

# **SL(6)404 – The Environmental Protection (Single-use Plastic Products) (Civil Sanctions) (Wales) Regulations 2023**

## **Background and Purpose**

The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 (**the Act**) aims to address the environmental damage caused by the use and disposal of single-use plastic products (**SUPP**) in Wales. Section 5 of the Act creates an offence of supplying prohibited SUPP.

These Regulations provide that a local authority, as regulator, may impose civil sanctions in relation to section 5 offences as an alternative to criminal prosecutions. The civil sanctions are:

- fixed monetary penalties,
- variable monetary penalties,
- compliance notices,
- stop notices, and
- enforcement undertakings.

For example, if a local authority is satisfied beyond reasonable doubt that a person has committed a section 5 offence, the local authority may, where it is appropriate to do so, impose a fixed penalty of £200 on the person instead of prosecuting the person.

The Regulations also provide for guidance relating to the use of civil sanctions, and for the publication of information on the enforcement action taken by local authorities.

## **Procedure**

Draft Affirmative

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

## **Technical Scrutiny**

The following four points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Regulation 6 states:



*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.*

We would be grateful if the Welsh Government could clarify the meaning of regulation 6, in particular why it is necessary to say that a penalty recoverable “on the order of a court” is treated as payable “under a court order”. Without an explanation, the reference to an order of the court and a court order seems circular.

## **2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Regulation 14 provides for the publication of information regarding civil sanctions. For example, a local authority must publish reports specifying the cases in which civil sanctions have been imposed. However, regulation 14(3) states that regulation 14 does not apply in cases where the Welsh Ministers consider that publication would be inappropriate.

We would be grateful if the Welsh Government could:

- (a) clarify the intent behind regulation 14(3),
- (b) give examples of when publication might be inappropriate, and
- (c) explain how the Welsh Government’s opinion as to what is inappropriate will be communicated to local authorities.

## **3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Paragraph 2 of Schedule 1 sets out the requirements of a notice of intent to impose a fixed monetary penalty. As regards paragraph 2:

- (a) Should a notice of intent also include information as to how the discharge payment may be made?
- (b) What does “requirement” mean in paragraph 2(2)(d)(iii)? Schedule 1 does not expressly refer to any “requirement” (unlike Schedule 2). Should “requirement” be changed to “penalty”?

## **4. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Paragraph 1(4) of Schedule 2 says that before serving a variable monetary penalty notice, the regulator may require a person to provide information in order to establish the amount of any financial benefit arising as a result of a section 5 offence.

However, it is unclear what happens if the person refuses to provide information, i.e. how is this requirement enforced?



## Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

## Welsh Government response

A Welsh Government response is required to each of the reporting points.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**15 November 2023**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

Welsh Parliament

**Legislation, Justice and Constitution Committee**