



A Green Paper on on the New Civil Sanctions for Environmental Offences 2010

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NEW CIVIL SANCTIONS FOR ENVIRONMENTAL OFFENCES 2010

SUMMARY

On 6th April 2010 the Civil Sanctions order came into force. It allows the environmental regulator to impose civil sanctions on a business committing certain environmental offences, and acts as an alternative to prosecution and criminal penalties of fines and imprisonment. The EA intends to start to use these new powers on 4th January 2011.

The Governments intention is that civil sanctions will make environmental law enforcement more effective and flexible for regulators and businesses. It is designed to be more proportionate and reflect the fact that most incidents / offences committed by businesses are unintentional. At present, the new system applies to England only, similar regulations for Wales are expected to follow shortly.

“The new civil sanctions will allow regulators to distinguish more effectively between those with a good general approach to compliance and those who tend to disregard the law. They will enable regulators to respond appropriately to the circumstances of each case; for example, ensuring that those who have saved costs through non-compliance do not gain an unfair advantage over those who have complied. This represents an important change in the way that enforcement is conducted and is expected to foster improved communication and co- operation between regulators and those they regulate.”

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What are civil sanctions?

The new civil sanctions the environmental regulator can use against a business committing certain environmental offences include:

Compliance notice - a written notice with the requirement to take specified

steps within a stated period to secure that an offence does not continue or happen again.

Restoration notice - a written notice with the requirement to take specified steps within a stated period to secure that the position is, so far as possible, restored to what it would have been if no offence had been committed

Enforcement undertaking - a voluntary agreement by the offender to take corrective action to make up for non-compliance. These enable a person, which a regulator reasonably suspects of having committed an offence, to give an undertaking to a regulator to take one or more corrective actions set out in the undertaking.

Fixed monetary penalty (FMP) - A requirement to pay a monetary penalty of a fixed amount, a low level penalty for minor offences fixed at £100 for an individual and £300 for a company.

Variable monetary penalty (VMP) - A requirement to pay a monetary penalty of an amount determined by the regulator reflecting the circumstances of the offence. Intended as a monetary penalty for more serious offences with a maximum fine of £250,000.

Third party undertaking: These enable a person who has received a regulator's notice of intent to impose a variable monetary penalty, for example, to give a commitment to take action to benefit a third party affected by the non-compliance.

Stop notice - a written notice to stop an activity which is causing harm. A requirement for a person to stop carrying on an activity described in the notice until it has taken steps to come back into compliance

Dr Paul Leinster, Chief Executive of the Environment Agency, said: 'Having had such a successful outcome from Government's review of our regulation is a great achievement. It allows us to focus on protecting people and the environment. 'This is an ongoing journey for us. Businesses appreciate the benefits of a regulatory approach that makes it easier for them to protect people and the environment. However we recognise there is still more we can do to become the best regulator we can be and to clamp down quickly and effectively on the few businesses that cause significant damage to the environment and harm to people.'

A study of the current system resulted in the following findings :

Regulators often have to choose between issuing a warning letter or caution and taking criminal proceedings without easy access to proportionate intermediate sanctions that act as a deterrent, leading to a 'compliance deficit' The current enforcement system therefore relies heavily on criminal sanctions and this is sometimes disproportionate.

Fines do not always cover the costs to society of harm from non-compliance and therefore do not always act as an appropriate deterrent, contributing to a shortfall in compliance.

Environmental damage and its effects are often not put right

Overall, the current system does not adequately encourage or take account of a generally good approach to compliance, or deter non-compliance, with environmental regulations. Potentially it gives those who do not comply with regulations a competitive advantage which is unfair to those who do comply.

In response to these shortcomings the Government has introduced **RES Act civil sanctions for environmental offences**. The regulators still have the discretion to use existing sanctioning powers and any of the other approaches to enforcement that pre-dated RES Act civil sanctions and they will decide what is appropriate on consideration of the specific facts of the case.

Advice and guidance remains the cornerstone of a well graduated system of enforcement and will in many cases be sufficient to achieve the regulators' enforcement objectives. Regulators will use the new sanctions when more appropriate to achieving enforcement objectives and proportionate than relying on existing enforcement mechanisms. Prosecution remains the appropriate response for the most serious offences.

The Environment Agency and Natural England are the first regulators to be given these new civil powers. They will be able to use civil or traditional criminal punishments at their discretion, depending on which action they believe to be more effective.

What offences can civil sanctions be used for?

At present, civil sanctions will be used for offences involving harm to water or wildlife, or poor drainage and waste management. Other offences will be added by future legislation. The Order specifies which civil sanctions can be used for which offences.

What are the procedures for using civil sanctions?

These vary from sanction to sanction. In most cases:

1. The regulator issues a notice of intent to impose the sanction.
2. The offender can make objections.
3. The offender can appeal against a civil sanction to an independent tribunal.
4. Subject to the appeal, the offender must pay the penalty.

Legal action can and will be taken against anyone not paying monetary penalties. In addition, anyone not complying with stop notices or restoration notices will usually be prosecuted. In some circumstances, the regulator may recover costs of investigation and or legal services.

THE FULL DEFRA GUIDANCE ON NEW ENVIRONMENTAL CIVIL SANCTIONS CAN BE FOUND HERE:

["http://www.defra.gov.uk/environment/policy/enforcement/pdf/defra-wag-guidance.pdf"](http://www.defra.gov.uk/environment/policy/enforcement/pdf/defra-wag-guidance.pdf)

IS YOUR SITE RIGHT?

Use this Environment Agency 10-point checklist to help you make sure

Storing and handling oils, chemicals and other risky materials

1. Are storage containers fit for purpose, regularly inspected and maintained?
2. Are storage areas and containers sited away from watercourses, drains and unsurfaced areas?
3. Do storage containers have secondary containment, such as a bund, to contain any leaks or spills?
4. Do you have procedures and training for safe delivery and handling of materials?

Waste management

5. Is your storage and handling of waste safe and does it comply with the law?
6. Do you know where your waste goes? Are you sure it's disposed of correctly?
7. Are you reducing and recycling your waste? Do it and save money.

Site Drainage

8. Do you have an up to date drainage plan of your site?
9. Is your site drained correctly?
 - only clean water, such as roof drainage, to surface water drains.
 - all contaminated water, such as sewage and trade effluent, to foul drain.

Dealing with pollution emergencies

10. Do you have a plan, equipment and training to deal with pollution emergencies?

*If you answered 'no' to any question, or are unsure, use the Environment Agency's "Pollution Prevention Pays – getting your site right" guidance available from their website or call us for advice **0800 731 9313***

FURTHER ESSENTIAL READING

The Full DEFRA Guidance on the New Environmental Civil Sanctions :

The EA intends to start to use these new powers on 4th January 2011.

“<http://www.defra.gov.uk/environment/policy/enforcement/pdf/defra-wag-guidance.pdf>”

PPG7 : Refuelling Facilities :

Advice on how to protect the environment through the safe delivery, storage and dispensing of fuels.

<http://publications.environment-agency.gov.uk/epages/eapublications.storefront>

PPG18 Managing Fire Water and Major Spillages

These guidance notes have been drawn up to assist in the identification of the equipment and techniques available to prevent and mitigate damage to the water environment caused by fires and major spillages.

Download full Guidance at

“<http://publications.environment-agency.gov.uk/pdf/PMHO600BBUD-e-e.pdf>”

PPG21 : Pollution - Incident Response :

Good practice guidance to produce incident response plans for dealing with accidents, spillages and fires, to help protect the environment.

<http://publications.environment-agency.gov.uk/epages/eapublications.storefront>

PPG22 : Incident Response – Dealing with Spills :

Advice on how to deal with spillages to avoid pollution.

<http://publications.environment-agency.gov.uk/epages/eapublications.storefront>

PPG26 : Safe Storage -

Drums and Intermediate Bulk Containers :

The regulations apply to: tanks (can be permanent or temporary); drums greater than 200 litres capacity; intermediate bulk containers (IBCs); mobile bowers.

All PPGs are available for download at

<http://www.environment-agency.gov.uk/business/topics/pollution/39083.aspx>

ENVIRONMENTAL LIABILITY DIRECTIVE 2004/35/EC :

The Directive establishes a strong framework for environmental liability based on the "polluter pays" principle, with a view to preventing and remedying damage to animals, plants, natural habitats and water resources, and damage affecting the land. Where the polluter is at fault or negligent powers exist to ensure that the costs as well as any fines are allocated, in extreme cases prison sentences can be enforced.

Download full Directive www.europa.eu

PPG28 Controlled Burn

This guidance will help you decide when and how to use a controlled burn as part of a fire fighting strategy to prevent or reduce damage to the environment. You should consider this guidance on a site by site basis when developing an incident response plan for your site.

Download full Guidance at

["http://publications.environment-agency.gov.uk/pdf/PMHO1005BJIT-e-e.pdf"](http://publications.environment-agency.gov.uk/pdf/PMHO1005BJIT-e-e.pdf)

Fire Service Manual

This Fire and Rescue Manual is the first manual within the Fire Service Operations series dedicated to the protection of the environment. This publication provides information and guidance designed to support firefighters, Fire Brigade Service managers, and trainers in their work at operational incidents, training events, and during day-to-day activities.

Download full manual here

["http://www.communities.gov.uk/publications/fire/environmentprotectvol2"](http://www.communities.gov.uk/publications/fire/environmentprotectvol2)

**If you have any questions about how to
make your business safer for your staff
and the environment please call**

0800 731 9313

www.environmental-innovations.biz

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