
WELSH STATUTORY INSTRUMENTS

2010 No. 1821

The Environmental Civil Sanctions (Wales) Order 2010

PART 3

Non-compliance and enforcement

Recovery of payments

6. The regulator may recover any fixed monetary penalty, variable monetary penalty or non-compliance penalty on the order of a court, as if payable under a court order.

Non-compliance penalties

7.—(1) If a person fails to comply with a compliance notice, a restoration 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 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 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 must be made;
- (d) the period in which payment must be made, which must not be less than 28 days;
- (e) the right of appeal;
- (f) the consequences of failure to make payment in the specified period;
- (g) any circumstances in which the regulator may reduce the amount of the penalty.

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

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

(7) The grounds of appeal are—

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

- (e) any other similar reason.

Enforcement cost recovery notices

8.—(1) A regulator may serve a notice (“an enforcement cost recovery notice”) on a person on whom a variable monetary penalty notice, compliance notice, restoration notice or stop notice has been served requiring that person to pay the costs incurred by the regulator in relation to the imposition of that notice 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 must be made;
- (d) the period in which payment must be made, which must not be less than 28 days;
- (e) the right of appeal; and
- (f) the consequences of failure to comply with the notice in the specified period.

(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.

(6) The person required to pay costs 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.