

Draft Regulations laid before Senedd Cymru under section 62(3) of the Regulatory Enforcement and Sanctions Act 2008, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2024 No. (W.)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Environmental Protection
(Single-use Vapes) (Wales)
Regulations 2024**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in Wales, prohibit the supply of single-use vapes. They are made under powers conferred by section 140 of the Environmental Protection Act 1990 (“the 1990 Act”) and section 62 of the Regulatory Enforcement and Sanctions Act 2008 (“the 2008 Act”). The 1990 Act allows the Welsh Ministers to prohibit the use, supply, and storage of specified articles to prevent them from causing pollution of the environment and harm to the health of animals. It also allows them to confer powers corresponding to those under section 108 of the Environment Act 1995 on authorised persons, including powers of entry, examination, and investigation, for taking photographs and samples, and the search and seizure of documents. The 2008 Act allows the Welsh Ministers, when making secondary legislation creating a criminal offence, to make any provision which could be made under Part 3 of the 2008 Act. This includes the imposition of the following civil sanctions: fixed monetary penalties, variable monetary penalties, compliance notices, non-compliance penalties, stop notices and enforcement undertakings.

Part 1 of these Regulations includes interpretation provisions, such as the definitions of “supply” (regulation 2) and of a “single-use vape” (regulation 3).

Part 2 of these Regulations sets out two offences. The first prohibits the supply, or offer for supply, of single-use vapes (regulation 4). Breach of these provisions is an offence. The second makes it an offence to obstruct enforcement officers from exercising their powers or to fail to comply with their requests (regulation 5). A defence of due diligence is provided for in regulation 6.

Part 3 is concerned with enforcement and investigatory powers. It introduces the “authorised purpose” for which an enforcement officer’s powers must be exercised, being to determine whether an offence has been committed or a requirement of a civil sanction has been contravened (regulation 7). The enforcement powers are contained in regulations 9 and 10 and include powers of entry, examination, and investigation, taking photographs and samples, and the search and seizure of documents. Regulation 11 provides for compensation associated with these powers. Regulation 12 provides a power for the Welsh Ministers to direct that certain single-use vapes be treated as waste.

Part 3 also introduces a civil sanctions regime to enable regulators to impose a range of civil sanctions in relation to the Part 2 offences (regulation 8 and the Schedule). These are: fixed monetary penalties, variable monetary penalties, compliance notices, stop notices, enforcement cost recovery notices and non-compliance penalties. Regulators may also accept enforcement undertakings under these provisions. The Regulations make provision for the procedure relating to these civil sanctions and the available appeal mechanisms. Failure to comply with a stop notice is an offence (paragraph 18 of the Schedule). All appeals relating to a civil sanction are to the First-tier Tribunal. Regulators are able to recover the costs of enforcement in the case of compliance notices and stop notices, and must issue guidance about their use of enforcement cost recovery notices (paragraph 29 of the Schedule).

Part 3 provides for the publication of information on enforcement action taken by regulators (regulation 13). Regulation 14 provides that guidance relating to the use of civil sanctions must be prepared and consulted on, and specifies information to be included in such guidance.

Part 4 contains supplementary provision for review of the Regulations (regulation 15).

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, Cathays Park, Cardiff, CF10 3NQ.

Draft Regulations laid before Senedd Cymru under section 62(3) of the Regulatory Enforcement and Sanctions Act 2008, for approval by resolution of Senedd Cymru.

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2024 No. (W.)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Environmental Protection
(Single-use Vapes) (Wales)
Regulations 2024**

Made ***

Coming into force ***

The Welsh Ministers make the following Regulations in exercise of the powers conferred by section 140(1)(c) and (d), (3)(a), (c) and (d) and (9) of the Environmental Protection Act 1990(1) (“the 1990 Act”) and section 62(2) of the Regulatory Enforcement and Sanctions Act 2008(2) (“the 2008 Act”).

The Welsh Ministers—

- (a) consider it appropriate to make these Regulations for the purpose of preventing the articles specified in them from causing pollution of the environment and harm to the health of animals;
- (b) have published a notice in the London Gazette and the Western Mail in accordance with section 140(6)(b)(3) of the 1990 Act, and have considered the representations made in

(1) 1990 c. 43. Section 140(3)(c) was amended by S.I. 1999/1108. By virtue of Article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), and section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (2006 c. 32), subject to certain exceptions that are not relevant to these Regulations, the functions of the Secretary of State under section 140 are exercisable by the Welsh Ministers in relation to Wales.

(2) 2008 c. 13.

(3) Section 140(6)(b) was amended by S.I. 2012/1923.

- accordance with that notice as required by section 140(6)(c) of the 1990 Act;
- (c) have consulted the Secretary of State in accordance with section 59(3) of the 2008 Act;
 - (d) have consulted local authorities (who are regulators for the purposes of these Regulations), in accordance with section 60(1) of the 2008 Act;
 - (e) have consulted such organisations that the Welsh Ministers considered to be representative of persons likely to be substantially affected by the proposals, and such other persons as the Welsh Ministers considered appropriate, in accordance with section 60(1) of the 2008 Act;
 - (f) are satisfied, in accordance with section 66 of the 2008 Act, that local authorities (who are regulators for the purposes 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 62(3) of the 2008 Act, 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 Environmental Protection (Single-use Vapes) (Wales) Regulations 2024.

(2) These Regulations come into force on [1 April 2025].

(3) These Regulations apply in relation to Wales only.

Interpretation

2. In these Regulations—

“civil sanction” means a fixed monetary penalty, a variable monetary penalty, a compliance notice, a non-compliance penalty, a stop notice or an enforcement undertaking (and references to imposition of a civil sanction include acceptance of an enforcement undertaking);

“compliance notice” has the meaning given by paragraph 1(1)(c) of the Schedule;

“container” means a cartridge, pod, tank, capsule, or any other receptacle designed to hold a vaping substance and to be used with a vape;

“enforcement officer” means a person authorised under regulation 7(1);

“enforcement undertaking” means a written undertaking to take such action as may be specified in the undertaking, within such period as may be so specified;

“fixed monetary penalty” has the meaning given by paragraph 1(1)(a) of the Schedule;

“local authority” means a county council or county borough council in Wales;

“non-compliance penalty” has the meaning given in paragraph 26(1) of the Schedule;

“regulator” means a local authority;

“single-use vape” has the meaning given in regulation 3(1);

“stop notice” has the meaning given by paragraph 11(2) of the Schedule;

“supply” means supply, whether by sale or not, in the course of a business;

“third-party undertaking” has the meaning given by paragraph 3(1) of the Schedule;

“vape” means a device that—

- (a) vaporises substances, other than tobacco, for the purposes of inhalation through a mouthpiece (whether or not it also vaporises tobacco); and
- (b) is not a medical device within the meaning of regulation 2(1) of the Medical Devices Regulations 2002⁽¹⁾ or a medicinal product within the meaning of regulation 2(1) of the Human Medicines Regulations 2012⁽²⁾;

“vaping substance” means a substance, other than tobacco, that is intended to be vaporised with a vape;

“vaporises” includes aerosolises (and “vaporised” is to be construed accordingly);

“variable monetary penalty” has the meaning given by paragraph 1(1)(b) in the Schedule.

Meaning of single-use vape

3.—(1) A single-use vape is a vape which is not designed or intended to be re-used.

(1) S.I. 2002/618, amended by S.I. 2008/2936. There are other amending instruments but none are relevant.

(2) S.I. 2012/1916.

(2) A single-use vape is not intended to be re-used if it is—

- (a) not refillable,
- (b) not rechargeable, or
- (c) not refillable and not rechargeable.

(3) For the purposes of this regulation, a vape is not refillable unless it is designed to include—

- (a) a single-use container which is separately available and can be replaced by an individual user in the normal course of use, or
- (b) a container which can be refilled by an individual user in the normal course of use.

(4) For the purposes of this regulation, a vape is not rechargeable if it is designed to contain—

- (a) a battery which cannot be recharged, or
- (b) a coil which is not separately available and cannot be replaced by an individual user in the normal course of use, including any coil which is contained in a single-use cartridge or pod which is not separately available and cannot be replaced by an individual user in the normal course of use.

(5) For the purposes of this regulation, “separately available” means available for purchase by an individual user.

PART 2

Offences

Offence: supply of single-use vapes

4.—(1) A person commits an offence if they—

- (a) supply a single-use vape,
- (b) offer to supply a single-use vape, or
- (c) have in their possession for supply a single-use vape.

(2) A person convicted of an offence under paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding the general limit in a magistrates’ court, or both, or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

Offence: obstruction of enforcement officers and failure to comply with their requests

5.—(1) A person commits an offence if they—

- (a) intentionally obstruct an enforcement officer exercising powers under regulation 9 (powers of entry) or regulation 10 (power of entry, investigation, and examination etc.), or
- (b) fail, without reasonable excuse, to comply with a request made by an enforcement officer in the exercise of their powers under regulation 10(1)(f), (g) or (h).

(2) A person convicted of an offence under paragraph (1)(a) or (1)(b) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

6.—(1) Subject to paragraphs (2) and (4), in proceedings for an offence under this Part, it is a defence for a person (“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under paragraph (1) which involves a third-party allegation unless P has—

- (a) served a notice in accordance with paragraph (3), or
- (b) obtained the leave of the court.

(3) The notice must—

- (a) give any information in P’s possession which identifies or assists in identifying the person who—
 - (i) committed the act or default, or
 - (ii) supplied the information upon which P relied, and
- (b) be served on the person bringing the proceedings not less than 7 clear days before the hearing of the proceedings.

(4) P may not rely on a defence under paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person, unless it was reasonable for P to have relied on the information, having regard in particular to—

- (a) the steps that P took, and those which might reasonably have been taken, for the purposes of verifying the information, and
- (b) whether P had any reason to disbelieve the information.

(5) In this regulation, “third-party allegation” means an allegation that the commission of the offence was due to—

- (a) the act or default of another person, or
- (b) reliance on information supplied by another person.

PART 3

Enforcement, investigatory powers, and civil sanctions

Enforcement

7.—(1) A regulator may authorise any person as an enforcement officer to exercise, for an authorised purpose and in accordance with the terms of the authorisation, any of the powers specified in regulation 10 (power of entry, investigation, and examination etc.) if that person appears to the regulator suitable to exercise them.

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

(3) In this Part, “authorised purpose” means the purpose of determining whether an offence under these Regulations has been or is being committed, or whether any requirement of a civil sanction imposed under these Regulations has been or is being contravened.

Civil sanctions

8. The Schedule makes provision for the enforcement of an offence, via civil sanctions, under Part 2 of these Regulations.

Powers of entry

9.—(1) Subject to paragraph (2), an enforcement officer may, at any reasonable time and without prior notice, enter premises which the enforcement officer has reason to suspect it is necessary to enter for an authorised purpose.

(2) Where any of the conditions in paragraph (3) apply, any entry onto those premises by virtue of paragraph (1) may be effected only under the authority of a warrant granted by a justice of the peace.

(3) If a justice of the peace, on sworn information in writing, is satisfied—

- (a) that there are reasonable grounds to enter any premises in exercise of the power in paragraph (1), and
- (b) that any of the conditions in paragraph (4) are met,

the justice of the peace may by warrant authorise an enforcement officer to enter the premises, if need be, by reasonable force.

- (4) The conditions mentioned in paragraph (3) are—
- (a) entry has been refused,
 - (b) the enforcement officer apprehends on reasonable grounds that entry is likely to be refused,
 - (c) the premises are unoccupied,
 - (d) the occupier is temporarily absent from the premises and the case is one of urgency, or
 - (e) an application to enter the premises would defeat the object of the proposed entry.

(5) A warrant granted under paragraph (3) continues in force until the end of the period of 28 days beginning with the date it was issued.

(6) An enforcement officer must, if leaving the premises at a time where no owner or occupier is present, leave it as effectively secured against trespassers as the enforcement officer found it.

(7) This regulation does not apply to residential premises.

(8) For the purposes of this regulation, “residential premises” means premises, or any part of premises, used wholly or mainly as a dwelling.

Power of entry, investigation, and examination etc.

10.—(1) An enforcement officer entering premises under or by virtue of regulation 9 (powers of entry) may—

- (a) be accompanied by another enforcement officer, and if the enforcement officer has reasonable cause to apprehend any serious obstruction in the execution of their duty, a constable;
- (b) bring any equipment or materials for the authorised purpose for which the power of entry is being exercised;
- (c) make such examination and investigation as may in any circumstances be necessary;
- (d) subject to paragraph (2), search those premises and seize and remove any documents (other than single-use vapes, or components of single-use vapes) in or on the premises, for the purpose of any examination or investigation under sub-paragraph (c);
- (e) take such measurements and photographs and make such recordings as the enforcement officer considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (f) require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any

documents which it is necessary for the enforcement officer to see for the purposes of any examination or investigation under sub-paragraph (c) and to inspect and take copies of, or of any entry in, the documents;

- (g) require any person to provide the enforcement officer with such facilities and assistance with respect to any matters or things within the person's control, or in relation to which that person has responsibilities, as are necessary to enable the enforcement officer to exercise any of the powers conferred by this regulation;
- (h) direct that those premises or any part of them, or anything in them, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of examination or investigation under sub-paragraph (c);
- (i) take any samples, or cause samples to be taken, of any single-use vapes, or components of single-use vapes, found in or on those premises, and cause such single-use vapes or components to be analysed or tested;
- (j) in the case of any single-use vape, or component of a single-use vape, found in or on those premises, take possession of it, and retain it for so long as is necessary for all or any of the following purposes—
 - (i) to dismantle it or to cause it to be dismantled (but not so as to damage or destroy it, unless that is necessary);
 - (ii) to examine it, and to subject it to any process or test, or cause it to be examined;
 - (iii) to ensure that it is not tampered with before the examination is completed;
 - (iv) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations;
- (k) once in or on those premises, make a purchase of a single-use vape, or enter into an agreement to secure provision of a single-use vape, without first giving notice, or obtaining a warrant to do so.

(2) Subject to paragraph (4), an enforcement officer may not exercise the power in paragraph (1)(d) without—

- (a) the consent of a person entitled to grant access to material on or accessible from the premises, or
- (b) the authority of a warrant granted under paragraph (3).

(3) A justice of the peace may by warrant authorise an enforcement officer to exercise the powers in paragraph (1)(d) in accordance with the warrant and, if need be, by force, if the justice of the peace is satisfied there are reasonable grounds for believing that—

- (a) there are documents on or accessible from the premises in question which is likely to be of substantial value (by themselves or together with other material) to an examination or investigation under paragraph (1)(c), and
- (b) it is impracticable to communicate with a person entitled to grant access to the documents, or access to them is unlikely to be granted unless a warrant is produced.

(4) An enforcement officer may exercise the power in paragraph (1)(d) without consent or the authority of a warrant if the enforcement officer has reasonable grounds for believing that exercising the power is necessary to prevent the documents from being concealed, lost, altered, or destroyed.

(5) Where an enforcement officer removes a document under the power in paragraph (1)(d) that is “protected material”—

- (a) the material may not be used for the authorised purpose, and
- (b) the material must be returned to the premises from which it was removed, or to the person who had possession or control over it immediately before it was removed, as soon as reasonably practicable (but the enforcement officer may retain, or take copies of, any information contained in the document in relation to which no such entitlement exists).

(6) For the purposes of this regulation, “protected material” means—

- (a) material subject to legal professional privilege,
- (b) excluded material within the meaning of section 11 of the Police and Criminal Evidence Act 1984⁽¹⁾, or
- (c) journalistic material, within the meaning of section 13 of the Police and Criminal Evidence Act 1984⁽²⁾, which is not excluded material.

(7) Nothing in paragraph (1)(f) compels the production by a person of any documents of which that person would, on grounds of legal professional privilege, be entitled to withhold production on an

(1) 1984 c. 60.
(2) 1984 c. 60.

order for disclosure in an action in the County Court or High Court.

(8) An enforcement officer seeking to exercise a power under paragraph (1) must produce evidence of identity and authority if requested by a person who is, or who appears to be—

- (a) a supplier of single-use vapes;
- (b) an employee of a supplier referred to in subparagraph (a);
- (c) the owner or occupier of any premises in which the enforcement officer seeks to exercise the power concerned.

Compensation for damage caused by exercise of powers of entry, investigation, and examination etc.

11.—(1) This Regulation applies to any power to enter under regulation 9, or to do anything under regulation 10.

(2) Subject to paragraph (3), the regulator under whose authorisation the enforcement officer acts must compensate any person who has sustained loss or damage by reason of—

- (a) the exercise by the enforcement officer of that power, or
- (b) the performance of, or failure to perform, the duty imposed by regulation 9(6).

(3) Compensation will not be payable in respect of any loss or damage which—

- (a) is attributable to the default of the person who sustained it, or
- (b) is loss or damage in respect of which compensation is payable by virtue of any other provision of a pollution control enactment (as defined under section 108(15) of the Environment Act 1995⁽¹⁾).

(4) Any dispute as to a person's entitlement to compensation under this regulation, or as to the amount of any compensation due, will be referred to the arbitration of a single arbitrator.

(5) An enforcement officer will not be liable in any civil or criminal proceedings for anything done in the purported exercise of any relevant power if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Disposal of single-use vapes

12.—(1) The Welsh Ministers may direct that single-use vapes of a description specified in paragraph (2)

(1) 1995 c. 25.

are to be treated as waste and disposed of or otherwise treated as the Welsh Ministers consider necessary.

(2) The single-use vapes referred to in paragraph (1) are any single-use vapes which have been supplied, offered for supply, or held in a person's possession for supply in contravention of Part 2, and include single-use vapes in respect of which a regulator has imposed civil sanctions under these Regulations.

(3) A direction under paragraph (1)—

- (a) may be given to any one or more regulators in connection with any enforcement action taken by a regulator under these Regulations;
- (b) may be applicable in respect of single-use vapes retained by any enforcement officer who is—
 - (i) authorised by the regulator concerned, and
 - (ii) acting for an authorised purpose;
- (c) must not be executed by the regulator concerned (or by a person acting on the regulator's behalf) until any right of appeal in relation to the offence under these Regulations is exhausted, or the period for bringing that appeal has ended without an appeal being brought.

Publication of information about enforcement action

13.—(1) Where a regulator imposes civil sanctions under these Regulations, the regulator must from time to time publish—

- (a) the cases in which the civil sanction has been imposed,
- (b) where the civil sanction is a fixed monetary penalty, a variable monetary penalty, or a compliance notice, the cases in which a third-party undertaking has been accepted, and
- (c) the cases in which an enforcement undertaking has been entered into.

(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 regulation does not apply in cases where the regulator considers that publication would be inappropriate.

Guidance

14.—(1) The regulator must publish guidance about its use of civil sanctions under these Regulations in relation to an offence under Part 2.

(2) In relation to guidance relating to a fixed monetary penalty, a variable monetary penalty, a compliance notice, a non-compliance penalty, or a stop notice, the guidance must contain the relevant information set out in paragraph (3).

(3) The relevant information referred to in paragraph (2) is information as to—

- (a) the circumstances in which the penalty or notice is likely to be imposed,
- (b) the circumstances in which the penalty or notice may not be imposed,
- (c) the right to make representations and objections, and rights of appeal,
- (d) in the case of a fixed monetary penalty, the amount of the penalty, how liability for the penalty may be discharged, and the effect of discharge, and
- (e) in the case of a variable monetary penalty, the matters likely to be taken into account by the regulator in determining the amount of the penalty (including any discounts for voluntary reporting by any person of that person's non-compliance).

(4) The regulator must revise the guidance where appropriate.

(5) The regulator must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this regulation.

(6) The regulator must have regard to its guidance or revised guidance published under this regulation in exercising its functions.

PART 4

Supplementary

Review

15.—(1) The Welsh Ministers must—

- (a) as soon as reasonably practicable after the end of the period of three years from the date on which these Regulations come into force carry out a review of the operation of the provisions in Part 3 (enforcement, investigatory powers, and civil sanctions) and the Schedule,
- (b) from time to time, carry out a review of the regulatory provision contained in these Regulations (including Part 3 and the Schedule), and
- (c) publish a report setting out the conclusions of any review as soon as reasonably practicable thereafter.

(2) In the case of a review under paragraph (1)(a), the Welsh Ministers must—

- (a) consider whether the provision has implemented its objectives efficiently and effectively,
- (b) consult such persons as the Welsh Ministers consider appropriate, and
- (c) lay a copy of the report under paragraph (1)(c) before Senedd Cymru.

(3) In this regulation, “regulatory provision” has the same meaning as in section 32 of the Small Business, Enterprise and Employment Act 2015(1).

Name

Cabinet Secretary for Climate Change and Rural Affairs, one of the Welsh Ministers

Date

(1) 2015 c. 26.

SCHEDULE Regulation 8
Civil Sanctions

PART 1

Fixed monetary penalties, variable monetary penalties, and compliance notices

Imposition of a fixed monetary penalty, a variable monetary penalty, or a compliance notice

1.—(1) In relation to an offence under Part 2 of these Regulations, a regulator may, subject to paragraph (2), by notice impose a requirement on a person to—

- (a) pay the regulator a penalty of £200 (a “fixed monetary penalty”),
- (b) pay the regulator a monetary penalty of such amount as the regulator may determine (a “variable monetary penalty”), or
- (c) take such steps as the regulator may specify, within such period as it may specify, to secure that the offence does not continue or recur, or to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed (a “compliance notice”).

(2) Before so imposing a requirement under paragraph (1), 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 under regulation 5 (obstruction of enforcement officers and failure to comply with their requests), the amount of the penalty must not exceed the maximum amount of the fine that could be imposed upon conviction of that offence.

(4) A requirement under paragraph (1)(a) may not be imposed where a variable monetary penalty has been imposed, or a compliance notice or stop notice has been served, on a person in relation to the same act or omission.

(5) A requirement under paragraph (1)(b) or (1)(c) may not be imposed where a fixed monetary penalty has been imposed on a person in relation to the same act or omission, or the person has discharged liability to a fixed monetary penalty in relation to the same act or omission.

Notice of intent

2.—(1) Before a regulator may issue a fixed monetary penalty, a variable monetary penalty, or a compliance notice on a person, the regulator must serve on that person a notice of what is proposed (a “notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposed fixed monetary penalty, variable monetary penalty, or compliance notice (as the case may be);
- (b) in the case of a proposed compliance notice, the requirements of the notice;
- (c) in the case of a fixed monetary penalty or a variable monetary penalty, the amount to be paid;
- (d) 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 may not impose the proposed fixed monetary penalty, variable monetary penalty, or compliance notice.

(3) A notice of intent to issue a fixed monetary penalty must also—

- (a) offer the person on whom the notice is served the opportunity to discharge their liability for the penalty by paying the sum of £100 to the regulator within 28 days, beginning with the day on which the notice is received, and
- (b) explain the effect of that discharge.

(4) A person’s liability to a fixed monetary penalty is discharged if the person pays the sum of £100 to the regulator within the time period specified in sub-paragraph (3)(a).

(5) A person on whom a notice of intent is served may, within 28 days beginning with the day on which the notice is received, make representations and objections to the regulator in relation to the proposed imposition of the fixed monetary penalty, variable monetary penalty, or compliance notice.

(6) Sub-paragraph (5) does not apply in relation to a notice of intent to serve a fixed monetary penalty if the person makes a payment in accordance with sub-paragraph (4).

Third-party undertakings

3.—(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 third-party affected by the offence (a “third-party undertaking”).

(2) The regulator may accept or reject any such third-party undertaking.

Final notice

4.—(1) After the end of the period for making representations and objections in paragraph 2(5), the regulator must decide whether—

- (a) to impose the requirements in the notice of intent, with or without modifications, or
- (b) to impose any other requirement that the regulator has the power to impose under this Part.

(2) Where the regulator decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 5 in the case of a fixed monetary penalty, with paragraph 6 in the case of a variable monetary penalty, or with paragraph 7 in the case of a compliance notice.

(3) The regulator may not impose 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.

(4) The regulator must take into account any third-party undertaking that it has accepted, in deciding whether or not to serve a final notice.

Contents of final notice: fixed monetary penalty

5. A final notice for a fixed monetary penalty must include information as to—

- (a) the grounds for imposing the penalty,
- (b) the amount to be paid,
- (c) how payment must be made,
- (d) any early payment discounts,
- (e) the period within which payment must be made, which must not be less than 28 days beginning with the day on which the final notice was received,
- (f) rights of appeal, and
- (g) the consequences of failing to comply with the notice (including any late payment penalties).

Contents of final notice: variable monetary penalty

6. A final notice for a variable monetary penalty must include information as to—

- (a) the grounds for imposing the penalty,
- (b) the amount to be paid,

- (c) how payment must be made,
- (d) any early payment discounts,
- (e) the period within which payment must be made, which must not be less than 28 days beginning with the day on which the final notice was received,
- (f) rights of appeal, and
- (g) the consequences of failing to comply with the notice (including any late payment penalties).

Contents of final notice: compliance notice

7. A final notice for a compliance notice must include information as to—

- (a) the grounds for imposing the notice,
- (b) what compliance is required and the period within which it must be completed,
- (c) rights of appeal, and
- (d) the consequences of failing to comply with the notice.

Appeals against a final notice

8.—(1) The person receiving the 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) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable,
- (d) in the case of a compliance notice, that the nature of the requirement is unreasonable, or
- (e) that the decision was unreasonable for any other reason.

Criminal proceedings: fixed monetary penalties

9.—(1) If a notice of intent to serve a fixed monetary penalty is served on any person—

- (a) no criminal proceedings may be instituted against that person in respect of the act or omission to which the notice relates before the end of the period in which the person may discharge liability to the fixed monetary penalty under paragraph 2(3), and
- (b) if the person so discharges liability in accordance with paragraph 2(4), the person may not at any time be convicted of the relevant offence in relation to that act or omission.

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

Criminal proceedings: variable monetary penalties and compliance notices

10.—(1) If—

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

that person may 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 compliance notice is imposed on a person or 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 compliance notice or third-party undertaking.

PART 2

Stop notices

Stop notices

11.—(1) A regulator may serve a stop notice on any person in a case falling within sub-paragraph (3) or (4).

(2) A “stop notice” is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(3) A case falling within this sub-paragraph is a case where—

- (a) the person is carrying out the activity;
- (b) the regulator reasonably believes that the activity as carried on by that person is causing, or presents a significant risk of causing, serious harm to the environment (including the health of animals); and
- (c) the regulator reasonably believes that the activity as carried on by that person involves,

or is likely to involve, the commission of an offence under Part 2 of these Regulations.

(4) A case falling within this sub-paragraph is a case where the regulator reasonably believes that—

- (a) the person is likely to carry on the activity,
- (b) the activity as likely to be carried on by that person will cause, or will present a significant risk of causing, serious harm to the environment (including the health of animals); and
- (c) the activity as likely to be carried on by that person will involve, or will be likely to involve, the commission of an offence under Part 2 of these Regulations.

(5) The steps referred to in paragraph (2) must be steps to remove or reduce the harm or risk of harm to the environment (including the health of animals).

(6) A stop notice may not be served where a fixed monetary penalty has been imposed on a person in relation to the same act or omission, or the person has discharged liability to a fixed monetary penalty in relation to the same act or omission.

Contents of a stop notice

12. A stop notice must include information as to—

- (a) the grounds for serving the notice,
- (b) the steps the person must take to comply with the stop notice,
- (c) rights of appeal, and
- (d) the consequences of non-compliance.

Appeals against stop notices

13.—(1) The person on whom a stop notice is served may appeal against the decision to serve it.

(2) The grounds of 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) that any step specified in the notice is unreasonable;
- (e) that the person has not committed the offence and would not have committed it had the stop notice not been served;
- (f) that the person would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been served.

Completion certificates

14.—(1) Where, after service of a stop notice, the regulator is satisfied that the person has taken the steps specified in the notice, the regulator must issue a certificate to that effect (a “completion certificate”).

(2) The stop notice ceases to have effect on the issue of a completion certificate.

(3) The person on whom the stop notice is served may at any time apply to the regulator for a completion certificate.

(4) The regulator must make a decision as to whether to issue a completion certificate, and give written notice of its decision to the applicant, within 14 days of receipt of the application.

Appeals against a decision not to issue a completion certificate

15. The person on whom the stop notice was served may appeal against a decision not to issue a completion certificate, following an application made under paragraph 14(3), on the grounds—

- (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.

Compensation

16. The regulator must compensate a person for loss suffered as a result of the service of a stop notice, or the refusal to issue a completion certificate, if—

- (a) the stop notice is subsequently withdrawn or amended by the regulator because the decision to serve it was unreasonable, or any step specified in it was unreasonable,
- (b) the person successfully appeals against the stop notice and the First-tier Tribunal finds that the service of the notice was unreasonable, or
- (c) the person successfully appeals against the refusal to issue a completion certificate and the First-tier Tribunal finds that the refusal was unreasonable.

Appeal against compensation decision

17. A person may appeal against a decision not to award compensation, or the amount of compensation awarded—

- (a) on the grounds that the regulator’s decision was unreasonable;
- (b) on the grounds that the amount offered was based on incorrect facts.

Offence

18. Where a person on whom a stop notice is served does not comply with it, the person is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale, or imprisonment for a term not exceeding the general limit in a magistrates' court, or both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine not exceeding level 5 on the standard scale, or both.

PART 3

Enforcement undertakings

Enforcement undertakings

19. A regulator may accept an enforcement undertaking given by a person in a case where the regulator has reasonable grounds to suspect that the person has committed an offence under Part 2 of these Regulations.

Contents of an enforcement undertaking

20.—(1) An enforcement undertaking must specify—

- (a) action to secure the offence does not continue or recur,
- (b) action (including the payment of a sum of money) to benefit any person affected by the offence,
- (c) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed, or
- (d) action of a prescribed description.

(2) The enforcement undertaking must specify the period within which the action must be completed.

(3) The enforcement undertaking must include—

- (a) a statement that the enforcement undertaking is made in accordance with this Schedule,
- (b) the terms of the enforcement undertaking, and
- (c) the circumstances in which a person may be regarded as having complied with the enforcement undertaking.

(4) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if both parties agree in writing.

Acceptance of an enforcement undertaking

21. If a regulator has accepted an enforcement undertaking, then, unless the person from whom the enforcement undertaking is accepted has failed to comply with the enforcement undertaking, or any part of it—

- (a) that person may not, at any time, be convicted of the offence in respect of the act or omission to which the enforcement undertaking relates, and
- (b) the regulator may not impose on that person a fixed monetary penalty, a variable monetary penalty, a compliance notice, or a stop notice in respect of that act or omission.

Discharge of an enforcement undertaking

22.—(1) If a regulator that has accepted an enforcement undertaking is satisfied that the undertaking has been complied with, it must issue a certificate to that effect (a “discharge certificate”).

(2) The regulator may require the person who has given the enforcement undertaking to provide sufficient information to determine that the enforcement undertaking has been complied with.

(3) The person who has given the enforcement undertaking may, at any time, apply to the regulator for a discharge certificate.

(4) The regulator must decide whether to issue a discharge certificate, and give written notice of its decision to the applicant, within 14 days of the application.

Appeals against a decision not to issue a discharge certificate

23. The person to whom written notice is given that a discharge certificate will not be issued, following an application made under paragraph 22(3), may appeal that decision on the grounds—

- (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.

Inaccurate, misleading, or incomplete information

24.—(1) A person who has given inaccurate, misleading, or incomplete information in relation to an enforcement undertaking is to be taken not to have complied with it.

(2) A regulator may by notice in writing revoke a discharge certificate which it issued under paragraph 22, if it was issued on the basis of inaccurate, misleading, or incomplete information.

Non-compliance with enforcement undertaking

25.—(1) If an enforcement undertaking is not complied with, the regulator that accepted the enforcement undertaking may either—

- (a) serve a fixed penalty notice, a variable penalty notice, a compliance notice, or a stop notice, or
- (b) bring criminal proceedings.

(2) If a person has complied partly but not fully with an enforcement undertaking, that partial compliance must be taken into account in the imposition of any criminal or other civil sanction on the person.

(3) Criminal proceedings for an offence to which an enforcement undertaking relates may be instituted at any time up to twelve months from the date on which the regulator notifies the person required to comply with that enforcement undertaking of that person's failure to do so.

PART 4

Non-compliance penalties

Non-compliance penalties

26.—(1) If a person fails to comply with a compliance notice or a third-party undertaking, the regulator may serve a notice on that person imposing a monetary penalty (a “non-compliance penalty”) in respect of the same 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 compliance notice or 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 non-compliance penalty,
- (b) the amount to be paid,
- (c) how payment may be made,
- (d) the period in which payment must be made, which must not be less than 28 days beginning with the day on which the notice is received,
- (e) rights of appeal,
- (f) the consequences of failure to make payment in the specified period, and
- (g) any circumstances in which the regulator may reduce the amount of the penalty.

(5) The non-compliance penalty is not payable if the requirements of the compliance notice are complied with, or the third-party undertaking is fulfilled, before the time set for payment of the non-compliance penalty.

Appeals against non-compliance penalties

27.—(1) The person on whom the notice imposing the non-compliance penalty is served may appeal against it.

(2) The grounds of appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision to serve the notice was wrong in law;
- (c) that the decision was unfair or unreasonable;
- (d) that the amount of the penalty was unreasonable.

PART 5

Administration and appeals

Withdrawing or amending a notice

28. A regulator may at any time in writing—

- (a) withdraw a notice imposing a fixed monetary penalty, a variable monetary penalty, or a non-compliance penalty,
- (b) reduce the amount of any penalty specified in the notice, or
- (c) withdraw a compliance notice or a stop notice, or amend the steps specified in a compliance notice or a stop notice.

Enforcement cost recovery notices

29.—(1) A regulator may serve a notice on a person on whom a stop notice or a compliance notice has been served, requiring that person to pay the costs incurred by the regulator in relation to the requirement imposed by the stop notice or compliance notice (an “enforcement cost recovery notice”), up to the date upon which the stop notice or the compliance notice is served.

(2) “Costs” include, in particular—

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

(3) The enforcement cost recovery notice must specify—

- (a) how payment may be made,
- (b) the amount required to be paid,
- (c) the period in which payment must be made, which must not be less than 28 days beginning with the day on which the notice is received,
- (d) the grounds for imposing the notice,
- (e) the right of appeal, and
- (f) the consequences of a failure to comply with the notice in the specified period.

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

(5) The person required to pay costs by an enforcement cost recovery notice is not liable to pay any costs shown by that person to have been unnecessarily incurred by the regulator.

(6) Each regulator must publish guidance about its use of enforcement cost recovery notices.

(7) The regulator must revise the guidance where appropriate.

(8) The regulator must have regard to its guidance or revised guidance published under this paragraph in exercising its functions.

Appeals against enforcement cost recovery notices

30. The person required to pay costs under an enforcement cost recovery notice 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 the costs.

Power to recover payments

31. A regulator may recover any fixed monetary penalty, variable monetary penalty, non-compliance penalty, or costs set out in an enforcement cost recovery notice imposed under this Schedule, on the order of a court, as if payable under a court order.

Appeals: general provisions

32.—(1) An appeal under paragraph 8, 13, 15, 17, 23, 27, or 30 of this Schedule is to the First-tier Tribunal.

(2) All notices (other than stop notices) are suspended pending the determination or withdrawal of an appeal.

(3) The First-tier Tribunal may, in relation to a requirement of a civil sanction imposed under this

Schedule, or the service of a notice under this Schedule—

- (a) set aside the requirement or the notice,
- (b) confirm the requirement or the notice,
- (c) vary the requirement or the notice or any part of it,
- (d) take such steps as the regulator could have taken in relation to the act or omission giving rise to the requirement or the notice, or
- (e) remit the decision whether to confirm the requirement or the notice, or any matter relating to that decision, to the regulator.