)(4) of the 2010 Measure, a draft of these Regulations has been laid before, and approved by a resolution of, Senedd Cymru.

RHAN 1

Cyflwyniad

PART 1

Introduction

Enwi, dod i rym a chymhwyso

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Gwahardd Llosgi Gwastraff Penodedig, neu ei Ddodi ar Safle Tirlenwi (Cymru) 2023.

(2) Daw'r Rheoliadau hyn i rym ar 6 Ebrill 2024.

(3) Mae'r Rheoliadau hyn yn gymwys o ran Cymru.

Title, coming into force and application

1.—(1) The title of these Regulations is the Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023.

(2) These Regulations come into force on 6 April 2024.

(3) These Regulations apply in relation to Wales.

(1) Mae adran 71(1) o Ddeddf 2008 yn darparu mai ystyr "relevant authority", mewn perthynas â darpariaeth a wneir gan Weinidogion Cymru o dan Ran 3 neu yn ei rhinwedd, yw Gweinidogion Cymru.

(2) Mae'r cyfeiriad yn adran 2(8) o Ddeddf 1999 at gymeradwyaeth dau Dŷ Senedd y Deyrnas Unedig yn cael effaith mewn perthynas ag arfer swyddogaethau gan Weinidogion Cymru fel pe bai'n gyfeiriad at gymeradwyaeth Senedd Cymru, yn rhinwedd adran 150A(2) o Ddeddf Llywodraeth Cymru 2006 a pharagraff 33 o Atodlen 11 iddi.

(3) Mae'r cyfeiriad yn adran 62(3) o Ddeddf 2008 at Gynulliad Cenedlaethol Cymru bellach yn cael effaith fel pe bai'n gyfeiriad at Senedd Cymru, yn rhinwedd adran 150A(2) o Ddeddf Llywodraeth Cymru 2006.

(4) Mae'r cyfeiriad yn adran 20(3) o Fesur 2010 at Gynulliad Cenedlaethol Cymru bellach yn cael effaith fel pe bai'n gyfeiriad at Senedd Cymru, yn rhinwedd adran 150A(2) o Ddeddf Llywodraeth Cymru 2006.

(1) Section 71(1) of the 2008 Act provides that "relevant authority" means, in relation to provision made under or by virtue of Part 3 by the Welsh Ministers, the Welsh Ministers.

(2) The reference in section 2(8) of the 1999 Act to approval by each House of Parliament has effect in relation to the exercise of functions by the Welsh Ministers as if it were a reference to approval by Senedd Cymru, by virtue of section 150A(2) of, and paragraph 33 of Schedule 11 to, the Government of Wales Act 2006.

(3) The reference in section 62(3) of the 2008 Act to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006.

(4) The reference in section 20(3) of the 2010 Measure to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006.

RHAN 2

Gorfodaeth a sancsiynau sifil

Y rheoleiddiwr

2. Y rheoleiddiwr at ddibenion y Rheoliadau hyn yw Cyfoeth Naturiol Cymru ac eithrio mewn cysylltiad â pheiriannau llosgi gwastraff bach pan y rheoleiddiwr yw'r awdurdod lleol ar gyfer yr ardal y mae'r peiriant ynddi.

Sancsiynau sifil

3. Mae'r Atodlen (sancsiynau sifil) yn gwneud darpariaeth ynghylch sancsiynau sifil y caniateir eu gosod at ddiben gorfodi trosedd o dan reoliad 38(2) o Reoliadau Trwyddedu Amgylcheddol (Cymru a Lloegr) 2016(1) ("Rheoliadau 2016") pan fo'r drosedd yn ymwneud â thorri amod trwydded a grybwyllir ym mharagraff 1 o Ran 4 o Atodlen 9 i Reoliadau 2016 neu baragraff 5A o Atodlen 10 iddynt.

RHAN 3

Diwygiadau i Reoliadau 2016

Diwygiadau i Reoliadau 2016: Cymru

4.—(1) Mae Rheoliadau 2016 wedi eu diwygio fel a ganlyn.

(2) Ym mharagraff 1 o Ran 4 o Atodlen 9 (peidio â llosgi gwastraff wedi ei gasglu ar wahân er mwyn ei baratoi i'w aildefnyddio a'i ailgylchu)—

- (a) yn is-baragraff (2)(a), yn lle "any waste paper, metal, plastic or glass" rhodder "in Wales, any waste paper, card, cartons, metal, plastic, glass, food, small electrical and electronic equipment or unsold textiles";
- (b) ar y diwedd, mewnosoder—

"(3) For the purposes of this paragraph—
"cartons" means fibre-based composite packaging, being packaging material which is made of paperboard or paper fibres, laminated with low density polythene or polypropylene plastic, and which may also have layers of other materials, to form a single unit that cannot be separated by hand;

(1) O.S. 2016/1154, a ddiwygiwyd gan O.S. 2020/904; mae offerynnau diwygio eraill ond nid yw'r un ohonynt yn berthnasol.

PART 2

Enforcement and civil sanctions

Regulator

2. The regulator, for the purposes of these Regulations is Natural Resources Wales save in respect of small waste incineration plants where the local authority for the area in which the plant is situated is the regulator.

Civil sanctions

3. The Schedule (civil sanctions) makes provision about civil sanctions that may be imposed for the purpose of the enforcement of an offence under regulation 38(2) of the Environmental Permitting (England and Wales) Regulations 2016(1) ("the 2016 Regulations") where the offence relates to a breach of a permit condition mentioned in Schedule 9, Part 4, paragraph 1 or Schedule 10, paragraph 5A to the 2016 Regulations.

PART 3

Amendments to the 2016 Regulations

Amendments to the 2016 Regulations: Wales

4.—(1) The 2016 Regulations are amended as follows.

(2) In Schedule 9, Part 4, paragraph 1 (waste separately collected for preparing for re-use and recycling not to be incinerated)—

- (a) in sub-paragraph (2)(a), for "any waste paper, metal, plastic or glass" substitute "in Wales, any waste paper, card, cartons, metal, plastic, glass, food, small electrical and electronic equipment or unsold textiles";
- (b) at the end, insert—

"(3) For the purposes of this paragraph—
"cartons" means fibre-based composite packaging, being packaging material which is made of paperboard or paper fibres, laminated with low density polythene or polypropylene plastic, and which may also have layers of other materials, to form a single unit that cannot be separated by hand;

(1) S.I. 2016/1154, amended by S.I. 2020/904; there are other amending instruments but none is relevant.

“electrical and electronic equipment” means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields and designed for use with a voltage rating not exceeding 1,000 volts for alternating current and 1,500 volts for direct current;

“small electrical and electronic equipment” means electrical and electronic equipment falling within one of the categories of EEE listed in Schedule 3 to the Waste Electrical and Electronic Equipment Regulations 2013(1), excluding items with any external dimension of more than 50 centimetres;

“unsold” means an unused consumer product, in a factory, retail premises, wholesaler, warehouse or other premises, that has not been sold to a consumer or has been sold and returned by a consumer.”

(3) Ym mharagraff 5A o Atodlen 10 (peidio â thirlenwi gwastraff wedi ei gasglu ar wahân er mwyn ei baratoi i’w ailddfyddio a’i ailgylchu)—

- (a) yn is-baragraff (2)(a), yn lle “any waste paper, metal, plastic or glass for landfill if that waste has been separately collected for the purposes of preparing for re-use or recycling; or” rhodder “in Wales, any waste paper, card, cartons, metal, plastic, glass, food, small electrical and electronic equipment or textiles for landfill if that waste has been separately collected for the purposes of preparing for re-use or recycling;”;
- (b) ar ôl is-baragraff (2)(a) mewnosoder—
“(aa) any waste wood; or”;
- (c) yn is-baragraff (2)(b), yn lle “any waste for landfill that results from the treatment of waste referred to in paragraph (a), unless” rhodder “in Wales, any waste for landfill that results from the treatment of waste referred to in paragraph (a) or (aa) unless”;
- (d) ar y diwedd, mewnosoder—

“(3) For the purposes of this paragraph —

“cartons” means fibre-based composite packaging, being packaging material which is made of paperboard or paper fibres, laminated with low density polythene or polypropylene plastic, and which may also have layers of other materials, to form a single unit that cannot be separated by hand;

“electrical and electronic equipment” means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields and designed for use with a voltage rating not exceeding 1,000 volts for alternating current and 1,500 volts for direct current;

“small electrical and electronic equipment” means electrical and electronic equipment falling within one of the categories of EEE listed in Schedule 3 to the Waste Electrical and Electronic Equipment Regulations 2013(1), excluding items with any external dimension of more than 50 centimetres;

“unsold” means an unused consumer product, in a factory, retail premises, wholesaler, warehouse or other premises, that has not been sold to a consumer or has been sold and returned by a consumer.”

(3) In Schedule 10, paragraph 5A (waste separately collected for preparing for re-use and recycling not to be landfilled)—

- (a) in sub-paragraph (2)(a), for “any waste paper, metal, plastic or glass for landfill if that waste has been separately collected for the purposes of preparing for re-use or recycling; or” substitute “in Wales, any waste paper, card, cartons, metal, plastic, glass, food, small electrical and electronic equipment or textiles for landfill if that waste has been separately collected for the purposes of preparing for re-use or recycling;”;
- (b) after sub-paragraph (2)(a) insert—
“(aa) any waste wood; or”;
- (c) in sub-paragraph (2)(b), for “any waste for landfill that results from the treatment of waste referred to in paragraph (a), unless” substitute “in Wales, any waste for landfill that results from the treatment of waste referred to in paragraph (a) or (aa) unless”;
- (d) at the end, insert—

“(3) For the purposes of this paragraph—

“cartons” means fibre-based composite packaging, being packaging material which is made of paperboard or paper fibres, laminated with low density polythene or polypropylene plastic, and which may also have layers of other materials, to form a single unit that cannot be separated by hand;

(1) O.S. 2013/3113, a ddiwygiwyd gan O.S. 2018/1214; mae offerynnau diwygio eraill ond nid yw’r un ohonynt yn berthnasol.

(1) S.I. 2013/3113, amended by S.I. 2018/1214; there are other amending instruments but none is relevant.

“electrical and electronic equipment” means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields and designed for use with a voltage rating not exceeding 1,000 volts for alternating current and 1,500 volts for direct current;

“small electrical and electronic equipment” means electrical and electronic equipment falling within one of the categories of EEE listed in Schedule 3 to the Waste Electrical and Electronic Equipment Regulations 2013, excluding items with any external dimension of more than 50 centimetres.”

“electrical and electronic equipment” means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields and designed for use with a voltage rating not exceeding 1,000 volts for alternating current and 1,500 volts for direct current;

“small electrical and electronic equipment” means electrical and electronic equipment falling within one of the categories of EEE listed in Schedule 3 to the Waste Electrical and Electronic Equipment Regulations 2013, excluding items with any external dimension of more than 50 centimetres.”

Julie James

Y Gweinidog Newid Hinsawdd, un o Weinidogion
Cymru
29 Tachwedd 2023

Minister for Climate Change, one of the Welsh
Ministers
29 November 2023

RHAN 1

Cosbau ariannol penodedig

Gosod cosb ariannol benodedig

1.—(1) Caiff y rheoleiddiwr drwy hysbysiad osod cosb ariannol benodedig ar berson (“cosb ariannol benodedig”) mewn perthynas â throsedd o dan reoliad 38(2) o Reoliadau 2016 pan fo’r drosedd yn ymwneud â thorri amod trwydded a grybwyllir ym mharagraff 1 o Ran 4 o Atodlen 9 i Reoliadau 2016 neu baragraff 5A o Atodlen 10 iddynt.

(2) Cyn gwneud hynny, rhaid i’r rheoleiddiwr fod wedi ei fodloni y tu hwnt i amheuaeth resymol fod y person wedi cyflawni’r drosedd.

(3) Swm y gosb i’w thalu i’r rheoleiddiwr fel cosb ariannol benodedig yw £500.

Hysbysiad o fwriad

2.—(1) Pan fo’r rheoleiddiwr yn cynnig gosod cosb ariannol benodedig ar berson, rhaid i’r rheoleiddiwr gyflwyno hysbysiad o’r hyn a gynigir (“hysbysiad o fwriad”) i’r person hwnnw.

(2) Rhaid i’r hysbysiad o fwriad gynnwys—

- (a) y seiliau dros y cynnig i osod y gosb;
- (b) swm y gosb;
- (c) datganiad y gellir cael rhyddhad rhag atebolrwydd am y gosb drwy dalu 50% o’r gosb o fewn 28 o ddiwrnodau gan ddechrau â’r diwrnod y cafwyd yr hysbysiad;
- (d) gwybodaeth am—
 - (i) effaith y taliad rhyddhau hwnnw;
 - (ii) yr hawl i gyflwyno sylwadau a gwrthwynebiadau o fewn 28 o ddiwrnodau gan ddechrau â’r diwrnod y cafwyd yr hysbysiad o fwriad;
 - (iii) ym mha amgylchiadau na chaiff y rheoleiddiwr osod y gosb (gan gynnwys unrhyw amddiffyniadau sy’n ymwneud â’r drosedd y cyflwynir yr hysbysiad mewn perthynas â hi).

PART 1

Fixed monetary penalties

Imposition of a fixed monetary penalty

1.—(1) The regulator may by notice impose a fixed monetary penalty on a person (“fixed monetary penalty”) in relation to an offence under regulation 38(2) of the 2016 Regulations where the offence relates to a breach of a permit condition mentioned in Schedule 9, Part 4, paragraph 1 or Schedule 10, paragraph 5A to the 2016 Regulations.

(2) Before doing so, the regulator must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) The amount of penalty to be paid to the regulator as a fixed monetary penalty is £500.

Notice of intent

2.—(1) Where the regulator proposes to impose a fixed monetary penalty on a person, the regulator must serve on that person a notice of what is proposed (“notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposal to impose the penalty;
- (b) the amount of the penalty;
- (c) a statement that liability for the penalty can be discharged by paying 50% of the penalty within 28 days beginning with the day on which the notice was received;
- (d) information as to—
 - (i) the effect of that discharge payment;
 - (ii) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;
 - (iii) the circumstances in which the regulator must not impose the penalty (including any defences relating to the offence in relation to which the notice is served).

Rhyddhau rhag atebolrwydd

3. Caiff y gosb ei rhyddhau os yw person sy'n cael hysbysiad o fwriad yn talu 50% o swm y gosb o fewn 28 o ddiwrnodau gan ddechrau â'r diwrnod y cafwyd yr hysbysiad.

Cyflwyno sylwadau a gwrthwynebiadau

4. Caiff person y cyflwynir hysbysiad o fwriad iddo, o fewn 28 o ddiwrnodau gan ddechrau â'r diwrnod y cafwyd yr hysbysiad, gyflwyno sylwadau a gwrthwynebiadau ysgrifenedig i'r rheoleiddiwr mewn perthynas â'r cynnig i osod y gosb ariannol benodedig.

Cyflwyno hysbysiad terfynol

5.—(1) Os nad yw'r person sydd wedi cael hysbysiad o fwriad yn ei ryddhau ei hun rhag atebolrwydd o fewn 28 o ddiwrnodau, caiff y rheoleiddiwr gyflwyno hysbysiad terfynol ("hysbysiad terfynol") sy'n gosod cosb ariannol benodedig.

(2) Ni chaiff y rheoleiddiwr gyflwyno hysbysiad terfynol i berson pan fo'r rheoleiddiwr wedi ei fodloni na fyddai'r person, oherwydd unrhyw amddiffyniad, yn agored i gael ei euogfarnu o'r drosedd y mae'r hysbysiad yn ymwneud â hi.

(3) Ni chaiff y rheoleiddiwr sy'n cyflwyno hysbysiad terfynol sy'n ymwneud â chosb ariannol benodedig gyflwyno unrhyw hysbysiad arall o dan y Rheoliadau hyn mewn perthynas â'r drosedd.

Cynnwys hysbysiad terfynol

6. Rhaid i hysbysiad terfynol gynnwys gwybodaeth am—

- (a) y seiliau dros osod y gosb,
- (b) swm y gosb,
- (c) sut y caniateir talu,
- (d) y cyfnod o 56 o ddiwrnodau y mae rhaid talu o'i fewn,
- (e) manylion y disgowntiau am dalu'n gynnar a'r cosbau am dalu'n hwyr,
- (f) hawliau apelio, ac
- (g) canlyniadau peidio â thalu.

Disgownt am dalu'n gynnar

7. Os yw person y cyflwynwyd hysbysiad o fwriad iddo wedi cyflwyno sylwadau neu wrthwynebiadau ynglŷn â'r hysbysiad hwnnw o fewn y terfyn amser, caiff y person hwnnw ryddhau hysbysiad terfynol drwy dalu 50% o'r gosb o fewn 28 o ddiwrnodau gan ddechrau â'r diwrnod y cafwyd yr hysbysiad terfynol.

Discharge of liability

3. The penalty is discharged if a person who receives a notice of intent pays 50% of the amount of the penalty within 28 days beginning with the day on which the notice was received.

Making representations and objections

4. A person on whom a notice of intent is served may, within 28 days beginning with the day on which the notice was received, make written representations and objections to the regulator in relation to the proposed imposition of the fixed monetary penalty.

Service of final notice

5.—(1) If the person who has received a notice of intent does not discharge liability within 28 days, the regulator may serve a final notice ("final notice") imposing a fixed monetary penalty.

(2) The regulator must not serve a final notice on a person where the regulator is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates.

(3) The regulator who serves a final notice relating to a fixed monetary penalty must not serve any other notice under these Regulations in relation to the offence.

Contents of final notice

6. A final notice must include information as to—

- (a) the grounds for imposing the penalty,
- (b) the amount of the penalty,
- (c) how payment may be made,
- (d) the period of 56 days within which payment must be made,
- (e) details of the early payment discounts and late payment penalties,
- (f) rights of appeal, and
- (g) the consequences of non-payment.

Discount for early payment

7. If a person who was served with a notice of intent made representations or objections concerning that notice within the time limit, that person may discharge a final notice by paying 50% of the penalty within 28 days beginning with the day on which the final notice was received.

Apelau yn erbyn hysbysiad terfynol

8.—(1) Caiff y person sy'n cael hysbysiad terfynol apelio yn ei erbyn.

(2) Y seiliau dros apelio yw—

- (a) bod y penderfyniad yn seiliedig ar wall ffeithiol;
- (b) bod y penderfyniad yn anghywir mewn cyfraith;
- (c) bod y penderfyniad yn afresymol;
- (d) unrhyw reswm tebyg arall.

Peidio â thalu ar ôl 56 o ddiwrnodau (cosb am dalu'n hwyr)

9.—(1) Rhaid i'r gosb gael ei thalu o fewn 56 o ddiwrnodau i gael hysbysiad terfynol.

(2) Os na thelir y gosb o fewn 56 o ddiwrnodau cynyddir y swm sy'n daladwy 50%.

(3) Yn achos apêl, mae'r gosb yn daladwy o fewn 28 o ddiwrnodau i benderfynu'r apêl (os yw'r apêl yn aflwyddiannus), ac os nad yw wedi ei thalu o fewn 28 o ddiwrnodau cynyddir swm y gosb 50%.

Achosion troseddol

10.—(1) Os cyflwynir hysbysiad o fwriad ar gyfer cosb ariannol benodedig i unrhyw berson—

- (a) ni chaniateir cychwyn achos troseddol am y drosedd yn erbyn y person hwnnw mewn cysylltiad â'r weithred neu'r anweithred y mae'r hysbysiad yn ymwneud â hi cyn 28 o ddiwrnodau o'r dyddiad y ceir yr hysbysiad o fwriad, a
- (b) os yw'r person hwnnw yn ei ryddhau ei hun rhag atebolrwydd yn y fath fodd, ni chaniateir ar unrhyw adeg euogfarnu'r person hwnnw o'r drosedd mewn perthynas â'r weithred neu'r anweithred honno.

(2) Os gosodir cosb ariannol benodedig ar unrhyw berson, ni chaniateir ar unrhyw adeg euogfarnu'r person hwnnw o'r drosedd mewn cysylltiad â'r weithred neu'r anweithred sy'n arwain at y gosb.

Appeals against final notice

8.—(1) The person receiving a final notice may appeal against it.

(2) The grounds for appeal are—

- (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) any other similar reason.

Non-payment after 56 days (late payment penalty)

9.—(1) The penalty must be paid within 56 days of receipt of a final notice.

(2) If the penalty is not paid within 56 days the amount payable is increased by 50%.

(3) In the case of an appeal the penalty is payable within 28 days of the determination of the appeal (if the appeal is unsuccessful), and if it is not paid within 28 days the amount of the penalty is increased by 50%.

Criminal proceedings

10.—(1) If a notice of intent for a fixed monetary penalty is served on any person—

- (a) no criminal proceedings for the offence may be instituted against that person in respect of the act or omission to which the notice relates before 28 days from the date the notice of intent is received, and
- (b) if that person so discharges liability, that person must not at any time be convicted of the offence in relation to that act or omission.

(2) If a fixed monetary penalty is imposed on any person, that person must not at any time be convicted of the offence in respect of the act or omission giving rise to the penalty.

RHAN 2

Cosbau ariannol amrywiadwy

Gosod cosb ariannol amrywiadwy

11.—(1) Caiff y rheoleiddiwr drwy hysbysiad osod cosb ariannol ar berson sy'n ei gwneud yn ofynnol i'r person hwnnw dalu swm i'r rheoleiddiwr a bennir gan y rheoleiddiwr (“cosb ariannol amrywiadwy”) mewn perthynas â throsedd o dan reoliad 38(2) o Reoliadau 2016 pan fo'r drosedd yn ymwneud â thorri amod trwydded a grybwyllir ym mharagraff 1 o Ran 4 o Atodlen 9 i Reoliadau 2016 neu baragraff 5A o Atodlen 10 iddynt.

(2) Cyn gwneud hynny, rhaid i'r rheoleiddiwr fod wedi ei fodloni y tu hwnt i amheuaeth resymol fod y person wedi cyflawni'r drosedd.

(3) Pan osodir cosb ariannol amrywiadwy mewn perthynas â throsedd—

- (a) y gellir ei rhoi ar brawf yn ddiannod yn unig, a
- (b) sydd i'w chosbi ar euogfarn ddiannod drwy ddirwy (pa un a yw hefyd i'w chosbi drwy gyfnod o garchar ai peidio),

ni chaniateir i swm y gosb ariannol amrywiadwy fod yn fwy nag uchafswm y ddirwy honno (os oes uchafswm).

(4) Cyn cyflwyno hysbysiad sy'n ymwneud â chosb ariannol amrywiadwy i berson, caiff y rheoleiddiwr ei gwneud yn ofynnol i'r person ddarparu'r wybodaeth honno sy'n rhesymol at ddiben cadarnhau swm unrhyw fudd ariannol sy'n deillio o'r drosedd.

Hysbysiad o fwriad

12.—(1) Pan fo'r rheoleiddiwr yn cynnig gosod cosb ariannol amrywiadwy ar berson, rhaid i'r rheoleiddiwr gyflwyno i'r person hwnnw hysbysiad o'r hyn a gynnigir (“hysbysiad o fwriad”).

(2) Rhaid i'r hysbysiad o fwriad gynnwys—

- (a) y seiliau dros y cynnig i osod y gosb;
- (b) swm y gosb;
- (c) gwybodaeth am—
 - (i) yr hawl i gyflwyno sylwadau a gwrthwynebiadau o fewn 28 o ddiwrnodau gan ddechrau â'r diwrnod y cafwyd yr hysbysiad o fwriad;
 - (ii) ym mha amgylchiadau na chaiff y rheoleiddiwr osod y gosb (gan gynnwys unrhyw amddiffyniadau rhag y drosedd y cyflwynir yr hysbysiad mewn perthynas â hi).

PART 2

Variable monetary penalties

Imposition of a variable monetary penalty

11.—(1) The regulator may by notice impose a monetary penalty on a person requiring that person to pay such amount to the regulator as the regulator may determine (“variable monetary penalty”) in relation to an offence under regulation 38(2) of the 2016 Regulations where the offence relates to a breach of a permit condition mentioned in Schedule 9, Part 4, paragraph 1 or Schedule 10, paragraph 5A to the 2016 Regulations.

(2) Before doing so, the regulator must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) Where a variable monetary penalty is imposed in relation to an offence that is—

- (a) triable summarily only, and
- (b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),

the amount of the variable monetary penalty must not exceed the maximum amount (if any) of that fine.

(4) Before serving a notice relating to a variable monetary penalty on a person, the regulator may require the person to provide such information as is reasonable for the purpose of establishing the amount of any financial benefit arising as a result of the offence.

Notice of intent

12.—(1) Where the regulator proposes to impose a variable monetary penalty on a person, the regulator must serve on that person a notice of what is proposed (“notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposal to impose the penalty;
- (b) the amount of the penalty;
- (c) information as to—
 - (i) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;
 - (ii) the circumstances in which the regulator must not impose the penalty (including any defences to the offence in relation to which the notice is served).

Cyflwyno sylwadau a gwrthwynebiadau

13. Caiff person y cyflwynir hysbysiad o fwriad iddo, o fewn 28 o ddiwrnodau gan ddechrau â'r diwrnod y cafwyd yr hysbysiad, gyflwyno sylwadau a gwrthwynebiadau ysgrifenedig i'r rheoleiddiwr mewn perthynas â'r cynnig i osod y gosb ariannol amrywiadwy.

Ymgymeriadau trydydd parti

14.—(1) Caiff person y cyflwynir hysbysiad o fwriad iddo gynnig ymgymeriad o ran camau i'w cymryd gan y person hwnnw (gan gynnwys talu swm o arian) er budd unrhyw berson y mae'r drosedd yn effeithio arno ("ymgymeriad trydydd parti").

(2) Rhaid i'r rheoleiddiwr dderbyn neu wrthod ymgymeriad trydydd parti.

Cyflwyno hysbysiad terfynol

15.—(1) Ar ddiwedd y cyfnod ar gyfer cyflwyno sylwadau a gwrthwynebiadau, rhaid i'r rheoleiddiwr benderfynu pa un ai i osod y gosb ariannol amrywiadwy yn yr hysbysiad o fwriad ai peidio, gydag addasiadau neu hebddynt.

(2) Rhaid i'r rheoleiddiwr ystyried unrhyw ymgymeriad trydydd parti a dderbynnir ganddo wrth benderfynu—

- (a) pa un ai i gyflwyno hysbysiad terfynol ai peidio, a
- (b) swm unrhyw gosb ariannol amrywiadwy a osodir ganddo.

(3) Pan fo'r rheoleiddiwr yn penderfynu gosod cosb ariannol amrywiadwy, rhaid i'r rheoleiddiwr gyflwyno hysbysiad sy'n ei gosod ("hysbysiad terfynol") sy'n cydymffurfio â pharagraff 16.

(4) Ni chaiff y rheoleiddiwr gyflwyno hysbysiad terfynol ar berson pan fo'r rheoleiddiwr wedi ei fodloni na fyddai'r person, oherwydd unrhyw amddiffyniad, yn agored i gael ei euogfarnu o'r drosedd y mae'r hysbysiad yn ymwneud â hi.

Cynnwys hysbysiad terfynol

16. Rhaid i hysbysiad terfynol gynnwys gwybodaeth am—

- (a) y seiliau dros osod y gosb,
- (b) swm y gosb,
- (c) sut y caniateir talu,
- (d) y cyfnod y mae rhaid talu o'i fewn, na chaiff fod yn llai na 28 o ddiwrnodau,
- (e) hawliau apelio, ac
- (f) canlyniadau peidio â thalu.

Making representations and objections

13. A person on whom a notice of intent is served may, within 28 days beginning with the day on which the notice was received, make written representations and objections to the regulator in relation to the proposed imposition of the variable monetary penalty.

Third party undertakings

14.—(1) A person on whom a notice of intent is served may offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any person affected by the offence ("third party undertaking").

(2) The regulator must accept or reject a third party undertaking.

Service of final notice

15.—(1) At the end of the period for making representations and objections, the regulator must decide whether to impose the variable monetary penalty in the notice of intent, with or without modifications.

(2) The regulator must take into account any third party undertaking that it accepts in deciding—

- (a) whether or not to serve a final notice, and
- (b) the amount of any variable monetary penalty it imposes.

(3) Where the regulator decides to impose a variable monetary penalty, the regulator must serve a notice imposing it ("final notice") that complies with paragraph 16.

(4) The regulator must not serve a final notice on a person where the regulator is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates.

Contents of final notice

16. A final notice must include information as to—

- (a) the grounds for imposing the penalty,
- (b) the amount of the penalty,
- (c) how payment may be made,
- (d) the period within which payment must be made, which must be not less than 28 days,
- (e) rights of appeal, and
- (f) the consequences of non-payment.

Apelau yn erbyn hysbysiad terfynol

17.—(1) Caiff y person sy'n cael hysbysiad terfynol apelio yn ei erbyn.

(2) Y seiliau dros apelio yw—

- (a) bod y penderfyniad yn seiliedig ar wall ffeithiol;
- (b) bod y penderfyniad yn anghywir mewn cyfraith;
- (c) bod swm y gosb yn afresymol;
- (d) bod y penderfyniad yn afresymol am unrhyw reswm arall;
- (e) unrhyw reswm tebyg arall.

Achosion troseddol

18.—(1) Os—

- (a) gosodir cosb ariannol amrywiadwy ar unrhyw berson, neu
- (b) derbynir ymgymeriad trydydd parti oddi wrth unrhyw berson,

ni chaniateir ar unrhyw adeg euogfarnu'r person hwnnw o'r drosedd mewn cysylltiad â'r weithred neu'r anweithred sy'n arwain at y gosb ariannol amrywiadwy neu'r ymgymeriad trydydd parti ac eithrio mewn achos y cyfeirir ato yn is-baragraff (2).

(2) Mae'r achos y cyfeirir ato yn is-baragraff (1) yn achos—

- (a) pan fo ymgymeriad trydydd parti yn cael ei dderbyn oddi wrth berson,
- (b) pan na fo cosb ariannol amrywiadwy yn cael ei gosod ar y person hwnnw, ac
- (c) pan fo'r person hwnnw yn methu â chydymffurfio â'r ymgymeriad trydydd parti.

(3) Caniateir cychwyn achos troseddol am droseddau y gellir eu rhoi ar brawf yn ddiannod y mae ymgymeriad trydydd parti yn is-baragraff (2) yn ymwneud â hwy ar unrhyw adeg hyd at chwe mis o'r dyddiad pan fo'r rheoleiddiwr yn hysbysu'r person fod y person wedi methu â chydymffurfio â'r ymgymeriad hwnnw.

Appeals against a final notice

17.—(1) The person receiving a final notice may appeal against it.

(2) The grounds for appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the amount of the penalty is unreasonable;
- (d) that the decision was unreasonable for any other reason;
- (e) any other similar reason.

Criminal proceedings

18.—(1) If—

- (a) a variable monetary penalty is imposed on any person, or
- (b) a third party undertaking is accepted from any person,

that person must not at any time be convicted of the offence in respect of the act or omission giving rise to the variable monetary penalty or third party undertaking except in a case referred to in sub-paragraph (2).

(2) The case referred to in sub-paragraph (1) is a case where—

- (a) a third party undertaking is accepted from a person,
- (b) no variable monetary penalty is imposed on that person, and
- (c) that person fails to comply with the third party undertaking.

(3) Criminal proceedings for offences triable summarily to which a third party undertaking in sub-paragraph (2) relates may be instituted at any time up to six months from the date when the regulator notifies the person that the person has failed to comply with that undertaking.

RHAN 3

Cosbau am beidio â chydymffurfio

Cosbau am beidio â chydymffurfio

19.—(1) Os yw person yn methu â chydymffurfio ag ymgymeriad trydydd parti, caiff y rheoleiddiwr gyflwyno hysbysiad i'r person hwnnw yn gosod cosb ariannol (“cosb am beidio â chydymffurfio”) mewn cysylltiad â'r un drosedd, ni waeth a osodwyd cosb ariannol amrywiadwy hefyd mewn cysylltiad â'r drosedd honno ai peidio.

(2) Rhaid i'r rheoleiddiwr bennu swm y gosb, a rhaid i'r swm hwnnw fod yn ganran o gostau cyflawni gweddill gofynion yr ymgymeriad trydydd parti.

(3) Rhaid i'r rheoleiddiwr bennu'r ganran gan roi sylw i holl amgylchiadau'r achos, a chaiff y ganran honno fod yn 100%, os yw'n briodol.

(4) Rhaid i'r hysbysiad gynnwys gwybodaeth am—

- (a) y seiliau dros osod y gosb,
- (b) swm y gosb,
- (c) sut y caniateir talu,
- (d) y cyfnod y mae rhaid talu o'i fewn, na chaiff fod yn llai na 28 o ddiwrnodau,
- (e) hawliau apelio,
- (f) canlyniadau peidio â thalu, ac
- (g) unrhyw amgylchiadau pan gaiff y rheoleiddiwr leihau swm y gosb.

(5) Os cyflawnir ymgymeriad trydydd parti cyn y terfyn amser a osodir ar gyfer talu'r gosb am beidio â chydymffurfio, nid yw'r gosb yn daladwy.

Apelau yn erbyn cosbau am beidio â chydymffurfio

20.—(1) Caiff person sy'n cael cosb am beidio â chydymffurfio apelio yn ei herbyn.

(2) Y seiliau dros apelio yw—

- (a) bod y penderfyniad yn seiliedig ar wall ffeithiol;
- (b) bod y penderfyniad yn anghywir mewn cyfraith;
- (c) bod y penderfyniad yn annheg neu'n afresymol am unrhyw reswm;
- (d) bod swm y gosb yn afresymol;
- (e) unrhyw reswm tebyg arall.

PART 3

Non-compliance penalties

Non-compliance penalties

19.—(1) If a person fails to comply with a third party undertaking, the regulator may serve a notice on that person imposing a monetary penalty (“non-compliance penalty”) in respect of the same offence, irrespective of whether a variable monetary penalty was also imposed in respect of that offence.

(2) The amount of the penalty must be determined by the regulator, and must be a percentage of the costs of fulfilling the remaining requirements of the third party undertaking.

(3) The percentage must be determined by the regulator, having regard to all the circumstances of the case, and may, if appropriate, be 100%.

(4) The notice must include information as to—

- (a) the grounds for imposing the penalty,
- (b) the amount of the penalty,
- (c) how payment may be made,
- (d) the period within which payment must be made, which must not be less than 28 days,
- (e) rights of appeal,
- (f) the consequences of non-payment, and
- (g) any circumstances in which the regulator may reduce the amount of the penalty.

(5) If a third party undertaking is fulfilled before the time set for payment of the non-compliance penalty, the penalty is not payable.

Appeals against non-compliance penalties

20.—(1) A person receiving a non-compliance penalty may appeal against it.

(2) The grounds for appeal are—

- (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 for any reason;
- (d) that the amount of the penalty is unreasonable;
- (e) any other similar reason.

RHAN 4

Cyfuno sancsiynau

Cyfuno sancsiynau

21.—(1) Ni chaiff y rheoleiddiwr gyflwyno hysbysiad o fwriad sy'n ymwneud â chosb ariannol benodedig os gosodwyd cosb ariannol amrywiadwy ar y person hwnnw sy'n ymwneud â'r un weithred neu anweithred.

(2) Ni chaiff y rheoleiddiwr gyflwyno hysbysiad o fwriad sy'n ymwneud â chosb ariannol amrywiadwy i berson os, mewn perthynas â'r un weithred neu anweithred—

- (a) gosodwyd cosb ariannol benodedig ar y person hwnnw, neu
- (b) rhyddhawyd y person hwnnw rhag atebolrwydd am gosb ariannol benodedig ar ôl cyflwyno hysbysiad o fwriad i osod y gosb honno.

RHAN 5

Hysbysiadau adennill cost gorfodaeth

Hysbysiadau adennill cost gorfodaeth

22.—(1) Caiff y rheoleiddiwr gyflwyno hysbysiad (“hysbysiad adennill cost gorfodaeth”) i berson y gosodwyd cosb ariannol amrywiadwy arno sy'n ei gwneud yn ofynnol i'r person hwnnw dalu'r costau yr aed iddynt gan y rheoleiddiwr mewn perthynas â gosod y gosb ariannol amrywiadwy hyd at yr adeg y'i gosodwyd.

(2) Mae costau yn cynnwys yn benodol—

- (a) costau ymchwilio;
- (b) costau gweinyddu;
- (c) costau cael cyngor arbenigol (gan gynnwys cyngor cyfreithiol).

(3) Rhaid i'r hysbysiad adennill cost gorfodaeth bennu—

- (a) y seiliau dros osod yr hysbysiad,
- (b) y swm y mae'n ofynnol ei dalu,
- (c) sut y caniateir talu,
- (d) y cyfnod y mae rhaid talu o'i fewn, na chaiff fod yn llai na 28 o ddiwrnodau,
- (e) hawliau apelio, ac
- (f) canlyniadau peidio â thalu.

PART 4

Combination of sanctions

Combination of sanctions

21.—(1) The regulator must not serve a notice of intent relating to a fixed monetary penalty if a variable monetary penalty has been imposed on that person relating to the same act or omission.

(2) The regulator must not serve a notice of intent relating to a variable monetary penalty on a person if, in relation to the same act or omission—

- (a) a fixed monetary penalty has been imposed on that person, or
- (b) that person has discharged liability for a fixed monetary penalty following service of a notice of intent to impose that penalty.

PART 5

Enforcement cost recovery notices

Enforcement cost recovery notices

22.—(1) The regulator may serve a notice (“enforcement cost recovery notice”) on a person on whom a variable monetary penalty has been imposed requiring that person to pay the costs incurred by the regulator in relation to the imposition of the variable monetary penalty up to the time of its imposition.

(2) Costs include in particular—

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

(3) The enforcement cost recovery notice must specify—

- (a) the grounds for imposing the notice,
- (b) the amount required to be paid,
- (c) how payment may be made,
- (d) the period within which payment must be made, which must not be less than 28 days,
- (e) rights of appeal, and
- (f) the consequences of non-payment.

(4) Caiff y person y cyflwynir yr hysbysiad iddo ei gwneud yn ofynnol i'r rheoleiddiwr ddarparu dadansoddiad manwl o'r swm.

(5) Nid yw'r person y mae'n ofynnol iddo dalu costau yn agored i dalu unrhyw gostau y mae'r person hwnnw'n dangos yr aed iddynt yn ddiangen.

Apelau yn erbyn hysbysiadu adennill cost gorfodaeth

23.—(1) Caiff y person y mae'n ofynnol iddo dalu costau o dan baragraff 22(1) apelio—

- (a) yn erbyn penderfyniad y rheoleiddiwr i osod y gofyniad i dalu costau,
- (b) yn erbyn penderfyniad y rheoleiddiwr o ran swm y costau hynny, neu
- (c) am unrhyw reswm tebyg arall.

(2) Y seiliau dros apelio yw—

- (a) bod y penderfyniad yn seiliedig ar wall ffeithiol;
- (b) bod y penderfyniad yn anghywir mewn cyfraith;
- (c) bod swm y costau yn afresymol;
- (d) bod y penderfyniad yn afresymol am unrhyw reswm arall;
- (e) unrhyw reswm tebyg arall.

RHAN 6

Gweinyddu ac apelau

Tynnu hysbysiad yn ôl neu ddiwygio hysbysiad

24. Caiff y rheoleiddiwr ar unrhyw adeg yn ysgrifenedig—

- (a) tynnu cosb ariannol benodedig yn ôl;
- (b) tynnu yn ôl gosb ariannol amrywiadwy, cosb am beidio â chydymffurfio neu hysbysiad adennill cost gorfodaeth, neu leihau'r swm a bennir yn y gosb neu'r hysbysiad.

Canllawiau o ran defnyddio sancsiynau sifil

25.—(1) Pan fo pŵer yn cael ei roi i'r rheoleiddiwr yn y Rheoliadau hyn i osod sancsiwn sifil—

- (a) rhaid i'r rheoleiddiwr gyhoeddi canllawiau ar ei ddefnydd o'r sancsiwn;
- (b) yn achos canllawiau sy'n ymwneud â chosb ariannol benodedig neu gosb ariannol amrywiadwy, rhaid i'r canllawiau gynnwys yr wybodaeth berthnasol;

(4) The person on whom the notice is served may require the regulator to provide a detailed breakdown of the amount.

(5) The person required to pay costs is not liable to pay any costs shown by that person to have been unnecessarily incurred.

Appeals against enforcement cost recovery notices

23.—(1) The person required to pay costs under paragraph 22(1) may appeal—

- (a) against the decision of the regulator to impose the requirement to pay costs,
- (b) against the decision of the regulator as to the amount of those costs, or
- (c) for any other similar reason.

(2) The grounds for appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the amount of the costs is unreasonable;
- (d) that the decision was unreasonable for any other reason;
- (e) any other similar reason.

PART 6

Administration and appeals

Withdrawing or amending a notice

24. The regulator may at any time in writing—

- (a) withdraw a fixed monetary penalty;
- (b) withdraw a variable monetary penalty, a non-compliance penalty or an enforcement cost recovery notice, or reduce the amount specified in the penalty or notice.

Guidance as to use of civil sanctions

25.—(1) Where these Regulations confer power on the regulator to impose a civil sanction—

- (a) the regulator must publish guidance about its use of the sanction;
- (b) in the case of guidance relating to a fixed monetary penalty or variable monetary penalty, the guidance must contain the relevant information;

- (c) rhaid i'r rheoleiddiwr ddiwygio'r canllawiau pan fo hynny'n briodol;
- (d) rhaid i'r rheoleiddiwr roi sylw i'r canllawiau neu'r canllawiau diwygiedig wrth arfer ei swyddogaethau.

(2) Yn achos canllawiau sy'n ymwneud â chosb ariannol benodedig, yr wybodaeth berthnasol y cyfeirir ati yn is-baragraff (1)(b) yw gwybodaeth am—

- (a) ym mha amgylchiadau y mae'r gosb yn debygol o gael ei gosod,
- (b) ym mha amgylchiadau na chaniateir gosod y gosb,
- (c) swm y gosb,
- (d) sut y caniateir cael rhyddhad rhag atebolrwydd am y gosb ac effaith y rhyddhad hwnnw, ac
- (e) hawliau i gyflwyno sylwadau a gwrthwynebiadau a hawliau apelio.

(3) Yn achos canllawiau sy'n ymwneud â chosb ariannol amrywiadwy, yr wybodaeth berthnasol y cyfeirir ati yn is-baragraff (1)(b) yw gwybodaeth am—

- (a) ym mha amgylchiadau y mae'r gosb yn debygol o gael ei gosod,
- (b) ym mha amgylchiadau na chaniateir gosod y gosb,
- (c) y materion y mae'r rheoleiddiwr yn debygol o'u hystyried wrth bennu swm y gosb (gan gynnwys pan fo rhywun yn adrodd yn wirfoddol nad yw wedi cydymffurfio), a
- (d) hawliau i gyflwyno sylwadau a gwrthwynebiadau a hawliau apelio.

Canllawiau ychwanegol

26. Rhaid i'r rheoleiddiwr gyhoeddi canllawiau sy'n ymwneud â defnyddio cosbau am beidio â chydymffurfio a hysbysiadau adennill cost gorfodaeth sy'n pennu—

- (a) ym mha amgylchiadau y maent yn debygol o gael eu gosod,
- (b) ym mha amgylchiadau na chaniateir eu gosod,
- (c) materion i'w hystyried wrth bennu'r swm o dan sylw, a
- (d) hawliau apelio.

Ymgynghori ar ganllawiau

27. Rhaid i'r rheoleiddiwr ymgynghori â'r personau hynny y mae'n ystyried eu bod yn briodol cyn cyhoeddi unrhyw ganllawiau neu ganllawiau diwygiedig o dan y Rheoliadau hyn.

- (c) the regulator must revise the guidance where appropriate;
- (d) the regulator must have regard to the guidance or revised guidance in exercising its 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 the penalty must 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.

(3) In the case of guidance relating to a variable 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 the penalty must not be imposed,
- (c) the matters likely to be taken into account by the regulator in determining the amount of the penalty (including voluntary reporting by any person of their own non-compliance), and
- (d) rights to make representations and objections and rights of appeal.

Additional guidance

26. The regulator must publish guidance relating to the use of non-compliance penalties and enforcement cost recovery notices specifying—

- (a) the circumstances in which they are likely to be imposed,
- (b) the circumstances in which they must not be imposed,
- (c) matters to be taken into account in establishing the amount involved, and
- (d) rights of appeal.

Consultation on guidance

27. The regulator must consult such persons as it considers appropriate before publishing any guidance or revised guidance under these Regulations.

Cyhoeddi camau gorfodi

28.—(1) Pan fo pŵer yn cael ei roi i'r rheoleiddiwr i osod sancsiwn sifil o dan y Rheoliadau hyn, rhaid i'r rheoleiddiwr o bryd i'w gilydd gyhoeddi adroddiadau sy'n pennu—

- (a) yr achosion y gosodwyd y sancsiwn sifil ynddynt,
- (b) pan fo'r sancsiwn sifil yn gosb ariannol benodedig, yr achosion y cafwyd rhyddhad rhag atebolrwydd am y gosb ynddynt drwy dalu'r gosb yn dilyn yr hysbysiad o fwriad, a heb fod camau pellach yn cael eu cymryd, ac
- (c) pan fo'r sancsiwn sifil yn gosb ariannol amrywiadwy, yr achosion y derbyniwyd ymgymeriad trydydd parti ynddynt.

(2) Yn is-baragraff (1)(a) nid yw'r cyfeiriad at achosion y gosodwyd y sancsiwn sifil ynddynt yn cynnwys achosion pan fo'r sancsiwn wedi ei osod ond wedi ei wrthdroi ar apêl.

(3) Nid yw'r paragraff hwn yn gymwys mewn achosion pan fo Gweinidogion Cymru yn ystyried y byddai cyhoeddi yn amhriodol.

Adennill taliadau

29. Caiff y rheoleiddiwr adennill unrhyw gosb ariannol benodedig, cosb ariannol amrywiadwy neu unrhyw gosb am beidio â chydymffurfio a osodir o dan y Rheoliadau hyn ac unrhyw gosb ariannol am dalu'n hwyr, ar orchymyn llys, fel pe bai'n daladwy o dan orchymyn llys.

Apelau

30.—(1) Mae apêl o dan y Rheoliadau hyn yn apêl i'r Tribiwnlys Haen Gyntaf (“y Tribiwnlys”).

(2) Mewn unrhyw apêl pan fo cyflawni trosedd yn fater y mae'n ofynnol penderfynu arno, rhaid i'r rheoleiddiwr brofi'r drosedd honno yn ôl yr un baich profi a'r un safon profi ag mewn erlyniad troseddol.

(3) Mewn unrhyw achos arall rhaid i'r Tribiwnlys bennu'r safon profi.

(4) Mae pob hysbysiad wedi ei atal dros dro wrth aros i'r apêl gael ei phenderfynu neu ei thynnu yn ôl.

(5) Caiff y Tribiwnlys, mewn perthynas â gosod cosb neu gyflwyno hysbysiad o dan y Rheoliadau hyn—

- (a) tynnu yn ôl y gosb neu'r hysbysiad,
- (b) cadarnhau'r gosb neu'r hysbysiad,
- (c) amrywio'r gosb neu'r hysbysiad,

Publication of enforcement action

28.—(1) Where a power is conferred on the regulator to impose a civil sanction under these Regulations, the regulator must from time to time publish reports specifying—

- (a) the cases in which the civil sanction has been imposed,
- (b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged by payment of the penalty following the notice of intent, and without further action being taken, and
- (c) where the civil sanction is a variable monetary penalty, the cases in which a third party undertaking has been accepted.

(2) In sub-paragraph (1)(a) the reference to cases in which the civil sanction has been imposed does not include cases where the sanction has been imposed but overturned on appeal.

(3) This paragraph does not apply in cases where the Welsh Ministers consider that publication would be inappropriate.

Recovery of payments

29. The regulator may recover any fixed monetary penalty, variable monetary penalty or non-compliance penalty imposed under these Regulations and any financial penalty for late payment, on the order of a court, as if payable under a court order.

Appeals

30.—(1) An appeal under these Regulations is to the First-tier Tribunal (“the Tribunal”).

(2) In any appeal where the commission of an offence is an issue requiring determination, the regulator must prove that offence according to the same burden and standard of proof as in a criminal prosecution.

(3) In any other case the Tribunal must determine the standard of proof.

(4) All notices are suspended pending the determination or withdrawal of the appeal.

(5) The Tribunal may, in relation to the imposition of a penalty or service of a notice under these Regulations—

- (a) withdraw the penalty or notice,
- (b) confirm the penalty or notice,
- (c) vary the penalty or notice,

- (d) cymryd unrhyw gamau y gallai'r rheoleiddiwr eu cymryd mewn perthynas â'r weithred neu'r anweithred sy'n arwain at y gosb neu'r hysbysiad, neu
- (e) anfon y penderfyniad o ran pa un ai i gadarnhau'r gosb neu'r hysbysiad ai peidio, neu unrhyw fater sy'n ymwneud â'r penderfyniad hwnnw, at y rheoleiddiwr.

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Argraffwyd a chyhoeddwyd yn y DU gan Y Llyfrfa Cyf dan awdurdod a goruchwyliaeth Jeff James, Rheolwr Llyfrfa Ei Fawrhydi ac Argraffydd Deddfau Senedd y Brenin.

- (d) take such steps as the regulator could take in relation to the act or omission giving rise to the penalty or notice, or
- (e) remit the decision whether to confirm the penalty or notice, or any matter relating to that decision, to the regulator.

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£8.14

<http://www.legislation.gov.uk/id/wsi/2023/1289>

ISBN 978-0-348-39500-6



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