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WELSH STATUTORY INSTRUMENTS

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**2019 No. 331 (W. 81)**

**ENVIRONMENTAL PROTECTION, WALES**

**The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019**

*Made - - - - 20 February 2019*

*Coming into force in accordance with regulation 1(2)*

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the prevention, reduction and management of waste<sup>(1)</sup> and make these Regulations in exercise of the powers conferred by that section<sup>(2)</sup>.

In accordance with section 59(3) of the Government of Wales Act 2006<sup>(3)</sup> a draft of these Regulations was laid before and approved by a resolution of the National Assembly for Wales.

**Title, commencement and extent**

1.—(1) The title of these Regulations is the Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019.

(2) These Regulations come into force on the day after the day on which they are made.

(3) These Regulations extend to England and Wales.

**Amendment of the Environmental Protection Act 1990**

2.—(1) Part II of the Environmental Protection Act 1990 (waste on land)<sup>(4)</sup> is amended as follows.

(2) After section 34ZA (fixed penalty notices: offences under section 34(6) relating to section 34(2A): England)<sup>(5)</sup> insert—

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(1) [S.I. 2010/1552](#). By virtue of section 59(2) of the Government of Wales Act 2006 ([c.32](#)) the Welsh Ministers may exercise the power conferred by section 2(2) of the European Communities Act 1972 ([c.68](#)) in relation to any matter, or for any purpose, if they have been designated in relation to that matter or for that purpose.

(2) [1972 c.68](#). Section 2(2) was amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 ([c. 7](#)).

(3) [2006 c. 32](#). Section 59(3) was amended by section 20(2)(c) of the Wales Act 2017 ([c. 4](#)).

(4) [1990 c.43](#).

(5) Section 34ZA was inserted by regulation 3 of [S.I. 2018/1227](#).

**“Fixed penalty notices: offences under section 34(6) relating to section 34(2A): Wales**

**34ZB.**—(1) This section applies where it appears to an enforcement authority in Wales that a person has failed to comply with the duty relating to the transfer of household waste in section 34(2A)(6) in Wales.

(2) The authority may give to that person a notice offering the opportunity of discharging any liability to conviction for an offence under section 34(6) by payment of a fixed penalty.

(3) An authority may not give a person a notice under subsection (2) if such a notice has already been given to that person (whether by the same or another authority) in respect of the same offence.

(4) Where a waste collection authority (A) gives a notice to a person under subsection (2) in relation to a failure to comply with the duty in section 34(2A) that took place in the area of another waste collection authority (B), A must, at the time of giving the notice, give a copy of the notice to B.

(5) Where the Natural Resources Body for Wales gives a notice to a person under subsection (2), the Body must, at the time of giving the notice, give a copy of the notice to the waste collection authority in whose area the failure to comply with the duty in section 34(2A) took place.

(6) Where a person is given a notice under subsection (2) in respect of an offence—

- (a) no proceedings may be instituted for that offence before the end of the period of 14 days following the date of the notice; and
- (b) the person may not be convicted of the offence if the fixed penalty is paid before the end of that period.

(7) The fixed penalty payable to an enforcement authority under this section is £300.

(8) An enforcement authority may make provision in a notice given under subsection (2) for treating the fixed penalty as having been paid if a lesser amount of £150 is paid before the end of the period of 10 days following the date of the notice.

(9) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(10) A notice under this section must also—

- (a) state the period during which, by virtue of subsection (6)(a), proceedings will not be instituted for the offence under section 34(6);
- (b) state the date on or before which, by virtue of subsection (6)(b), payment of the fixed penalty must be made in order to discharge any liability to conviction for the offence;
- (c) state the amount of the fixed penalty;
- (d) if the enforcement authority makes provision under subsection (8)—
  - (i) state the lesser amount, the payment of which is treated, by virtue of that subsection, as payment of the fixed penalty, and
  - (ii) state the date on or before which payment of the lesser amount must be made for it to be so treated;
- (e) state the permissible methods of payment;
- (f) state the person to whom, and the address at which, payment may be made;
- (g) explain that—

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(6) Section 34 was amended by S.I. 2005/2900, 2006/123 (W. 16), 2007/3538, 2011/988. There are other amending instruments but none is relevant.

- (i) the notice contains an offer to discharge liability to conviction for the offence by payment of a fixed penalty and that the person is not required to accept that offer, and
  - (ii) the person is entitled to make representations to the authority about the allegations contained in the notice;
  - (h) state the address to which the person may send any representations;
  - (i) explain that, by virtue of subsection (3), an authority may not give a person a notice under this section if such a notice has already been given to that person (whether by the same or another authority) in respect of the same offence;
  - (j) state the other enforcement authorities to which the authority has sent a copy of the notice in accordance with subsections (4) and (5).
- (11) An enforcement authority may authorise in writing a person (an “authorised officer”) to give a notice under this section on its behalf.
- (12) Where an authorised officer proposes to give a person a notice under subsection (2), the officer may require that person to give their name and address.
- (13) A person commits an offence if the person—
- (a) fails to give a name or address when required to do so under subsection (12), or
  - (b) gives a false or inaccurate name or address in response to a requirement under that subsection.
- (14) A person guilty of an offence under subsection (13) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (15) In any proceedings a certificate which—
- (a) purports to be signed by or on behalf of the chief finance officer of an enforcement authority to whom a fixed penalty is payable pursuant to a notice under this section; and
  - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,
- is evidence of the facts stated.
- (16) In this section—
- “chief finance officer”, in relation to an enforcement authority, means the person having responsibility for the financial affairs of the authority;
  - “enforcement authority in Wales” means the Natural Resources Body for Wales or a waste collection authority in Wales.”
- (3) In section 73A (use of fixed penalty receipts)(7)—
- (a) in subsection (1A), after “section” insert “34ZB or”;
  - (b) in subsection (2), after “34ZA,” insert “34ZB,”.

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(7) Section 73A was inserted by section 52 of the Clean Neighbourhoods and Environment Act 2005 (c. 16), and was amended by S.I. 2013/755 (W. 90), 2016/334, 2017/1024 (W. 262) and 2018/1227. There are other amendments but none is relevant.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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20 February 2019

*Hannah Blythyn*  
Deputy Minister for Housing and Local  
Government, under authority of the Minister  
for Housing and Local Government, one of the  
Welsh Ministers

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## EXPLANATORY NOTE

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

These Regulations insert a new section 34ZB into Part II (waste on land) of the Environmental Protection Act 1990 (c.43) (“the Act”).

Section 34(2A) of the Act sets out the duty of care that applies to occupiers of domestic property in relation to household waste produced at their property. That duty requires occupiers of domestic property in Wales to take all measures available to them as are reasonable in the circumstances to secure that any transfer made by the occupier of their household waste is only to a person that is authorised to accept it.

Section 34(6) of the Act provides that a failure to comply with the duty imposed by section 34(2A) is an offence.

The new section 34ZB confers a power on waste authorities in Wales to give a notice offering a person the opportunity of discharging any liability to conviction for the offence of failing to comply with the duty imposed by section 34(2A) by payment of a fixed penalty.

When issuing a notice, a Welsh authority may offer a discount for early payment of a fixed penalty.

A regulatory impact assessment in relation to Wales has been prepared on the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on [www.gov.wales](http://www.gov.wales).