

# **SL(6)407 – The Prohibition on Disposal of Food Waste to Sewer) (Civil Sanctions) (Wales) Order 2023**

## **Background and Purpose**

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

A civil sanctions regime is introduced to enable the regulator to impose fixed monetary penalties, variable monetary penalties and non-compliance penalties. The regulator, for the purposes of this Order, is the local authority for the area in which the premises are situated.

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

The Schedule to this Order provides that guidance relating to the use of civil sanctions must be published. Guidance must also be published relating to the use of non-compliance penalties and enforcement cost recovery notices. Before any guidance is published, the regulator is required to consult. This Order also provides for the publication of information on enforcement action taken by the regulator. The regulator is able to recover certain costs of enforcement in the case of variable monetary penalties.

The regulator is able to recover any fixed monetary penalty, variable monetary penalty or non-compliance penalty imposed by the regulator under this Order together with any financial penalty for late payment.

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

## **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 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

**1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**



In article 3, the provision refers to an “offence under section **34D** of the 1990 Act”. But on every other occasion in this Order the provisions always refer to an offence under “section **34D(3)**” of the 1990 Act (see articles 5, 6(1) and (3), and paragraphs 1(1) and 11(1) of the Schedule). In this regard, section 34D(3) is the specific provision that creates an offence under section 34D of the 1990 Act. Therefore, it would have been more precise to cite “section **34D(3)**” of the 1990 Act in article 3 of this Order, and also more consistent with the other provisions of the Order.

## **2. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.**

In the Schedule, in paragraph 11(1), in the Welsh text, “determine” has been translated as “ganfyddir”. The term “canfod” is noted in the Legislative Translation Unit’s Glossary as the preferred term when conveying the meaning of “determine” in the context of ascertaining, establishing or discovering something. But it does appear to be incorrect in the context of paragraph 11(1) where the determine refers to specifying the amount of the financial penalty to be paid to the regulator, and hasn’t been used elsewhere in this Order.

The term “pennu” is also noted in the Legislative Translation Unit’s Glossary as the preferred term when conveying the meaning of “determine” in the different context of specifying, setting or fixing an amount etc. In this regard, “pennu” is the term that has been used as the translation of “determine” elsewhere in this Order in the same context as paragraph 11(1) – see paragraphs 19(2) and (3), and 25(3)(c) of the Schedule. In addition, “determine” has been translated as “pennu” in similar provisions that are found in other Welsh SIs such as paragraphs 1(1)(a) and 24(2) and (3) of the Schedule to SI 2018/760 (W. 151).

Therefore, it would appear that “determine” should have been translated as “bennir” rather than “ganfyddir” to correctly convey the meaning of that term in the context of paragraph 11(1) of the Schedule to this Order.

There is also some confusion in relation to the translation of this term in the corresponding numbered paragraph of the Schedule to the Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023 where “ganfyddir bennir” has been used in the Welsh text.

## **3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In the Schedule, in paragraph 25(2) and (3), there are references that are incorrectly described as “**paragraph** (1)(b)” but they should be described as “**sub-paragraph** (1)(b)” – see Writing LW 6.16(2) about composite references. In addition, in paragraph 28(2) of the Schedule, there is a similar reference which is incorrectly described as “**paragraph** (1)(a)” which should be described as “**sub-paragraph** (1)(a)”.

## **4. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**



In the Schedule, in paragraph 25(3)(c), in the English text, the phrase “**determining** the amount” has been used in relation to the amount of the penalty. However, in the following paragraph 26(c), a slightly different phrase, “**establishing** the amount”, has been used in relation to the non-compliance penalties and enforcement cost recovery notices.

In the Welsh text, both “determining” and “establishing” have been translated using the same word “bennu” which conveys the meaning of specifying or setting/fixing an amount to be paid in this context. It suggests to the reader of the Welsh text that both “determining the amount” and “establishing the amount” bear the same meaning in those paragraphs. If there is a difference in meaning, it would have been more appropriate to use a different term in the Welsh text of paragraph 26(c), such as “**gadarnhau**”. This would have conveyed the meaning of “establishing” in the sense of ascertaining or discovering the amount involved.

Therefore, the translation of paragraphs 25(3)(c) and 26(c) in the Welsh text of the Schedule does not convey the potential different meanings of the English text (if there is an intended difference) in the context of those paragraphs. In addition, it means that the translation of paragraphs 25(3)(c) and 26(c) in the Welsh text of the Schedule to this Order is different from that found in the corresponding paragraphs in the Schedule to the Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023, although the English text is identical. But it is also unclear whether the difference in the drafting of the English text by using “determining” and “establishing” is deliberate due to an intended difference in their meaning or an inconsistency in the drafting.

## 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 for each of the reporting points.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**15 November 2023**

