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Civil sanctions for environmental offences

The Environmental Civil Sanctions Order & Regulations 2010

Guidance to regulators in England on how the civil sanctions should be applied, and draft guidance for Wales*

January 2010

*Legislation is likely to be made in Wales during 2010. This document remains in draft for application in Wales until it has been updated to reflect the planned Welsh legislation.

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1. Introduction

Civil sanctions for environmental offences

1.1 The Government, including the Welsh Assembly Government, believes that environmental regulators should have access to effective sanctions that are flexible and proportionate and that ensure the protection of the environment and human health when tackling non-compliance.

1.2 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.

The civil sanctions include:

Compliance notice: A requirement to take specified steps within a stated period to secure that an offence does not continue or happen again.

Restoration notice: A 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: 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.

Variable monetary penalty (VMP): A requirement to pay a monetary penalty of an amount determined by the regulator reflecting the circumstances of the offence.

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 requirement for a person to stop carrying on an activity described in the notice until it has taken steps to come back into compliance

1.3 The Regulatory Enforcement and Sanctions Act 2008[1] (hereafter RES Act) contains enabling powers to introduce these civil sanctions across a number of different spheres. In the environmental sphere civil sanctions are introduced by the following Statutory Instruments[2]:

- The Environmental Civil Sanctions (England) Order 2010
- The Environmental Sanctions (Miscellaneous Amendments) (England) Regulations 2010
- The draft proposed Environmental Civil Sanctions (Wales) Order 2010
- The draft proposed Environmental Sanctions (Miscellaneous Amendments) (Wales) Regulations 2010

1.4 These Statutory Instruments make the civil sanctions available for certain specified offences for use by:

- The Environment Agency
- Natural England

The Government plans to consider possible proposals to make civil sanctions available for use by Local Authorities. Following the joint Defra/WAG public consultation which ended on 14 October 2009, the Welsh Assembly Government is also considering whether to introduce civil sanctions for use by Countryside Council for Wales.

1.5 In using the civil sanctions regulators must apply a criminal standard of proof: i.e. they must be satisfied 'beyond reasonable doubt' that an offence has been committed before using them, except for enforcement undertakings and stop notices (see paragraph 2.10).

Background and objectives of civil sanctions

1.6 The Macrory Review of regulatory enforcement[3] and a Defra review of environmental enforcement[4] both concluded that the current sanctioning framework for dealing with environmental offences was capable of improvement. The problems identified were that:

- 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

[1] The RES Act does not cover offences created in legislation that is made under the European Communities Act 1972; the European Communities Act is therefore to be used to introduce RES style civil sanctions in regulations that implement requirements of EU Directives.
[2] The RES Act only allows civil sanctions for existing offences. Therefore, new legislation will consider the potential for using civil sanctions separately.
[3] Regulatory Justice: Making Sanctions Effective. http://www.berr.gov.uk/files/file44593.pdf
[4] http://www.defra.gov.uk/environment/enforcement/report.htm

- 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.

1.7 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.

1.8 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.

1.9 The Government also has plans to introduce new powers to assist the courts in structured, proportionate, and effective sentencing of the especially serious environmental offences that continue to come before them.

1.10 The aim of these measures is to create a better graduated enforcement system and, more widely, a level playing field in removing competitive advantages for non-compliant companies and to be fairer overall. The introduction of these measures should lead to wider benefits for the protection of the environment.

About this document

1.11 This document is non-statutory guidance which sets out how the Secretary of State for the Environment, Food and Rural Affairs and, in draft form, the Welsh Assembly Government consider these civil sanctions should be applied in practice. It sets out government policy and is intended to make clear that there is a fair process for the civil sanctions and to ensure consistency across regulators.

1.12 The RES Act[5] requires regulators to consult on and publish guidance about the new sanctions ('Sanctions Guidance') as well as how they will enforce offences ('Enforcement Policy'). These documents will provide the regulated community

[5] Section 63 of The Regulatory Enforcement and Sanctions Act 2008 and articles 12 - 14 of the Environmental Civil Sanctions Order 2010.

and members of the public with a clear indication of what they can expect from regulators when they are responding to non-compliance. They are referred to in this document as 'guidance from regulators'.

1.13 This document has been developed by the Government working with the regulators (including representatives of Local Authorities), the Tribunal Service and representatives of businesses and non-governmental organisations. It applies to the Environment Agency and Natural England and will also apply to the Countryside Council for Wales and Local Authorities at a later date if civil sanctions are made available to them. Regulators will be guided by this document in developing their own guidance.

1.14 The table below provides a brief summary of other documents and guidance that are closely related.

Figure 1: SI guidance and related documents

Document	Issued by	Description
Code for Crown Prosecutors	The Crown Prosection Service [6]	This sets out the general principles Crown Prosecutors should follow when they make decisions on cases
Compliance Code	Department for Business, Innovation & Skills[7]	The Code sets out what regulators should consider when determining policies, setting standards or giving guidance in relation to their duties. It is based on the better regulation principles in the Hampton Report
RES Act	Department for Business, Innovation & Skills[8]	Legislation containing enabling powers for Ministers to introduce civil sanctions for relevant regulators and relevant offences. The scope is determined by schedules 5 to 7 of the RES Act.
RES Act guidance	Department for Business, Innovation & Skills[9]	Government guidance on how civil sanctions are expected to work across all forms of regulation
Statutory Instruments	Department of Environment, Food and Rural Affairs and Welsh Assembly Government	Legislation granting the Environment Agency and Natural England the powers to use civil sanctions for certain offences
Guidance on the Statutory Instruments	Department of Environment, Food and Rural Affairs and Welsh Assembly Government	Guidance to regulators on how civil sanctions in the Statutory Instruments should be applied (this document)
Regulator Sanctions	Environment Agency and Natural England	Guidance from the regulators to those they regulate on how they will apply and

[6] http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html
[7] http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementing-principles/regulatory-compliance-code/page44055.html/inspection-enforcement/implementing-principles/regulatory-compliance-code/page44055.html
[8] http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementing-principles/sanctions-bills/page44047.html
[9] http://www.berr.gov.uk/files/file47135.pdf

Guidance and Enforcement Policy		enforce civil sanctions, referred to in this document as 'guidance from regulators'.
Regulator Sanctions Guidance and Enforcement Policy	Countryside Council for Wales[10]	Guidance from the regulator to those they regulate on how they will apply and enforce civil sanctions, referred to in this document as 'guidance from regulators'.

1.15 This document is correct at time of publication and will be kept under review and revised from time to time[11]. It is freely available in Adobe Acrobat format. A printed copy of the guidance is available on request by writing to:

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Waste Regulation Policy Branch
Waste and Local Environmental Quality Division
Welsh Assembly Government
Cathays Park
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CF10 3NQ

e-mail:
waste@wales.gsi.gov.uk

[10] The Welsh Assembly Government is considering whether to introduce civil sanctions for use by Countryside Council for Wales.
[11] The guidance will be considered for update once the proposed Order and Amendment Regulations have been approved by the Welsh Assembly Government

2. Using civil sanctions

This section outlines how civil sanctions are to be used. It starts by setting out some general issues and summarising existing enforcement mechanisms. It then introduces the civil sanctions explaining when each is appropriate and how they are to work in practice.

General approach to using civil sanctions

General principles

2.1 Some general overarching principles should guide how regulators respond to environmental offending. First, it is worth noting the Hampton principles set out in the Regulators' Compliance Code[12], which are:

- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.
- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.
- Regulators should provide authoritative, accessible advice easily and cheaply.
- No inspection should take place without a reason.
- Businesses should not have to give unnecessary information or give the same piece of information twice.
- The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

Some additional principles which apply to the use of civil sanctions for environmental offences are that the approach should:

1. Get individuals or companies back into compliance

2. Remove risks and prevent harm from occurring or continuing

3. Ensure damage is restored, restitution is provided to local communities and that the polluter pays

4. Level the playing field, removing financial benefit and ensuring proportionality to the offence, harm and the facts of the case

[12] http://www.berr.gov.uk/files/file45019.pdf

5. Deter non-compliance, and encourage behaviour change, future compliance and reductions in future risks

6. Secure better results or same results at lower cost

7. Avoid ‘unintended consequences’

2.2 Each regulator is required to publish sanctions guidance and an enforcement policy. These are referred to collectively as ‘guidance from regulators’ in this document. Regulators will involve businesses and other stakeholders in their development and will consult publicly on them.

2.3 The decision on which enforcement option is appropriate in a particular case is an operational matter for regulators. Regulators take such decisions following consideration of the specific facts of the case and in line with their enforcement policy. Their approach will be consistent with the principles above and the guidance in section 3.

2.4 More generally regulators should endeavour to apply civil sanctions in a way that is consistent across different geographical regions, across offences and across those they regulate. Regulators should also endeavour to ensure that offenders are not penalised twice for the same offence by different regulators. A central purpose of this document and the guidance from regulators is to promote consistency in applying civil sanctions across regulators.

2.5 It is worth drawing attention to paragraph 8.2 of the Compliance Code which states that, except where immediate action is required, ‘regulators should, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach’.

2.6 The guidance from regulators will set out the process for considering relevant factors and making enforcement decisions. This will ensure a clear and transparent process for both existing sanctions and the new civil sanctions outlined in this document.

Availability of civil sanctions

2.7 A civil sanction is only available for a particular offence where it is specified in the Statutory Instruments (see paragraph 1.3) that a civil sanction is available for the particular offence. Annex 1 summarises which civil sanctions can be used for which offences. VMPs and enforcement undertakings provide a new alternative to prosecution in suitable cases. FMPs or enforcement notices are to fill gaps in existing legislation and do not duplicate any existing provisions, or replace any existing sanction.

2.8 The guidance from regulators will set out which sanctions, including both the existing and new sanctions, will be available for each offence. Regulators will

consider how guidance for particular sectors may be developed in the longer term.

2.9 Civil sanctions can be applied to any person who commits a relevant offence, including for example: businesses, landowners, individuals, public organisations and non-governmental organisations.

Standards of proof

2.10 The standards of proof for using the civil sanctions are as follows:

- To use a compliance notice, restoration notice, variable monetary penalty or a fixed monetary penalty, regulators must be satisfied beyond reasonable doubt that an offence has been committed. This is the same standard of proof as is required in criminal cases.
- An enforcement undertaking may be accepted where the regulator has reasonable grounds to suspect that the person has committed an offence.
- A stop notice may be served where a regulator reasonably believes that the activity as carried on, or likely to be carried on, by that person involves or is likely to involve:
  - i the commission of an offence for which a stop notice may be imposed, see Annex 1, page 46.
  - ii significant risk of serious harm to human health or the environment

Criminal proceedings

2.11 In general criminal proceedings may not be taken where a civil sanction has been served. Exceptions to this are where:

- A restoration notice, compliance notice or enforcement undertaking is used without the addition of a VMP and the person fails to comply with the notice or undertaking. In this case regulators can prosecute for the original offence. Where a person has complied partly but not fully with an enforcement undertaking the regulator should take that into account in deciding whether or not to prosecute.
- A stop notice is served; as failure to comply with a stop notice is a criminal offence in itself.

Revenue from penalties

2.12 All revenue from penalties are paid into the Government's main bank account (known as the Consolidated Fund[13]) and is not available to the regulators who impose the penalties[14].

[13] Under, section 69(2)(a) of the RES Act, where the regulator has functions only in relation to Wales, this is the Welsh Consolidated Fund

[14] This is required in section 69 of the RES Act and article 6 of The Environmental Civil Sanctions Orders 2010.

Consistency with action by other regulators

2.13 Regulators should take account of any investigations and possible or actual sanctions by other regulators relating to same matter. This would be to ensure overall proportionality. It is good practice for regulators to have Memoranda of Understanding with other regulators where this kind of co-ordination is necessary.

Fair process

2.14 Fair process is essential to the effective use of civil sanctions. Section 6 provides detail on the arrangements for representations and appeals.

Existing enforcement mechanisms

2.15 Environmental regulations require individuals, businesses, landowners and others to do certain things and avoid doing others to protect and improve the environment. Not complying with these requirements is typically an offence.

2.16 Regulators currently have a variety of ways of responding to these offences depending on the facts of the case and seriousness of non-compliance. These include:

- Advice and guidance to encourage future compliance, which will continue to be the standard response in many cases and may be provided with or without a sanction depending on the circumstances;
- Warnings for lower level cases;
- Fixed penalty notices in certain cases;
- Administrative powers and duties to take enforcement action, including where enforcement notices, works notices and abatement notices are available. The powers and duties in the Environmental Damage Regulations 2009 to serve notices to require the prevention and remediation of significant cases of damage to the environment is one such example. There are offences for not complying with these notices.
- Modification, suspension, changes to conditions or revocation of permits and authorisations where they exist or refusal to grant them;
- Cautions where the regulator considers that the public interest requires a criminal sanction but prosecution is not appropriate and the offender admits the offence;
- Prosecution for the most serious cases.

2.17 The wide range of regulator enforcement powers has grown up over a long period through different proposals and pieces of legislation. This has left important gaps in enforcement powers and left regulators over-reliant on prosecution. Consideration should therefore be given to using the civil sanctions introduced in this section where they provide a more appropriate and proportionate response to the offence.

Compliance notices, restoration notices and variable monetary penalties[15]

2.18 Compliance notices target the non-compliance itself and its causes, restoration notices target the effects of non-compliance and VMPs aim to remove any advantage from non-compliance.

2.19 Regulators are able to use them either independently or in any chosen combination to tailor the sanctions imposed to the different circumstances of the offence in the most suitable way. This will enable them to achieve a constructive enforcement outcome that remedies the consequences of an offence and, as far as possible, promotes good working relationships between regulator and the regulated community; an outcome that is often not served by prosecution. In some cases, a person may already have returned to compliance and undertaken restoration voluntarily, or the regulator can consider accepting a suitable enforcement undertaking if offered.

Compliance notices

2.20 A compliance notice is a written notice issued by the regulator which requires a person to take specified steps within a stated period to ensure that an offence does not continue or happen again.

When is a compliance notice appropriate?

2.21 In some cases, an offence may be ongoing in nature or the circumstances that have given rise to it may persist so there is a risk that the offence may recur. In these cases a compliance notice may be appropriate to require specified action to be taken to stop the offence or to address its underlying causes.

What steps might a compliance notice require?

2.22 Compliance notices might, for example, require:

- Specific investment such as to build a concrete floor and bund to prevent leaks from tanks of chemicals entering the environment;
- A system of maintenance for critical equipment;
- Change or updating of a particular process;
- Training of relevant staff.

Restoration notices

2.23 A restoration notice is a written notice issued by the regulator which requires a person to take steps to restore harm caused by non-compliance, so that the position is restored, so far as possible, to what it would have been if no offence had been committed.

[15] These three types of civil sanctions are labelled *discretionary requirements* in the RES Act.

When is a restoration notice appropriate?

2.24 Some offences will result in environmental damage; in these cases a restoration notice may be appropriate to require specific action to be taken to address that damage. Damage to the environment may involve a temporary or sustained loss of environmental quality (for example in air, water or soil quality) or, more widely, in the resources and services provided by ecosystems. Restoration notices would not be appropriate where action is taken under the Environmental Damage Regulations 2009, which provides specific duties and powers to respond to the most serious cases.

What steps might a restoration notice require?

2.25 Restoration notices would normally achieve the objective of restoration (to the position that would have persisted if no offence had been committed) by restoring the affected resources and services directly. What is possible will depend on the circumstances of the case. In certain cases it may also be possible to restore the position by taking actions to improve the same types of resources or services more widely than at the site of the damage itself. For example, if damage reduces the population of a species by a proportion it may be appropriate to take actions somewhere other than at the site to restore the position the population would have been in[16].

2.26 Regulators should have regard to what is proportionate when requiring restoration. In certain circumstances, for example, the costs of full restoration may be disproportionate to the benefits to be obtained. In suitable cases, consideration should be given to natural recovery. In some cases an enforcement undertaking may be welcomed, if offered. This may, for example, include restoration or enhancements to alternative areas or alternative natural resources[17] where there are opportunities to do so. There may sometimes be advantages to such alternative approaches in terms of cost and/or environmental outcomes.

2.27 Typical restoration actions might, for example, include:

- Removal and/or treating contaminants to reduce impacts on natural resources or local communities;
- Removing or protecting against other pressures on natural resources and services or local communities (e.g. other obstructions, non-native species and/or development-related pressures);
- Re-stocking or re-introductions of damaged species (e.g. fish);
- Seeding, planting or replanting vegetation;
- Providing conservation staff resources to manage or maintain sites or introducing conservation measures or management to a site;
- Developing and implementing strategic management plans;

[16]The provisions of the Environmental Damage Regulations do not apply in the cases covered in paragraph 2.255. The assessment techniques identified in the EDR guidance may, however, be used to determine the scale of restoration actions required where it is possible to restore by means of the alternative actions envisaged in paragraphs 2.25 and 2.26. See Annex 2 of the guidance at: http://www.defra.gov.uk/environment/liability/pdf/indepth-guide-regs09.pdf

[17]See paragraphs 2.70 and 2.71.

- Implementing restrictions to access, or improvements to access;
- Providing monitoring capacity.

2.28 In some cases local communities may be affected by an offence where it is possible to take some restorative action, for example where there is loss of amenity, damage to protected habitats or where there is nuisance with impacts such as the spread of dust or soot. Restoring these impacts (for example by restoring levels of amenity, habitat restoration and removing the soot or dust) will be an important aspect of restoration. Regulators may wish to seek local views to ensure that proposals take account of local circumstances.

2.29 A restoration notice should clearly identify

- The damage or losses
- The actions required to restore the position
- The period within which those actions should be taken

The regulator may also wish to specify the outcomes to be obtained and any monitoring requirements.

Variable monetary penalties

2.30 A VMP is a proportionate monetary penalty which the regulator may impose for the more serious cases of non-compliance where the regulator decides that prosecution is not in the public interest.

When is a VMP appropriate?

2.31 VMPs are used:

a) to remove any financial benefit that may exist from non-compliance; and
b) to adequately deter future non-compliance.

They are for use in cases where any other costs to the person of co-operating with enforcement action for the offence (such as the costs of complying with compliance notices, restoration notices and third party undertakings along with any ancillary costs) do not already achieve these two objectives. Compliance with the law, restoration of harm, and compensation to affected parties thus all take priority over monetary penalties.

How should the level of VMP be determined?

2.32 There are three steps to working out the penalty. This section introduces these steps and how they are to be worked out. The steps are:

i. **The regulator estimates the financial benefit from non-compliance.** This is, as a first step, to remove any financial benefit (in terms normally of costs avoided) associated with the specific case.

ii. **Add an appropriate deterrent component.** Removing the financial benefit associated with the specific cases of non-compliance, and requiring

compliance and restoration where appropriate, will often not be sufficient to deter offending. This is largely because non-compliance is not always detected and enforcement action not always taken. Therefore some proportion of the time businesses and others who do not comply will retain some financial benefit. It is not feasible to base this component on probability of detection directly. There are, however, factors which help to indicate the effort a person has invested to prevent the non-compliance and what action has been taken to address non-compliance where it does happen. These factors will be taken into account in determining the deterrent component.

iii. **Deduct any other costs incurred.** The purpose of a VMP is to ensure that a person faces sufficient costs to achieve the two objectives of i) removing financial benefit from the non-compliance and ii) deterring non-compliance. In cases where persons have already incurred some costs in response to enforcement action the VMP would increase the costs to the level sufficient to achieve i) and ii). This is done by deducting the costs already incurred (as detailed in paragraph 2.42) from i) + ii). Where costs already equal or exceed i) + ii) a VMP should not be applied.

i. Estimate the financial benefit from non-compliance

2.33 The financial benefit will normally be the costs of any actions that can reasonably be considered necessary to have avoided the non-compliance. This would include, for example:

- the costs of any fees not incurred;
- the costs of any investments considered to have been necessary to avoid non-compliance[18]; and
- the costs of staff resource, expert or commercial services considered necessary to carry out the activity in a compliant manner.

The estimation of financial benefit should also include a reasonable amount to reflect the rate of return on sums that have not been expended and periods of time over which the benefit has persisted. In some cases the likely financial benefit will be expected to be small and it may not be proportionate for the regulator to investigate this.

ii. Add an appropriate deterrent component

2.34 The deterrent component is a sum additional to the amount required to remove financial benefit. It is derived by taking a figure as a starting point and applying a multiplier to it, on the basis of the presence or absence of particular factors.

2.35 The starting sum can be:

- **Restoration costs**. The regulator's estimate of the costs of restoration required under a restoration notice[19]; or

[18] Please note that the actual costs of achieving compliance as a result of enforcement will be taken into account in calculating the deduction to be made under paragraph 2.32 (iii) above.

- **The financial benefit**. The regulator's estimate identified in paragraph 2.33 where the regulator considers this is significant; or
- **The maximum criminal fine a magistrates court could impose** for the specific offence where the Regulator cannot identify or make a sufficiently accurate estimate of either significant restoration costs or significant financial benefit; or the Regulator does not consider that these would be an appropriate starting point for reasons to be stated in the Notice of Intent.

2.36 The regulator will choose the starting sum depending upon which one characterises the offence and may choose the one with the highest value. In the following illustrations the example of the Producer Responsibility offence is characterised by financial gain and that would therefore be the starting point, the Oil Pollution offence is characterised by restoration costs and that would be the starting sum; and finally the Consent Breach at a Sewage Works has no identifiable gain or restoration costs and therefore the Magistrates Court Maximum would be the starting sum.

Illustration of factual situations to show how the starting sum might be chosen:

Example 1 – Financial benefit - A typical case under the Producer Responsibility Obligations (Packaging Waste) Regulations could involve the following facts:

A multi-national company (turnover £4.5bn) which has obligations under the regulations (turnover greater than £2million and produces more than 50tonnes of packaging per year) voluntarily notifies the Environment Agency that it should have been registered in the UK for the preceding 8 years (they were registered in another EU country); they have now registered. They attend an interview under caution and provide estimates of the packaging tonnage and type for each year. It is estimated that they have avoided £180,000 in registration fees and packaging notes that should have been purchased.

Example 2 – Restoration costs - An oil pollution offence involving substantial restoration could involve the following facts:

A small brook running through an industrial estate has been subject to regular acute oil incidents as well as an underlying chronic problem for many years. A large (£0.5bn turnover) national waste company operating on the estate has long thought to be the source but this could not be proved. Following two incidents and an extensive investigation by the regulator defective drainage systems are uncovered. The company decline an interview but provide a written statement. The necessary restoration steps are set out in a restoration notice. The company undertake extensive restoration of the brook for several kilometres as well as general improvements in conjunction with a local action group and the local authority. This restoration is done at a cost of £100,000.

Example 3 – Maximum Criminal Fine a Magistrates Court Could Impose - Sewage treatment works as part of their consent, are sometimes allowed to

[19] A "restoration notice" is any notice the regulator can use to require restoration, whether available under the RES Act or other legislation

marginally exceed the discharge limits a specific number of times each year without breaching their consent. So for example, a works that is sampled 12 times a year could fail twice but the third time will be a breach of the consent. A typical case could involve the following facts:

A utility company sends in sampling returns which show that a sewage treatment works serving a coastal resort has breached its consent in this way. The incident happened some weeks previously so no samples can be taken to ascertain whether there was any impact at the time in terms of bathing water quality. The offence is absolute so no further evidence gathering is necessary. The company had previously received a warning for a similar breach at the same works. The company's consultants write a report on the breach and more general aspects which they share with the regulator. The report shows that an incident occurred and was discovered by the utility's contract samplers. Human error in operation rather than underinvestment was the cause. An operative who covers several works including this one was dispatched, shut down the works, put tankers on standby among other measures. The regulator was not notified.

2.37 Where restoration costs are chosen as the starting sum for the deterrent element regulators must adjust the restoration cost downwards when that is necessary to ensure the starting sum is proportionate to the seriousness of the offence, having regard to relevant decisions of the First-tier Tribunal.

2.38 In order to make the deterrent proportionate to the non-compliance the Regulator will apply an adjustment based on aggravating and mitigating factors.

2.39 First a maximum multiplier that can be applied is determined on the basis of aggravating factors that indicate what effort the person has invested in avoiding the non-compliance or its effects. The regulator will consider the following factors[20]:

- Degree of blameworthiness
- History of non-compliance
- Attitude to the non-compliance, for example lack of prompt action to eliminate or reduce the risk of damage resulting from regulatory non-compliance;
- Foreseeability, and risk of environmental harm (the risk may be much greater than would be suggested by the harm actually caused)
- Ignoring earlier advice and guidance

The maximum multiplier cannot exceed four times the starting sum.

2.40 The regulator will assess each aggravating factor against a sliding scale from 0 to 4. The regulator will then add the multipliers identified for each of the aggravating factors together and apply the total multiplier to the starting sum. The regulator will consult on its approach to assessing and applying each aggravating factor. For all aggravating factors other than blameworthiness, 0

[2020] Note that the regulator will consider prosecution where more serious degrees of unacceptable behaviour are present. See table B after paragraph 3.7.

denotes the absence of that factor. For blameworthiness, absence is represented by 0.1. This is to recognise that in the more serious cases , a minimum deterrent element may need to be applied (subject to the impact of mitigating factors below) to reflect the fact that detection of non-compliance will normally be well below one hundred percent. The examples on pages 20 and 21 illustrate how a VMP might be calculated.

2.41 The regulator will then assess mitigating features and reduce the deterrent component by reference to its assessment of the following factors:

- Preventative measures taken in advance of the offence
- Co operation with the Regulator
- Voluntary reporting of Regulatory non compliance
- Restoration undertaken
- Attitude to offence; and a prompt response
- Personal Circumstances (e.g. age, health issues)
- Other case-specific mitigating features

It is anticipated that the maximum reduction will normally be up to 80% but might be up to 100% in exceptional circumstances. This step is also illustrated in the example above.

iii. Deduct any other costs incurred

2.42 This is all the regulator's estimates of the costs the person has incurred as a result of the offence and will include:

- **The costs of complying with the compliance notice.** This is the costs of any actions to comply with a compliance notice. The costs could include, for example, the costs of capital investment, contracted services and staff input. Persons should be encouraged to provide evidence of costs. Where they do not, regulators should use judgement on the basis of the evidence available. This may include obtaining estimates from relevant contractors.
- **The costs of complying with a restoration notice.** This is the cost of any actions to comply with a restoration notice. The costs could include, for example, the costs of actual restoration works, any administrative costs and the costs of monitoring. Persons should be encouraged to provide evidence of costs. Where they do not, regulators should use judgement on the basis of the evidence available. This may include obtaining estimates from relevant contractors.
- **The costs recovered through an enforcement cost recovery notice.** This is any legal, expert, or administrative costs incurred by the regulator up to the point at which the VMP is imposed.
- **An appropriate amount to reflect a third party undertaking.** The regulator will decide what proportion of the costs of a third party undertaking to deduct. This may, for example, depend on how closely the TPU relates to the effects of the case.
- **An amount to reflect any other costs resulting from the offence the regulator considers are justified.** This might for example include the costs of any actions taken voluntarily in response to the offence. Persons will generally have to provide documentary evidence of costs.

Where the total costs in this paragraph equal or exceed the sum of the financial benefit and the deterrent element then no VMP is served[21]. However, the costs that may be deducted would not include the cost of any works done that were of such an unsatisfactory standard that they have to be replaced rather than modified to achieve compliance.

Right to require information

2.43 Paragraph 1(6) of Schedule 2 of the Environmental Civil Sanctions Orders 2010 provides regulators with a power to require from the person such information as is reasonable to establish the amount of the penalty. Failure to comply may influence regulators to prosecute instead of serving a civil sanction. Alternatively, regulators may take failure to comply with such requests into account in applying the multiplier, reflecting the attitude of the person not complying.

Uncertainty

2.44 While regulators should follow the steps outlined above it should be emphasised that there will often be uncertainty in establishing the elements of a VMP precisely and ultimately regulators will need to exercise their reasonable judgement on the appropriate level of penalty on the basis of the evidence available to them. The effort that regulators invest in assessing it should be proportionate to the circumstances.

Maximum level of penalties

2.45 The amount of a VMP for offences which can only be heard in the magistrate's courts[22] (when dealt with through the criminal system), may not exceed the maximum fine that magistrates could impose. The maximum level of fine is set in the relevant legislation and is often £5,000 but may be higher, for example: £20,000 or £50,000.

2.46 For all other offences, which may be heard in a magistrates or Crown court[23], the maximum amount of a VMP is £250,000. Where the proportionate VMP would be greater than £250,000 the regulator would normally prosecute.

Multiple offences

2.47 In some cases it may be proportionate to impose VMPs for more than one offence. More than one VMP may be proportionate if more than one offence is needed to capture the relevant facts of the case. Where more than one VMP is used, the regulator should ensure that the overall penalty remains proportionate to the facts and the overall level of deterrence is appropriate.

[21] Where the total costs are such that no monetary penalty would be imposed, it may be necessary in some circumstances for the regulator to impose a VMP of a token amount (eg £1) to allow the deducted enforcement costs may be recovered from the offender.
[22] Known as "summary only" offences.
[23] Known as "either way" offences

Ability to pay

2.48 There may be some cases where persons are unable to pay the full amount of a penalty. In these circumstances, the person will need to make a submission to the regulator with evidence of limited ability to pay for the regulator to take into account.

Example to illustrate calculation of VMP: Water pollution
(this example illustrates use of civil sanctions in relation to a permitted activity – legislation is planned to make civil sanctions available for this kind of offence)

A substantial pollution incident results from the failure of poorly maintained equipment at a site. The regulator decides to serve a VMP and works out the penalty as follows:

i) **Estimate financial benefit from non-compliance.** The regulator identifies the measures it considers were necessary to have avoided non-compliance. This includes regular maintenance inspections, servicing and replacement of parts where necessary and implementation of internal monitoring procedures. It establishes that these measures have not been adequately taken over the previous two years since new plant had been built. It obtains independent estimates of the costs of outstanding work over the two years from engineering contractors which, including a notional rate of return on avoided costs, is £25k. These costs represent the financial benefit that the company has had from not taking the measures considered necessary by the regulator.

ii) **Add an appropriate deterrent component.** The regulator uses the estimated financial benefit as the starting sum for calculating the deterrent component.

Assess the Aggravating Factors (figures are illustrations only):

- Degree of blameworthiness = 1 - to reflect inadequate attention to addressing environmental risk, falling short of established industry practice
- History of non-compliance = 0 – there has been no enforcement action in relation to similar non-compliance
- Attitude to the non-compliance = 0 - to reflect a swift response to reducing the impact of the pollution, and good co-operation with the regulator
- Foreseeability and risk of environmental harm = 2 - to reflect the environmental risk created and its foreseeability – the actual pollution was substantial but risked being worse.
- Ignoring earlier advice and guidance = 0 - to reflect the fact that the operator had not ignored site specific advice and guidance

Add the aggravating factors 1.5 + 1.5 = 3

Multiply by the starting sum 3 x £25,000 = £75,000

The next step would be to apply the relevant mitigating factors to reduce this maximum amount. Mitigating factors include the company's swift reporting of the incident, it's co-operation with the regulator, and action it took to quickly address the non-compliance, and to reduce the harm caused to the environment. The £75,000 is reduced by 80% to £15,000.

This deterrent component is added to the financial benefit producing a figure of £40,000.

iii) **Deduct any other costs incurred.** The regulator then deducts:

- The costs that the company incurred to control the pollution. The company provided evidence that these were £20k.
- The regulator's enforcement costs of £1.5k which are recovered separately through an enforcement cost recovery notice.
- 50% of the costs of a third party undertaking from the business, involving compensation to a local angling group , which is a further £2.5k.

The deductions total £24k. The regulator therefore serves a VMP for £40,000 - £24,000 = £16,000.

Example to illustrate calculation of VMP: Site of Special Scientific Interest
(see scenario 7 in annex 2 for further background)

SSSIs are designated to protect England and Wales' most important biodiversity and geological heritage. A landowner's agent has without notice or consent cleared 300m of a ditch within a wetland SSSI. The resulting extra drainage has caused drying and degradation of the wetland. The area of damage is relatively small, but natural regeneration will not be adequate and so restoration is necessary to restore the plant or animal populations damaged on the SSSI. The landowner has volunteered to carry out restoration works by installing water control structures and backfilling the excavated materials. Natural England decides to serve a restoration notice setting out the steps that need to be taken, to ensure the necessary environmental outcomes for the site and a VMP, Natural England works out the penalty as follows:

iv) **Estimate financial benefit from non-compliance.** The regulator considers that the measurable financial benefit has been negligible – any benefit would have been realised only in the long term.

v) **Add an appropriate deterrent component.** The regulator estimates that the restoration costs are relatively small as the estate's employees and plant will be used. The regulator uses the maximum a magistrates court could have imposed for the offence - £20,000 – as the starting sum for calculating the deterrent component.

Assess the Aggravating Factors:

- Degree of blameworthiness = 1 – to reflect inadequate instructions to the agent - the SSSI boundaries were well known
- History of non-compliance = 0 – the landowner has always sought consent before
- Attitude to the non-compliance = 0 - to reflect the lack of aggravating factors such as obstruction of the investigation
- Foreseeability and risk of environmental harm = 1.5 - to reflect the environmental risk created and its foreseeability – the degradation was foreseeable.

- Ignoring earlier advice and guidance = 0 - to reflect the fact that the operator had not ignored site specific advice and guidance

Add the aggravating factors 1 + 1.5 = 2.5

Multiply by the starting sum 2.5 x £20,000 = £50,000

The next step would be to apply the relevant mitigating factors to reduce this maximum amount. Mitigating factors include the landowner's readiness to restore the harm caused, and its good record of compliance. The £50,000 is reduced by 80% to £10,000.

vi) **Deduct any other costs incurred.** The regulator then deducts:

- The costs that the company incurred to restore the site. The landowner provides evidence that its employee and plant costs add up to £1,000.
- The regulator's enforcement costs of £500 which are recovered separately through an enforcement cost recovery notice.

The deductions total £1,500. The regulator therefore serves a VMP for £10,000 – 1,500 = £8,500

Process for using compliance notices, restoration notices and VMPs

Notice of intent

2.49 Before imposing a compliance notice, restoration notice and/or VMP, the regulator must first serve the person with a 'notice of intent' setting out what is proposed. The notice must contain certain information including:

- the grounds for proposing to impose the sanction including the key facts that lead the regulator to consider that an offence has been committed the proposed amount and basis for calculating a VMP;
- the right to make the representations and objections and the period within which they may be made – the period must be 28 days beginning with the day the notice is received;
- the circumstances in which the regulator is not allowed to impose the sanction (for example where a person has a defence under the relevant legislation); and
- the fact that persons may offer enforcement undertakings or third party undertakings.

Written representations

2.50 On receiving a notice of intent, the person will have the right to make written representations and objections to the regulator about the proposal to impose the sanction. This is an opportunity for the person to raise any defences to the proposed sanction or any other concerns they may have such as consistency of

enforcement. . The regulator must decide whether to impose the sanction (with or without modification) or where they have the power, to impose a different sanction. The regulator will do this as quickly as possible after the end of the period for making representations and objections, consistent with appropriate consideration of the issues.

Reviewing decisions

2.51 In order to ensure that sanctioning is in line with good practice and that sanctions are applied consistently within regulators, the regulator should have centrally co-ordinated arrangements in place to review or monitor individual decisions. Regulators recognise the need to act reasonably and so field officers will not be empowered to impose civil sanctions without review by others. This will ensure that there is confidence in the regulatory system from the regulated community and the wider public.

2.52 Arrangements will mirror, and in the initial period of implementation, go further than the process applied currently to prosecution decisions to provide a high level of assurance. Such arrangements could, for example, provide that a senior officer reviews whether the case should progress to a final notice taking into account the representations and objections made by the person. In order to provide a degree of independence, those involved in the review process should not have been involved in the original decision to issue the notice of intent but should work or have worked in the relevant area of regulation. In order to provide consistency across regions, this process should be overseen at national level within regulators. Regulators will set out the review process in more detail in the course of their public consultation.

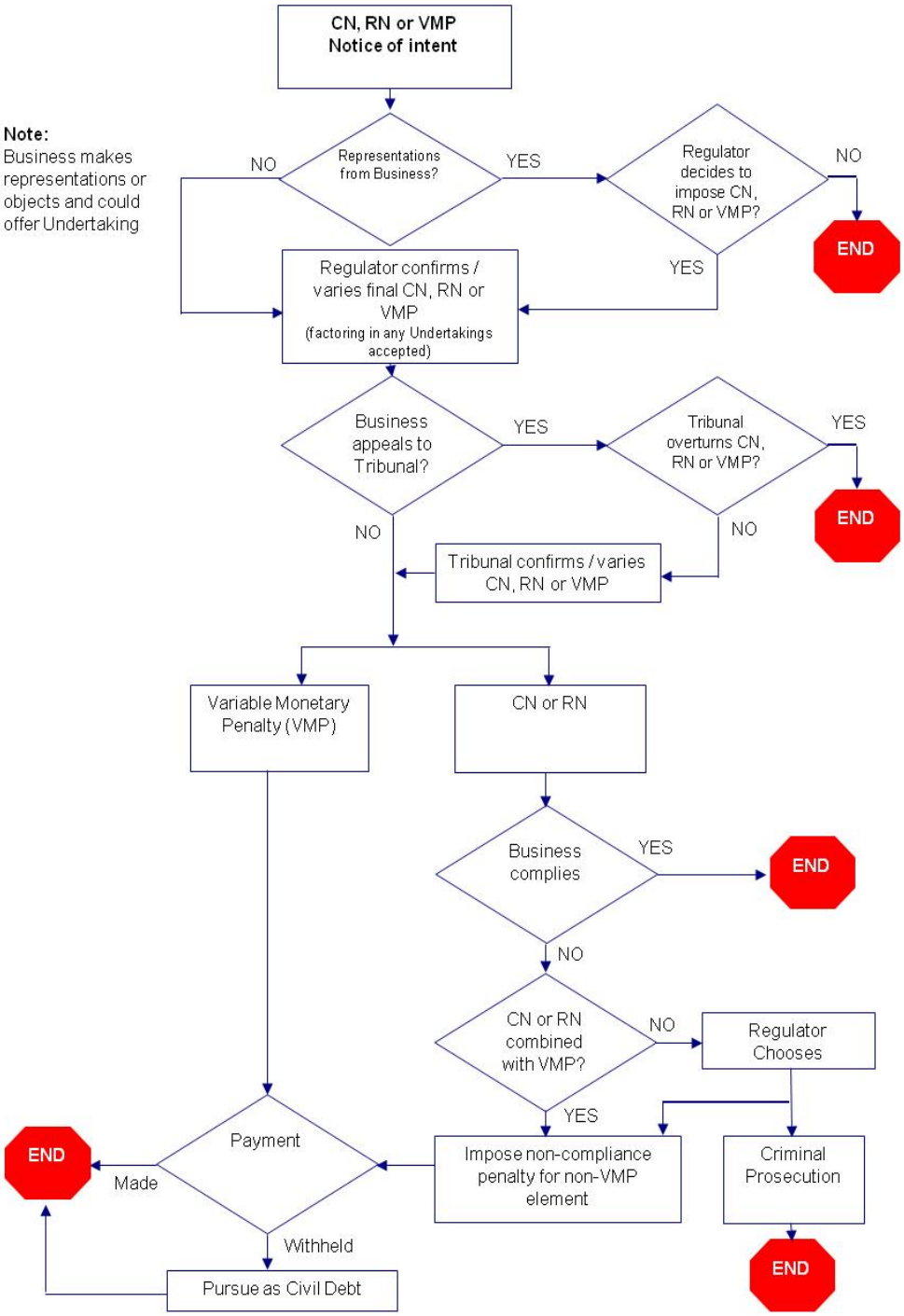
Final notices

2.53 If it decides to impose a compliance notice, restoration notice and/or VMP, the regulator must serve a further notice, a ‘final notice’, which contains certain information as to the following:

- the grounds for imposing the sanction;
- if a VMP is imposed, how payment may be made, the period within which it must be made and, where they exist, any early payment discounts or late payment penalties;
- rights of appeal; and
- the consequences of failing to comply with the sanction.

It is good practice for regulators to inform persons when they are satisfied that the requirements of notices have been discharged. In some cases, for example where restoration takes place over a long period of time, this may be an extended time period.

Process for using compliance notices, restoration notices and VMPs[24]



Third party undertakings

2.54 When a person has received a notice of intent to impose a compliance notice, restoration notice or a variable monetary penalty, they are able to offer a third party undertaking (TPU). A TPU involves taking action to benefit a third party affected by the offence. Where such an undertaking is offered, it will be up to the regulator to decide whether to accept it, and how to take the undertaking into

[24] termed 'discretionary requirements' in the Regulatory Enforcement and Sanctions Act 2008

account in making its sanctioning decision. For example, a regulator could issue a notice of intent to a person, notifying it of its intention to issue a variable monetary penalty. The person could then offer to pay compensation to persons affected by the offence, and the regulator, if it saw fit, could reduce the amount of the VMP to take account of the compensation offered. Such undertakings cannot, however, be offered by a person after a final notice has been imposed. A TPU may not always be appropriate: the civil courts are likely to remain the means by which affected persons obtain compensation when appropriate for damage to health or substantial economic interests.

2.55 A TPU would normally be an appropriate option where there is identifiable harm to local people or communities. Harm may include any:

- loss of amenity;
- nuisance with no concrete effect (e.g. odour)
- nuisance with impacts (e.g. dust, soot)
- damage to local economic activity

2.56 Measures offered in a TPU could for example:

- Directly reduce or restore the harm
- Compensate for the harm by providing or making improvements to the local environment or amenities
- Reducing other pressures on local communities, for example by helping to reduce other sources of nuisance where possible
- Involve financial payment of compensation

2.57 As far as possible a TPU should address the harm caused, benefit the same people who have suffered as a result of it and be proportionate to the harm. The regulator will normally expect the person offering a TPU to consult those affected by the harm and benefitting from the TPU. The regulator will take this into account in deciding whether to accept it and how to take it into account in making its sanctioning decision.

2.58 There may be occasions where the person offering a TPU may wish to consider the option of a quantitative assessment of the scale of harm to determine the scale of measures to be provided[25]. This may be proportionate in some cases of harm. It is expected that any assessments undertaken would be relatively simple while sufficiently transparent and robust to demonstrate the proportionality of the measures to the regulator.

[25] A quantitative assessment might involve using resource equivalence or monetary valuation methods. Both resource equivalence and monetary valuation methods are transparent approaches that can be used to determine the scale of measures required to compensate for the losses that result from harm to the environment. Resource equivalence methods assess both the losses and the gains in terms of resources (or, in some cases, the services that those resources provide to the environment and society): in the simplest of terms this might be the number of trees or fish lost and gained. These methods have been used in the US for many years. Monetary valuation methods assess gains and losses in money terms. Annex 2 (paragraphs 20 to 28) of the guidance to the Environmental Damage Regulations provides further information and explanation of both methods: http://www.defra.gov.uk/environment/liability/pdf/indepth-guide-regs09.pdf

2.59 A third party undertaking could be accepted in conjunction with the imposition of a compliance notice or restoration notice. This would allow a person to offer to compensate people or communities affected by non-compliance and the harm caused, but it would not lessen the action needed to comply with the law or restore the environment. The purpose of a TPU is not to give communities rights to require redress but to provide for proportionate sanctions. In some cases regulators may themselves wish to take account of the views of local communities in deciding whether to accept TPUs.

2.60 A person can also offer an enforcement undertaking at the stage that they receive a notice of intent. This is where the person wishes to volunteer action to address the non-compliance entirely for example, taking action to come back into compliance, restoring damage and making restitution to those affected, and/or giving up a financial benefit. If this is accepted then no other civil sanction will be served or prosecution instigated. The main differences between enforcement undertakings and TPUs include that:

- TPUs can only be offered in response to a Notice of Intent for a compliance notice, a restoration notice or a VMP whereas an enforcement undertaking can be offered pro-actively as soon as a person is aware of non-compliance (as well as at the stage of a Notice of Intent);
- An enforcement undertaking can address non-compliance directly or make amends for it whereas a TPU is specifically to compensate third parties who have been affected by the non-compliance
- TPUs can be accepted in conjunction with compliance notices, restoration notices and VMPs whereas once an enforcement undertaking is accepted no other civil sanction can be applied.

The subsection below covers enforcement undertakings.

Enforcement undertakings

2.61 An enforcement undertaking is a voluntary agreement by a person to take steps that would make amends for non-compliance and its effects. It is for the regulator to decide whether to accept it in a particular case.

2.62 No other civil sanction may be imposed or prosecution brought if the regulator accepts the enforcement undertaking, and the undertaking is carried out.

2.63 In developing their guidance, regulators will work with businesses and other stakeholders to make the most of the opportunity presented by enforcement undertakings to streamline enforcement and to work together co-operatively in addressing issues of non-compliance. It is important that regulators take the opportunities available to them (such as through their guidance and their contacts with businesses and particularly small businesses) to make business aware of the existence of enforcement undertakings as a response to non-compliance.

When is an enforcement undertaking appropriate?

2.64 An enforcement undertaking is appropriate where a person wishes to take a proactive approach and is able to suggest measures that proportionately and appropriately address the non-compliance and the issues it raises. Enforcement undertakings are generally for use where a person realises that they have committed a relevant offence and brings it to the attention of the regulator, or where the regulator otherwise suspects that a relevant offence has been committed. Enforcement undertakings can also be offered, if sufficiently full and unreserved, at the stage when the regulator issues a Notice of Intent to impose a civil sanction.

2.65 For a regulator to accept an enforcement undertaking there must be clear recognition of any failings or harm caused by the relevant person. Where relevant, the regulator will look for director or board level commitment to restoration and future compliance. This could initially be set out in a letter and developed into a formal action plan by the relevant person in consultation with the regulator. The enforcement undertaking should set out the actions to be taken and the timetable agreed with the regulator.

2.66 Enforcement undertakings are not always appropriate; for example, where the presence of factors identified in table B in section 3 of the guidance suggests that prosecution is more appropriate.

2.67 The Government proposes to allow regulators to accept an enforcement undertaking for a wide range of offences so as to give the regulated community maximum flexibility. This is expected to fit well with the self-regulatory approach of operators who actively manage risk and compliance. Offering an enforcement undertaking provides a further opportunity for responsible business to stand apart from others and more quickly restore their reputation.

2.68 The availability of enforcement undertakings is also expected to promote dialogue between the regulator and regulated, improving trust and confidence. It is also expected to encourage more open volunteering of information to the regulator when a problem is discovered because the regulated community will be more confident of a proportionate response.

What might an enforcement undertaking consist of?

2.69 An enforcement undertaking will be a written agreement by the person to take action to make amends for the non-compliance and its effects: to return to compliance, to restore harm, and to compensate those adversely affected.

2.70 Where appropriate, restoration of harm should include steps to make amends to individuals or communities or others adversely affected by the non-compliance. This may include monetary compensation or practical action. Practical steps could include for example, cleaning up when non-compliance has caused nuisance in the form of dust or dirt, or restoring or providing alternative amenities where these have been damaged. Where restoration of the actual harm is not possible, the Government expects that responsible businesses will consider making equivalent restoration in some alternative way.

2.71 Where a person offers to restore harm as part of an undertaking they will want either to demonstrate that the measures they are proposing fully restore the harm (or are equivalent to full restoration) or demonstrate what proportion of the harm their proposals restore. As for TPUs, it may be proportionate in some cases for a person to consider the option of a quantitative assessment of the scale of harm to determine the scale of measures to be provided.

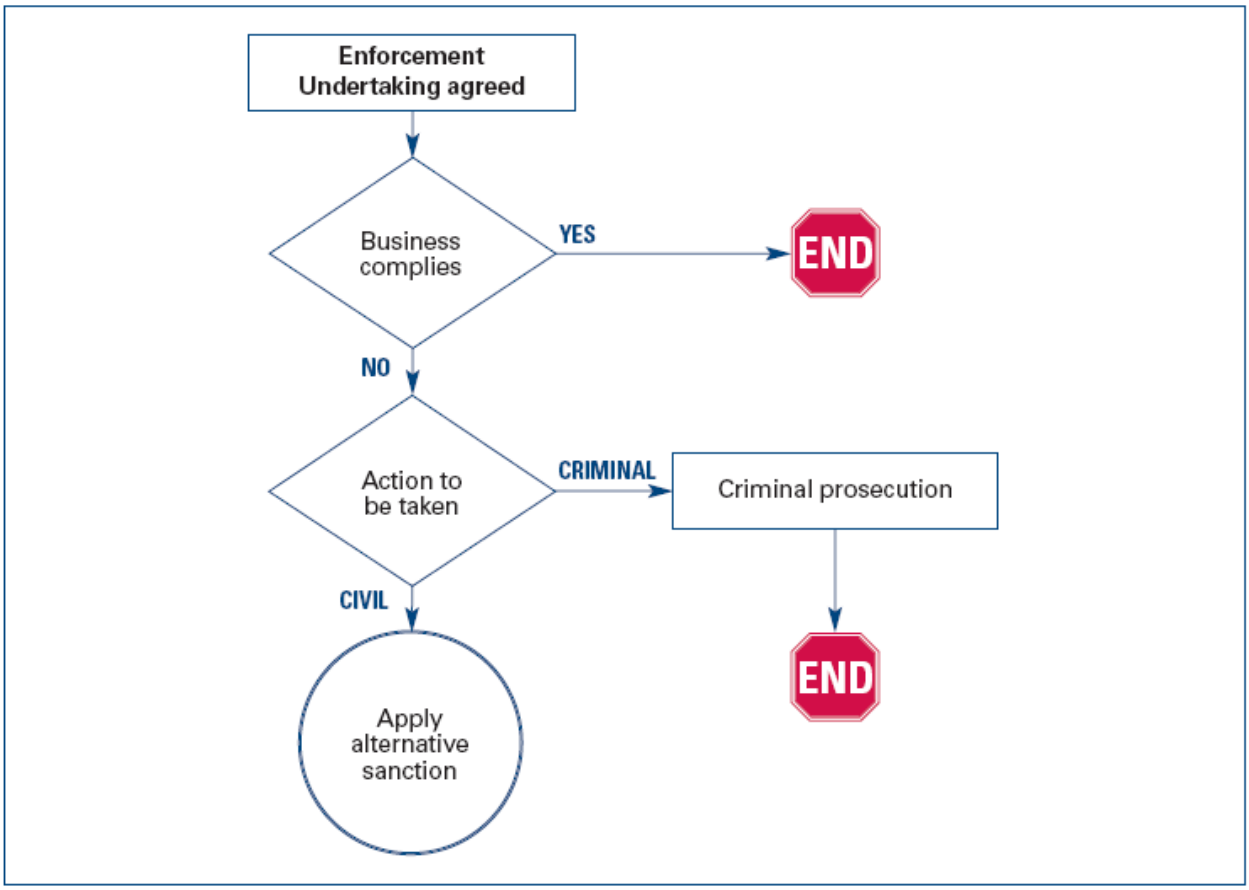
2.72 The agreement will need to be sufficiently detailed to allow the regulator to decide when the undertaking has been carried out, or whether the person is defaulting on the undertaking and enforcement action is needed. The regulator is not expected to enter into negotiations over an enforcement undertaking, but in some cases the regulators may wish to seek clarification from operators.

Process for using enforcement undertakings

2.73 A regulator should be able to accept an undertaking from a person in any case where it has reasonable grounds to suspect that the person has committed an offence. The actions that the person can offer to undertake must include one or more of the following:

- secure that the offence does not continue or recur;
- take action to secure that the position is restored, so far as possible, to what it would have been if the offence had not been committed, including restoration to individuals or communities affected (e.g. restoring local amenities; or cleaning up after a dust cloud);
- benefit (compensate) a person affected by the offence including individuals, groups of individuals and/or communities; or
- where restoration of actual harm is not possible, make equivalent restoration to another environmental resource or service.

2.74 If the regulator is satisfied that the enforcement undertaking has been fulfilled then it should issue a completion certificate. The person may apply for a completion certificate once it has completed all the actions agreed in the enforcement undertaking. If a person makes such an application, the regulator must make a decision as to whether to issue one within 28 days of the request.



Fixed Monetary Penalties

2.75 An FMP is a relatively low level fixed penalty which the regulator may impose for a specified minor offence.

2.76 An FMP is a standalone civil sanction and cannot be used in conjunction with any other sanction.

When is a fixed monetary penalty appropriate?

2.77 FMPs are appropriate for relatively minor offences where, for example, there is a failure to meet requirements to monitor or document activities and where the regulator may, in a proportionate way, still want to signal the need for compliance. They are for specific and clear-cut offences or defined aspects of offences identified in Annex 1 of this document. FMPs are mainly appropriate where advice and guidance has already been given and has not been complied with. It is anticipated that regulators will use FMPs sparingly as advice and guidance will often be enough to ensure that a person returns to compliance.

2.78 FMPs are not appropriate for more serious cases of non-compliance, for example where: the impact of non-compliance is significant or where there is evidence of intent, or repeated non-compliance.

2.79 Offences for which FMPs may be imposed are set out in full in Annex 1, and include lesser examples of the following:

- breach of a permit for water abstraction - Water Resources Act 1991, section 24(4)(a) and (b);
- failure to furnish a certificate of compliance in respect of packaging recovery and recycling obligations - Producer Responsibility Obligations (Packaging Waste) Regulations 2007, regulation 40(1)(c)-

2.80 Fixed Monetary Penalties (FMPs) are similar in many ways to Fixed Penalty Notices (FPNs) which are already available for some environmental offences. Where FPNs are already available, FMPs have not been introduced.

Process for using FMPs

2.81 The regulator must start by serving a Notice of Intent to impose the penalty, including:

- The grounds for proposing to impose the penalty
- The amount to be paid
- The effect of paying a 'discharge payment'
- The right to make representations and objections against the proposed penalty
- The circumstances in which the regulator is not allowed to impose the FMP: where a person has a defence, as set out in the legislation that created the offence
- The period of time a person has to make representations and objections, which is 28 days and
- The period of time within which liability for the FMP may be discharged which will be 28 days

2.82 After the 28 day period within which the recipient of the notice of intent must make representations or objections and raise any defences, the regulator must decide whether or not to impose a final notice of the penalty. This must include:

- The grounds for imposing the notice
- The amount to be paid
- How the payment may be made
- The period of time within which the full amount will be due
- The period after which the late payment penalty will be incurred
- The rights of appeal
- The process for making an agreement
- The consequences of failing to pay the penalty

2.83 Annex 1 of this document identifies the offences for which a FMP may be imposed. For all these offences the level of FMPs is:

- £100 for individuals
- £300 for all other persons, including for example limited companies

2.84 The level of FMP will be varied as follows:

- Reduced by half for a Discharge Payment made within 28 days following receipt of the Notice of Intent to impose the FMP
- Reduced by half for payment within 28 days of a FMP being confirmed by the regulator but only where the person has made representations
- Increased by half for payment more than 56 days after an FMP has been confirmed by the regulator ("late payment charge")

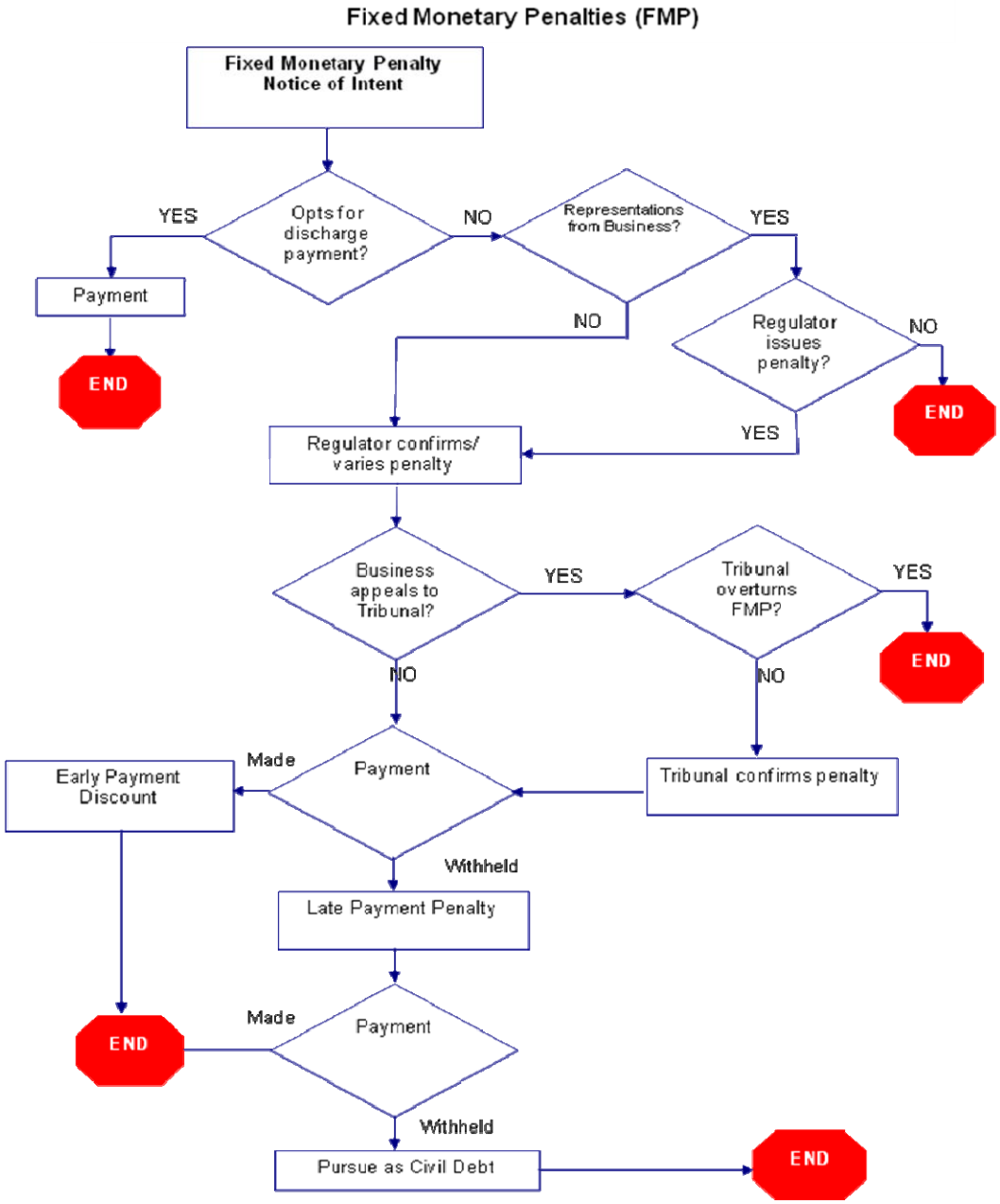


Figure 1

Stop notices

2.85 A stop notice is a written notice which prohibits a person from carrying out an activity which is causing (or is likely to cause) serious harm; or which presents (or is likely to present) a significant risk of causing serious harm until the person has taken the steps specified in the notice to remove the risk of serious harm or fully return to compliance with the law. The notice can require a person to stop carrying out certain processes and will relate to the activities or part of the activities that are responsible for the risk or harm.

2.86 A stop notice may be issued with any other civil sanction except an FMP. Stop notices can also be served in combination with steps leading to a criminal prosecution.

When is a stop notice appropriate?

2.87 A stop notice may only be served if a person is carrying on (or is likely to carry on) an activity that the regulator reasonably believes:

- is causing (or will cause) serious harm or presents (or will present) a significant risk of causing serious harm to human health or the environment (including the health of animals and plants)
- involves (or will involve) or is likely to involve (or will be likely to involve) committing an offence for which a stop notice is available, see Annex 1, page 46.

2.88 In weighing up whether it is in the public interest to impose a stop notice, regulators will have regard to any wider social impacts that may result such as effects on animal welfare. In relevant cases, they will also consider whether imposing a stop notice would prevent an organisation from performing any statutory duties, for example: duties on water companies to supply water.

Compensation

2.89 A regulator must compensate a person if as the result of the service of the notice or the refusal of a completion certificate that person has suffered loss, and:

- A 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;
- The regulator is in breach of its statutory obligations;
- The person successfully appeals against the stop notice and the Tribunal finds that the service of the notice was unreasonable;
- The person successfully appeals against the refusal of a completion certificate and the Tribunal finds that the refusal was unreasonable.

2.90 Compensation would thus not be payable where an appeal was successful on a technical or minor matter but the Tribunal upheld the notice as having been reasonably served. In such a case the Tribunal has the power to amend a stop notice to remove any such technical flaw.

2.91 The regulator should not have to pay compensation if it acted reasonably on the basis of the information provided by the person at the time when the notice was served. Where the person takes action to do what is required of them or provide new information and the stop notice is, exceptionally, amended by the regulator to reflect the new position but not withdrawn, then no compensation will be payable, as the basis for imposing the stop notice remains valid..

2.92 Compensation should cover any loss including exceptional costs resulting from the serving of the stop notice (e.g. legal or expert advice). It will be for the person on whom the stop notice was served to justify the losses in writing.

2.93 The compensation scheme is without prejudice to a person's rights to seek redress through the Ombudsman, judicial review, or civil litigation. A person will have the right to appeal to the First-tier Tribunal against a regulator's decision not to give compensation or as to the amount of compensation.

2.94 Regulators should consult on their arrangements for considering and providing compensation as part of consulting on their guidance (referred to in this document as 'guidance from regulators').

Process for using stop notices

2.95 The regulator serves a stop notice in the circumstances outlined above. There is no requirement to serve a notice of intent first – a stop notice may have to be issued as a matter of urgency. The stop notice must include:

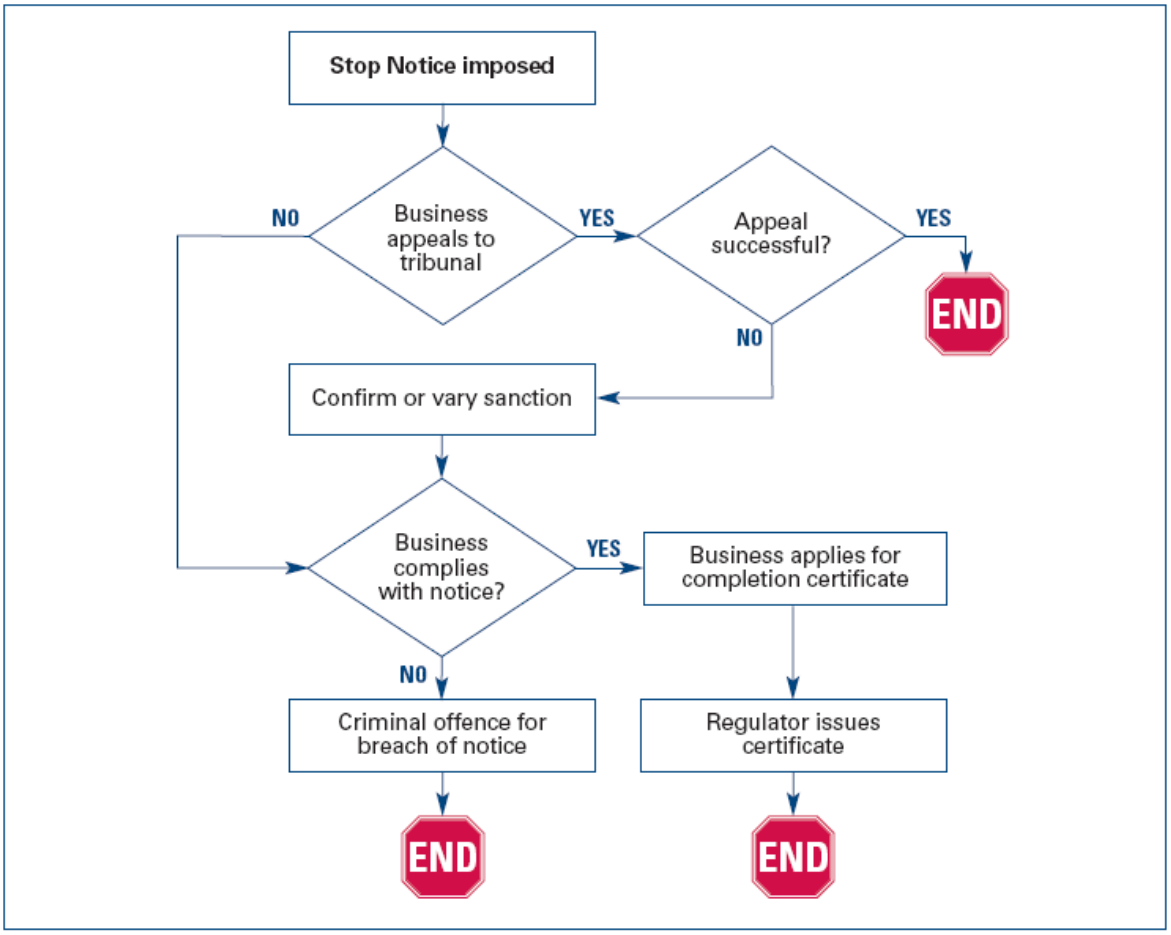
- The grounds for serving the stop notice,
- The actions the person must take to comply with the stop notice,
- Rights of appeal, and
- The consequences of non-compliance.

Non-compliance with a stop notice is a criminal offence.

2.96 The person on whom a stop notice is served may then appeal against the decision to serve it within 28 days of receiving it. The stop notice would not be suspended on appeal unless the First-tier Tribunal directs otherwise.

2.97 Rule 20 (4) of the Tribunal Procedure (First-tier Tribunal) (Regulatory Chamber) Rules 2009 provide the Tribunal with powers to stay or suspend, or to lift a stay or suspension of, a decision which is or may be the subject of an appeal to the Tribunal pending a substantive appeal. This flexibility can be extended to environmental appeals to allow the Tribunal to quickly consider the request for an application for suspension pending an appeal.

2.98 If the regulator is satisfied after the stop notice has been served that the person has taken the steps set out in the notice then the regulator must issue a completion certificate. The person may also apply for a completion certificate at any time and the regulator must decide whether to issue one as soon as possible and at most within 14 days of the request.



Publicity

2.99 Regulators will be required to publish the details of any enforcement action taken using civil sanctions, i.e. where a civil sanction is imposed or where any undertaking is accepted. The Government considers it good practice for a regulator to maintain a public register on its website of civil sanctioning decisions it has taken, as well as criminal convictions. It will be important that the register, when it is developed, points to the greater seriousness of criminal conviction than a civil sanction, and the greater seriousness of a VMP than other sanctions. The fact that an EU or TPU has been offered by a person and accepted should be recorded. The register should record where the person has fulfilled all the requirements satisfactorily in the time agreed, under notices or a EU.

2.100 Regulators will not publish the details of sanctions where the sanction is being appealed, or has been overturned at appeal.

2.101 Regulators may also pursue pro-active publicity options, such as issuing press releases. Whether a regulator decides to do this will depend on the circumstances of the case taking account, for example, of local concern, any health risks posed by the case and the behaviour of the person. In many cases, it will be unnecessary to actively publicise an EU. There may be other cases where it would be appropriate, for example where the EU relates to a case which has caused public concern or harm. It may also be in the interests of the person undertaking the EU that the remedial steps are widely known.

2.102 The Government considers that including the offence publicly on the record is the most important aspect of an FMP as a marker that a degree of improvement is needed; an FMP would be appropriate mainly where advice and guidance had failed to secure the necessary change. The entries of FMPs on the public record should specify where the penalty has been discharged by payment of the penalty following the notice of intent and without further action being taken. Given that in the graduated system of sanctions, FMPs are for the least serious cases, the regulator would not normally take active steps (for example case-specific press releases) to publicise them.

3. Factors determining enforcement approach

This section provides guidance on how civil sanctions relate to existing mechanisms. It explains the use of advice and guidance. It then explains the way in which regulators typically approach decisions to prosecute at present and illustrates how they are likely to make decisions in the future with the expanded toolkit that will include civil sanctions. Regulators will have regard to this document when setting out their revised enforcement policies.

Advice and guidance

3.1 The Hampton principles set out in the Regulators' Compliance Code (see paragraph 2.1) state that regulators should 'only intervene when there is a clear case for protection and that 'regulators should provide authoritative, accessible advice easily and cheaply'. Advice and guidance will remain the cornerstone of a well graduated system of enforcement and will in many cases be sufficient to achieve the regulators' enforcement objectives.

3.2 Regulators will use the new sanctions when they consider that advice and guidance alone will not achieve their enforcement objectives. FMPs, which are for the least serious cases, would mainly be appropriate where advice and guidance has failed to achieve the necessary improvement.

Prosecution

3.3 When considering prosecution, regulators must have regard to the Code for Crown Prosecutors ('the Code')[26]. This requires that prosecutors should only commence proceedings where there is sufficient evidence to provide a realistic prospect of securing a conviction. The Code makes clear that the decision to prosecute is a serious matter and that cases should only be prosecuted where it is considered to be in the public interest. The Code also emphasises that each case is unique and must be considered on its own facts and merits. However, general principles apply. Each regulator also sets out in their enforcement and prosecution policy what factors they will have regard to in assessing when prosecution is in the public interest, in particular when prosecution is proportionate.

3.4 Under their present enforcement policies, environmental regulators take a range of factors into consideration when deciding the appropriate enforcement response and whether prosecution is justified in the public interest. For clarity, these may be grouped into 4 broad categories: offence, offender, impact, and possible wider consequences.

[26] The Code for Crown Prosecutors is a public document, issued by the Director of Public Prosecutions, that sets out the general principles prosecutors should follow when they make decisions on cases. The Code may be viewed at http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html

3.5 These same kinds of factors will continue to be relevant with the introduction of a wider toolkit of sanctions. However, the introduction of new civil sanctions will make it possible for regulators to achieve results in new ways. In particular, bringing a person into compliance, securing restoration of damage, removing financial benefit, and securing long term protection of the environment may in many cases effectively be delivered through the imposition of a civil sanction as an alternative to prosecution.

3.6 Deciding on the appropriate enforcement option is not simply a matter of adding up the number of factors for or against prosecution. The extent to which a particular factor is considered significant may vary depending on the particular circumstances of the case in question. Environmental regulators must balance all relevant factors in the circumstances of each case and make an overall assessment as to the most appropriate course of action.

3.7 It would therefore be inappropriate to place undue emphasis on any one factor, or set of factors, when considering how sanctioning is likely to change with the introduction of civil sanctions. However, it is helpful to provide an indication of relevant factors, under the categories identified above, that the Government considers will in future tend to suggest to a regulator that prosecution is the proportionate action – figure 2 below.

Figure 2 Public interest factors in favour of prosecution:

Factors relating to	**Factor tending to suggest that prosecution is appropriate**
Offence	• long-term or continuing breach • significant deviation from legal requirement or permit conditions • operating without a licence or permit
Offender	• has committed an offence intentionally or with recklessness or negligence • has a history of non-compliance • has failed to comply with a previous civil sanction • is shown to be dishonest or deceiving • has failed to report non-compliance • has not cooperated with investigations • has failed to comply with restoration or other notice requirements • the offence involved obstruction • the incident was foreseeable • the offence has been committed with the consent, connivance or neglect of senior officers of a corporate body
Impact	• serious environmental impact or risk of impact, including impact on the local community • serious impact on compliant business, competitors undermined • the offence undermines the regulatory system[27]

[27] eg management failure to have regard to advice of competent persons, which defeats the purpose of the requirement to have a competent person.

Possible wider consequences	• significant potential long-term effect • potential impact on the wider population

3.8 In the absence of factors such as those above, a person might expect the regulator to respond with civil sanctions, or in some cases just a warning. It should be noted that the factors identified are not exhaustive and the final decision will be made at the discretion of the regulator, based on the assessment of all factors and their relative importance for the non-compliance under consideration.

3.9 Figure 2 sets out a number of aspects of the behaviour of a person that may point to prosecution. The regulator will also take into account steps that a person takes to mitigate the non-compliance, especially:

- voluntary, timely and full disclosure of non-compliance
- active steps to restore harm caused, compensate those affected, and declare any financial benefit from non-compliance
- full and open co-operation with the regulator's investigation

Degree of environmental damage

3.10 As set out above, regulators will take a number of factors into account in deciding whether to prosecute in any specific case. However, it will be helpful to consider in particular the way actual environmental damage may affect regulators' decisions.

3.11 Serious environmental risk or damage would normally tend to point to prosecution as this will often involve significant failure to comply with important requirements to prevent or minimise risk. Even then a regulator may sometimes find evidence that shows to its satisfaction that the risk of damage was not foreseeable, in which case the regulator may still wish to consider imposing civil sanctions.

3.12 It might be felt that any substantial environmental damage is always deserving of prosecution, irrespective of whether it is aggravated by other factors. The Government considers this is too rigid a position, particularly where persons are strictly liable for certain kinds of environmental damage. Strict liability is applied when it is necessary for effective environmental regulation to minimise the risks to the environment and public health – it ensures that persons are readily accountable to society for damage caused by their activities subject, where appropriate, to certain defences. The introduction of civil sanctions will allow regulators to more fairly recognise in strict liability cases the effort most persons put into compliance, having regard to the factors set out above.

3.13 However, if any one or more of the other factors set out in Table B aggravated a case of environmental damage, the circumstances would be likely to suggest to the regulator that prosecution would be more appropriate.

3.14 When appropriate, civil sanctions would provide an effective alternative enforcement response. Civil sanctions would provide the regulator with the ability to impose substantial and proportionate monetary penalties on persons for the more serious offences; and new or existing notice powers can require restoration of damage caused. In some cases, enforcement undertakings might provide the best outcome for the environment where a company voluntarily commits to rectifying the damage that has been done and to ensuring future compliance in a manner that is acceptable to the regulator.

3.15 Transparency will be important to public confidence in regulator use of civil sanctions, especially when environmental damage has been caused or local communities have been adversely affected through nuisance or loss of amenity. Paragraphs 2.99 – 2.102 discuss more fully the need for adequate public information about enforcement action that regulators take.

3.16 The Government therefore considers that, depending on the circumstances of the individual case, regulators could use civil sanctions to effectively and proportionately address cases of substantial environmental damage that have not been aggravated by other factors.

Senior company officers

3.17 Civil sanctions can be served, no different from anyone else, on a director or other senior officer of a company if that person has committed a relevant offence.

Scenarios

3.18 The decision-making factors set out above are designed to ensure that important outcomes will be achieved: in fairer treatment of persons who take a responsible approach to compliance; for the environment; and for local communities. The scenarios set out in annex 2 illustrate what people might expect from a reformed enforcement system. Please note that these examples draw on regulators' experience but they are not real cases. Real cases would often be more complicated and may involve regulators in considering a wider range of factors.

4. Enforcing Civil Sanctions

This section explains how regulators will seek to ensure that persons comply with the requirements of civil sanctions.

4.1 The enforcement process will differ from sanction to sanction. The Environmental Civil Sanctions Orders 2010 (see paragraph 1.3) specify the procedures and powers available to regulators when persons fail to pay monetary penalties or comply with RES Act notices.

VMP, FMP or other monetary penalty

4.2 Where a fixed or variable monetary penalty is imposed and the person fails to pay it, no prosecution can be brought for the original offence. Unpaid penalties will instead be enforced through the civil courts. The Orders enable regulators to recover unpaid sums in the same way as if they had gone to a county court or High Court, as this course of action is normally quickest. The regulator will be able to recover unpaid enforcement cost recovery notices and non-compliance penalties in the same way.

Enforcement undertakings

4.3 Should a person fail to comply with the terms of an enforcement undertaking or only partly comply, the regulator will have the choice of whether to extend the period of the enforcement undertaking, impose a different civil sanction or to pursue a criminal prosecution for the original offence. Any partial compliance would be taken into account in the imposition of any civil sanction or decision whether or not to prosecute. If a person provides misleading or inaccurate information in relation to the undertaking, then the person will be deemed to have not complied with the undertaking and the regulator can decide whether to impose a different civil sanction or pursue a criminal prosecution.

Restoration notice or compliance notice imposed without a VMP

4.4 Failing to comply with either of these notices would normally point to prosecution unless there are strong mitigating factors. Where these mitigating factors exist, a **non-compliance penalty notice** (NCP) can be served. An NCP is a written notice issued by the regulator imposing a monetary penalty (see below for more details). As the original restoration notice (RN), compliance notice (CN) or third party undertaking (TPU) remain outstanding, should the person continue with their non-compliance then the regulator will be able to prosecute for the original offence, whether or not the NCP is paid.

Restoration notice or compliance notice imposed with a VMP, or a third party undertaking accepted by the regulator

4.5 When a person fails to comply with a restoration notice or a compliance notice that is issued with a VMP, no prosecution is allowed: the VMP gives immunity

from prosecution. The regulator can instead impose an NCP. A NCP would also be needed if the person has failed to fulfil a third party undertaking it has made. The restoration notice, compliance notice or third party undertaking would remain in force.

Stop notices

4.6 Given the serious nature of stop notices, non-compliance should normally result in criminal prosecution.

Enforcement cost recovery notices

4.7 The unpaid notice will be pursued through the civil courts.

How do non-compliance penalties work?

4.8 The regulator must determine the amount of the NCP by reference to the original notice or TPU and it must be a percentage of the costs of the outstanding requirements. The regulator will determine the percentage depending on all the circumstances of the case and it may be up to 100% of the costs the regulator estimates the person is avoiding. The regulator will not be able to retain the monies from a NCP; these must be paid into the Consolidated Fund.

4.9 There is no notice of intent as the consequences of non-compliance with the original civil sanction would have been set out when the final restoration or compliance notice was served, or TPU accepted. The person will have 28 days to pay the NCP unless the regulator stipulates a longer period. Should the CN, RN or TPU be complied with during the NCP payment period then the penalty does not have to be paid. There will be no late payment charges. The regulator has the power to withdraw or vary the notice if it finds grounds to do so.

4.10 If the regulator decides to impose a NCP, it must serve a notice, containing the following information:

- the grounds for imposing the notice;
- the amount to be paid;
- the period within which the amount must be paid;
- if appropriate, the circumstances, such as partial completion of the necessary work, that may lead the regulator to reduce the NCP, or withdraw and extend the period of the NCP;
- how payment may be made;
- rights of appeal; and
- the consequences of failing to comply with the notice
- provide a revised time period in which the original notice must be complied with.

4.11 As with unpaid monetary penalties, if a person fails to pay a NCP for non-compliance with a RN, CN or TPU combined with a VMP, then regulators may enforce through the civil courts.

5. Costs

This section explains which costs can be recovered from persons in different circumstances and how regulators will recover costs.

Enforcement cost recovery notices (ECRN)

5.1 Section 53 of the RES Act gives regulators the power to recover certain costs when imposing a sanction. This power is limited to VMPs, compliance notices, restoration notices or stop notices. The recoverable costs include the regulators' investigation and administration costs as well as any related costs for obtaining legal or other expert advice. An ECRN is the mechanism that regulators will use to recover costs. Regulators will not be able to use ECRNs to recover costs for FMPs or EUs.

5.2 The regulator should serve the ECRN at the same time as the civil sanction is imposed, unless there are practical reasons that prevent this. It should specify the type of costs incurred by the regulator and the amount to be paid in relation to each cost. Although the RES Act says that the person should be able to request a detailed breakdown of the costs it would be good practice for the regulator to provide this information automatically.

5.3 The regulator will retain any money raised through the cost recovery provisions. As the notice reflects the actual costs the regulator has incurred in investigating and enforcing the offence it would not be appropriate to offer any discharge or early payment discount or late payment charge.

5.4 If the regulator decides to impose a ECRN, it must serve a notice, containing information as to the following:

- The grounds for imposing the notice;
- The amount to be paid
- How payment may be made and the period within which it must be made;
- Rights of appeal; and
- The consequences of failing to comply with the notice

5.5 The operator will have 28 days to pay the ECRN unless the regulator stipulate a longer period.

6. Representations and appeals

A fair process is essential to the effective use of civil sanctions. When a regulator intends to impose a civil sanction on a person, other than imposing a stop notice or accepting an undertaking, it must first consider any representations the person makes against the sanction. When a regulator imposes a civil sanction the recipient will be able to appeal. This section provides the detail.

Representations

6.1 Before a regulator decides to impose a compliance notice, restoration notice, variable monetary penalty or fixed monetary penalty it must issue a Notice of Intent to impose the sanction. On receipt of the Notice a person can make representations and object to the proposed imposition of the sanction. Representations must be made within 28 days of receiving a Notice of Intent. This is set out in chapter 2.

When can appeals be made

6.2 Under the two Statutory Instruments (see paragraph 1.3) appeals can be made to the First-tier Tribunal against:

- Compliance notices
- Restoration notices
- Variable monetary penalties
- Fixed monetary penalties
- Stop notices
- Regulator's decisions not to issue a completion certificate for a stop notice or and enforcement undertaking
- Non-compliance penalties
- Enforcement cost recovery notices

6.3 The Environmental Civil Sanctions Orders set out specific grounds on which an appeal may be made, in the interests of transparency. However, an appeal may also be made for any other reason. Grounds include:

- that the decision was based on an error of fact;
- that the decision was wrong in law;
- in the case of a monetary penalty, that the amount of the penalty is unreasonable;
- in the case of a non-monetary requirement, that the nature of the requirements is unreasonable;
- other specific grounds depending on the particular sanction; or,
- any other reason.

Process for appealing

6.4 Appeals will be made to the General Regulatory Chamber of the First-tier Tribunal. Appeals should be made by sending or delivering a notice of appeal to the Tribunal so that it is received within 28 days of the date on which notice of the sanction or other decision was received. **See annex 5 for address details.**

6.5 The composition of a tribunal is a matter for the Senior President of Tribunals to decide. A tribunal may include non-legal members with suitable expertise or experience in the issues in an appeal in addition to Tribunal Judiciary. The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009[28] and the tribunal judges' discretion will ensure that cases are dealt with in the interest of justice and minimising parties' costs. What follows is to illustrate how tribunals typically approach cases.

6.6 The appellant would submit their case in writing and the regulator would respond in writing. Tribunals maintain the same standards of openness in their proceedings as a criminal court. Under Rule 34 of the Rules the Tribunal would normally give at least 14 days notice of a hearing to consider disposal of proceedings. The effects of some environmental incidents may be such that members of the local community will wish to listen to proceedings. The Tribunal would aim to publish details of daily court lists on its website informing interested parties and the general public of current cases.

6.7 If an appellant asks the judge not to make public certain pieces of evidence or to exclude the public from a hearing, the judge will weigh the conflicting rights and private and public interests before making a decision, as in any court.

6.8 In an appeal hearing, the regulator will carry the burden of proving its case. This is covered in section 10(2) of the Environmental Civil Sanctions Order 2010. For example, the RES Act sections 39(2) and 42(2) require the regulator to be satisfied beyond reasonable doubt that an offence has been committed before they may impose a fixed monetary penalty, variable monetary penalty, restoration notice or compliance notice. On appeal, the regulator will have to prove the commission of an offence, where the Tribunal decides that is required, beyond reasonable doubt, as though the issue was being addressed in a criminal prosecution. In all other matters, the Tribunal will decide the standard of proof.

6.9 The Tribunal would aim to publish the decisions for appeals on its website. Requests made for information relating to another living individual can be made by using the Freedom of Information Act. The disclosure of this information will be subject to the relevant exemptions within the FOI Act.

6.10 Any party to a case has a right to appeal a decision of the First-tier Tribunal on a point of law arising from the Tribunals decision. The right may only be exercised with permission of the First-tier Tribunal or Upper Tribunal. Where permission is given the further appeal would be heard by the Upper Tribunal.

[28] The General Regulatory Chamber Rules may be found at: http://www.opsi.gov.uk/si/si2009/uksi_20091976_en_1

6.11 Under the Rules the First-tier Tribunal has the power to award costs against a party. The Tribunal may make an order in respect of costs only where a party has acted unreasonably in bringing, defending or conducting the proceedings.

6.12 The Lord Chancellor has the capacity to charge fees for appeals to the First-tier Tribunal, for example an application fee. Where he is proposing to introduce fees he is required to consult the Senior President of Tribunals and the Administrative Justice and Tribunals Council as well as a full public consultation. Following this, any such proposal would be subject to secondary legislation that would need to be debated and agreed by both Houses of Parliament before it would take effect.

6.13 Appeals made for stop notices will normally need to be fast-tracked. Stop notices are not suspended on appeal unless the First-tier Tribunal directs otherwise, so applications for suspension of stop notices will need to be dealt with as a matter of urgency.

Approach to deciding appeals

6.14 Rule 2 of the draft General Regulatory Chamber Rules states its overriding objective as being to deal with a case fairly and justly. This includes dealing with a case in ways which are proportionate to the importance of the case, the complexity of the issues and the anticipated costs and resources of the parties. The Rules give the tribunal judge wide case management powers in order to achieve these objectives. In the interests of proportionate handling of cases, the judge may for example hold a preliminary hearing to consider any matter (Rule 5); direct the parties as to which particular issues are to be resolved (Rule 6), and for complex or technical evidence on issues to be submitted by an expert (Rule 15); reach a decision based on the written submissions alone (Rule 32) if both parties agree; or conduct a wider ranging hearing if that is necessary.

Annex 1: Offences covered by civil sanctions

In the following tables—

"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.

Table 1. List of offences and the civil sanctions that are available for them as legislated by the Environmental Civil Sanctions (England) Order 2010

Legislation	FMP	VMP	CN	RN	SN	EU
Destructive Imported Animals Act 1932 (c. 12)						
section 6(1)(c) consisting of non-compliance or breach of a term of a licence	No	Yes	Yes	Yes	Yes	Yes
section 6(1)(e)	No	Yes	No	No	No	No
Hill Farming Act 1946 (c. 73)						
section 20(2)	Yes	Yes	No	Yes	Yes	Yes
section 34(2)	No	Yes	No	No	No	No
Pests Act 1954 (c. 68)						
section 4(2)	No	Yes	No	No	No	No
Weeds Act 1959 (c. 54)						
section 2(1)	No	Yes	No	No	No	No
section 4(2)	No	Yes	No	No	No	No
Salmon and Freshwater Fisheries Act 1975 (c. 51)						
section 2(1)	No	Yes	No	No	No	No

Legislation	FMP	VMP	CN	RN	SN	EU
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
Wildlife and Countryside Act 1981 (c. 69)						
section 1(1)	No	Yes	Yes	Yes	Yes	No
section 1(2)	No	Yes	Yes	Yes	Yes	No
section 1(5)	No	Yes	Yes	Yes	Yes	No
section 5(1)	No	Yes	No	Yes	Yes	No
section 6(1)	No	Yes	Yes	Yes	Yes	No
section 6(2)	No	Yes	Yes	Yes	Yes	No
section 6(3)	No	Yes	Yes	Yes	Yes	No
section 7(1)	No	Yes	Yes	Yes	Yes	No
section 7(3)	No	Yes	Yes	Yes	Yes	No
section 7(4)	No	Yes	Yes	Yes	Yes	No
section 8(1)	No	Yes	Yes	Yes	Yes	No
section 8(3)	No	Yes	Yes	Yes	Yes	No
section 9(1)	No	Yes	Yes	Yes	Yes	No
section 9(2)	No	Yes	Yes	Yes	Yes	No
section 9(4)	No	Yes	Yes	Yes	Yes	No
section 9(4A)	No	Yes	Yes	Yes	Yes	No
section 9(5)	No	Yes	Yes	Yes	Yes	No
section 11(1)	No	Yes	No	Yes	Yes	No
section 11(2)	No	Yes	Yes	Yes	Yes	No
section 11(3)	No	Yes	Yes	Yes	Yes	No
section 13(1)	No	Yes	Yes	Yes	Yes	No
section 13(2)	No	Yes	Yes	Yes	Yes	No
section 14(1)	No	Yes	Yes	Yes	Yes	No

Legislation	FMP	VMP	CN	RN	SN	EU
section 14(2)	No	Yes	Yes	Yes	Yes	No
section 17	No	Yes	No	No	No	No
section 19XB(1)	No	Yes	No	No	No	No
section 19XB(2)	No	Yes	No	No	No	No
section 19XB(3)	No	Yes	No	No	No	No
section 19XB(4)	No	Yes	No	No	No	No
section 28P(1)	Yes	Yes	Yes	Yes	Yes	Yes
section 28P(2)	Yes	Yes	Yes	Yes	Yes	Yes
section 28P(3)	Yes	Yes	Yes	Yes	Yes	Yes
section 28P(5A)	Yes	Yes	Yes	Yes	Yes	Yes
section 28P(6)	No	Yes	Yes	Yes	Yes	Yes
section 28P(6A)	No	Yes	Yes	Yes	Yes	Yes
section 28P(8)	No	Yes	No	No	No	No
section 28Q(4)	No	Yes	No	No	No	No
section 28S(3)	No	Yes	No	No	No	No
section 51(4)	No	Yes	No	No	No	No
Salmon Act 1986 (c. 62)						
section 32	No	Yes	No	No	No	No
Environmental Protection Act 1990 (c. 43)						
section 33(6)	No	No	No	No	Yes	No
section 71(3)	No	Yes	No	No	No	No
Water Resources Act 1991 (c. 57)						
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

Legislation	FMP	VMP	CN	RN	SN	EU
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 (c. 56)						
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
Deer Act 1991 (c. 54)						
section 8(5)	Yes	Yes	No	No	Yes	Yes
Land Drainage Act 1991 (c. 59)						
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
Protection of Badgers Act 1992 (c. 51)						
section 3	Yes	Yes	Yes	Yes	Yes	Yes
section 10(8)	Yes	Yes	Yes	Yes	Yes	Yes
Environment Act 1995 (c. 25)						
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 (c. 37)						
section 4(4)	No	Yes	No	No	No	No

Table 2. List of offences and the civil sanctions that are available for them as legislated by the Environmental Civil Sanctions (Miscellaneous Amendments) (England) Regulations 2010

Regulation	FMP	VMP	CN	RN	SN	EU
Sludge (Use in Agriculture) Regulations 1989						
regulation 3	No	Yes	Yes	Yes	Yes	Yes
regulation 4	Yes	Yes	No	No	Yes	Yes
regulation 5	Yes	Yes	No	No	No	Yes
regulation 6(1)	No	Yes	Yes	No	No	Yes
regulation 7(1)	No	Yes	Yes	No	No	Yes
regulation 7(2)	Yes	Yes	Yes	No	No	Yes
regulation 8(3)(a)	No	Yes	No	No	Yes	Yes
regulation 8(3)(b)	No	Yes	No	Yes	Yes	Yes
regulation 8(4)	No	Yes	No	Yes	Yes	Yes
Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000						
regulation 3(1)	Yes	Yes	Yes	No	No	Yes
regulation 4(1)	Yes	Yes	Yes	No	No	Yes
regulation 4(2)(b)	Yes	Yes	No	No	No	Yes
regulation 4(3)	Yes	Yes	No	No	No	Yes
regulation 4(4)(d)	Yes	Yes	No	No	No	Yes
regulation 4(8)	Yes	Yes	No	No	No	Yes
regulation 4(9)	Yes	Yes	No	No	No	Yes
regulation 5	Yes	Yes	No	No	No	Yes
regulation 13(4)(a)	No	Yes	No	No	No	No
regulation 13(4)(b)	No	Yes	No	No	No	No
regulation 13(4)(c)	No	Yes	No	No	No	No
Control of Pollution (Oil Storage) (England) Regulations 2001						
regulation 9	Yes	Yes	No	Yes	Yes	Yes

Regulation	FMP	VMP	CN	RN	SN	EU
Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003						
regulation 9	No	Yes	Yes	Yes	Yes	Yes
Hazardous Waste (England and Wales) Regulations 2005						
regulation 19	No	Yes	Yes	Yes	Yes	Yes
regulation 20	No	Yes	Yes	Yes	Yes	Yes
regulation 22	No	Yes	No	No	No	Yes
regulation 34	No	Yes	Yes	No	No	Yes
regulations 35 to 44	No	Yes	Yes	No	No	Yes
regulation 46 and Schedule 7	No	Yes	Yes	No	No	Yes
regulation 47	No	Yes	Yes	No	No	Yes
regulation 48	No	Yes	Yes	No	No	Yes
regulation 49	No	Yes	Yes	No	No	Yes
regulation 50	No	Yes	Yes	No	No	Yes
regulation 51	No	Yes	Yes	No	No	Yes
regulation 53	No	Yes	No	No	No	Yes
regulation 54	No	Yes	No	No	No	Yes
regulation 55	No	Yes	No	No	No	No
regulation 62	No	Yes	Yes	Yes	Yes	No
regulation 68	No	Yes	No	No	No	No
Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006						
regulation 22(1)	Yes	Yes	No	No	No	Yes
regulation 23	Yes	Yes	No	No	No	Yes
regulation 24(1)	No	Yes	No	No	No	No
regulation 26(1)	No	Yes	No	No	No	No
regulation 30(8)	No	Yes	No	No	No	No

Regulation	FMP	VMP	CN	RN	SN	EU
Producer Responsibility Obligations (Packaging Waste) Regulations 2007						
regulation 40(1)(a)	Yes	Yes	No	No	No	Yes
regulation 40(1)(b)	No	Yes	No	No	No	Yes
regulation 40(1)(c)	Yes	No	No	No	No	No
regulation 40(3)	No	Yes	No	No	No	Yes
regulation 40(7)	No	Yes	No	No	No	No
regulation 40(8)(a)	No	Yes	No	No	No	Yes
regulation 40(8)(b)	Yes	No	No	No	No	No
Transfrontier Shipment of Waste Regulations 2007						
regulation 17	No	Yes	No	No	No	Yes
regulation 18	No	Yes	No	No	No	Yes
regulation 19(2)	No	Yes	No	No	No	Yes
regulation 19(3)	No	Yes	No	No	No	Yes
regulation 20(2)	No	Yes	No	No	No	Yes
regulation 21	No	Yes	No	No	No	Yes
regulation 22(2)	No	Yes	No	No	No	Yes
regulation 23	No	Yes	No	No	No	Yes
regulation 24(2)	No	Yes	No	No	No	Yes
regulation 25	No	Yes	No	No	No	Yes
regulation 26	No	Yes	No	No	No	Yes
regulation 27(2)	No	Yes	No	No	No	Yes
regulation 28	No	Yes	No	No	No	Yes
regulation 29(2)	No	Yes	No	No	No	Yes
regulation 30(2)	No	Yes	No	No	No	Yes
regulation 31	No	Yes	No	No	No	Yes
regulation 32(2)	No	Yes	No	No	No	Yes
regulation 33(2)	No	Yes	No	No	No	Yes
regulation 34(2)	No	Yes	No	No	No	Yes
regulation 35(2)	No	Yes	No	No	No	Yes
regulation 36	No	Yes	No	No	No	Yes
regulation 37(2)	No	Yes	No	No	No	Yes
regulation 38(2)	No	Yes	No	No	No	Yes
regulation 38(3)	No	Yes	No	No	No	Yes
regulation 38(4)	No	Yes	No	No	No	Yes

Regulation	FMP	VMP	CN	RN	SN	EU
regulation 39(2)	No	Yes	No	No	No	Yes
regulation 40(2)	No	Yes	No	No	No	Yes
regulation 41(2)	No	Yes	No	No	No	Yes
regulation 42(2)	No	Yes	No	No	No	Yes
regulation 43	No	Yes	No	No	No	Yes
regulation 44(2)	No	Yes	No	No	No	Yes
regulation 52(1)	No	Yes	No	No	No	No
regulation 53(a)	No	Yes	No	No	No	No
regulation 53(b)	No	Yes	No	No	No	No
regulation 53(c)	No	Yes	No	No	No	No
regulation 54(a)	No	Yes	No	No	No	No
regulation 54(b)	No	Yes	No	No	No	No
Nitrate Pollution Prevention Regulations 2008						
regulation 48	Yes	Yes	Yes	Yes	Yes	Yes

Annex 2: Scenarios to illustrate using civil and other sanctions

1. Please refer to section 3 of the guidance, which explains the way in which regulators typically approach decisions to prosecute at present and illustrates how they are likely to make decisions in the future with the expanded toolkit that will include civil sanctions.

Scenario 1 - Hazardous waste

A company intentionally mixes hazardous and non-hazardous waste to disguise the hazardous waste so that it can be disposed of as non-hazardous, which would incur lower disposal costs and bring significant financial benefit. The site does not have a permit or exemption to allow mixing of this nature. An employee who has not received adequate training and is not wearing the appropriate protective equipment is injured when he comes into contact with the waste. The company has previous convictions for similar offences. Unauthorised mixing of hazardous and non-hazardous waste is an offence under regulation 19 of the Hazardous Waste (England and Wales) Regulations.

Likely enforcement response: Although a Variable Monetary Penalty is available, the nature of the offence, which resulted in injury, and the previous offending history, mean that this case is clearly deserving of prosecution.

Scenario 2 – Hazardous waste

During an inspection, a high street garage is unable to find hazardous waste consignment notes for the removal of waste oils. This is an offence under regulation 49 of the Hazardous Waste (England and Wales) Regulations. The company explains that they suspect the documents may have been thrown away accidentally by a junior member of staff during an office clear-out. There is no evidence of previous offending - on previous visits, the documents have been available.

Likely enforcement response: The company offers an Enforcement Undertaking which includes a commitment to, as far as possible, replace the missing notes, introduce new training and establish improved procedures to ensure there is no repeat. The company is clearly acknowledging its mistakes and making a commitment to change. The Enforcement Undertaking is accepted as it is considered it will deliver the necessary behaviour change and a more formal sanction is not required.

Scenario 3 – Oil storage

A company has a previously exemplary track record. During a site visit, an officer notices that there is evidence that the quantity of oil being stored exceeds that which the bunding would be able to contain in the event of a leak. The company is in breach of the Control of Pollution (Oil Storage) (England) Regulations. The company acknowledges the issue and explains that the normal site manager is off sick, as are other key members of staff, and that they will take any necessary action.

Likely enforcement response: The company is advised to reduce the quantity of oil being stored as a matter of urgency, which they do immediately to rectify the problem. Although civil sanctions and prosecution are available options, advice is considered an appropriate response given the previous record of the company and the exceptional circumstances.

Scenario 4 - Producer responsibility

A company is registered under the Producer Responsibility (Packaging Waste) Regulations. When submitting its annual return it becomes clear that it has failed to purchase enough packaging recovery notes to meet its obligation. As a consequence, it commits an offence which is associated with a considerable financial saving from the cost it has avoided in not purchasing the notes. The company has produced the required number of notes in the past. However, a sanction is necessary to maintain confidence in the regime and to reassure companies who have met their obligations.

Likely enforcement response: Prosecution is considered inappropriate because of the company's previous good record but the size of the financial benefit made by the company means that a Variable Monetary Penalty is justified.

Scenario 5 – Permitted process plant:

(This example illustrates use of civil sanctions in relation to a permitted activity – legislation is planned to make civil sanctions available for this kind of offence)

An operator's site normally meets requirements, but they have been defeated by an unlikely combination of circumstances. Substantial pollution has leaked into soil risking groundwater contamination. The operator has alerted the regulator and taken swift steps to start removing the pollutant and reducing the contamination risk. The operator offers a comprehensive enforcement undertaking, to ensure at their expense that pollution from the incident is cleaned up so far as possible, further pollution is prevented, and any necessary further precautions are put in place.

Likely enforcement response: The regulator might consider the offer of an enforcement undertaking from the company, which had a good track record and has moved swiftly to restore the harm caused.

Scenario 6 – Damage to a Site of Special Scientific Interest (SSSI)

SSSIs are designated to protect England and Wales' most important biodiversity and geological heritage. A landowner or manager has without notice or consent cleared 300m of a ditch within a wetland SSSI. The resulting extra drainage has caused drying and degradation of the wetland. The area of damage is relatively small, but natural regeneration is not possible and so restoration is necessary to restore the plant or animal populations damaged on the SSSI. The landowner has volunteered to carry out restoration works by installing water control structures and backfilling the excavated materials.

Likely enforcement response: restoration notice to ensure the necessary environmental outcomes for the site, as natural regeneration is not possible in this case; a variable monetary penalty may be imposed to remove any financial benefit from the non-compliance or to impose a penalty to deter future non-compliance. If for any reason, the damage at the original site cannot be fully restored, the landowner could be required to restore another area of SSSI wetland to the required state.

Note: this example assumes that the damage is not serious enough to fall within scope of the Environmental Damage Regulations 2009.

Scenario 7 - Deliberate dumping of construction material at a Site of Special Scientific Interest (SSSI)

The landowner has deliberately dumped construction material in the channel and on the bank of a river SSSI. There has been damage to the channel and vegetation on the bank. The spoil has smothered breeding grounds of bullhead and salmon, and destroyed an otter holt. The landowner is refusing to restore voluntarily.

Likely enforcement response – Prosecution and a request to the court to order restoration

Note: this example assumes that the damage is not serious enough to fall within scope of the Environmental Damage Regulations 2009.

Annex 3: Monitoring the civil sanctions

Monitoring and review of the civil sanctions

1. The use of the new civil sanctions will be reviewed two years after their introduction. Monitoring data will be collected from the start to inform this review. Defra and Welsh Assembly Government (WAG) have worked with regulators to establish the aims of the review and the questions the review should address (see the table overleaf). Defra and WAG will work with regulators and other stakeholders to develop a proportionate methodology for answering these questions and to ensure that maximum use is made of readily available data.

2. Defra and WAG and regulators will set up a forum where government, regulators and stakeholders can review results of the monitoring activity at key stages towards a formal review. This forum will help to assess whether the civil sanctions are being used consistently in line with the published enforcement policy and guidance.

3. The aims of the review will be to establish:

   A. What has happened
   B. Whether we have achieved the intended objectives of civil sanctions (these have been identified within questions 8-14 in the table below)
   C. What the costs and benefits have been
   D. Whether improvements could be made
   E. What we have learnt about responding proportionately and effectively to environmental non-compliance

4. The table overleaf identify the questions the review will include to achieve these aims.

5. The principle information sources to address these questions are expected to be:

   - Data from regulators on the use of sanctions and related issues
   - questionnaires of regulators and regulated
   - detailed analysis of a sample of cases
   - a social research project by external researchers
   - other available sources

Questions to be covered by the review of civil sanctions

A. ***What has happened***

1. Have the proposals been fully implemented and are the appropriate systems in place?
2. How much have the civil sanctions been used and how does this relate to expectations?
3. What is the regulators' and other stakeholders' experience of the civil sanctions?
4. What costs have been incurred in using the civil sanctions and how do these compare to expectations?
5. Have recipients of sanctions complied with them?
6. What have appeal rates been compared to expectations?
7. Have the civil sanctions been applied in a fair and consistent way?

B. ***Whether we have achieved the intended objectives of civil sanctions***

8. Have they brought those not complying back into compliance?
9. Have they removed risks and prevented harm from occurring or continuing?
10. Have they ensured damage is restored, restitution is provided to local communities and that the polluter pays?
11. Have they removed financial benefit, related proportionately to the offence, harm and the facts of the case and, overall, helped to level the playing field?
12. Have they deterred non-compliance and encouraged behaviour change, future compliance and reductions in future risks?
13. Have they secured better results or the same results at lower cost?
14. Have negative 'unintended consequences' been avoided?

C. ***What the costs and benefits have been***

15. What are the costs and benefits?

D. ***Whether improvements could be made***

16. Are the right civil sanctions available for the right offences?
17. Are there ways to improve their design and the way they are used?
18. Are there circumstances in which civil sanctions should be used more or less than currently?
19. Have civil sanctions secured better collaboration between regulator and regulated and how can this be improved?

E. ***What we have learnt about responding effectively and proportionately to environmental non-compliance***

20. What determines whether operators comply? How do operators perceive civil sanctions as a motivation for compliance compared to other mechanisms?
21. Does using the civil sanctions provide an effective and fair means of enforcement?

Annex 4: Glossary

Appeal	The opportunity provided for the operator to challenge a decision made by the regulator by appealing to the First-tier Tribunal.
Civil sanction	An administrative sanction imposed by the regulator enabled by the RES Act
Code for Crown Prosecutors or the Code	A public document issued by the Director of Public Prosecutions that sets out the general principles that prosecutors should follow when they make decisions on cases.
Completion certificate	Certificate issued by the regulator when they are satisfied the steps specified in the notice have been completed.
Compliance deficit	A compliance deficit results from cases where there has been significant non-compliance by the operator but the regulator has not had an appropriate and proportionate sanction with which to address the offence(s).
Compliance notice or CN	A written notice issued by the regulator which requires an operator to take actions to comply with the law, or to return to compliance within a specified period.
Criminal standard of proof	Level of evidence needed to prove that a criminal offence has been committed. The regulator must be satisfied 'beyond reasonable doubt' that an offence has been committed before imposing a CN, RN, FMP or VMP.
Discharge payment	Reduction of penalty for payments made within 28 days following a notice of intent for FMPs
Enforcement	Action taken in response to non-compliance.
Enforcement Cost Recovery Notice or ECRN	A Enforcement Cost Recovery Notice would be a written notice issued by the regulator which requires a person to pay the regulator's investigation, legal or administrative costs when these have been incurred in imposing a VMP, Restoration Notice, Compliance Notice or Stop Notice.
Enforcement Undertaking or EU	A voluntary agreement by an operator to take steps that would make amends for non-compliance

	and its effects. It is for the regulator to decide whether to accept it.
Final notice	Notice served after the period for representations has ended.
Financial benefit	The costs of any actions that can reasonably be considered necessary to have avoided non-compliance and potential financial return on sums that have not been expended.
First-tier Tribunal or FTT	A new generic tribunal established by Parliament under the Tribunals, Courts and Enforcement Act 2007. The First-tier Tribunal's main function is to hear appeals against decisions of the Government where the tribunal has been given jurisdiction.
Fixed Monetary Penalty or FMP	Relatively low level fine fixed by legislation which the regulator may impose for a specified minor instance of regulatory non compliance.
Fixed Penalty Notice or FPN	Low level fine fixed by legislation which if not paid will result in prosecution for the original offence.
Late payment charge	Increase of penalty for payments made more than 56 days after the final notice for a FMP was issued.
Local Authority	The relevant District, London or Metropolitan Borough Council in England and the County or Borough Council in Wales
Macrory Review	A Government report produced by Professor Richard Macrory in November 2006 examining the effective use of sanctions.
Non-Compliance Penalty or NCP	A written notice issued by the regulator imposing a monetary penalty where a restoration notice or compliance notice has not been complied with.
Notice of Intent	A notice served before imposing a civil sanction including details of what is proposed, grounds for the action, the right to make representations and objections etc.
Offence	Breach of legislation
Offender	Person who has committed or suspected of committing an offence.
Person	Any person who may commit an offence. This

	could, for example, include a business, a landowner, a non-governmental organisation, a public sector organisation or a private individual.
Regulated community	Those who are subject to environmental regulation.
Compliance Code	A statutory document which steers regulators towards performing their duties in a business-friendly way, by planning regulation and inspections in a way that causes least disruption to the economy. Regulators should consider the Code when determining policies, setting standards or giving guidance in relation to their duties.
Restoration	Restore to the position that would have persisted if no offence had been committed.
Restoration notice or RN	A written notice issued by the regulator which requires an operator to take steps, within a stated period, to restore harm caused by non-compliance. Steps may be required so that the position is restored, so far as possible, to what it would have been if no offence had been committed.
Standard of proof	Level of evidence needed to prove that an offence has been committed.
Stop notice or SN	A written notice which requires an operator to cease an activity that is causing harm or presents a significant risk of causing serious harm.
Third Party Undertaking or TPU	An action offered by a business to benefit a third party affected by the offence, including the payment of compensation.
Triable summarily only	Cases that may only be heard in the magistrate's court.
Variable Monetary Penalty or VMP	A proportionate monetary penalty which the regulator may impose for a more serious offence when the regulator decides that prosecution is not in the public interest.
Written representations	Any written representations and objections made to the regulator about the proposal to impose the requirement. The person can raise any defences to the proposed sanction.

Annex 5: Contact information

This annex contains information about where to go for further information.

Defra

Peter Johnson or James Whitman
Fairer and Better Environmental Enforcement Team
Defra
5A, Ergon House
Horseferry Road
London
SW1P 2AL

Tel: 0207 238 4638 or 0207 238 6148

WAG

Waste Regulation Policy Branch
Cathays Park
Cardiff
CF10 3NQ

Tel: 02920 823665

EA

Peter Kellett
Environment Agency
Westbury Block 1
Government Buildings,
Burghill Road,
Westbury on Trym,
Bristol
BS10 6BF

Tel: 0117 9152376

Natural England

Enquiries
Natural England
Northminster House
Peterborough
PE1 1UA

Tel: 0845 600 3078 (local rate)
Fax: 01733 455103

Tribunal Service

Graham Cresswell
Operational Manager
General Regulatory Chamber Tribunals
Arnhem House
Leicester

Tel: 0116 2494378