



OFFERYNNAU STATUDOL  
CYMRU

WELSH STATUTORY  
INSTRUMENTS

2023 Rhif 1296 (Cy. 231)

2023 No. 1296 (W. 231)

**DIOGELU'R AMGYLCHEDD,  
CYMRU**

**ENVIRONMENTAL  
PROTECTION, WALES**

Gorchymyn Gwahardd Gwaredu  
Gwastraff Bwyd i Garthffos  
(Sanctsiynau Sifil) (Cymru) 2023

The Prohibition on Disposal of  
Food Waste to Sewer (Civil  
Sanctions) (Wales) Order 2023

**NODYN ESBONIADOL**

*(Nid yw'r nodyn hwn yn rhan o'r Gorchymyn hwn)*

Mae'r Gorchymyn hwn yn gwneud darpariaeth mewn perthynas â gwahardd gwaredu gwastraff bwyd i garthffos o dan adran 34D o Ddeddf Diogelu'r Amgylchedd 1990 (fel y'i mewnosodwyd gan adran 66(1) o Ddeddf yr Amgylchedd (Cymru) 2016 (dccc 3)). Mae torri'r gwaharddiad hwn yn drosedd o dan adran 34D(3) o Ddeddf Diogelu'r Amgylchedd 1990 (p. 43).

Cyflwynir cyfundrefn sanctsiynau sifil i alluogi'r rheoleiddiwr i osod cosbau ariannol penodedig, cosbau ariannol amrywiadwy a chosbau am beidio â chydymffurfio (erthygl 5 a pharagraffau 1, 11 a 19 o'r Atodlen). Y rheoleiddiwr, at ddibenion y Gorchymyn hwn, yw'r awdurdod lleol ar gyfer yr ardal y mae'r fangre ynddi.

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

Mae'r Atodlen i'r Gorchymyn hwn (paragraffau 25 i 27) yn darparu bod rhaid cyhoeddi canllawiau sy'n ymwneud â defnyddio sanctsiynau sifil. Rhaid hefyd gyhoeddi canllawiau sy'n ymwneud â defnyddio cosbau am beidio â chydymffurfio a hysbysiadau adennill cost gorfodaeth (paragraff 26). Cyn i unrhyw ganllawiau gael eu cyhoeddi, mae'n ofynnol i'r rheoleiddiwr ymgynghori (paragraff 27). Mae'r Gorchymyn hwn hefyd yn darparu ar gyfer cyhoeddi gwybodaeth ynghylch camau gorfodi a gymerir gan y

**EXPLANATORY NOTE**

*(This note is not part of this Order)*

This Order makes provision in relation to the prohibition on the disposal of food waste to sewer under section 34D of the Environmental Protection Act 1990 (as inserted by section 66(1) of the Environment (Wales) Act 2016 (anaw 3)). Breach of this prohibition is an offence under section 34D(3) of the Environmental Protection Act 1990 (c. 43).

A civil sanctions regime is introduced to enable the regulator to impose fixed monetary penalties, variable monetary penalties and non-compliance penalties (article 5 and paragraphs 1, 11 and 19 of the Schedule). The regulator, for the purposes of this Order, is the local authority for the area in which the premises are situated.

This Order makes provision for the procedure relating to the civil sanctions, including appeals. Appeals under this Order are to the First-tier Tribunal.

The Schedule to this Order (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). This Order also provides for the publication of information on enforcement action taken by the regulator (paragraph 28 of the Schedule). The regulator is able

rheoleiddiwr (paragraff 28 o'r Atodlen). Mae'r rheoleiddiwr yn gallu adennill costau penodol 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 gan y rheoleiddiwr o dan y Gorchymyn hwn ynghyd ag unrhyw gosb ariannol am dalu'n hwyr (paragraff 29 o'r Atodlen).

Mae erthygl 6 yn rhoi pwerau i swyddogion gorfodaeth i ymchwilio mewn perthynas â throseddau posibl, gan gynnwys pwerau mynediad ac ymfael.

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

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 this Order together with any financial penalty for late payment (paragraph 29 of the Schedule).

Article 6 gives enforcement officers powers of investigation in relation to potential offences, including powers of entry and seizure.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. 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](http://www.gov.wales).

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PROTECTION, WALES**

**Gorchymyn Gwahardd Gwaredu  
Gwastraff Bwyd i Garthffos  
(Sancsiynau Sifil) (Cymru) 2023**

**The Prohibition on Disposal of  
Food Waste to Sewer (Civil  
Sanctions) (Wales) Order 2023**

*Gwnaed* 29 Tachwedd 2023  
*Yn dod i rym* 6 Ebrill 2024

*Made* 29 November 2023  
*Coming into force* 6 April 2024

Mae Gweinidogion Cymru yn gwneud y Gorchymyn hwn drwy arfer y pwerau a roddir gan adrannau 36(2), 39, 42, 45, a 52 i 55 o Ddeddf Gorfodi Rheoleiddiol a Sancsiynau 2008(1) ("Deddf 2008").

The Welsh Ministers make this Order in exercise of the powers conferred by sections 36(2), 39, 42, 45, and 52 to 55 of the Regulatory Enforcement and Sanctions Act 2008(1) ("the 2008 Act").

Mae Gweinidogion Cymru wedi ymgynghori yn unol ag adrannau 59(3) a 60 o Ddeddf 2008(2) ac maent wedi eu bodloni (yn unol ag adran 66 o Ddeddf 2008) y bydd awdurdodau lleol (sef y rheoleiddiwr at ddiben y Gorchymyn hwn) 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 Gorchymyn hwn.

The Welsh Ministers have consulted in accordance with sections 59(3) and 60 of the 2008 Act(2) and are satisfied (in accordance with section 66 of the 2008 Act) that local authorities (who are the regulator for the purpose of this Order) will act in accordance with the principles referred to in section 5(2) of that Act in exercising a power conferred by this Order.

Yn unol ag adran 61(2) o Ddeddf 2008(3), gosodwyd drafft o'r Gorchymyn hwn gerbron Senedd Cymru ac fe'i cymeradwywyd ganddi drwy benderfyniad.

In accordance with section 61(2) of the 2008 Act(3), a draft of this Order has been laid before, and approved by resolution of, Senedd Cymru.

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(1) 2008 p. 13. Diwygiwyd adran 36(2) gan adran 21(2)(f) o Ddeddf Menter 2016 (p. 12); diwygiwyd adrannau 39 a 42 gan baragraff 12 o Atodlen 5 i O.S. 2015/664. Diffinnir "prescribed" yn adran 71(1) o Ddeddf 2008.  
(2) Mae adran 71(1) o Ddeddf 2008 yn darparu mai ystyr "relevant authority", mewn perthynas â darpariaeth a wneir o dan Ran 3 neu yn rhinwedd y Rhan honno gan Weindogion Cymru, yw Gweinidogion Cymru.  
(3) Mae'r cyfeiriad yn adran 61(2) o Ddeddf 2008 at Gynulliad Cenedlaethol Cymru bellach yn cael effaith fel cyfeiriad at Senedd Cymru, yn rhinwedd adran 150A(2) o Ddeddf Llywodraeth Cymru 2006 (p. 32).

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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(1) of the 2008 Act.  
(2) 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.  
(3) The reference in section 61(2) 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 (c. 32).

## Enwi, dod i rym a chymhwyso

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Gwahardd Gwaredu Gwastraff Bwyd i Garthffos (Sanctiynau Sifil) (Cymru) 2023.

(2) Daw i rym ar 6 Ebrill 2024.

(3) Mae'r Gorchymyn hwn yn gymwys o ran Cymru.

## Dehongli

2. Yn y Gorchymyn hwn—

ystyr “Deddf 1990” (“*the 1990 Act*”) yw Deddf Diogelu'r Amgylchedd 1990(1);

ystyr “swyddog gorfodaeth” (“*enforcement officer*”) yw person a awdurdodir o dan erthygl 4(1).

## Y rheoleiddiwr

3. Y rheoleiddiwr, at ddibenion gorfodi trosedd o dan adran 34D(3) o Ddeddf 1990, yw'r awdurdod lleol ar gyfer yr ardal y mae'r fangre ynddi.

## Gorfodaeth

4.—(1) Caiff y rheoleiddiwr awdurdodi unrhyw berson i arfer unrhyw un neu ragor o'r pwerau a bennir yn erthygl 6 os ymddengys i'r rheoleiddiwr fod y person hwnnw yn addas i'w arfer neu i'w harfer.

(2) Rhaid i awdurdodiad o dan baragraff (1) fod yn ysgrifenedig.

## Sanctiynau sifil

5. Mae'r Atodlen yn gwneud darpariaeth ynghylch y sanctiynau sifil y caniateir eu gosod at ddiben gorfodi trosedd o dan adran 34D(3) o Ddeddf 1990.

## Pwerau swyddogion gorfodaeth

6.—(1) Caiff swyddog gorfodaeth fynd i unrhyw fangre ar unrhyw adeg resymol at ddiben penderfynu a yw trosedd o dan adran 34D(3) o Ddeddf 1990 yn cael ei chyflawni neu wedi ei chyflawni.

(2) Rhaid i swyddog gorfodaeth, os gofynnir iddo wneud hynny, ddangos tystiolaeth o awdurdodiad y swyddog hwnnw.

## Title, coming into force and application

1.—(1) The title of this Order is the Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023.

(2) It comes into force on 6 April 2024.

(3) This Order applies in relation to Wales.

## Interpretation

2. In this Order—

“the 1990 Act” (“*Deddf 1990*”) means the Environmental Protection Act 1990(1);

“enforcement officer” (“*swyddog gorfodaeth*”) means a person authorised under article 4(1).

## Regulator

3. The regulator, for the purposes of the enforcement of an offence under section 34D(3) of the 1990 Act, is the local authority for the area in which the premises are situated.

## Enforcement

4.—(1) The regulator may authorise any person to exercise any of the powers specified in article 6 if that person appears to the regulator suitable to exercise them.

(2) An authorisation under paragraph (1) must be in writing.

## Civil sanctions

5. The Schedule makes provision about the civil sanctions that may be imposed for the purpose of the enforcement of an offence under section 34D(3) of the 1990 Act.

## Enforcement officer powers

6.—(1) An enforcement officer may enter any premises at any reasonable time for the purpose of determining whether an offence under section 34D(3) of the 1990 Act is being, or has been, committed.

(2) An enforcement officer must, if requested to do so, produce evidence of that officer's authority.

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(1) 1990 p. 43; mewnosodwyd adran 34D gan adran 66(1) o Ddeddf yr Amgylchedd (Cymru) 2016 (decc 3). Mae diwygiadau pellach i'r Ddeddf nad ydynt yn berthnasol i'r Gorchymyn hwn.

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(1) 1990 c. 43; section 34D was inserted by the Environment (Wales) Act 2016 (anaw 3), section 66(1). There are further amendments to the Act that are not relevant to this Order.

(3) Caiff ynad heddwch, drwy warant wedi ei llofnodi, ganiatáu i swyddog gorfodaeth fynd i fangre at ddiben penderfynu a yw trosedd o dan adran 34D(3) o Ddeddf 1990 yn cael ei chyflawni neu wedi ei chyflawni, gan ddefnyddio grym rhesymol os oes ei angen, os yw'r ynad wedi ei fodloni ar sail gwybodaeth ysgrifenedig ar lw—

- (a) bod sail resymol dros fynd i'r fangre honno, a
- (b) bod unrhyw un neu ragor o'r amodau ym mharagraff (4) wedi ei fodloni neu eu bodloni.

(4) Yr amodau yw—

- (a) bod mynediad i'r fangre wedi ei wrthod, neu'n debygol o gael ei wrthod, a bod hysbysiad o'r bwriad i wneud cais am warant wedi ei roi i'r meddiannydd,
- (b) y byddai gofyn am gael mynediad i'r fangre, neu roi hysbysiad o'r bwriad i wneud cais am warant, yn tanseilio'r amcan o fynd i'r fangre,
- (c) bod angen mynd i'r fangre ar fyrder, neu
- (d) nad yw'r fangre wedi ei meddiannu neu fod y meddiannydd yn absennol dros dro.

(5) Mae gwarant yn ddilys am un mis.

(6) Caiff swyddog gorfodaeth sy'n mynd i fangre o dan yr erthygl hon, neu warant a ddyroddir odani, ddod â'r personau hynny y mae'r swyddog gorfodaeth yn ystyried eu bod yn angenrheidiol.

(7) Rhaid i swyddog gorfodaeth sy'n mynd i unrhyw fangre nad yw wedi ei meddiannu, neu fangre y mae'r meddiannydd yn absennol ohoni dros dro, adael y fangre wedi ei diogelu yr un mor effeithiol rhag mynediad anawdurdodedig ag yr oedd cyn mynd iddi.

(8) Caiff swyddog gorfodaeth sy'n mynd i fangre o dan yr erthygl hon, neu warant a ddyroddir odani—

- (a) edrych ar unrhyw gofnodion (ar ba ffurf bynnag y'u cedwir) a chymryd copi o unrhyw gofnodion y mae ganddo reswm dros gredu y gallant fod yn ofynnol fel tystiolaeth mewn achos o dan adran 34D(3) o Ddeddf 1990 neu'r Gorchymyn hwn, neu ymafael mewn unrhyw gofnodion o'r fath a'u cadw,
- (b) pan fo unrhyw gofnodion o'r fath yn cael eu storio ar ffurf electronig—
  - (i) cael mynediad i unrhyw gyfrifiadur ac unrhyw gyfarpar neu ddeunydd cysylltiedig sy'n cael ei ddefnyddio neu sydd wedi cael ei ddefnyddio mewn cysylltiad â'r cofnodion ac arolygu a gwirio gweithrediad unrhyw gyfrifiadur o'r fath ac unrhyw gyfarpar neu ddeunydd cysylltiedig o'r fath,

(3) A justice of the peace may by signed warrant permit an enforcement officer to enter premises for the purpose of determining whether an offence under section 34D(3) of the 1990 Act is being, or has been, committed, if necessary by reasonable force, if the justice, on sworn information in writing is satisfied that—

- (a) there are reasonable grounds to enter those premises, and
- (b) any of the conditions in paragraph (4) are met.

(4) The conditions are that—

- (a) entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant has been given to the occupier,
- (b) asking for entry to the premises, or giving notice of the intention to apply for a warrant, would defeat the object of the entry,
- (c) entry is required urgently, or
- (d) the premises are unoccupied or the occupier is temporarily absent.

(5) A warrant is valid for one month.

(6) An enforcement officer who enters premises under this article, or a warrant issued under it, may be accompanied by such persons as the enforcement officer considers necessary.

(7) An enforcement officer who enters any unoccupied premises, or premises from which the occupier is temporarily absent, must leave them as effectively secured against unauthorised entry as they were before entry.

(8) An enforcement officer who enters premises under this article, or a warrant issued under it, may—

- (a) inspect any records (in whatever form they are held) and take a copy of or seize and detain any records which they have reason to believe may be required as evidence in proceedings under section 34D(3) of the 1990 Act or this Order,
- (b) where any such records are stored in electronic form—
  - (i) have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with the records,

(ii) ei gwneud yn ofynnol i unrhyw berson a chanddo ofal dros y cyfrifiadur, y cyfarpar neu'r deunydd, neu sydd fel arall yn ymwneud â gweithrediad y cyfrifiadur, y cyfarpar neu'r deunydd, ddarparu unrhyw gymorth a all fod yn rhesymol ofynnol, a

(iii) ei gwneud yn ofynnol i'r cofnodion gael eu dangos ar ffurf sy'n caniatáu mynd â hwy ymaith.

(9) Rhaid i swyddog gorfodaeth—

(a) cyn gynted ag y bo'n rhesymol ymarferol ar ôl ymafael mewn unrhyw gofnodion o dan baragraff (8), ddarparu derbynneb ysgrifenedig i'r meddiannydd sy'n nodi'r cofnodion hynny, a

(b) dychwelyd y cofnodion i'r meddiannydd cyn gynted ag y bo'n rhesymol ymarferol unwaith nad ydynt yn ofynnol mwyach at ddibenion achos o dan adran 34D(3) o Ddeddf 1990 neu'r Gorchymyn hwn.

(10) Caiff swyddog gorfodaeth sy'n mynd i fangre o dan yr erthygl hon, neu warrant a ddyroddir odani, at ddibenion ymchwilio i droseddau o dan adran 34D(3) o Ddeddf 1990 neu gasglu tystiolaeth a all fod yn ofynnol mewn achos o dan adran 34D(3) o Ddeddf 1990 neu'r Gorchymyn hwn—

(a) mesur, neu dynnu ffotograffau, neu wneud recordiadau o unrhyw ran o'r fangre, unrhyw wrthrych ar y fangre neu unrhyw beth sydd ynghlwm wrth y fangre neu sydd fel arall yn ffurfio rhan ohoni,

(b) cymryd sampl o unrhyw eitem neu unrhyw sylwedd,

(c) gweithredu unrhyw offer a geir ar y fangre,

(d) ymafael mewn unrhyw offer a geir ar y fangre a chadw'r offer hwnnw am gyhyd ag sy'n rhesymol angenrheidiol.

(11) Caiff swyddog gorfodaeth ddinistrio neu waredu fel arall unrhyw sampl a gymerir o dan yr erthygl hon pan na fydd y sampl yn ofynnol mwyach.

(12) Rhaid i swyddog gorfodaeth—

(a) cyn gynted ag y bo'n rhesymol ymarferol ar ôl ymafael mewn unrhyw offer o dan baragraff (10)(d), ddarparu derbynneb ysgrifenedig i'r meddiannydd sy'n nodi'r offer yr ymafaelwyd ynddynt, a

(b) dychwelyd yr offer i'r meddiannydd cyn gynted ag y bo'n rhesymol ymarferol unwaith nad ydynt yn ofynnol mwyach at ddibenion achos o dan adran 34D(3) o Ddeddf 1990 neu'r Gorchymyn hwn.

(ii) require any person having charge of, or otherwise concerned with the operation of the computer, apparatus or material to provide such assistance as may reasonably be required, and

(iii) require the records to be produced in a form in which they may be taken away.

(9) An enforcement officer must—

(a) as soon as reasonably practicable after seizure of any records under paragraph (8), provide the occupier with a written receipt identifying those records, and

(b) return the records to the occupier as soon as reasonably practicable once they are no longer required for the purposes of proceedings under section 34D(3) of the 1990 Act or this Order.

(10) An enforcement officer who enters premises under this article, or a warrant issued under it may, for the purposes of investigating offences under section 34D(3) of the 1990 Act or gathering evidence that may be required in proceedings under section 34D(3) of the 1990 Act or this Order—

(a) measure, photograph or take recordings of any part of the premises, any object on the premises or anything that is attached to or otherwise forms part of the premises,

(b) take a sample of any article or substance,

(c) operate any equipment found on the premises,

(d) seize any equipment found on the premises and retain such equipment for so long as is reasonably necessary.

(11) An enforcement officer may destroy or otherwise dispose of any sample taken under this article when the sample is no longer required.

(12) An enforcement officer must—

(a) as soon as reasonably practicable after seizure of any equipment under paragraph (10)(d), provide the occupier with a written receipt identifying the equipment seized, and

(b) return the equipment to the occupier as soon as reasonably practicable once it is no longer required for the purposes of proceedings under section 34D(3) of the 1990 Act or this Order.

(13) Nid yw'r erthygl hon yn gymwys i unrhyw fangre o fewn paragraff (a) na (b) o adran 75(5) (eiddo domestig a charafannau) o Ddeddf 1990.

(13) This article does not apply to any premises within paragraph (a) or (b) of section 75(5) (domestic property and caravans) of the 1990 Act.

*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 adran 34D(3) o Ddeddf 1990.

(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 £300.

**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 gynnigir (“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).

**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.

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 34D(3) 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 as a fixed monetary penalty is £300.

**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.



## 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 Gorchymyn hwn 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.

## 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;

## 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 this Order 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) bod y penderfyniad yn anghywir mewn cyfraith;
- (c) bod y penderfyniad yn afresymol;
- (d) unrhyw reswm tebyg arall.

- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable;
- (d) any other similar reason.

**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 dechrau achos troseddol yn erbyn y person hwnnw am y drosedd 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.

**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 i'r rheoleiddiwr unrhyw swm a bennir gan y rheoleiddiwr (“cosb ariannol amrywiadwy”) mewn perthynas â throedd o dan adran 34D(3) o Ddeddf 1990.

(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.

**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 section 34D(3) of the 1990 Act.

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

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

- (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 unrhyw wybodaeth 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 gynigir (“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).

### 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 y camau sydd 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.

(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).

### 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.

## 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 hebbynt.

(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 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.

## 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 nag 28 o ddiwrnodau,
- (e) hawliau apelio, ac
- (f) canlyniadau peidio â thalu.

## 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.

## 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.

## 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 dechrau 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 fydd y rheoleiddiwr yn hysbysu'r person bod y person wedi methu â chydymffurfio â'r ymgymeriad hwnnw.

## 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 sy'n 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 bodloni 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,

## 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 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) y cyfnod y mae rhaid talu o'i fewn, na chaiff fod yn llai nag 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 ymgymieriad trydydd parti cyn y terfyn amser 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.

- (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.

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

## RHAN 5

### Hysbysiad 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 y mae’r rheoleiddiwr wedi mynd iddynt 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 nag 28 o ddiwrnodau,
- (e) hawliau apelio, ac
- (f) canlyniadau peidio â thalu.

(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 hysbysiadau 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;

## PART 5

### Enforcement cost recovery notice

#### 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) bod y penderfyniad yn afresymol am unrhyw reswm arall;
- (e) unrhyw reswm tebyg arall.

- (d) that the decision was unreasonable for any other reason;
- (e) any other similar reason.

## 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 cosb ariannol amrywiadwy, cosb am beidio â chydymffurfio neu hysbysiad adennill cost gorfodaeth yn ôl neu leihau'r swm a bennir yn y gosb neu'r hysbysiad.

#### Canllawiau ar ddefnyddio sancsiynau sifil

**25.**—(1) Pan fo'r Gorchymyn hwn yn rhoi pŵer i'r rheoleiddiwr 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;
- (c) rhaid i'r rheoleiddiwr ddiwygio'r canllawiau pan fo'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,

## 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 this Order confers 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 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) 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 person yn rhoi gwybod o'i wirfodd nad yw wedi cydymffurfio), a
- (d) hawliau i gyflwyno sylwadau a gwrthwynebiadau a hawliau apelio.

- (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.

### 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.

### 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.

### 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 unrhyw ganllawiau diwygiedig o dan y Gorchymyn hwn.

### Consultation on guidance

**27.** The regulator must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this Order.

### Cyhoeddi camau gorfodi

**28.—(1)** Pan fo pŵer yn cael ei roi i'r rheoleiddiwr i osod sancsiwn sifil o dan y Gorchymyn hwn, 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 yn sgil talu'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.

### Publication of enforcement action

**28.—(1)** Where a power is conferred on the regulator to impose a civil sanction under this Order, 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.

## Adennill taliadau

29. Caiff y rheoleiddiwr adennill unrhyw gosb ariannol benodedig, unrhyw gosb ariannol amrywiadwy neu unrhyw gosb am beidio â chydymffurfio a osodir o dan y Gorchymyn hwn 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 Gorchymyn hwn 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 brofi ag mewn erlyniad troseddol.

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

(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 Gorchymyn hwn—

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

## Recovery of payments

29. The regulator may recover any fixed monetary penalty, variable monetary penalty or non-compliance penalty imposed under this Order 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 this Order 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 this Order—

- (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.

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£8.14

<http://www.legislation.gov.uk/id/wsi/2023/1296>

ISBN 978-0-348-39504-4



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