



Enforcement Guidance

December 2011

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Foreword

I am very pleased to make our Enforcement Guidance available to those that we regulate, as well as Government, our stakeholders and anyone with an interest in the enforcement of environmental crime.

Natural England is firmly committed to helping those we regulate to comply with the law. By providing clear information on the offences we are responsible for enforcing, as well as the potential consequences of non-compliance, I hope that this guidance helps towards that commitment.

Despite these challenging economic times Natural England will continue to use its enforcement lever in a robust but proportionate manner. Our objective is to safeguard the natural environment, not add unnecessary costs on stakeholders. We will continue to target offences which cause significant environmental harm and offenders who spoil our natural environment deliberately in pursuit of financial gain or personal gratification.

A key aim of this guidance is to promote consistency and transparency in decision making throughout England. All Natural England officers dealing with enforcement casework will apply this guidance and our position statement.

Janette Ward
Director Regulation
December 2011

1 Introduction

- 1.1 Natural England was established to conserve our wildlife, landscapes and seas; to restore our natural assets and to work with people so that they can enjoy all the benefits the natural world offers. Our priorities are to reconnect people with nature, protect our natural assets and maximise the opportunities offered by a greener economy.
- 1.2 We achieve our outcomes through the deployment of advice, incentives, regulation and practical action. Our regulation work involves helping people comply with laws that protect wildlife and the natural environment and taking enforcement action when these laws are broken.
- 1.3 Our general approach to compliance and enforcement is outlined in our Compliance and Enforcement Position¹. Best practice guidance with the aim of helping compliance is available in one place on our website². This guidance is focused on how we take enforcement action. Specifically it describes the:
 - offences we are responsible for enforcing;
 - sanctions available to us;
 - factors we consider in deciding what action to take;
 - how we use enforcement to achieve environmental outcomes; and
 - the processes involved.

2 Roles and Governance

- 2.1 We publish a wide range of advice and guidance to help individuals and business comply with the regulations we are responsible for which can be obtained from our website³. We are committed to producing guidance in line with the Code of Practice on Guidance on Regulation⁴. Where it becomes clear that additional advice would help the regulated community comply, new advice or guidance will be published. Some of this will be general and other parts sector specific. In developing significant new guidance we consult either informally or formally with business to achieve workable outcomes that allow economic progress whilst ensuring there is no negative impact on the environment (or whilst ensuring Natural England achieves the best possible outcomes for the environment).
- 2.2 Our advisers are the first point of contact in Natural England for those seeking help and guidance when trying to comply with the regulations we are responsible for. They will normally offer verbal advice and guidance in the first instance but are empowered to issue formal advice and warnings where technical or minor breaches are encountered. This allows such incidents to be dealt with swiftly and efficiently and by those who are best placed to advise on how to comply in future. Similarly some civil sanctions that require very specific actions (e.g. the safe disposal of pesticides or the clearance of injurious weeds) are passed to those with the appropriate specialist expertise.
- 2.3 Our dedicated Regulation function helps the advisers achieve consistent outcomes and deals with more difficult cases of non compliance. All of this work is overseen by a

¹ <http://www.naturalengland.org.uk/ourwork/regulation/enforcement/default.aspx>

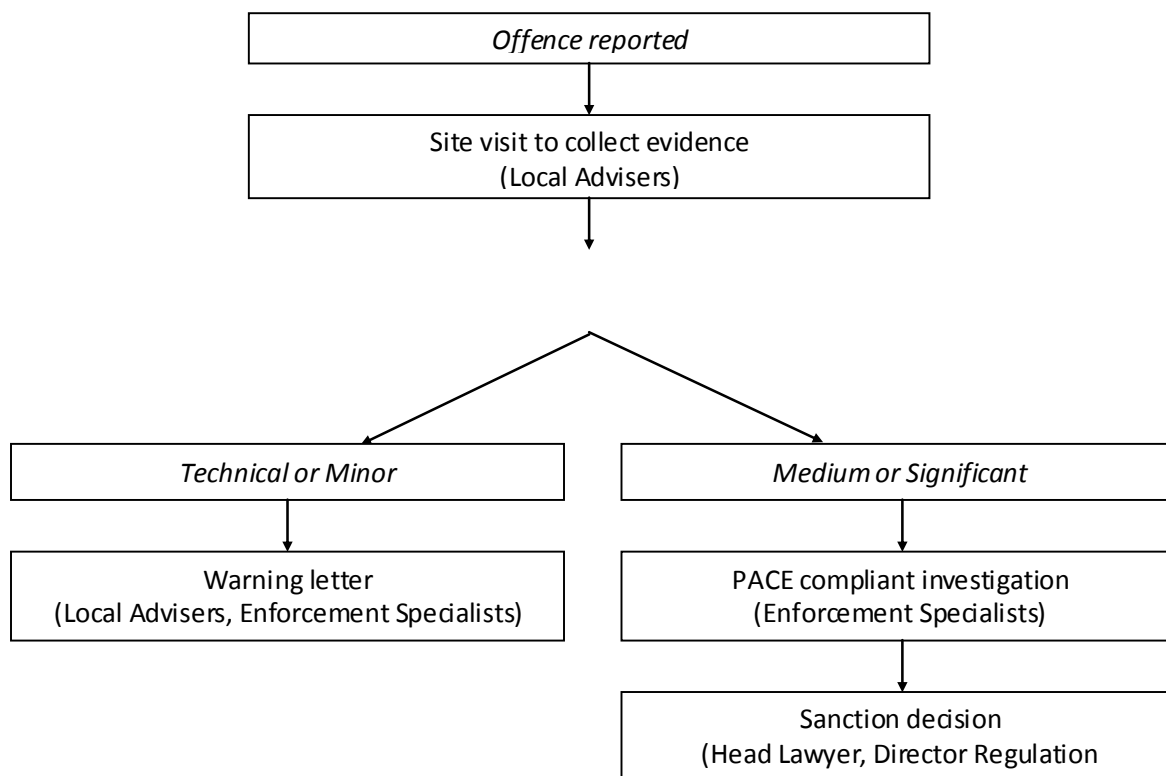
² <http://www.naturalengland.org.uk/ourwork/regulation/default.aspx>

³ <http://www.naturalengland.org.uk/ourwork/regulation/default.aspx>

⁴ <http://www.bis.gov.uk/files/file53268.pdf>

Director who must approve the civil sanctions we serve for the more serious cases of non-compliance in consultation with reviewing lawyers. Proceedings leading to criminal sanctions cannot be started without the approval of our Director Regulation in consultation with our Head of Legal.

- 2.4 We have established an internal Project Board for our Compliance and Enforcement work and it is their role to oversee the consistent and proportionate application of all of the sanctions that we apply. This Board is chaired at Director level.



3 Enforcement Responsibilities

3.1 Our enforcement responsibilities are:

3.2 **The Environmental Damage (Prevention and Remediation) Regulations 2009.** These Regulations apply where damage to land, water or biodiversity is extremely severe. We are responsible for ensuring the prevention and remediation of biodiversity damage on land. Should an incident fall within the scope of the Regulations immediate preventive action and subsequent remediation is required.

3.3 **Sites of Special Scientific Interest (SSSIs).** These sites represent England’s very best wildlife and geology and are given a high level of protection. Public bodies and those who own or occupy SSSIs must obtain our permission before undertaking certain potentially damaging activities, and no person must intentionally or recklessly damage their special features.

- 3.4 **Heather and Grass Burning.** The Heather and Grass etc. Burning (England) Regulations 2007 aim to protect soils, wildlife, people and property from inappropriate burning of semi-natural vegetation. The Regulations underline the minimum requirements that those burning vegetation should meet.
- 3.5 **Environmental Impact Assessment for uncultivated land and semi-natural areas.** The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006 aim to protect uncultivated land and semi-natural areas from being damaged by projects that increase agricultural productivity. They also guard against possible negative environmental effects from the restructuring of rural land holdings.
- 3.6 **Breaches of species licences we issue.** We issue many licences for activities potentially affecting protected species. Where our licences are breached we are responsible for taking enforcement action. Where offences against protected species are committed by those without a licence enforcement action is undertaken by the Police and Crown Prosecution Service.
- 3.7 **Pesticide poisoning of animals.** We work in partnership with the Chemicals Regulation Directorate to regulate the impact of pesticides on the environment. We undertake field enquiries into the death of wildlife and companion animals where pesticides are thought to be involved. We issue notices requiring remedial action should pesticides be encountered in hazardous situations.
- 3.8 **Complaints relating to injurious weeds.** We issue notices requiring the clearance of certain injurious weeds where they are causing a serious problem on agricultural land.
- 3.9 Further details of the offences associated with these responsibilities are at Annex 1.

4 Investigations

- 4.1 If we discover or receive a report of an incident in which we believe offences may have been committed that are within our remit, we will conduct an investigation in order to establish the facts of the case, the seriousness of the damage and the wider relevance of the incident. In simple cases investigations may be no more than site visits conducted by our officers who may deal with the matter by offering advice, but in more serious cases we may use specialist investigating officers to take witness statements and interview suspects under caution. In order to properly protect those involved all investigations will comply with the legal requirements of the Police and Criminal Evidence Act 1984 (PACE) and the Codes of Practice made under it. For prosecutions and many civil sanctions we are required to prove that offences have been committed beyond reasonable doubt.

5 Sanctions

- 5.1 Where offences are committed we aim to provide advice and best practice guidance to achieve future compliance. This may be written or verbal and may be the only action we take. However where this voluntary cooperative approach fails or where the impact on the environment is of concern it may also be proportionate to serve a sanction⁵.

⁵ We define a sanction as a warning letter, a requirement imposed by a notice (e.g. a stop notice or a restoration or compliance notice), a binding legal agreement, or a penalty applied by us or a court. Advice and guidance is not considered to be a sanction.

Sanctions available

- 5.2 Historically we have only had access to a limited number of sanctions - typically warning letters, simple cautions or prosecutions. However some offences did allow the use of specialist civil sanctions - requiring actions such as the clearance of injurious weeds or the safe disposal of pesticides.
- 5.3 We now have access to a broader suite of civil sanctions for many of the offences we are responsible for enforcing. They were introduced by The Regulatory Enforcement and Sanctions Act 2008 (RES), the Environmental Civil Sanctions (England) Order 2010 and the Environmental Civil Sanctions (Miscellaneous Amendments) Regulations 2010. They are referred to as 'RES' civil sanctions hereafter. Their flexibility will allow us to accept undertakings to put matters right, require steps to be taken to ensure future compliance to halt damaging activities, restore environmental harm, and to ensure the 'polluter pays'. They will allow us to distinguish more effectively between those with a good general approach to compliance and those who tend to disregard the law, ensuring that those who have saved costs through non-compliance do not gain an unfair economic advantage over those who have complied. They will minimise the burden on those we regulate and will foster improved communication and cooperation. It should be noted that a criminal prosecution is not allowed by law if a 'RES' civil sanction has been complied with for that particular offence, the only exception being when a 'RES' Stop Notice has been served.
- 5.4 A brief outline of the sanctions available to us is given in the table below, and further details are in Annexes 2 to 4.

'RES' civil sanctions	
Sanction	Details
Compliance Notice	These require the offender to take specified steps within a specified period of time to ensure that an offence does not continue or happen again.
Enforcement Undertakings	These allow offenders to volunteer steps to remedy a potential or actual offence including ensuring future compliance, restoring harm, giving up a financial benefit, or providing restitution to affected local communities. If the agreed steps are taken, no civil or criminal sanctions could follow.
Fixed Monetary Penalty	These allow regulators to serve a Notice requiring a fine of a fixed amount (£300 for body corporate or £100 for individuals). This is envisaged for minor and clear-cut offences (e.g. failure to submit monitoring data within required timescales) where previous advice and guidance has been ignored. The money goes to the Government's Consolidated Fund.
Non-Compliance Penalty Notice	These can be served following non-compliance with a RES Restoration or Compliance Notice. The financial penalty is based on the costs an offender is avoiding by not complying with the notice. The money goes to the Government's Consolidated Fund.

Restoration Notice	These require the offender to take specified steps within a stated period to ensure that the position is restored, so far as possible, to what it would have been if no offence had been committed.
Stop Notice	These prevent the offender from carrying on an activity until they have taken steps to come back into compliance. They can only be used where we reasonably believe that an unlawful activity is causing or presents a significant risk of causing serious harm to human health or the environment.
Third Party Undertakings	This enables an offender to provide restitution to affected local communities where they have been notified of our intention to serve a Compliance Notice, Restoration Notice or Variable Monetary Penalty.
Variable Monetary Penalty	These allow regulators to calculate the amount of the fine to be able to remove financial benefit of non-compliance in more serious cases, and additionally deter non-compliance where appropriate. They will be typically used for medium offences and as an alternative to prosecutions for significant offences where there are strong mitigating factors. The money goes to the Government's Consolidated Fund.
'Specialist' civil sanctions	
Sanction	Details
'EDR' Prevention and Remediation Notices	Prevention and Remediation Notices are available for cases that fall within the Environmental Damage (Prevention and Remediation) Regulations 2009. A prevention notice can be served when there is an imminent threat of damage, or where there is actual damage and there is a need to prevent it from getting worse. A remediation notice will be served when there is damage to be restored.
SSSI Restoration Order	A court order requiring a SSSI to be restored can be sought but only following a successful prosecution for a SSSI offence.
'EIA' Stop and Remediation Notices	These notices are available under the Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006. A stop notice will prohibit all work with immediate effect. A remediation notice will aim to return damaged semi-natural land to its former condition.
Enforcement (Pesticide) Notice	A notice to remedy significant deficiencies, which breach regulations, in the storage arrangements or the use of pesticides. The notice will direct any reasonable remedial or preventative measures that need to be taken.
Enforcement (Weeds) Notice	A notice that requires the clearance of certain injurious weeds.
Possession Order	An order of the civil court to secure the eviction of those in illegal encampments on National Nature Reserves.
Withholding financial incentives	Where offences are committed by those in receipt of payments under agri-environment schemes we can withhold payments to remove any financial gain or to ensure payment

	is not made until a person returns to compliance.
Condition/revocation /refusal of a permission	Many of the regulatory regimes we operate involve granting permissions (e.g. consents, licences) for activities that would otherwise be unlawful. Where such activities are not being undertaken in accordance with the permission we can add extra conditions to ensure future compliance, revoke the permission completely, or refuse to provide permission in the future.
<i>Criminal sanctions and injunctions</i>	
Sanction	Details
Simple caution	A formal warning to an offender about an offence that they have committed and their future conduct. We typically use simple cautions where prosecution would not be in the public interest and where alternative civil sanctions are not available.
Prosecution	A criminal conviction to punish significant and or persistent environmental offending and to create a deterrent against future non-compliance.
Injunction	An order of the civil court directing a particular activity to stop or for certain activities to be carried out. Courts may grant Injunctions where there has been or is highly likely to be a breach and a real risk or actual environmental harm. We will only seek an injunction in serious cases and as a last resort where all other options have failed to prevent offences being committed.

Proportionate use of sanctions

5.5 To ensure the sanctions we serve are proportionate we classify incidents depending on their seriousness as technical, minor, medium or significant. Classification is assessed primarily, but not exhaustively, on the factors given below. The impact or harm caused by an offence on the natural environment (typically habitats or species) is the predominant factor, followed by a range of aggravating and mitigating factors but starting with the level of culpability. It is not simply a matter of adding up the number of aggravating and mitigating factors on each side and seeing where the case falls. Each case will be considered on its own facts, on its own merits and in a consistent manner.

Environmental impact⁶ – *not in order of priority and not exhaustive:*

- rarity – how rare the affected habitat or species is at a local, regional, national and international scale;
- scale – an assessment of how large an area of habitat has been affected or how many individuals/species have been disturbed or killed;
- severity – the degree of damage to the habitat or level of harm caused to the species;
- recovery potential – whether the species or habitat can recover, over what timescale, and will human intervention be necessary.

Aggravating factors – *not in order of priority and not exhaustive.*

⁶ Where an offence of obstruction is being considered we will consider the nature, severity and consequences of the obstruction.

- the offender's state of mind and level of culpability: deliberate, reckless, negligent or accidental;
- action or lack of action prompted by gain, typically financial motives – profit or cost saving;
- disregarding warnings from Natural England, another regulator, or from within the workforce;
- lack of co-operation with Natural England or other regulator;
- complex restoration operation required;
- previous relevant offences committed;
- offence widespread (nationally or locally) or likely to be repeated by the offender or others.

Mitigating factors – *not in order of priority and not exhaustive:*

- steps taken to remedy the breach;
- prompt reporting of offence;
- admission of responsibility;
- good compliance record and or conduct;
- the offender's minor role with little personal responsibility;
- ready co-operation with the regulatory authority.

Use of sanctions to achieve outcomes

5.6 We use sanctions to achieve a range of outcomes including:

- the restoration of environmental harm;
- the prevention of further harm;
- the removal of illicit financial gain;
- a deterrence against reoffending (by the original offender and others); and
- where necessary the punishment of serious and persistent offenders.

We may aim to seek more than one of these outcomes. Our approach to using sanctions to achieve each of these outcomes is described below.

Restoration of environmental harm

5.7 Full restoration of environmental harm is the most important outcome of enforcement. We will always request full restoration following illegal damage to the environment.

5.8 Where offences are classified as minor we will usually request voluntary restoration, but if this is not forthcoming we will consider using our powers to require restoration, such as RES Restoration Notices (see Annex 2). Where offences are classified as medium or significant we are likely to use our powers to require restoration straightaway. We will always give full consideration to proposed Enforcement Undertakings (see Annex 2) where these are available for the offences committed.

5.9 We will always seek to secure the restoration of damaged features to the condition they would have been in had the offence not occurred. We will always seek to secure the restoration of that feature *in situ*.

- 5.10 We accept that in many cases natural recovery will be the best option. In such cases we will simply seek a commitment to leave the area to recover naturally over the necessary timescales.
- 5.11 Where irreversible damage has been caused we will give consideration to the improvement or creation of similar or alternative features at alternative locations. Such locations will generally be nearby, within the same land ownership and ecologically sound. Only in these circumstances will restoration elsewhere be considered – where damaged features are restorable we will expect restoration *in situ*.
- 5.12 Where offences are classified as minor and the damage is considered to be repairable, our local advisers are generally responsible for deciding whether the features should be left to recover naturally, or whether any active restoration should be sought, and if so, the scope and requirements of that restoration.
- 5.13 Where offences are classified as medium or significant the above officers must work with our ecologists or geologists to collectively make a decision as to the appropriate restoration requirements.
- 5.14 We will always expect restoration costs to be borne by the offender. This is an important aspect of the polluter pays principle. We will not issue agri-environment schemes or other financial incentives for restoration following illegal damage.
- 5.15 Where restorative works are complex and require specialist contractors we will expect to be consulted on the contractor to be used. We may wish to set indicators of success and to monitor ongoing restoration.

Prevention of further environmental harm

- 5.16 Where offences have been committed we will always seek a commitment that they will not recur. Where offences are classified as technical or minor we will usually provide advice and guidance and seek a voluntary commitment to future compliance, but where this approach fails we will consider imposing a sanction that requires an activity to be carried out in compliance with the law in future. Where offences are classified as medium or significant we are likely to use our powers to require future compliance straightaway.
- 5.17 A number of civil sanctions can be used to require future compliance. In particular, a RES Compliance Notice, which requires specific steps to be taken within a certain time period to ensure that an offence does not continue or happen again, is available for a number of offences. Other civil sanctions are more specialised such as an Enforcement (Pesticide) Notice to require the safe storage of pesticides. Other options could include adding conditions to a permission to ensure it is carried out correctly in the future, or the withholding of agri-environment scheme payments until a person has come back into compliance. The sanction chosen will depend on the circumstances of the case.
- 5.18 In some circumstances an offence may be so serious that the offender must not be allowed to carry on an activity at all. We have access to sanctions that can achieve this outcome, such as stop notices or the revocation of a permission. We are likely to reserve these sanctions for offences classified as significant and where the impact on the environment is of serious concern.

Removal of illicit financial gain

- 5.19 We are conscious that financial gain either directly or through cost avoidance is a motivation behind some wildlife crimes. Where we believe offenders are motivated by financial gain we will attempt to remove all financial gain in its entirety. This approach will also reassure the compliant majority that the non-compliant minority will not gain a competitive advantage by offending. We can remove financial gain by withholding agri-environment payments or by imposing RES Variable Monetary Penalties which can include an element for restitution to affected third parties. Where these options are not available we will consider prosecution and raising details of illicit financial gain with the court.

Deterrence and punishment

- 5.20 For some offences it may be proportionate to create a deterrent to those who may consider undertaking similar offences. For offences classified as technical or minor a proportionate deterrence can be achieved through warning letters or RES Fixed Monetary Penalties. For offences classified as medium or for significant offences where there are strong mitigating factors, Simple Cautions or RES Variable Monetary Penalties can be used to create a proportionate deterrent. Punishment by prosecution will be reserved for offences classified as significant and where it is in the public interest to prosecute.

Choice of sanction

- 5.21 The seriousness of the incident and the outcomes we can achieve through enforcement are considered together to determine what sanction(s) to apply. In keeping with the Sentencing Guidelines Council's guidelines on Seriousness⁷ this is made up primarily of an assessment of both potential or actual harm (impact) combined with culpability. In essence the greater the culpability and the greater the harm the more serious the offence will be. Conversely the lower culpability and harm incidents will be the less serious offences.
- 5.22 In general advice and guidance, backed up where necessary with advisory/warning letters, will remain our normal response to technical or minor incidents; civil sanctions will typically be used for offences classified as medium; and prosecution will be reserved for offences classified as significant and where the Code for Crown Prosecutors indicates that prosecution is in the public interest. Natural England will only prosecute with reference to the relevant public interest factors outlined in the Code for Crown Prosecutors⁸. The first test in the Code is whether there is a realistic prospect of conviction. The second test is whether it is in the public interest to prosecute. The factors in the Code are not exhaustive and it will often be necessary to consider others depending on the circumstances of each offence. We will always consider the level of environmental harm when considering whether it is in the public interest to prosecute.
- 5.23 The following table gives an indication of how our choice of sanction may be considered. Not every sanction available to Natural England is included as it would make the table overly complex and less helpful as a guide to our approach. Every case is different and a range of sanctions could be appropriate to the circumstances of each individual case. We seek to make the sanction(s) fit the offence.

⁷ Sentencing Guidelines Council December 2004 Overarching Principles: Seriousness
http://sentencingcouncil.judiciary.gov.uk/docs/web_seriousness_guideline.pdf

⁸ http://www.cps.gov.uk/publications/code_for_crown_prosecutors/codetest.html

	Technical	Minor	Medium	Significant
Restoration	Advice and Guidance Warning Letters ¹		Restoration Notice ²	
Prevention			Compliance Notice ² or Stop Notice	
Deterrence			Variable Monetary Penalty ²	Prosecution
Financial benefit removal	Withholding Financial Incentives / Variable Monetary Penalty ²			

¹ Fixed Monetary Penalties could also be served where advice and guidance or warning letter fails to prevent offending

² Could be replaced with an Enforcement Undertaking where offered by offenders

5.24 Example incidents and our likely responses to them are given in Annex 6.

5.25 Cases will usually follow a pattern of activity when choosing sanctions:

- Identification and investigation of the offence;
- Classification of the offence by considering the impact, the culpability as well as aggravating and mitigating circumstances;
- Evaluation of the Enforcement Outcomes desired and the sanction options available to 'fit' the particular offence.

6 Representations and appeals against sanctions

6.1 The ability to make representations and appeals against the sanctions we issue is an important aspect of ensuring that we serve sanctions consistently, proportionately, and above all fairly.

6.2 A representation is a statement of facts or reasons as to why a sanction should not be served. Although the law only requires us to consider representations against certain RES civil sanctions, we will consider representations against any sanction we issue, including warning letters issued in response to technical or minor offences.

6.3 If you have been served with a notice of intent to serve a RES Fixed Monetary Penalty, Variable Monetary Penalty, Compliance Notice or Restoration Notice you have 28 days to make your representations which we are required to consider before serving the final notice. Those representations will be considered by a different Director and reviewing lawyer who will make a recommendation. Instructions on how to make representations, and the deadlines, will be included in the notice of intent. Prosecutions, Injunctions and Possession Orders involve a hearing before they are imposed. This is effectively the time to make representations. For other sanctions you should simply write a letter to the person who issued the sanction or to someone higher up the management chain if you prefer.

6.4 If you make representations we will fully consider them and respond by confirming the sanction unchanged, confirming it with changes or withdrawing the sanction completely. We will always give full reasons for our response in writing.

6.5 An appeal is a formal challenge that Natural England should not have served a sanction. The appeal is made to a separate body who are required to make a decision, typically on

whether our sanction should remain unchanged, be changed, or be withdrawn completely.

- 6.6 Instructions on how to appeal, and the deadlines, and who to appeal to, will be included in the sanction documents. If you are considering appealing against a Prosecution, Injunction or Possession Order you should seek legal advice.
- 6.7 The table below indicates which sanctions you can and cannot appeal against. If you have a right of appeal we will always explain how to appeal in writing when we serve the sanction.

Sanctions	Representations	Appeals
All 'RES' civil sanctions ⁹	✓	✓
'EDR' Remediation Notice	✓	✓
SSSI Restoration Order	✓	✓
'EIA' stop and remediation notices	✓	✓
Possession Order	✓	✓
Prosecution	✓	✓
Injunction	✓	✓
'EDR' Prevention Notice	✓	X
Enforcement (Pesticide) Notice	✓	X
Enforcement (Weeds) Notice	✓	X
Simple caution	✓	X

- 6.8 Grounds of appeal vary depending on the sanction issued. Generally, the grounds of appeal against a 'RES' civil sanction are that:

- the decision was based on an error of fact;
- the decision was wrong in law;
- the decision was unreasonable;
- any other reason.

- 6.9 All appeals against RES civil sanctions are heard by the First Tier Tribunal (Environment). This is a specialist body which ensures the public have the opportunity to seek effective redress against Government decisions by the judiciary. Further details on how they will administer appeals are on their website¹⁰. If you are appealing against a Prosecution, SSSI Restoration Order, Injunction or Possession Order you are appealing against an order of the court. If you are appealing against any other sanction your appeal will be heard by Defra.

⁹ Including Enforcement Cost Recovery Notices (see section 7) and our refusal to issue completion certificates for RES Enforcement Undertakings and Stop Notices (see Annex 2)

¹⁰ <http://www.tribunals.gov.uk/>

- 6.10 Appeal procedures vary depending on who is hearing the appeal but in general an appeal will either be heard orally or by an exchange of written representations. The appellant is usually able to choose the approach. Any type of appeal hearing may involve a site visit.
- 6.11 The possible outcomes from an appeal depends on the sanction being appealed but the body you have appealed to is required to make a decision, usually to determine if our sanction should remain unchanged, be changed in some way, or be withdrawn completely. The body you have appealed to will confirm this decision to you in writing. If they have determined that our sanction should be changed or withdrawn you should expect to hear from us promptly.

7 Cost recovery

- 7.1 We can recover the costs of imposing Prosecutions, Injunctions and Possession Orders; and RES Stop Notices, Compliance Notices, Restoration Notices and Variable Monetary Penalties.
- 7.2 Unless there are extenuating circumstances, including ability to pay, we will seek to recover our costs of imposing these sanctions in full. This will include the costs of investigating an offence and administering a sanction, as well as any legal or other expert advice. We will recover the costs of internal staff time; the costs of using external investigators, lawyers, and other experts; and the use of any specialist equipment and advice.
- 7.3 If we have secured a prosecution, injunction or possession order we will make an application to the court to recover costs at the same time. If we have served a RES Stop Notice, Compliance Notice, Restoration Notice or Variable Monetary Penalty we will serve an Enforcement Cost Recovery Notice. This notice must include:
- Grounds for imposing the notice;
 - Amount to be paid;
 - How to pay;
 - Payment deadline;
 - Rights of appeal;
 - Consequences of failure to comply.
- 7.4 You can appeal against our recovery of costs. If you have been served with an Enforcement Cost Recovery Notice the Notice will detail how you can appeal to the Tribunals Service. Grounds for appeal are against our decision to serve the requirement to pay costs, against our decision as to the amount of those costs and any other reason. If costs have been recovered following a prosecution, injunction or possession order we strongly recommend you seek legal advice on how to appeal.
- 7.5 If you do not pay an Enforcement Cost Recovery Notice we can recover the debt through the civil courts. If you do not pay costs awarded by a Court following a prosecution, injunction or possession order we will ask the Court to recover unpaid costs on our behalf.

8 Publicity

- 8.1 We will continue to publish our annual reports on our website¹¹ which will in future include the use of civil sanctions.
- 8.2 We will act in accordance with the RES Act and Government Guidance on the implementation of the RES Act, which states that we must publish the cases in which a civil sanction has been imposed. We intend to publish on our website a register of all cases which have resulted in a civil sanction being issued, including where an Enforcement Undertaking or Third Party Undertaking has been offered and accepted. We will follow current best practice and publish the name of the offender (subject to Data Protection laws); the nature of the offence and harm caused, the area in which it took place and the sanction imposed. We will also publish a summary of accepted Undertakings, and the identity of the company/person that has offered the Undertaking (subject to Data Protection laws) . This register will record whether a person has made amends and fulfilled all the requirements satisfactorily within the time agreed.
- 8.3 We will use our discretion when deciding those civil and criminal sanctions to actively publicise (e.g. through press releases). We may do so where we believe it is proportionate and depending on a number of other factors including local and national interest. We will not actively publicise offences classified as technical or minor.

¹¹ <http://www.naturalengland.org.uk/ourwork/regulation/enforcement/default.aspx>