

Draft Regulations laid before Senedd Cymru under section 160A(2) and (5) of the Environmental Protection Act 1990, section 2(8) of the Pollution Prevention and Control Act 1999 and section 61(2) of the Regulatory Enforcement and Sanctions Act 2008, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2023 No. (W.)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Waste Separation
Requirements (Wales) Regulations
2023**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the separation requirements in Wales for the purposes of section 45AA of the Environmental Protection Act 1990 (c. 43) with the aim of ensuring that waste is managed in a manner that promotes high quality recycling. The separation requirements apply in respect of all premises other than domestic properties and caravans.

Separation requirements are specified in relation to the presentation of waste for collection (regulation 3), the collection of that waste (regulation 4) and the handling of waste that has been separately collected (regulation 5).

“Recyclable waste streams” is defined in regulation 2 as meaning (a) glass (b) cartons and similar, metal and plastic (c) paper and card (d) food waste (e) unsold small waste electrical and electronic equipment and (f) unsold textiles. The waste sub-fractions within each of the recyclable waste streams that are subject to the separation requirements are set out in Schedule 1.

Regulation 3 requires, as a minimum, each recyclable waste stream to be presented separately for collection. Those collecting, or arranging for the collection of, such waste must collect the recyclable waste streams separately (regulation 4). Those who subsequently handle that waste must not mix it with

any other recyclable waste stream or with other types of waste or other substances or articles (regulation 5). Regulation 2 provides that, where an occupier of premises takes controlled waste (defined in regulation 2) to a centralised collection point (for example, a waste recycling centre or a bring bank) this constitutes “presenting for collection” under the Regulations.

Hospitals are not required to present waste separately for collection until 6 April 2026. “Hospital” is defined in regulation 2.

These Regulations amend sections 46 (receptacles for household waste) and 47 (receptacles for commercial or industrial waste) of the Environmental Protection Act 1990 to clarify the relationship between a requirement imposed by a waste collection authority in Wales by notice under those sections and the requirements set out in section 45AA and these Regulations.

These Regulations amend the Waste (England and Wales) Regulations 2011 (S.I. 2011/988) to restrict the application, in relation to Wales, of regulations 13 (duties in relation to collection of waste) and 14 (duty in relation to collected waste) of those Regulations to domestic properties and caravans, as defined in section 75(5)(a) and (b) of the Environmental Protection Act 1990.

The offences in respect of breaches of the separation requirements are contained in section 45AA(8) of the Environmental Protection Act 1990.

A civil sanctions regime is introduced to enable the regulator to impose fixed monetary penalties, variable monetary penalties and non-compliance penalties (regulation 6 and paragraphs 1, 11 and 19 of Schedule 2). The regulator, for the purposes of these Regulations, is the Natural Resources Body for Wales.

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

Schedule 2 (paragraphs 25 to 27) provides that guidance relating to the use of civil sanctions must be published by the Natural Resources Body for Wales. 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 Schedule 2).

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.

Draft Regulations laid before Senedd Cymru under section 160A(2) and (5) of the Environmental Protection Act 1990, section 2(8) of the Pollution Prevention and Control Act 1999 and section 61(2) of the Regulatory Enforcement and Sanctions Act 2008, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2023 No. (W.)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Waste Separation
Requirements (Wales) Regulations
2023**

Made

Coming into force

6 April 2024

The Welsh Ministers make these Regulations⁽¹⁾ in exercise of the powers conferred by section 45AA(6), (7), (10) and (11) of the Environmental Protection Act 1990⁽²⁾, section 2 of the Pollution Prevention and Control Act 1999⁽³⁾ (“the 1999 Act”) and sections

(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) 1990 c. 43. Section 45AA was inserted by section 65 of the Environment (Wales) Act 2016 (anaw 3).

(3) 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).

36(2), 39, 42, 45 and 52 to 55 of the Regulatory Enforcement and Sanctions Act 2008(1) (“the 2008 Act”).

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

In accordance with section 66 of the 2008 Act the Welsh Ministers are satisfied that Natural Resources Wales (who is the regulator 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.

In accordance with section 160A(2) and (5) of the Environmental Protection Act 1990(3), section 2(8) of the 1999 Act(4) and section 61(2) of the 2008 Act(5), a draft of these Regulations has been laid before, and approved by resolution of, Senedd Cymru.

PART 1

Introduction

Title, coming into force and application

1.—(1) The title of these Regulations is the Waste Separation Requirements (Wales) Regulations 2023.

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

(3) These Regulations apply in relation to Wales.

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- (1) 2008 c. 13. Section 36(2) was amended by section 21(2)(f) of the Enterprise Act 2016 (c. 12); sections 39 and 42 were amended by paragraph 12 of Schedule 5 to S.I. 2015/664. “Prescribed” is defined in section 71 of that Act.
- (2) Section 71(1) of the Regulatory Enforcement and Sanctions Act 2008 Act (c. 13) provides that “relevant authority” means, in relation to provision made under or by virtue of Part 3 by the Welsh Ministers, the Welsh Ministers.
- (3) Section 160A was inserted by section 63(2) of the Environment Act 2021 (c. 30).
- (4) The reference in section 2(8) of the Pollution Prevention and Control Act 1999 (c. 24) 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 (c. 32).
- (5) The reference in section 61(2) of the Regulatory Enforcement and Sanctions Act 2008 (c. 13) 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 (c. 32).

Interpretation

2. In these Regulations—

“the 1990 Act” (“*Deddf 1990*”) means the Environmental Protection Act 1990;

“caravan” (“*carafân*”) has the meaning given by section 75(5)(b) of the 1990 Act;

“cartons and similar” (“*cartonau a’u tebyg*”) 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;

“controlled waste” (“*gwastraff a reolir*”) has the meaning given by section 75(4) of the 1990 Act;

“domestic property” (“*eiddo domestig*”) has the meaning given by section 75(5)(a) of the 1990 Act;

“electrical and electronic equipment” (“*offer trydanol ac electronig*”) 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;

“food waste” (“*gwastraff bwyd*”) has the meaning given by section 34D(5) of the 1990 Act, but does not include—

- (a) animal by-products comprising Category 1 material as listed in Article 8, or Category 2 material as listed in Article 9, of Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption⁽¹⁾,
- (b) food waste from premises that produce less than 5 kilogrammes of food waste in seven consecutive days, or
- (c) any waste categorised as hazardous under regulation 6 of the Hazardous Waste (Wales) Regulations 2005⁽²⁾ or containing residues of, or contaminated by, waste or substances categorised as hazardous under regulation 6 of those Regulations;

(1) EUR 2009/1069, amended by S.I. 2020/1388, there are other amending instruments but none is relevant.

(2) S.I. 2005/1806 (W. 138), amended by S.I. 2020/1339 (W. 296).

“premises” (*“mangre”*) does not include a domestic property or a caravan;

“presenting waste for collection” (*“cyflwyno gwastraff i’w gasglu”*) includes an occupier of premises taking controlled waste to a centralised collection point;

“recyclable waste streams” (*“ffrydiau gwastraff ailgylchadwy”*) means—

- (a) glass;
- (b) cartons and similar, metal and plastic;
- (c) paper and card;
- (d) food waste;
- (e) unsold small waste electrical and electronic equipment;
- (f) unsold textiles,

each comprising of the waste sub-fractions listed in Schedule 1, and “recyclable waste stream” means each of the individual streams listed in (a) to (f);

“regulator” (*“rheoleiddiwr”*) means Natural Resources Wales;

“small waste electrical and electronic equipment” (*“offer trydanol ac electronig gwastraff bach”*) 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” (*“nas gwerthwyd”*) 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.

PART 2

Separation Requirements

Duties in relation to presentation of waste

3.—(1) For the purposes of section 45AA(4) of the 1990 Act, the separation requirements are that each recyclable waste stream must, as a minimum, be presented for collection separately from any other recyclable waste steam and from other types of controlled waste or other substances or articles.

(2) Notwithstanding regulation 3(1), food waste within its original packaging may be presented for

(1) S.I. 2013/3113, amended by S.I. 2018/1214.

collection within the food waste recyclable waste stream provided that it is not reasonably practicable for the occupier to separate the food waste from its original packaging and that waste will be taken to and processed at a facility for—

- (a) preparation for re-use, or
- (b) recycling.

(3) Paragraph (1) does not apply to—

- (a) an occupier of a hospital until 6 April 2026;
- (b) controlled waste collected by a local authority as respects any relevant highway in respect of which a local authority has a duty under section 89(1)(a) of the 1990 Act to ensure that the land is, so far as is practicable, kept clear of litter and refuse;
- (c) controlled waste collected by a principal litter authority as respects its relevant land in respect of which a principal litter authority has a duty under section 89(1)(c) of the 1990 Act to ensure that the land is, so far as is practicable, kept clear of litter and refuse.

(4) In this regulation—

“hospital” (“*ysbyty*”) has the meaning given by section 206 of the National Health Service (Wales) Act 2006(1);

“preparation for re-use” (“*paratoi i’w aildddefnyddio*”) means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be used again for the same purpose for which they were conceived without any pre-processing;

“principal litter authority” (“*prif awdurdod sbwriel*”), “relevant highway” (“*priffordd berthnasol*”) and “relevant land” (“*tir perthnasol*”) have the meanings given by section 86 of the 1990 Act;

“recycling” (“*ailgylchu*”) means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations.

Duties in relation to collection of waste

4. For the purposes of section 45AA(1) and (2)(a) of the 1990 Act, the separation requirements are that each recyclable waste stream that has been presented

(1) 2006 c. 42.

separately for collection under regulation 3 must, as a minimum, be collected separately from any other recyclable waste stream and from other types of controlled waste or other substances or articles.

Duties in relation to collected waste

5.—(1) For the purposes of section 45AA(2)(b) of the 1990 Act, the separation requirements are that, where controlled waste has been separately collected from premises, a person acting in the course of a business who receives, keeps, treats or transports that waste must not mix that waste with any other recyclable waste stream or with other types of waste or other substances or articles.

(2) In this regulation, “person acting in the course of a business” has the meaning given by section 45AA(3) of the 1990 Act.

PART 3

Civil Sanctions

Civil sanctions

6. Schedule 2 (civil sanctions) makes provision about the civil sanctions that may be imposed for the purpose of the enforcement of an offence under section 45AA(8) of the 1990 Act.

PART 4

Amendments to the Environmental Protection Act 1990 and the Waste (England and Wales) Regulations 2011

Amendments to the Environmental Protection Act 1990: Wales

7. The 1990 Act is amended as follows.

8. In section 46 (receptacles for household waste), after subsection (5) insert—

“(5A) A requirement imposed on an occupier by a waste collection authority in Wales by a notice under this section does not apply so far as the requirement duplicates or conflicts with a requirement imposed on the occupier under section 45AA(4).”

9. In section 47 (receptacles for commercial or industrial waste), after subsection (5) insert—

“(5A) A requirement imposed on an occupier by a waste collection authority in Wales by a notice under this section does not apply so far as

the requirement duplicates or conflicts with a requirement imposed on the occupier under section 45AA(4).”

Amendments to the Waste (England and Wales) Regulations 2011: Wales

10. The Waste (England and Wales) Regulations 2011(1) are amended as follows.

11. In regulation 13 (duties in relation to collection of waste), before paragraph (2) insert—

“(1A) In relation to Wales paragraphs (2) to (4) apply in relation to the collection of waste from a domestic property or a caravan.”

12. In regulation 14 (duty in relation to collected waste), before paragraph (1) insert—

“(A1) In relation to Wales paragraphs (1) and (2) apply in relation to separately collected waste from a domestic property or a caravan.”

13. After regulation 15 (guidance) insert—

“15A. Interpretation: Wales

For the purposes of regulations 13 and 14, in relation to Wales—

“caravan” has the meaning given by section 75(5)(b) of the Environmental Protection Act 1990;

“domestic property” has the meaning given by section 75(5)(a) of the Environmental Protection Act 1990.”

Name

Minister for Climate Change, one of the Welsh Ministers

Date

(1) S.I. 2011/988; relevant amending instruments are S.I. 2012/1889, 2020/904.

SCHEDULES

SCHEDULE 1 Regulation 2

Waste sub-fractions comprising each recyclable waste stream

Glass

Glass bottles used as packaging

Glass jars used as packaging

but excluding any waste categorised as hazardous under regulation 6 of the Hazardous Waste (Wales) Regulations 2005 or containing residues of, or contaminated by, waste or substances categorised as hazardous under regulation 6 of those Regulations

Cartons and similar, metal and plastic

Cartons and similar

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, limited to:

Cartons

Paper drinks cups with a low density polythene or polypropylene plastic layer

Rigid paper containers

but excluding any waste categorised as hazardous under regulation 6 of the Hazardous Waste (Wales) Regulations 2005 or containing residues of, or contaminated by, waste or substances categorised as hazardous under regulation 6 of those Regulations

Metal

Aluminium foil

Aluminium food trays

Aluminium tubes

Steel and aluminium aerosols

Steel and aluminium jar and bottle lids and caps

Steel and aluminium tins and cans

but excluding any waste categorised as hazardous under regulation 6 of the Hazardous Waste (Wales) Regulations 2005 or containing residues of, or contaminated by, waste or substances categorised as hazardous under regulation 6 of those Regulations

Plastic

Amorphous polyethylene terephthalate and crystallised polyethylene terephthalate plastic packaging comprising pots, tubs, trays, rigid and semi-rigid lids and clear cups except where the plastic contains carbon black pigment so that it is not near infrared detectable

Amorphous polyethylene terephthalate plastic bottles except where the plastic contains carbon black pigment so that it is not near infrared detectable

High density polyethylene and low density polyethylene packaging comprising pots, tubs, trays and rigid and semi-rigid lids except where the plastic contains carbon black pigment so that it is not near infrared detectable

High density polyethylene and low density polyethylene plastic bottles, pumps and triggers except where the plastic contains carbon black pigment so that it is not near infrared detectable

Polypropylene and expanded polypropylene plastic packaging comprising pots, tubs, trays, rigid and semi-rigid lids and clear cups except where the plastic contains carbon black pigment so that it is not near infrared detectable

Polyethylene and polypropylene plastic packaging tubes except:

- where they are less than 50x50mm,
- where they have contained products used in construction works,
- where they have a metal layer, or
- where they are multi-monomer plastic

Polypropylene plastic bottles, pumps and triggers except where the plastic contains carbon black pigment so that it is not near infrared detectable

but excluding any waste categorised as hazardous under regulation 6 of the Hazardous Waste (Wales) Regulations 2005 or containing residues of, or contaminated by, waste or substances categorised as hazardous under regulation 6 of those Regulations

Paper and card

All paper and card except:

Fibre-based composite packaging, being packaging material which is made of paperboard or paper fibres, laminated with plastic, and which may also have layers of other materials, to form a single unit that cannot be separated by hand

Hardback books

Padded polyethylene lined envelopes

Paper and card containing glitter or foil

Paper and card contaminated with food, paint, oil or grease

Paper and card that has been laminated

Paper towels, tissues, wet wipes, kitchen roll

Scratch cards

Shredded paper

Stickers and sticky notes

Till receipts

Wallpaper

Wax, silicone, greaseproof papers

and also excluding any waste paper or card categorised as hazardous under regulation 6 of the Hazardous Waste (Wales) Regulations 2005 or containing residues of, or contaminated by, waste or substances categorised as hazardous under regulation 6 of those Regulations

Food waste

All food waste (see definition of “food waste” in regulation 2)

Unsold small waste electrical and electronic equipment

All unsold small waste electrical and electronic equipment (see definitions of “small waste electrical and electronic equipment” and “unsold” in regulation 2), but excluding any waste contaminated by waste or substances categorised as hazardous under regulation 6 of the Hazardous Waste (Wales) Regulations 2005

Unsold textiles

Clothing

Non-clothing textiles including carpets and carpet tiles, leisure textiles (such as tents and tarpaulins), mattresses, rugs, soft furnishings (such as curtains, bedsheets, blankets, duvets, pillows, towels), underlay

Packaging made from textiles

but excluding any waste categorised as hazardous under regulation 6 of the Hazardous Waste (Wales) Regulations 2005 or containing residues of, or contaminated by, waste or substances categorised as hazardous under regulation 6 of those Regulations

SCHEDULE 2 Regulation 6

Civil sanctions

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 section 45AA(8) of the 1990 Act.

(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 is specified in the table in Part 2 of this Schedule.

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).

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.

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.

PART 2

Fixed monetary penalty amounts

<i>Breach</i>	<i>Amount of fixed monetary penalty</i>
Failure without reasonable excuse to comply with section 45AA(2) of the 1990 Act	£500
Failure without reasonable excuse to comply with section	£300

PART 3

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 section 45AA(8) of the 1990 Act.

(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 relating to the offence in relation to which the notice is served).

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.

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.

PART 4

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.

PART 5

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 to a fixed monetary penalty following service of a notice of intent to impose that penalty.

PART 6

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) 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 7

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) 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 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 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.

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 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) 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.