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OFFERYNNAU STATUDOL  
CYMRU

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WELSH STATUTORY  
INSTRUMENTS

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**2010 Rhif 1821 (Cy.178)**

**2010 No. 1821 (W.178)**

**YR AMGYLCHEDD, CYMRU**

**ENVIRONMENT, WALES**

**TRIBIWNLYSOEDD AC YMCHWILIADAU,  
CYMRU**

**TRIBUNALS AND INQUIRIES,  
WALES**

**Gorchymyn Sancsiynau Sifil  
Amgylcheddol (Cymru) 2010**

**The Environmental Civil Sanctions  
(Wales) Order 2010**

**NODYN ESBONIADOL**

**EXPLANATORY NOTE**

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

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

Mae'r Gorchymyn hwn yn cael ei wneud o dan Ran 3 o Ddeddf Gorfodi Rheoleiddiol a Sancsiynau 2008. Mae'n caniatáu i Asiantaeth yr Amgylchedd, fel rheoleiddiwr, osod sancsiynau sifil mewn perthynas â'r tramgwyddau a bennir yn Atodlen 5 i'r Gorchymyn.

This Order is made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008. It permits the Environment Agency, as regulator, to impose civil sanctions in relation to the offences specified in Schedule 5 to the Order.

Cosbau ariannol penodedig, cosbau ariannol newidiol, hysbysiadau cydymffurfio, hysbysiadau adfer a hysbysiadau stop, ac ymrwymadau gorfodi yw'r sancsiynau sifil (erthygl 3).

The civil sanctions are fixed monetary penalties, variable monetary penalties, compliance notices, restoration notices and stop notices, and enforcement undertakings (article 3).

Mae'r Gorchymyn yn darparu ar gyfer y weithdrefn ynglŷn â chosbau ariannol penodedig (Atodlen 1), cosbau ariannol newidiol, hysbysiadau cydymffurfio, hysbysiadau adfer ac ymrwymadau trydydd parti (Atodlen 2), hysbysiadau stop (Atodlen 3) ac ymrwymadau gorfodi (Atodlen 4).

The Order makes provision for the procedure relating to fixed monetary penalties (Schedule 1), variable monetary penalties, compliance notices, restoration notices and third party undertakings (Schedule 2), stop notices (Schedule 3) and enforcement undertakings (Schedule 4).

Mae'n caniatáu i'r rheoleiddiwr gyflwyno hysbysiad diffyg cydymffurfio yn gosod cosb os na chydymffurfir â hysbysiad cydymffurfio, hysbysiad adfer neu ymrwymiad trydydd parti (erthygl 7).

It permits the regulator to serve a non-compliance notice imposing a penalty in the event of non-compliance with a compliance notice, restoration notice or third party undertaking (article 7).

O dan erthygl 8 caiff y rheoleiddiwr gyflwyno hysbysiad adennill cost gorfodi mewn perthynas â chostau ymchwilio a gweinyddu y bydd y rheoleiddiwr yn eu tynnu, a chostau'r rheoleiddiwr wrth sicrhau cyngor arbenigol.

Under article 8 the regulator may serve an enforcement cost recovery notice in relation to investigation and administration costs incurred by the regulator, and the costs of the regulator in obtaining expert advice.

Mae erthygl 10 yn nodi'r mecanwaith apelio. I Dribiwnlys yr Haen Gyntaf y cyflwynir apelau.

Article 10 sets out the appeal mechanism. Appeals are to the First-tier Tribunal.

Mae erthyglau 11 i 13 yn darparu bod rhaid i ganllawiau gael eu paratoi ynglŷn â defnyddio sancsiynau sifil a bod rhaid ymgynghori ynghylch y canllawiau hynny, ac mae erthygl 14 yn darparu ar gyfer cyhoeddi gwybodaeth am y camau gorfodi a gymerir gan y rheoleiddiwr.

Paratowyd asesiad effaith ar gyfer yr offeryn hwn. Mae copi ar gael gan Lywodraeth Cynulliad Cymru, Parc Cathays, Caerdydd CF10 3NQ.

Articles 11 to 13 provide that guidance must be prepared and consulted on relating to the use of civil sanctions, and article 14 provides for publication of information on enforcement action taken by the regulator.

An impact assessment has been prepared for this Order. A copy can be obtained from the Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ.

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**ENVIRONMENT, WALES**

**TRIBIWNLYSOEDD AC YMCHWILIADAU,  
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**TRIBUNALS AND INQUIRIES,  
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**Gorchymyn Sancsiynau Sifil  
Amgylcheddol (Cymru) 2010**

**The Environmental Civil Sanctions  
(Wales) Order 2010**

*Gwnaed* 14 Gorffennaf 2010

*Made* 14 July 2010

*Yn dod i rym* 15 Gorffennaf 2010

*Coming into force* 15 July 2010

CYNNWYS

CONTENTS

RHAN 1

PART 1

Rhagymadrodd

Introduction

1. Enwi, cymhwyso a chychwyn
2. Rheoleiddiwr

1. Title, application and commencement
2. Regulator

RHAN 2

PART 2

Sancsiynau sifil, hysbysiadau ac ymrwymadau

Civil sanctions, notices and undertakings

3. Sancsiynau sifil, hysbysiadau ac ymrwymadau
4. Cwmpas
5. Cyfuno sancsiynau

3. Civil sanctions, notices and undertakings
4. Scope
5. Combination of sanctions

RHAN 3

PART 3

Diffyg cydymffurfio a gorfodi

Non-compliance and enforcement

6. Adennill taliadau
7. Cosbau diffyg cydymffurfio
8. Hysbysiadau adennill cost gorfodi

6. Recovery of payments
7. Non-compliance penalties
8. Enforcement cost recovery notices

RHAN 4  
Gweinyddu

PART 4  
Administration

9. Tynnu hysbysiad yn ôl neu ei ddiwygio
10. Apelau
11. Canllawiau ynghylch defnyddio sancsiynau sifil
12. Canllawiau ychwanegol
13. Ymgynghori ynghylch canllawiau
14. Cyhoeddi camau gorfodi

9. Withdrawing or amending a notice
10. Appeals
11. Guidance as to use of civil sanctions
12. Additional guidance
13. Consultation on guidance
14. Publication of enforcement action

ATODLEN 1	–	Cosbau ariannol penodedig
ATODLEN 2	–	Cosbau ariannol newidiol, hysbysiadau cydymffurfio, hysbysiadau adfer ac ymrwymadau trydydd parti
ATODLEN 3	–	Hysbysiadau stop
ATODLEN 4	–	Ymrwymadau gorfodi
ATODLEN 5	–	Tramgwyddau

SCHEDULE 1	–	Fixed monetary penalties
SCHEDULE 2	–	Variable monetary penalties, compliance notices, restoration notices and third party undertakings
SCHEDULE 3	–	Stop notices
SCHEDULE 4	–	Enforcement undertakings
SCHEDULE 5	–	Offences

Mae Gweinidogion Cymru yn gwneud y Gorchymyn hwn drwy arfer y pwerau a roddir gan adrannau 36(2), 39, 42, 46, 50, 52, 53, 54, 55, 63 a 65 o Ddeddf Gorfodi Rheoleiddiol a Sancsiynau 2008(1).

The Welsh Ministers make this Order in exercise of the powers conferred by sections 36(2), 39, 42, 46, 50, 52, 53, 54, 55, 63, and 65 of the Regulatory Enforcement and Sanctions Act 2008(1).

Mae Gweinidogion Cymru wedi ymgynghori â'r Ysgrifennydd Gwladol yn unol ag adran 59 o'r Ddeddf honno ac wedi ymgynghori yn unol ag adran 60 o'r Ddeddf honno.

The Welsh Ministers have consulted the Secretary of State in accordance with section 59 of that Act and have carried out consultation in accordance with section 60 of that Act.

Mae Gweinidogion Cymru wedi'u bodloni, yn unol ag adran 66 o'r Ddeddf honno, y bydd Asiantaeth yr Amgylchedd (sef y rheoleiddiwr at ddibenion 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 are satisfied, in accordance with section 66 of that Act, that the Environment Agency (who is 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.

Mae drafft o'r Gorchymyn hwn wedi'i osod gerbron Cynulliad Cenedlaethol Cymru ac wedi'i gymeradwyo drwy benderfyniad ganddo yn unol ag adran 61(2) o'r Ddeddf honno.

A draft of this Order has been laid before, and approved by resolution of, the National Assembly for Wales in accordance with section 61(2) of that Act.

(1) 2008 p.13; gweler adran 71(1) ar gyfer y diffiniad o "prescribed" ac adran 74 ar gyfer y diffiniad o "Welsh ministerial matter".

(1) 2008 c.13; see section 71(1) for the definition of "prescribed", and section 74 for the definition of "Welsh ministerial matter".

## RHAN 1

### Rhagymadrodd

#### Enwi, cymhwyso a chychwyn

1. Enw'r Gorchymyn hwn yw Gorchymyn Sanesiynau Sifil Amgylcheddol (Cymru) 2010; mae'n gymwys o ran Cymru a daw i rym ar 15 Gorffennaf 2010.

#### Rheoleiddiwr

2. Asiantaeth yr Amgylchedd yw'r rheoleiddiwr at ddibenion y Gorchymyn hwn.

## RHAN 2

### Sanesiynau sifil, hysbysiadau ac ymrwymadau

#### Sanesiynau sifil, hysbysiadau ac ymrwymadau

3.–(1) Mae Atodlen 1 yn gwneud darpariaeth ar gyfer cosbau ariannol penodedig.

(2) Mae Atodlen 2 yn gwneud darpariaeth ar gyfer cosbau ariannol newidiol, hysbysiadau cydymffurfio, hysbysiadau adfer ac ymrwymadau trydydd parti.

(3) Mae Atodlen 3 yn gwneud darpariaeth ar gyfer hysbysiadau stop.

(4) Mae Atodlen 4 yn gwneud darpariaeth ar gyfer ymrwymadau gorfodi.

(5) Mae i'r termau hynny nad ydynt wedi eu diffinio yn Neddf Gorfodi Rheoleiddiol a Sanesiynau 2008 yr ystyron a bennir yn yr Atodlenni hynny.

#### Cwmpas

4. Mae Atodlen 5 yn nodi'r darpariaethau sy'n creu'r tramgwyddau y mae'r Gorchymyn hwn yn ymwneud â hwy.

#### Cyfuno sanesiynau

5.–(1) Ni chaiff rheoleiddiwr gyflwyno hysbysiad o fwriad ynglŷn â chosb ariannol benodedig os oes cosb ariannol newidiol wedi'i gosod neu os oes hysbysiad cydymffurfio, hysbysiad adfer neu hysbysiad stop wedi'i gyflwyno i'r person hwnnw ynglŷn â'r un weithred neu anwaith.

(2) Ni chaiff rheoleiddiwr gyflwyno hysbysiad o fwriad ynglŷn â chosb ariannol newidiol, hysbysiad cydymffurfio neu hysbysiad adfer, na chyflwyno hysbysiad stop, i unrhyw berson, mewn perthynas â'r un weithred neu anwaith—

## PART 1

### Introduction

#### Title, application and commencement

1. The title of this Order is the Environmental Civil Sanctions (Wales) Order 2010; it applies in relation to Wales and comes into force on 15 July 2010.

#### Regulator

2. The Environment Agency is the regulator for the purposes of this Order.

## PART 2

### Civil sanctions, notices and undertakings

#### Civil sanctions, notices and undertakings

3.–(1) Schedule 1 makes provision for fixed monetary penalties.

(2) Schedule 2 makes provision for variable monetary penalties, compliance notices, restoration notices and third party undertakings.

(3) Schedule 3 makes provision for stop notices.

(4) Schedule 4 makes provision for enforcement undertakings.

(5) Those terms not defined in the Regulatory Enforcement and Sanctions Act 2008 have the meanings specified in those Schedules.

#### Scope

4. Schedule 5 sets out the provisions creating the offences to which this Order relates.

#### Combination of sanctions

5.–(1) A regulator may not serve a notice of intent relating to a fixed monetary penalty if a variable monetary penalty has been imposed or a compliance notice, restoration notice or stop notice has been served on that person relating to the same act or omission.

(2) A regulator may not serve a notice of intent relating to a variable monetary penalty, compliance notice or restoration notice, or serve a stop notice, on any person if, in relation to the same act or omission—

- (a) os oes cosb ariannol benodedig wedi'i gosod ar y person hwnnw, neu
- (b) os yw'r person hwnnw wedi cyflawni ei rwymedigaeth dros gosb ariannol benodedig ar ôl i hysbysiad o fwriad i osod y gosb honno gael ei gyflwyno.

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

### RHAN 3

#### Diffyg cydymffurfio a gorfodi

##### Adennill taliadau

6. Caiff y rheoleiddiwr adennill unrhyw gosb ariannol benodedig, cosb ariannol newidiol neu gosb diffyg cydymffurfio ar orchymyn llys, fel pe bai'n daladwy o dan orchymyn llys.

##### Cosbau diffyg cydymffurfio

7.–(1) Os bydd person yn methu â chydymffurfio â hysbysiad cydymffurfio, hysbysiad adfer neu ymrwymiad trydydd parti, caiff y rheoleiddiwr gyflwyno hysbysiad i'r person hwnnw yn gosod cosb ariannol ("cosb diffyg cydymffurfio") mewn perthynas â'r un tramgwydd ni waeth a gafodd cosb ariannol newidiol ei gosod hefyd neu beidio mewn perthynas â'r tramgwydd hwnnw.

(2) Rhaid i swm y gosb gael ei phennu gan y rheoleiddiwr, a rhaid iddo fod yn ganran o gostau cyflawni gweddill gofynion yr hysbysiad neu'r ymrwymiad trydydd parti.

(3) Rhaid i'r ganran gael ei phennu gan y rheoleiddiwr gan roi sylw i holl amgylchiadau'r achos ac, os yw'n briodol, gall fod yn 100%.

(4) Rhaid i'r hysbysiad gynnwys gwybodaeth am y canlynol–

- (a) y seiliau dros osod y gosb diffyg cydymffurfio;
- (b) y swm sydd i'w dalu;
- (c) sut y mae'n rhaid talu;
- (ch) y cyfnod y mae'n rhaid talu ynddo, y mae'n rhaid iddo beidio â bod yn llai nag 28 diwrnod;
- (d) yr hawl i apelio;
- (dd) canlyniadau methu â thalu yn y cyfnod penodedig;
- (e) unrhyw amgylchiadau y gallai'r rheoleiddiwr ostwng swm y gosb odanynt.

(5) Os cydymffurfir â gofynion yr hysbysiad cydymffurfio neu'r hysbysiad adfer neu os cyflawnir ymrwymiad trydydd parti cyn yr amser sydd wedi'i bennu ar gyfer talu'r gosb diffyg cydymffurfio, nid yw'r gosb yn daladwy.

### 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) Caiff y person y cyflwynir yr hysbysiad sy'n gosod y gosb diffyg cydymffurfio apelio yn ei erbyn.

(7) Y seiliau dros apelio yw—

- (a) bod y penderfyniad i gyflwyno'r hysbysiad wedi'i seilio ar gangymeriad ffeithiol;
- (b) bod y penderfyniad yn anghywir yn gyfreithiol;
- (c) bod y penderfyniad yn annheg neu'n afresymol am unrhyw reswm;
- (ch) bod swm y gosb yn afresymol;
- (d) unrhyw reswm tebyg arall.

### Hysbysiaidau adennill cost gorfodi

8.—(1) Caiff rheoleiddiwr gyflwyno hysbysiad ("hysbysiad adennill cost gorfodi") i berson y mae hysbysiad cosb ariannol newidiol, hysbysiad cydymffurfio, hysbysiad adfer neu hysbysiad stop wedi'i gyflwyno iddo yn ei gwneud yn ofynnol i'r person hwnnw dalu'r costau a dynnwyd gan y rheoleiddiwr mewn perthynas â gosod yr hysbysiad hwnnw hyd at adeg ei osod.

(2) Mae costau'n cynnwys yn benodol—

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

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

- (a) y seiliau dros osod yr hysbysiad;
- (b) y swm y mae'n ofynnol i dalu;
- (c) y cyfnod y mae'n rhaid talu ynddo, y mae'n rhaid iddo beidio â bod yn llai nag 28 diwrnod;
- (ch) sut y mae'n rhaid talu;
- (d) yr hawl i apelio; a
- (dd) canlyniadau methu â chydymffurfio â'r hysbysiad yn y cyfnod penodedig.

(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 atebol i dalu unrhyw gostau y mae'r person hwnnw'n dangos eu bod wedi'u tynnu'n ddiangen.

(6) Caiff y person y mae'n ofynnol iddo dalu costau apelio—

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

(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.



## RHAN 4

### Gweinyddu

#### Tynnu hysbysiad yn ôl neu ei ddiwygio

9. Mewn ysgrifen ar unrhyw adeg caiff rheoleiddiwr wneud y canlynol—

- (a) tynnu hysbysiad cosb ariannol benodedig yn ôl;
- (b) tynnu hysbysiad cosb ariannol newidiol, hysbysiad cosb diffyg cydymffurfio neu hysbysiad adennill cost gorfodi yn ôl neu ostwng y swm a bennir yn yr hysbysiad;
- (c) tynnu hysbysiad cydymffurfio, hysbysiad adfer neu hysbysiad stop yn ôl neu ddiwygio'r camau a bennir yn yr hysbysiad er mwyn lleihau faint o waith sy'n angenrheidiol i gydymffurfio â'r hysbysiad.

#### Apelau

10.—(1) I Dribiwnlys yr Haen Gyntaf y gwneir apêl o dan y Gorchymyn hwn.

(2) Mewn unrhyw apêl (ac eithrio mewn perthynas â hysbysiad stop) lle mae cyflawni tramgwydd yn fater y mae angen penderfynu arno, rhaid i'r rheoleiddiwr brofi'r tramgwydd hwnnw yn ôl yr un baich prawf a'r un safon prawf ag mewn erlyniad troseddol.

(3) Mewn unrhyw achos arall rhaid i'r tribiwnlys bennu safon y prawf.

(4) Mae pob hysbysiad (heblaw hysbysadau stop) yn cael eu hatal nes i'r apêl gael ei chynnal.

(5) Caiff y Tribiwnlys atal neu amrywio hysbysiad stop.

(6) Caiff y Tribiwnlys, mewn perthynas â gosod gofyniad neu gyflwyno hysbysiad—

- (a) tynnu'r gofyniad neu'r hysbysiad yn ôl;
- (b) cadarnhau'r gofyniad neu'r hysbysiad;
- (c) amrywio'r gofyniad neu'r hysbysiad;
- (ch) cymryd unrhyw gamau y gallai'r rheoleiddiwr eu cymryd mewn perthynas â'r weithred neu'r anwaith sy'n arwain at y gofyniad neu'r hysbysiad;
- (d) cyfeirio'r penderfyniad a ddylid cadarnhau'r gofyniad neu'r hysbysiad, neu unrhyw fater arall ynglŷn â'r penderfyniad hwnnw, yn ôl at y rheoleiddiwr.

#### Canllawiau ynghylch defnyddio sancsiynau sifil

11.—(1) Pan roddir pŵer i reoleiddiwr yn y Gorchymyn hwn i osod sancsiwn sifil mewn perthynas â thrangwydd—

- (a) rhaid i'r rheoleiddiwr gyhoeddi canllawiau

## PART 4

### Administration

#### Withdrawing or amending a notice

9. A regulator may at any time in writing—

- (a) withdraw a fixed monetary penalty notice;
- (b) withdraw a variable monetary penalty notice, a non-compliance penalty notice or an enforcement cost recovery notice or reduce the amount specified in the notice;
- (c) withdraw a compliance notice, restoration notice or stop notice or amend the steps specified in the notice so as to reduce the amount of work necessary to comply with the notice.

#### Appeals

10.—(1) An appeal under this Order is to the First-tier Tribunal.

(2) In any appeal (except in relation to a stop notice) 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 (other than stop notices) are suspended pending appeal.

(5) The Tribunal may suspend or vary a stop notice.

(6) The Tribunal may, in relation to the imposition of a requirement or service of a notice—

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

#### Guidance as to use of civil sanctions

11.—(1) Where power is conferred on a regulator in this Order to impose a civil sanction in relation to an offence—

- (a) the regulator must publish guidance about its



ynghylch sut y mae'n defnyddio'r sancsiwn;

- (b) yn achos canllawiau ynglŷn â chosb ariannol benodedig, cosb ariannol newidiol, hysbysiad cydymffurfio, hysbysiad adfer neu hysbysiad stop, rhaid i'r canllawiau gynnwys yr wybodaeth berthnasol;
- (c) rhaid i'r rheoleiddiwr ddiwygio'r canllawiau lle bo'n briodol;
- (ch) rhaid i'r rheoleiddiwr roi sylw i'r canllawiau neu'r canllawiau diwygiedig wrth arfer ei swyddogaethau.

(2) Yn achos canllawiau ynglŷn â chosb ariannol benodedig, gwybodaeth am y canlynol yw'r wybodaeth berthnasol y cyfeirir ati ym mharagraff (1)(b)–

- (a) yr amgylchiadau y mae'r gosb yn debyg o gael ei gosod odanynt;
- (b) yr amgylchiadau na chaniateir ei gosod odanynt;
- (c) swm y gosb;
- (ch) sut y gall y rhwymedigaeth am y gosb gael ei chyflawni ac effaith ei chyflawni; a
- (d) hawliau i gyflwyno sylwadau a gwrthwynebiadau a hawliau i apelio.

(3) Yn achos canllawiau ynglŷn â chosb ariannol newidiol, hysbysiad cydymffurfio neu hysbysiad adfer, gwybodaeth am y canlynol yw'r wybodaeth berthnasol y cyfeirir ati ym mharagraff (1)(b)–

- (a) yr amgylchiadau y mae'r gofyniad yn debyg o gael ei osod odanynt;
- (b) yr amgylchiadau na chaniateir ei osod odanynt;
- (c) yn achos cosb ariannol newidiol, y materion sy'n debyg o gael eu cymryd i ystyriaeth gan y rheoleiddiwr wrth benderfynu ar swm y gosb (gan gynnwys adroddiad gwirfoddol gan unrhyw berson am ei ddiffyg cydymffurfio ei hun); ac
- (ch) hawliau i gyflwyno sylwadau a gwrthwynebiadau a hawliau i apelio.

(4) Yn achos canllawiau ynglŷn â hysbysiad stop, gwybodaeth am y canlynol yw'r wybodaeth berthnasol y cyfeirir ati ym mharagraff (1)(b)–

- (a) yr amgylchiadau y mae'r rheoleiddiwr yn debyg o gyflwyno'r hysbysiad odanynt;
- (b) yr amgylchiadau na chaniateir ei gyflwyno odanynt; ac
- (c) hawliau i apelio.

### Canllawiau ychwanegol

**12.** Rhaid i'r rheoleiddiwr ddyroddi canllawiau sy'n ymwneud â defnyddio cosbau diffyg cydymffurfio a hysbysadau adennill cost gorfodi sy'n pennu–

- (a) yr amgylchiadau y maent yn debyg o gael eu

use of the sanction;

- (b) in the case of guidance relating to a fixed monetary penalty, variable monetary penalty, compliance notice, restoration notice or stop notice, the guidance must contain the relevant information;
- (c) the regulator must revise the guidance where appropriate;
- (d) the regulator must have regard to the guidance or revised guidance in exercising its functions.

(2) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in paragraph (1)(b) is information as to–

- (a) the circumstances in which the penalty is likely to be imposed;
- (b) the circumstances in which it may 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, a compliance notice or a restoration notice, the relevant information referred to in paragraph (1)(b) is information as to–

- (a) the circumstances in which the requirement is likely to be imposed;
- (b) the circumstances in which it may not be imposed;
- (c) 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 voluntary reporting by any person of their own non-compliance); and
- (d) rights to make representations and objections and rights of appeal.

(4) In the case of guidance relating to a stop notice, the relevant information referred to in paragraph (1)(b) is information as to–

- (a) the circumstances in which the regulator is likely to serve the notice;
- (b) the circumstances in which it may not be imposed; and
- (c) rights of appeal.

### Additional guidance

**12.** The regulator must issue guidance relating to the use of non-compliance penalties and enforcement cost recovery notices specifying–

- (a) the circumstances in which they are likely to

- gosod odanynt;
- (b) yr amgylchiadau na chaniateir eu gosod odanynt;
- (c) materion sydd i'w cymryd i ystyriaeth wrth bennu'r swm sydd o dan sylw;
- (ch) hawliau i apelio.

### **Ymgynghori ynghylch canllawiau**

13. Rhaid i'r rheoleiddiwr ymgynghori ag unrhyw bersonau y mae'n barnu eu bod yn briodol cyn cyhoeddi unrhyw ganllawiau neu ganllawiau diwygiedig o dan y Gorchymyn hwn.

### **Cyhoeddi camau gorfodi**

14.–(1) Pan roddir pŵer i reoleiddiwr i osod sancsiwn sifil o dan y Gorchymyn hwn mewn perthynas â thramgwydd, rhaid i'r rheoleiddiwr gyhoeddi o dro i dro adroddiadau sy'n pennu–

- (a) yr achosion y mae'r sancsiwn sifil wedi'i osod ynddynt;
- (b) os cosb ariannol benodedig yw'r sancsiwn sifil, yr achosion lle mae'r rhwymedigaeth i'r gosb wedi'i chyflawni drwy dalu'r gosb ar ôl yr hysbysiad o fwriad a heb i ragor o gamau gael eu cymryd;
- (c) os cosb ariannol newidiol, hysbysiad adfer neu hysbysiad cydymffurfio yw'r sancsiwn sifil, yr achosion lle mae ymrwymiad trydydd parti wedi'i dderbyn;
- (ch) achosion lle mae ymrwymiad gorfodi wedi'i wneud.

(2) Ym mharagraff (1)(a) nid yw'r cyfeiriad at achosion y mae sancsiwn sifil wedi'i osod ynddynt yn cynnwys achosion lle mae'r sancsiwn wedi'i osod ond wedi'i ddileu mewn apêl.

(3) Nid yw'r erthygl hon yn gymwys mewn achosion lle mae Gweinidogion Cymru o'r farn na fyddai'n briodol cyhoeddi.

- be imposed;
- (b) the circumstances in which they may not be imposed;
- (c) matters to be taken into account in establishing the amount involved;
- (d) rights of appeal.

### **Consultation on guidance**

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

### **Publication of enforcement action**

14.–(1) Where a power is conferred on a regulator to impose a civil sanction under this Order in relation to an offence, 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;
- (c) where the civil sanction is a variable monetary penalty, restoration notice or compliance notice, the cases in which a third party undertaking has been accepted;
- (d) 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 article does not apply in cases where the Welsh Ministers consider that publication would be inappropriate.

*Jane Davidson*

Y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai, Un o Weindogion Cymru

14 Gorffennaf 2010

Minister for Environment, Sustainability and Housing, one of the Welsh Ministers

14 July 2010

## Cosbau ariannol penodedig

## Fixed monetary penalties

**Pŵer i osod cosb ariannol benodedig**

1.–(1) Caiff rheoleiddiwr drwy hysbysiad osod cosb ariannol benodedig ar berson mewn perthynas â thrangwydd o dan ddarpariaeth a bennir yn Atodlen 5 os yw'r tabl yn yr Atodlen honno yn dangos bod cosb o'r fath yn bosibl ar gyfer y trangwydd hwnnw.

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

(3) Swm y gosb sydd i'w dalu i'r rheoleiddiwr fel "cosb ariannol benodedig" yw £100 yn achos unigolyn neu £300 yn achos corff corfforaethol.

**Hysbysiad o fwriad**

2.–(1) Pan fo rheoleiddiwr yn bwriadu gosod cosb ariannol benodedig ar berson, rhaid i'r rheoleiddiwr gyflwyno i'r person hwnnw hysbysiad o'r hyn a fwriedir ("hysbysiad o fwriad").

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

- (a) seiliau'r bwriad i osod y gosb ariannol benodedig;
- (b) swm y gosb;
- (c) datganiad y gall y rhwymedigaeth ynglŷn â'r gosb gael ei chyflawni drwy dalu 50% o'r gosb o fewn 28 diwrnod yn dechrau â'r diwrnod y daeth yr hysbysiad i law;
- (ch) gwybodaeth am y canlynol–
  - (i) effaith y taliad cyflawni hwnnw;
  - (ii) yr hawl i gyflwyno sylwadau a gwrthwynebiadau o fewn 28 diwrnod yn dechrau â'r diwrnod y daeth yr hysbysiad o fwriad i law;
  - (iii) yr amgylchiadau na chaiff y rheoleiddiwr osod y gofyniad odanynt (gan gynnwys unrhyw amddiffyniadau ynglŷn â'r trangwydd y cyflwynir yr hysbysiad mewn perthynas ag ef).

**Cyflawni rhwymedigaeth**

3. Mae'r gosb wedi'i chyflawni os bydd person sy'n cael hysbysiad o fwriad yn talu 50% o swm y gosb o fewn 28 diwrnod yn dechrau â'r diwrnod y daeth yr hysbysiad i law.

**Cyflwyno sylwadau a gwrthwynebiadau**

4. Caiff person y cyflwynir hysbysiad o fwriad iddo

**Power to impose a fixed monetary penalty**

1.–(1) A regulator may by notice impose a fixed monetary penalty on a person in relation to an offence under a provision specified in Schedule 5 if the table in that Schedule indicates that such penalty is possible for that offence.

(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 £100 for an individual or £300 for a body corporate.

**Notice of intent**

2.–(1) Where a regulator proposes to impose a fixed monetary penalty 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 proposal to impose the fixed monetary 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 may not impose the requirement (including any defences relating to the offence in relation to which the notice is served).

**Discharge of liability**

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

**Making representations and objections**

4. A person on whom a notice of intent is served may

gyflwyno sylwadau a gwrthwynebiadau ysgrifenedig o fewn 28 diwrnod, yn dechrau â'r diwrnod y daeth yr hysbysiad i law, i'r rheoleiddiwr mewn perthynas â'r bwriad i osod y gosb ariannol benodedig.

### **Cyflwyno hysbysiad terfynol**

5.–(1) Os na fydd y person sydd wedi cael hysbysiad o fwriad yn cyflawni'r rhwymedigaeth o fewn 28 diwrnod caiff y rheoleiddiwr gyflwyno hysbysiad terfynol yn gosod cosb ariannol benodedig.

(2) Ni chaiff y rheoleiddiwr gyflwyno hysbysiad terfynol i berson os yw'r rheoleiddiwr wedi'i fodloni na fyddai'r person, oherwydd unrhyw amddiffyniad, yn agored i'w gollfarnu o'r tramgwydd y mae'r hysbysiad yn ymwneud ag ef.

(3) Ni chaiff rheoleiddiwr sy'n cyflwyno hysbysiad terfynol ynglŷn â chosb ariannol benodedig gyflwyno unrhyw hysbysiad arall o dan y Gorchymyn hwn mewn perthynas â'r tramgwydd.

### **Cynnwys yr hysbysiad terfynol**

6. Rhaid i hysbysiad terfynol gynnwys gwybodaeth am y canlynol–

- (a) swm y gosb;
- (b) y seiliau dros osod y gosb;
- (c) sut y gellir talu;
- (ch) y cyfnod o 56 diwrnod y mae'n rhaid talu ynddo;
- (d) manylion y disgowntiau talu cynnar a'r cosbau talu hwyr;
- (dd) hawliau i apelio; ac
- (e) canlyniadau peidio â thalu.

### **Disgownt am dalu'n gynnar**

7. Os cyflwynodd person y cyflwynwyd hysbysiad o fwriad iddo sylwadau neu wrthwynebiadau ynghylch yr hysbysiad hwnnw o fewn y terfyn amser, caiff y person hwnnw gyflawni'r hysbysiad terfynol drwy dalu 50% o'r gosb o fewn 28 diwrnod yn dechrau â'r diwrnod y daeth yr hysbysiad terfynol i law.

### **Seiliau dros apelio**

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

- (2) Y seiliau dros apelio yw–
- (a) bod y penderfyniad wedi'i seilio ar gamgymeriad ffeithiol;
  - (b) bod y penderfyniad yn anghywir yn gyfreithiol;
  - (c) bod y penderfyniad yn afresymol;
  - (ch) unrhyw reswm tebyg arall.

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 imposing a fixed monetary penalty.

(2) The regulator may 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) A regulator who serves a final notice relating to a fixed monetary penalty may 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 amount of the penalty;
- (b) the grounds for imposing 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 the final notice by paying 50% of the penalty within 28 days beginning with the day on which the final notice was received.

### **Grounds of appeal**

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

## **Methu â thalu ar ôl 56 diwrnod**

9.–(1) Rhaid i'r gosb gael ei thalu o fewn 56 diwrnod ar ôl i'r hysbysiad terfynol ddod i law.

(2) Os na thelir y gosb o fewn 56 diwrnod mae'r swm sy'n daladwy yn cynyddu 50%.

(3) Yn achos apêl mae'n daladwy o fewn 28 diwrnod ar ôl i'r apêl gael ei phenderfynu (os yw'r apêl yn aflwyddiannus) ac os nad yw'n cael ei thalu o fewn 28 diwrnod mae swm y gosb yn cynyddu 50%.

## **Achosion troseddol**

10.–(1) Os cyflwynir hysbysiad o fwriad ynglŷn â chosb ariannol benodedig i unrhyw berson—

- (a) ni chaniateir dechrau achos troseddol ynglŷn â'r tramgwydd yn erbyn y person hwnnw mewn perthynas â'r weithred neu'r anwaith y mae'r hysbysiad yn ymwneud â hi neu ef cyn 28 diwrnod o'r dyddiad y daeth yr hysbysiad o fwriad i law, a
- (b) os bydd y person hwnnw yn cyflawni'r rhwymedigaeth fel hyn, ni chaniateir i'r person hwnnw gael ei gollfarnu ar unrhyw adeg o'r tramgwydd mewn perthynas â'r weithred honno neu'r anwaith hwnnw.

(2) Os gosodir cosb ariannol benodedig ar unrhyw berson, ni chaniateir i'r person hwnnw ar unrhyw adeg gael ei gollfarnu o'r tramgwydd mewn perthynas â'r weithred neu'r anwaith sy'n arwain at y gosb.

## **ATODLEN 2**

### **Erthygl 3**

**Cosbau ariannol newidiol, hysbysiadau cydymffurfio, hysbysiadau adfer ac ymrwymadau trydydd parti**

### **Gosod cosb ariannol newidiol, hysbysiad cydymffurfio neu hysbysiad adfer**

- 1.–(1) Caiff rheoleiddiwr drwy hysbysiad osod—
- (a) gofyniad bod rhaid talu cosb ariannol i reoleiddiwr o unrhyw swm a bennir gan y rheoleiddiwr ("cosb ariannol newidiol");
  - (b) gofyniad bod rhaid cymryd unrhyw gamau a bennir gan reoleiddiwr, o fewn unrhyw gyfnod a bennir ganddo, i sicrhau na fydd y tramgwydd yn parhau neu'n ailddigwydd ("hysbysiad cydymffurfio");
  - (c) gofyniad bod rhaid cymryd unrhyw gamau a bennir gan reoleiddiwr, o fewn unrhyw gyfnod a bennir ganddo, i sicrhau bod y sefyllfa, cyn belled ag y bo modd, yn cael ei hadfer i'r hyn a fuasai pe na bai'r tramgwydd wedi'i gyflawni ("hysbysiad adfer"),

## **Non-payment after 56 days**

9.–(1) The penalty must be paid within 56 days of receipt of the 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 it 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 may 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 may not at any time be convicted of the offence in respect of the act or omission giving rise to the penalty.

## **SCHEDULE 2**

### **Article 3**

**Variable monetary penalties, compliance notices, restoration notices and third party undertakings**

### **Imposition of a variable monetary penalty, compliance notice or restoration notice**

- 1.–(1) A regulator may by notice impose—
- (a) a requirement to pay a monetary penalty to a regulator of such amount as the regulator may determine ("a variable monetary penalty");
  - (b) a requirement to take such steps as a regulator may specify, within such period as it may specify, to secure that the offence does not continue or recur ("a compliance notice");
  - (c) a requirement to take such steps as a regulator may specify, within such period as it may specify, 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 restoration notice"),



neu unrhyw gyfuniad o'r gofynion hyn, mewn perthynas â thrangwydd o dan ddarpariaeth a bennir yn Atodlen 5 os yw'r tabl yn yr Atodlen honno'n dangos bod cosb neu hysbysiad o'r fath yn bosibl ar gyfer y tramgwydd hwnnw.

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

(3) Ni chaniateir i ofyniad o dan y paragraff hwn gael ei osod ar berson ar fwy nag un achlysur mewn perthynas â'r un weithred neu anwaith.

(4) Pan osodir cosb ariannol newidiol mewn perthynas â thrangwydd a all—

- (a) cael ei brofi'n ddiannod yn unig, a
- (b) cael ei gosbi ar gollfarn ddiannod drwy ddirwy (p'un a all gael ei gosbi drwy gyfnod o garchar hefyd neu beidio),

ni chaniateir i swm y gosb ariannol newidiol fod yn fwy nag uchafswm y ddirwy honno.

(5) Cyn cyflwyno hysbysiad ynglŷn â chosb ariannol newidiol caiff y rheoleiddiwr ei gwneud yn ofynnol i'r person ddarparu unrhyw wybodaeth sy'n rhesymol er mwyn pennu swm unrhyw fudd ariannol a gafwyd o ganlyniad i'r tramgwydd.

### **Hysbysiad o fwriad**

2.—(1) Pan fo rheoleiddiwr yn bwriadu gosod gofyniad o dan yr Atodlen hon i berson, rhaid i'r rheoleiddiwr gyflwyno i'r person hwnnw hysbysiad o'r hyn a fwriedir ("hysbysiad o fwriad").

(2) Yn achos hysbysiad adfer neu hysbysiad cydymffurfio arfaethedig rhaid i'r hysbysiad o fwriad gynnwys—

- (a) seiliau'r hysbysiad arfaethedig;
- (b) gofyniad yr hysbysiad;
- (c) gwybodaeth am y canlynol—
  - (i) yr hawl i gyflwyno sylwadau a gwrthwynebiadau o fewn 28 diwrnod yn dechrau â'r diwrnod y daeth yr hysbysiad o fwriad i law;
  - (ii) yr amgylchiadau na chaiff y rheoleiddiwr osod yr hysbysiad odanynt (gan gynnwys unrhyw amddiffyniadau ynglŷn â'r tramgwydd y cyflwynir yr hysbysiad mewn perthynas ag ef).

(3) Yn achos cosb ariannol newidiol arfaethedig rhaid i'r hysbysiad o fwriad gynnwys—

- (a) y seiliau dros osod y gosb ariannol newidiol;
- (b) swm y gosb;
- (c) gwybodaeth am y canlynol—
  - (i) yr hawl i gyflwyno sylwadau a

or any combination of these requirements, in relation to an offence under a provision specified in Schedule 5 if the table in that Schedule indicates that such penalty or notice is possible for that offence.

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

(3) A requirement under this paragraph may not be imposed on a person on more than one occasion in relation to the same act or omission.

(4) 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 may not exceed the maximum amount of that fine.

(5) Before serving a notice relating to a variable monetary penalty the regulator may require the person to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of the offence.

### **Notice of intent**

2.—(1) Where a regulator proposes to impose a requirement under this Schedule on a person, the regulator must serve on that person a notice of what is proposed (a "notice of intent").

(2) In the case of a proposed restoration notice or compliance notice the notice of intent must include—

- (a) the grounds for the proposed notice;
- (b) the requirement of the notice;
- (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 may not impose the notice (including any defences relating to the offence in relation to which the notice is served).

(3) In the case of a proposed variable monetary penalty the notice of intent must include—

- (a) the grounds for imposing the variable monetary penalty;
- (b) the amount of the penalty;
- (c) information as to—
  - (i) the right to make representations and

gwrthwynebiadau o fewn 28 diwrnod yn dechrau â'r diwrnod y daeth yr hysbysiad o fwriad i law;

- (ii) yr amgylchiadau na chaiff y rheoleiddiwr osod y gosb odanynt (gan gynnwys unrhyw amddiffyniadau ynglŷn â'r tramgwydd y cyflwynir yr hysbysiad mewn perthynas ag ef).

### **Cyflwyno sylwadau a gwrthwynebiadau**

3. Caiff person y cyflwynwyd hysbysiad o fwriad iddo gyflwyno sylwadau a gwrthwynebiadau ysgrifenedig o fewn 28 diwrnod, yn dechrau â'r diwrnod y daeth yr hysbysiad i law, i'r rheoleiddiwr mewn perthynas â'r bwriad i osod cosb ariannol newidiol, hysbysiad adfer neu hysbysiad cydymffurfio.

### **Ymrwymadau trydydd parti**

4.–(1) Caiff person y cyflwynwyd hysbysiad o fwriad iddo gynnig ymrwymiad ynglŷn â chymru gan y person hwnnw (gan gynnwys talu swm o arian) er budd unrhyw berson yr effeithiwyd arno gan y tramgwydd ("ymrwymiad trydydd parti").

(2) Caiff y rheoleiddiwr dderbyn neu wrthod ymrwymiad trydydd parti o'r fath.

### **Hysbysiad terfynol**

5.–(1) Ar ôl diwedd y cyfnod ar gyfer cyflwyno sylwadau a gwrthwynebiadau, rhaid i'r rheoleiddiwr benderfynu a ddylid–

- (a) gosod y gofynion yn yr hysbysiad o fwriad, gydag addasiadau neu hebddynt, neu
- (b) gosod unrhyw ofyniad arall y mae gan y rheoleiddiwr bŵer i'w osod o dan yr Atodlen hon.

(2) Wrth benderfynu, rhaid i'r rheoleiddiwr gymryd i ystyriaeth unrhyw ymrwymiad trydydd parti y mae'n ei dderbyn.

(3) Pan fo'r rheoleiddiwr yn penderfynu gosod gofyniad, rhaid i'r hysbysiad sy'n ei osod (yr "hysbysiad terfynol") gydymffurfio â pharagraff 6 neu 7.

(4) Ni chaiff y rheoleiddiwr osod hysbysiad terfynol ar berson os yw'r rheoleiddiwr wedi'i fodloni na fyddai'r person, oherwydd unrhyw amddiffyniad, yn agored i'w gollfarnu o'r tramgwydd y mae'r hysbysiad yn ymwneud ag ef.

### **Cynnwys hysbysiad terfynol – cosb ariannol newidiol**

6. Rhaid i hysbysiad terfynol ynglŷn â chosb ariannol newidiol gynnwys gwybodaeth am y canlynol–

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 penalty (including any defences relating to the offence in relation to which the notice is served).

### **Making representations and objections**

3. 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 a variable monetary penalty, restoration notice or compliance notice.

### **Third party undertakings**

4.–(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 ("a third party undertaking").

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

### **Final notice**

5.–(1) After the end of the period for making representations and objections, the regulator must decide whether to–

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

(2) In making its decision, the regulator must take into account any third party undertaking that it has accepted.

(3) Where the regulator decides to impose a requirement, the notice imposing it (the "final notice") must comply with paragraph 6 or 7.

(4) 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.

### **Contents of final notice – variable monetary penalty**

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



- (a) y seiliau dros osod y gosb;
- (b) y swm sydd i'w dalu;
- (c) sut y gellir talu;
- (ch) y cyfnod y mae'n rhaid talu ynddo, y mae'n rhaid iddo beidio â bod yn llai nag 28 diwrnod;
- (d) hawliau i apelio; ac
- (dd) canlyniadau methu â chydymffurfio â'r hysbysiad.

**Cynnwys hysbysiad terfynol – hysbysiad cydymffurfio neu hysbysiad adfer**

7. Rhaid i hysbysiad terfynol ynglŷn â hysbysiad cydymffurfio neu hysbysiad adfer gynnwys gwybodaeth am y canlynol–

- (a) y seiliau dros osod yr hysbysiad;
- (b) pa waith cydymffurfio neu adfer sy'n ofynnol a'r cyfnod y mae'n rhaid iddo gael ei gwblhau ynddo;
- (c) yr hawliau i apelio; ac
- (ch) canlyniadau methu â chydymffurfio â'r hysbysiad.

**Apelau yn erbyn hysbysiad terfynol**

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

- (2) Y seiliau dros apelio yw–
  - (a) bod y penderfyniad wedi'i seilio ar gamgymeriad ffeithiol;
  - (b) bod y penderfyniad yn anghywir yn gyfreithiol;
  - (c) yn achos cosb ariannol newidiol, bod swm y gosb yn afresymol;
  - (ch) yn achos gofyniad anariannol, bod natur y gofyniad yn afresymol;
  - (d) bod y penderfyniad yn afresymol am unrhyw reswm arall;
  - (dd) unrhyw reswm tebyg arall.

**Achosion troseddol**

- 9.–(1) Os bydd–
  - (a) cosb ariannol newidiol, hysbysiad cydymffurfio neu hysbysiad adfer yn cael ei osod ar unrhyw berson, neu
  - (b) ymrwymiad trydydd parti yn cael ei dderbyn oddi wrth unrhyw berson,

ni chaniateir i'r person hwnnw gael ei gollfarnu ar unrhyw adeg o'r tramgwydd mewn perthynas â'r weithred neu'r anwaith sy'n arwain at y gosb ariannol newidiol, yr hysbysiad cydymffurfio, yr hysbysiad adfer neu'r ymrwymiad trydydd parti ac eithrio mewn achos y cyfeirir ato yn is-baragraff (2).

- (a) the grounds for imposing the penalty;
- (b) the amount to be paid;
- (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 failing to comply with the notice.

**Contents of final notice – compliance notice or restoration notice**

7. A final notice relating to a compliance notice or restoration notice must include information as to–

- (a) the grounds for imposing the notice;
- (b) what compliance or restoration is required and the period within which it must be completed;
- (c) the 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 non-monetary requirement, that the nature of the requirement is unreasonable;
  - (e) that the decision was unreasonable for any other reason;
  - (f) any other similar reason.

**Criminal proceedings**

- 9.–(1) If–
  - (a) a variable monetary penalty, compliance notice or restoration notice is imposed 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, compliance notice, restoration notice or third party undertaking except in a case referred to in sub-paragraph (2).

(2) Yr achos y cyfeirir ato yn is-baragraff (1) yw achos—

- (a) lle mae hysbysiad adfer neu hysbysiad cydymffurfio wedi'i osod ar berson neu lle mae ymrwymiad trydydd parti wedi'i dderbyn oddi wrth berson,
- (b) lle nad oes cosb ariannol newidiol wedi'i osod ar y person hwnnw, ac
- (c) lle mae'r person hwnnw'n methu â chydymffurfio â'r hysbysiad adfer, yr hysbysiad cydymffurfio neu'r ymrwymiad trydydd parti.

(3) Caniateir i achos troseddol ynglŷn â thramgwyddau a all gael eu profi'n ddiannod y mae hysbysiad neu ymrwymiad yn is-baragraff (2) yn ymwneud â hwy gael ei ddechrau ar unrhyw adeg hyd at chwe mis o'r dyddiad y mae'r rheoleiddiwr yn hysbysu'r person fod y person hwnnw wedi methu â chydymffurfio â'r hysbysiad neu'r ymrwymiad hwnnw.

### ATODLEN 3

Erthygl 3

#### Hysbysiadau stop

##### Hysbysiadau stop

1.—(1) Caiff y rheoleiddiwr gyflwyno hysbysiad stop i unrhyw berson yn unol â'r Atodlen hon mewn perthynas â thramgwydd o dan ddarpariaeth a bennir yn Atodlen 5 os yw'r tabl yn yr Atodlen honno'n dangos bod hysbysiad o'r fath yn bosibl ar gyfer y tramgwydd hwnnw.

(2) Dim ond mewn achos sy'n syrthio o fewn is-baragraff (3) neu (4) y caniateir i hysbysiad stop gael ei gyflwyno.

(3) Achos sy'n syrthio o fewn yr is-baragraff hwn yw achos—

- (a) lle mae'r person yn cyflawni'r gweithgaredd,
- (b) lle mae'r rheoleiddiwr yn credu'n rhesymol bod y gweithgaredd fel y mae'n cael ei gyflawni gan y person hwnnw yn achosi, neu'n creu risg arwyddocaol o achosi, niwed difrifol i unrhyw un o'r materion y cyfeirir atynt yn is-baragraff (5), ac
- (c) lle mae'r rheoleiddiwr yn credu'n rhesymol bod y gweithgaredd fel y mae'n cael ei gyflawni gan y person hwnnw yn cynnwys neu'n debyg o gynnwys cyflawni tramgwydd o dan ddarpariaeth a bennir yn Atodlen 5 gan y person hwnnw.

(4) Achos sy'n syrthio o fewn yr is-baragraff hwn yw achos lle mae'r rheoleiddiwr yn credu'n rhesymol—

- (a) bod y person yn debyg o gyflawni'r gweithgaredd,

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

- (a) a restoration notice or 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 restoration notice, compliance notice or third party undertaking.

(3) Criminal proceedings for offences triable summarily to which a notice or 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 such person has failed to comply with that notice or undertaking.

### SCHEDULE 3

Article 3

#### Stop notices

##### Stop notices

1.—(1) The regulator may serve a stop notice on any person in accordance with this Schedule in relation to an offence under a provision specified in Schedule 5 if the table in that Schedule indicates that such notice is possible for that offence.

(2) A stop notice may only be served in a case falling within sub-paragraph (3) or (4).

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

- (a) the person is carrying on 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 any of the matters referred to in sub-paragraph (5), 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 a provision specified in Schedule 5 by that person.

(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) y bydd y gweithgaredd fel y mae'n debyg o gael ei gyflawni gan y person hwnnw yn achosi, neu'n creu risg arwyddocaol o achosi, niwed difrifol i unrhyw un o'r materion y cyfeirir atynt yn is-baragraff (5), ac
- (c) y bydd y gweithgaredd fel y mae'n debyg o gael ei gyflawni gan y person hwnnw yn cynnwys neu'n debyg o gynnwys cyflawni tramgwydd o dan ddarpariaeth a bennir yn Atodlen 5 gan y person hwnnw.

(5) Y materion y cyfeirir atynt yn is-baragraffau (3)(b) a (4)(b) yw—

- (a) iechyd pobl,
- (b) yr amgylchedd (gan gynnwys iechyd anifeiliaid a phlanhigion).

### **Cynnwys hysbysiad stop**

2. Rhaid i hysbysiad stop gynnwys gwybodaeth am y canlynol—

- (a) y seiliau dros gyflwyno'r hysbysiad stop;
- (b) y camau y mae'n rhaid i'r person eu cymryd er mwyn cydymffurfio â'r hysbysiad stop;
- (c) hawliau i apelio; ac
- (ch) canlyniadau diffyg cydymffurfio.

### **Apelau**

3.–(1) Caiff y person y cyflwynir hysbysiad stop iddo apelio yn erbyn y penderfyniad i'w gyflwyno.

(2) Y seiliau dros apelio yw—

- (a) bod y penderfyniad wedi'i seilio ar gamgymeriad ffeithiol;
- (b) bod y penderfyniad yn anghywir yn gyfreithiol;
- (c) bod y penderfyniad yn afresymol;
- (ch) bod unrhyw gam a bennwyd yn yr hysbysiad yn afresymol;
- (d) nad yw'r person wedi cyflawni'r tramgwydd ac na fyddai wedi'i gyflawni pe na bai'r hysbysiad stop wedi'i gyflwyno;
- (dd) na fyddai'r person, oherwydd unrhyw amddiffyniad, wedi bod yn agored i'w gollfarnu o'r tramgwydd pe na bai'r hysbysiad stop wedi'i gyflwyno;
- (e) unrhyw reswm tebyg arall.

### **Tystysgrifau cwblhau**

4.–(1) Pan fo'r rheoleiddiwr wedi'i fodloni, ar ôl i hysbysiad stop gael ei gyflwyno, fod y person wedi cymryd y camau a bennwyd yn yr hysbysiad, rhaid i'r rheoleiddiwr ddyroddi tystysgrif i'r perwyl hwnnw ("tystysgrif gwblhau").

- (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 any of the matters referred to in sub-paragraph (5), 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 a provision specified in Schedule 5 by that person.

(5) The matters referred to in sub-paragraphs (3)(b) and (4)(b) are—

- (a) human health,
- (b) the environment (including the health of animals and plants).

### **Contents of a stop notice**

2. A stop notice must include information as to—

- (a) the grounds for serving the stop 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**

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

(2) The grounds for appeal are—

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

### **Completion certificates**

4.–(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) Mae effaith yr hysbysiad stop yn dod i ben pan ddyroddir tystysgrif gwblhau.

(3) Caiff y person y cyflwynir yr hysbysiad stop iddo wneud cais ar unrhyw adeg am dystysgrif gwblhau.

(4) Rhaid i'r rheoleiddiwr benderfynu a ddylid dyroddi tystysgrif gwblhau o fewn 14 diwrnod o gais o'r fath.

(5) Caiff y person y cyflwynwyd yr hysbysiad stop iddo apelio yn erbyn penderfyniad i beidio â dyroddi tystysgrif gwblhau ar y sail—

- (a) bod y penderfyniad wedi'i seilio ar gamgymeriad ffeithiol;
- (b) bod y penderfyniad yn anghywir yn gyfreithiol;
- (c) bod y penderfyniad yn annheg neu'n afresymol;
- (ch) bod y penderfyniad yn anghywir am unrhyw reswm tebyg arall.

### **Iawndal**

5.—(1) Rhaid i reoleiddiwr dalu iawndal i berson am golled a ddiroddir o ganlyniad i gyflwyno hysbysiad stop neu wrthod dyroddi tystysgrif gwblhau os yw'r person hwnnw wedi dioddef colled o ganlyniad i'r hysbysiad neu'r gwrthodiad ac—

- (a) bod yr hysbysiad stop yn cael ei dynnu'n ôl neu ei ddiwygio wedyn gan y rheoleiddiwr am fod y penderfyniad i'w gyflwyno yn afresymol neu am fod unrhyw gam a bennwyd yn yr hysbysiad yn afresymol;
- (b) bod y person yn apelio'n llwyddiannus yn erbyn yr hysbysiad stop a bod y Tribiwnlys Haen Gyntaf yn dyfarnu ei bod yn afresymol cyflwyno'r hysbysiad; neu
- (c) bod y person yn apelio'n llwyddiannus yn erbyn gwrthod dyroddi tystysgrif gwblhau a bod y Tribiwnlys yn dyfarnu ei bod yn afresymol gwrthod.

(2) Caiff person apelio yn erbyn penderfyniad i beidio â dyfarnu dalu iawndal neu yn erbyn penderfyniad pennu swm yr iawndal—

- (a) ar y sail bod penderfyniad y rheoleiddiwr yn afresymol;
- (b) ar y sail bod y swm a gynigiwyd wedi'i seilio ar ffeithiau anghywir;
- (c) am unrhyw reswm tebyg arall.

### **Tramgwyddau**

6.—(1) Pan na fo person y mae hysbysiad stop wedi ei ddyroddi iddo yn cydymffurfio ag ef o fewn y terfynau amser a bennwyd yn yr hysbysiad, mae'r person yn euog o dramgwydd ac yn agored—

- (a) o'i gollfarnu'n ddiannod, i ddirwy heb fod yn

(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 for a completion certificate.

(4) The regulator must make a decision as to whether to issue a completion certificate within 14 days of such an application.

(5) The person on whom the stop notice was served may appeal against a decision not to issue a completion certificate on the grounds that—

- (a) the decision was based on an error of fact;
- (b) the decision was wrong in law;
- (c) the decision was unfair or unreasonable;
- (d) the decision was wrong for any other similar reason.

### **Compensation**

5.—(1) A regulator must compensate a person for loss suffered as the result of the service of a stop notice or a refusal to issue a completion certificate if that person has suffered loss as a result of the notice or refusal and—

- (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 the notice 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 Tribunal finds that the refusal was unreasonable.

(2) A person may appeal against a decision not to award compensation or a decision as to the amount of compensation—

- (a) on the grounds that the regulator's decision was unreasonable;
- (b) on the grounds that the amount offered was based on incorrect facts;
- (c) for any other similar reason.

### **Offences**

6.—(1) Where a person to whom a stop notice is issued does not comply with it within the time limit specified in the notice, the person is guilty of an offence and liable—

- (a) on summary conviction, to a fine not

fwy nag £20,000, neu i garchar am gyfnod nad yw'n fwy na deuddeg mis, neu'r ddau, neu

- (b) o'i gollfarnu ar dditiad, i garchar am gyfnod nad yw'n fwy na dwy flynedd, neu ddirwy, neu'r ddau.

(2) Wrth gymhwyso'r paragraff hwn mewn perthynas â thramgwydd a gyflawnwyd cyn i adran 154(1) o Ddeddf Cyfiawnder Troseddol 2003(1) gychwyn mae'r cyfeiriad yn is-baragraff (1)(a) at ddeuddeg mis i'w ddarllen fel cyfeiriad at chwe mis.

exceeding £20,000, or imprisonment for a term not exceeding twelve months, or both, or

- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

(2) In the application of this paragraph in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003(1) the reference in sub-paragraph (1)(a) to twelve months is to be read as a reference to six months.

## ATODLEN 4

### Erthygl 3

#### Ymrwymadau gorfodi

##### Ymrwymadau gorfodi

1. Caiff rheoleiddiwr dderbyn ymrwymiad gorfodi oddi wrth berson mewn achos lle mae gan y rheoleiddiwr seiliau rhesymol dros amau bod y person wedi cyflawni tramgwydd o dan ddarpariaeth a bennir yn Atodlen 5 a bod y tabl yn yr Atodlen honno'n dangos y caniateir derbyn ymrwymiad gorfodi mewn perthynas â'r tramgwydd hwnnw.

##### Cynnwys a ffurf ymrwymiad gorfodi

2.–(1) Rhaid i ymrwymiad gorfodi fod yn ysgrifenedig a rhaid pennu–

- (a) camau i sicrhau na fydd y tramgwydd yn parhau neu'n ailddigwydd,
- (b) camau i sicrhau bod y sefyllfa, cyn belled ag y bo modd, yn cael ei hadfer i'r hyn a fuasai pe na bai'r tramgwydd wedi'i gyflawni,
- (c) camau (gan gynnwys talu swm o arian) er budd unrhyw berson yr effeithiwyd arno gan y tramgwydd, neu
- (ch) lle nad oes modd adfer y niwed sy'n codi o'r tramgwydd, camau a fydd yn sicrhau budd neu welliant cyfatebol i'r amgylchedd.

(2) Rhaid iddo bennu'r cyfnod y mae'n rhaid cymryd y camau ynddo.

(3) Rhaid iddo gynnwys–

- (a) datganiad bod yr ymrwymiad yn cael ei wneud yn unol â'r Atodlen hon;
- (b) telerau'r ymrwymiad;
- (c) sut a pha bryd y bernir bod person wedi cyflawni'r ymrwymiad.

(4) Caniateir i'r ymrwymiad gorfodi gael ei amrywio, neu i'r cyfnod y mae'n rhaid cwblhau'r camau

## SCHEDULE 4

### Article 3

#### Enforcement undertakings

##### Enforcement undertakings

1. A regulator may accept an enforcement undertaking from a person in a case where the regulator has reasonable grounds to suspect that the person has committed an offence under a provision specified in Schedule 5 and the table in that Schedule indicates that an enforcement undertaking may be accepted in relation to that offence.

##### Form and content of an enforcement undertaking

2.–(1) An enforcement undertaking must be in writing and must specify–

- (a) action to secure that the offence does not continue or recur,
- (b) 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,
- (c) action (including the payment of a sum of money) to benefit any person affected by the offence, or
- (d) where restoration of the harm arising from the offence is not possible, action that will secure equivalent benefit or improvement to the environment.

(2) It must specify the period within which the action must be completed.

(3) It must include–

- (a) a statement that the undertaking is made in accordance with this Schedule;
- (b) the terms of the undertaking;
- (c) how and when a person is considered to have discharged the undertaking.

(4) The enforcement undertaking may be varied, or the period within which the action must be completed



ynddo gael ei ymestyn, os bydd y ddau barti'n cytuno mewn ysgriflen.

### **Derbyn ymrwymiad gorfodi**

3. Os oes rheoleiddiwr wedi derbyn ymrwymiad gorfodi yna, oni bai bod y person y derbyniwyd yr ymrwymiad oddi wrtho wedi methu â chydymffurfio â'r ymrwymiad neu ag unrhyw ran ohono—

- (a) ni chaniateir i'r person hwnnw gael ei gollfarnu ar unrhyw adeg o'r tramgwydd mewn perthynas â'r weithred neu'r anwaith y mae'r ymrwymiad yn ymwneud â hi neu ef;
- (b) ni chaiff y rheoleiddiwr osod ar y person hwnnw unrhyw gosb ariannol benodedig, cosb ariannol newidiol, hysbysiad cydymffurfio na hysbysiad adfer mewn perthynas â'r weithred honno neu'r anwaith hwnnw.

### **Darpariaethau cyffredinol ynghylch ymrwymadau gorfodi**

4.–(1) Rhaid i reoleiddiwr sefydlu a chyhoeddi'r weithdrefn ar gyfer gwneud ymrwymiad gorfodi.

(2) Rhaid i'r rheoleiddiwr ymgynghori ag unrhyw bersonau y mae'n credu eu bod yn briodol cyn gwneud hynny.

(3) Wrth dderbyn ymrwymiad caiff y rheoleiddiwr ei gyhoeddi ym mha fodd bynnag y mae'n barnu ei fod yn addas.

### **Cyflawni ymrwymiad gorfodi**

5.–(1) Rhaid i reoleiddiwr sydd wedi'i fodloni y cydymffurfiwyd ag ymrwymiad gorfodi ddyroddi tystysgrif i'r perwyl hwnnw.

(2) Caiff rheoleiddiwr ei gwneud yn ofynnol i'r person sydd wedi rhoi'r ymrwymiad ddarparu digon o wybodaeth i benderfynu y cydymffurfiwyd â'r ymrwymiad.

(3) Caiff y person a roddodd yr ymrwymiad wneud cais am dystysgrif o'r fath ar unrhyw adeg.

(4) Rhaid i'r rheoleiddiwr benderfynu a ddylid dyroddi tystysgrif o'r fath, a rhoi hysbysiad ysgrifenedig o'r penderfyniad i'r ceisydd, o fewn 14 diwrnod o gais o'r fath.

(5) Caiff y person y rhoddir yr hysbysiad iddo apelio yn erbyn penderfyniad i beidio â dyroddi tystysgrif ar y sail bod y penderfyniad—

- (a) wedi'i seilio ar gamgymeriad ffeithiol;
- (b) yn anghywir yn gyfreithiol;
- (c) yn annheg neu'n afresymol;
- (ch) yn anghywir am unrhyw reswm tebyg arall.

may be extended, if both parties agree in writing.

### **Acceptance of an enforcement undertaking**

3. If a regulator has accepted an enforcement undertaking then, unless the person from whom the undertaking is accepted has failed to comply with the 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 undertaking relates;
- (b) the regulator may not impose on that person any fixed monetary penalty, variable monetary penalty, compliance notice or restoration notice in respect of that act or omission.

### **General provisions on enforcement undertakings**

4.–(1) A regulator must establish and publish the procedure for entering into an enforcement undertaking.

(2) The regulator must consult such persons as it considers appropriate before doing so.

(3) When it accepts an undertaking the regulator may publish it in whatever manner it sees fit.

### **Discharge of an enforcement undertaking**

5.–(1) A regulator who is satisfied that an enforcement undertaking has been complied with must issue a certificate to that effect.

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

(3) The person who gave the undertaking may at any time apply for such a certificate.

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

(5) The person to whom the notice is given may appeal against a decision not to issue a certificate on the grounds that the decision—

- (a) was based on an error of fact;
- (b) was wrong in law;
- (c) was unfair or unreasonable;
- (d) was wrong for any other similar reason.

## **Gwybodaeth anghywir, anghyflawn neu gamarweiniol**

6.–(1) Bernir bod person sydd wedi rhoi gwybodaeth anghywir, gamarweiniol neu anghyflawn mewn perthynas ag ymrwymiad gorfodi heb gydymffurfio ag ef.

(2) Caiff rheoleiddiwr drwy hysbysiad ysgrifenedig ddiddymu tystysgrif a ddyroddwyd o dan baragraff 5 os cafodd ei dyroddi ar sail gwybodaeth anghywir, anghyflawn neu gamarweiniol.

## **Diffyg cydymffurfio ag ymrwymiad gorfodi**

7.–(1) Os na chydymffurfir ag ymrwymiad gorfodi caiff y rheoleiddiwr naill ai–

- (a) cyflwyno hysbysiad cosb ariannol newidiol, hysbysiad cydymffurfio neu hysbysiad adfer, neu
- (b) dwyn achos troseddol

mewn perthynas â'r tramgwydd perthnasol.

(2) Os oes person wedi cydymffurfio'n rhannol ond nid yn llawn ag ymrwymiad, rhaid i'r cydymffurfio rhannol hwnnw gael ei gymryd i ystyriaeth wrth osod unrhyw sancsiwn troseddol neu unrhyw sancsiwn arall ar y person.

(3) Caniateir i achos troseddol ar gyfer tramgwyddau a all gael eu profi'n ddiannod ac y mae ymrwymiad gorfodi'n ymwneud â hwy gael ei ddechrau ar unrhyw adeg hyd at chwe mis o'r dyddiad y mae'r rheoleiddiwr yn hysbysu'r person fod y person hwnnw wedi methu â chydymffurfio â'r ymrwymiad hwnnw.

## **ATODLEN 5**

Erthygl 4

### **Tramgwyddau**

Yn y tabl canlynol–

- cosb ariannol benodedig yw "CAB";
- cosb ariannol newidiol yw "CAN";
- hysbysiad cydymffurfio yw "HC";
- hysbysiad adfer yw "HA";
- hysbysiad stop yw "HS";
- ymrwymiad gorfodi yw "YG".

## **Inaccurate, incomplete or misleading information**

6.–(1) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is regarded as not having complied with it.

(2) A regulator may by notice in writing revoke a certificate issued under paragraph 5 if it was issued on the basis of inaccurate, incomplete or misleading information.

## **Non-compliance with an enforcement undertaking**

7.–(1) If an enforcement undertaking is not complied with the regulator may either–

- (a) serve a variable monetary penalty notice, compliance notice or restoration notice, or
- (b) bring criminal proceedings

in respect of the relevant offence.

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

(3) Criminal proceedings for offences triable summarily to which an enforcement undertaking relates may be instituted at any time up to six months from the date when the regulator notifies the person that such person has failed to comply with that undertaking.

## **SCHEDULE 5**

Article 4

### **Offences**

In the following table–

- "FMP" is a fixed monetary penalty;
- "VMP" is a variable monetary penalty;
- "CN" is a compliance notice;
- "RN" is a restoration notice;
- "SN" is a stop notice;
- "EU" is an enforcement undertaking.



Y ddarpariaeth sy'n creu'r tramgwydd	CAB	CAN	HC	HA	HS	YG
<b>Deddf Pysgodfeydd Eogiaid a Dŵr Croyw 1975(1)</b>						
adran 2(1)	Nage	Ie	Nage	Nage	Nage	Nage
adran 2(2)	Nage	Ie	Nage	Nage	Nage	Nage
adran 2(4)	Nage	Ie	Nage	Ie	Ie	Ie
adran 4(1)	Nage	Ie	Nage	Ie	Ie	Ie
adran 5(4)	Nage	Ie	Nage	Ie	Ie	Ie
adran 9(2)	Nage	Ie	Nage	Ie	Nage	Ie
adran 12(1)	Nage	Ie	Nage	Ie	Ie	Ie
adran 12(3)	Nage	Ie	Nage	Ie	Ie	Ie
adran 13(2)	Nage	Ie	Nage	Ie	Ie	Ie
adran 14(8)	Nage	Ie	Nage	Ie	Ie	Ie
adran 15(2)	Nage	Ie	Nage	Ie	Ie	Ie
adran 18(1)	Nage	Ie	Nage	Nage	Nage	Nage
adran 27	Nage	Ie	Nage	Nage	Nage	Nage
adran 31(2)	Nage	Ie	Nage	Nage	Nage	Nage
<b>Deddf Eogiaid 1986(2)</b>						
adran 32	Nage	Ie	Nage	Nage	Nage	Nage
<b>Deddf Diogelu'r Amgylchedd 1990(3)</b>						
adran 33(6)	Nage	Nage	Nage	Nage	Ie	Nage
adran 71(3)	Nage	Ie	Nage	Nage	Nage	Nage

(1) 1975 p. 51; diwygiwyd adran 2(1) gan Ddeddf y Môr a Mynediad i'r Arfordir 2009 (p.23), adran 216(1), (2)(a) a (b); diwygiwyd adran 2(2) gan Ddeddf y Môr a Mynediad i'r Arfordir 2009, adran 216(1), (3)(a) a (b); diwygiwyd adran 4(1) gan Ddeddf y Môr a Mynediad i'r Arfordir 2009 adran 321, Atodlen 22, Rhan 5 (B); amnewidiwyd adran 14(8) gan Ddeddf yr Amgylchedd 1995 (p. 25), adran 105, Atodlen 15, paragraff 13; diwygiwyd adran 15(2) gan Ddeddf yr Amgylchedd 1995 adran 105, Atodlen 15, paragraff 14(2); diwygiwyd adran 27 gan Ddeddf y Môr a Mynediad i'r Arfordir 2009 adran 233(1), Atodlen 16, paragraffau 1 ac 11.

(2) 1986 p. 62; diwygiwyd adran 32 gan Ddeddf y Môr a Mynediad i'r Arfordir 2009 adrannau 229 a 321, Atodlen 22, Rhan 5(B).

(3) 1990 p. 43; diwygiwyd adran 33(6) gan Reoliadau Caniatáu Amgylcheddol (Cymru a Lloegr) 2007 (O.S. 2007/3538), rheoliadau 73, 74(2), Atodlen 21, Rhan 1, paragraffau 2, 4(1), (5) ac Atodlen 23; diwygiwyd adran 71(3) gan Ddeddf Cymdogaethau Glân a'r Amgylchedd 2005 (p. 16), adran 46(2)(b) a chan Ddeddf yr Amgylchedd 1995 adrannau 112, 120, Atodlen 19, paragraff 4(2) ac Atodlen 24.

**Deddf Adnoddau  
Dŵr 1991(1)**

adran 24(4)(a)	Ie	Ie	Ie	Ie	Ie	Ie
adran 24(4)(b)	Ie	Ie	Ie	Ie	Ie	Ie
adran 25(2)(a)	Ie	Ie	Ie	Ie	Ie	Ie
adran 25(2)(b)	Ie	Ie	Ie	Ie	Ie	Ie
adran 25C	Nage	Ie	Nage	Nage	Nage	Nage
adran 80(1)	Ie	Ie	Ie	Ie	Ie	Ie
adran 80(2)	Ie	Ie	Ie	Ie	Ie	Ie
adran 161D(1)	Nage	Ie	Nage	Nage	Nage	Nage
adran 199(4)	Nage	Ie	Nage	Nage	Nage	Nage
adran 201(3)	Nage	Ie	Nage	Nage	Nage	Nage
adran 202(4)	Nage	Ie	Nage	Nage	Nage	Nage
adran 206(1)	Nage	Ie	Nage	Nage	Nage	Nage
adran 206(3)	Nage	Ie	Nage	Nage	Nage	Nage
adran 206(3A)	Nage	Ie	Nage	Nage	Nage	Nage
adran 206(4)	Nage	Ie	Nage	Nage	Nage	Nage
Atodlen 20, paragraff 7	Nage	Ie	Nage	Nage	Nage	Nage

**Deddf y Diwydiant Dŵr 1991(2)**

adran 120(9)	Ie	Ie	Ie	Ie	Nage	Ie
adran 130(7)	Ie	Ie	Ie	Ie	Nage	Ie
adran 133(5)	Nage	Ie	Nage	Ie	Nage	Nage
adran 135A(2)(a)	Nage	Ie	Nage	Nage	Nage	Nage

**Deddf Traenio Tir 1991(3)**

adran 53(2)	Nage	Ie	Nage	Nage	Nage	Nage
adran 64(6)	Nage	Ie	Nage	Nage	Nage	Nage
adran 69(4)	Nage	Ie	Nage	Nage	Nage	Nage

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(1) 1991 p. 57; diwygiwyd adran 25(2)(b) gan Ddeddf Dŵr 2003 (p. 37) adrannau 2(1), (3), 101(2) ac Atodlen 9, Rhan 1; mewnosodwyd adran 25C gan Ddeddf Dŵr 2003 adran 30; diwygiwyd adran 80(1) gan Ddeddf yr Amgylchedd 1995 adran 120, Atodlen 22, paragraff 141(a); diwygiwyd adran 80(2) gan Ddeddf yr Amgylchedd 1995 adran 120, Atodlen 22, paragraffau 141(b) ac (c); mewnosodwyd adran 161D gan Ddeddf yr Amgylchedd 1995 adran 120, Atodlen 22, paragraff 162; diwygiwyd adran 199(4) gan Ddeddf Dŵr 2003 adrannau 8(1) a 5(b); amnewidiwyd adran 201(3) gan Ddeddf Dŵr 2003 adran 70; diwygiwyd adran 202(4) gan Ddeddf yr Amgylchedd 1995 adran 120, Atodlen 22, paragraffau 128 a 172(1); amnewidiwyd adran 206(1) gan Ddeddf yr Amgylchedd 1995 adran 112, Atodlen 19, paragraff 5(2) ac fe'i diwygiwyd gan Ddeddf Dŵr 2003 adran 101(1), Atodlen 7, Rhan 1, paragraffau 1 ac 11; mewnosodwyd adran 206(3A) gan Ddeddf yr Amgylchedd 1995 adran 112, Atodlen 19, paragraff 5(4); diwygiwyd Atodlen 20, paragraff 7 gan Ddeddf yr Amgylchedd 1995 adran 120, Atodlen 22, paragraff 188.

(2) 1991 p. 56; amnewidiwyd adran 120(9) gan Ddeddf yr Amgylchedd 1995 adran 120, Atodlen 22, paragraff 105(4); amnewidiwyd adran 130(7) gan Ddeddf yr Amgylchedd 1995 adran 120, Atodlen 22, paragraff 108(3); amnewidiwyd adran 133(5) gan Ddeddf yr Amgylchedd 1995 adran 120, Atodlen 22, paragraff 111; mewnosodwyd adran 135A(2)(a) gan Ddeddf yr Amgylchedd 1995 adran 120, Atodlen 22, paragraff 113.

(3) 1991 p. 59.

**Deddf yr Amgylchedd  
1995(1)**

adran 110(1)	Nage	Ie	Nage	Nage	Nage	Nage
adran 110(2)(a)	Nage	Ie	Nage	Nage	Nage	Nage
adran 110(2)(b)	Nage	Ie	Nage	Nage	Nage	Nage
adran 110(2)(c)	Nage	Ie	Nage	Nage	Nage	Nage
adran 110(3)	Nage	Ie	Nage	Nage	Nage	Nage

**Deddf Dŵr 2003(2)**

adran 4(4)	Nage	Ie	Nage	Nage	Nage	Nage
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(1) 1995 p. 25.

(2) 2003 p. 37.

Provision creating an offence	FMP	VMP	CN	RN	SN	EU
<b>Salmon and Freshwater Fisheries Act 1975(1)</b>						
section 2(1)	No	Yes	No	No	No	No
section 2(2)	No	Yes	No	No	No	No
section 2(4)	No	Yes	No	Yes	Yes	Yes
section 4(1)	No	Yes	No	Yes	Yes	Yes
section 5(4)	No	Yes	No	Yes	Yes	Yes
section 9(2)	No	Yes	No	Yes	No	Yes
section 12(1)	No	Yes	No	Yes	Yes	Yes
section 12(3)	No	Yes	No	Yes	Yes	Yes
section 13(2)	No	Yes	No	Yes	Yes	Yes
section 14(8)	No	Yes	No	Yes	Yes	Yes
section 15(2)	No	Yes	No	Yes	Yes	Yes
section 18(1)	No	Yes	No	No	No	No
section 27	No	Yes	No	No	No	No
section 31(2)	No	Yes	No	No	No	No
<b>Salmon Act 1986(2)</b>						
section 32	No	Yes	No	No	No	No
<b>Environmental Protection Act 1990(3)</b>						
section 33(6)	No	No	No	No	Yes	No
section 71(3)	No	Yes	No	No	No	No

(1) 1975 c. 51; section 2(1) was amended by the Marine and Coastal Access Act 2009 (c.23), section 216(1), (2)(a) and (b); section 2(2) was amended by the Marine and Coastal Access Act 2009, section 216(1), (3)(a) and (b); section 4(1) was amended by the Marine and Coastal Access Act 2009, section 321, Schedule 22, Part 5 (B); section 14(8) was substituted by the Environment Act 1995 (c. 25), section 105, Schedule 15, paragraph 13; section 15(2) was amended by the Environment Act 1995, section 105, Schedule 15, paragraph 14(2); section 27 was amended by the Marine and Coastal Access Act 2009, section 233(1), Schedule 16, paragraphs 1 and 11.

(2) 1986 c. 62; section 32 was amended by the Marine and Coastal Access Act 2009, sections 229 and 321, Schedule 22, Part 5(B).

(3) 1990 c. 43; section 33(6) was amended by the Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regulations 73, 74(2), Schedule 21, Part 1, paragraphs 2, 4(1), (5) and Schedule 23; section 71(3) was amended by the Clean Neighbourhoods and Environment Act 2005 (c. 16), section 46(2)(b) and by the Environment Act 1995, sections 112, 120, Schedule 19, paragraph 4(2) and Schedule 24.

**Water Resources  
Act 1991(1)**

section 24(4)(a)	Yes	Yes	Yes	Yes	Yes	Yes
section 24(4)(b)	Yes	Yes	Yes	Yes	Yes	Yes
section 25(2)(a)	Yes	Yes	Yes	Yes	Yes	Yes
section 25(2)(b)	Yes	Yes	Yes	Yes	Yes	Yes
section 25C	No	Yes	No	No	No	No
section 80(1)	Yes	Yes	Yes	Yes	Yes	Yes
section 80(2)	Yes	Yes	Yes	Yes	Yes	Yes
section 161D(1)	No	Yes	No	No	No	No
section 199(4)	No	Yes	No	No	No	No
section 201(3)	No	Yes	No	No	No	No
section 202(4)	No	Yes	No	No	No	No
section 206(1)	No	Yes	No	No	No	No
section 206(3)	No	Yes	No	No	No	No
section 206(3A)	No	Yes	No	No	No	No
section 206(4)	No	Yes	No	No	No	No
Schedule 20, paragraph 7	No	Yes	No	No	No	No

**Water Industry  
Act 1991(2)**

section 120(9)	Yes	Yes	Yes	Yes	No	Yes
section 130(7)	Yes	Yes	Yes	Yes	No	Yes
section 133(5)	No	Yes	No	Yes	No	No
section 135A(2)(a)	No	Yes	No	No	No	No

**Land Drainage  
Act 1991(3)**

section 53(2)	No	Yes	No	No	No	No
section 64(6)	No	Yes	No	No	No	No
section 69(4)	No	Yes	No	No	No	No

(1) 1991 c. 57; section 25(2)(b) was amended by the Water Act 2003 (c. 37), sections 2(1), (3), 101(2) and Schedule 9, Part 1; section 25C was inserted by the Water Act 2003, section 30; section 80(1) was amended by the Environment Act 1995, section 120, Schedule 22, paragraph 141(a); section 80(2) was amended by the Environment Act 1995, section 120, Schedule 22, paragraphs 141(b) and (c); section 161D was inserted by the Environment Act 1995, section 120, Schedule 22, paragraph 162; section 199(4) was amended by the Water Act 2003, sections 8(1) and (5)(b); section 201(3) was substituted by the Water Act 2003, section 70; section 202(4) was amended by the Environment Act 1995, section 120, Schedule 22, paragraphs 128 and 172(1); section 206(1) was substituted by the Environment Act 1995, section 112, Schedule 19, paragraph 5(2) and was amended by the Water Act 2003, section 101(1), Schedule 7, Part 1, paragraphs 1 and 11; section 206(3A) was inserted by the Environment Act 1995, section 112, Schedule 19, paragraph 5(4); Schedule 20, paragraph 7 was amended by the Environment Act 1995, section 120, Schedule 22, paragraph 188.

(2) 1991 c. 56; section 120(9) was substituted by the Environment Act 1995, section 120, Schedule 22, paragraph 105(4); section 130(7) was substituted by the Environment Act 1995, section 120, Schedule 22, paragraph 108(3); section 133(5) was substituted by the Environment Act 1995, section 120, Schedule 22, paragraph 111; section 135A(2)(a) was inserted by the Environment Act 1995, section 120, Schedule 22, paragraph 113.

(3) 1991 c. 59.

**Environment  
Act 1995(1)**

section 110(1)	No	Yes	No	No	No	No
section 110(2)(a)	No	Yes	No	No	No	No
section 110(2)(b)	No	Yes	No	No	No	No
section 110(2)(c)	No	Yes	No	No	No	No
section 110(3)	No	Yes	No	No	No	No

**Water Act  
2003(2)**

section 4(4)	No	Yes	No	No	No	No
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(1) 1995 c. 25.

(2) 2003 c. 37.

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