



Department for
Business, Energy
& Industrial Strategy

Challenges and Appeals Guidance

Office for Product
Safety & Standards

October 2017

The Office for Product Safety and Standards (Safety & Standards), part of the Department for Business, Energy and Industrial Strategy (BEIS), is committed, as a regulator, to providing you with clear information about your rights to challenge or appeal against our regulatory actions or decisions:

- If we have taken regulatory action or made a regulatory decision in relation to your business, you may have a legal right to appeal – these rights are explained at [‘Statutory \(legal\) rights to appeal’](#) below.
- Where we have taken regulatory action or made a regulatory decision in relation to your business and you do not have a statutory right to appeal, you are still entitled to challenge our advice, actions or decisions if you believe that we are wrong – your rights are explained at [‘Challenge our advice, actions or decisions’](#) below.

We are committed to providing a high quality, accessible and responsive service. For this reason, we welcome any comments or complaints about our service - if you have a complaint about our approach, or the behaviour of our staff, our complaints processes are explained in our complaints policy: ‘Complaints about the standard of service’ available on our webpages, where you will also find further explanation of our approach to delivering regulation:

<https://www.gov.uk/guidance/national-regulation-enforcement-services>

Statutory (legal) rights to appeal

Where Safety & Standards uses statutory (legal) powers to take enforcement action, you may have a statutory right to appeal. These legal rights to appeal vary in different regulatory areas, depending on the sanctioning powers that are available to us:

- Some statutory (legal) notices, have an associated right to appeal to the courts. These rights are explained at [Annex A](#).
- Some actions that we may take have an associated statutory right of appeal to the relevant Secretary of State, or to another body. These rights are explained at [Annex B](#).
- Some legislation that we enforce allows us to impose ‘civil sanctions’. Your rights to appeal in respect of civil sanctions are summarised at [Annex C](#).

Wherever we use an enforcement action which has a statutory right to appeal, we will inform you of that right to appeal at the time we take the action or notify you of our decision. We will explain how to appeal and the time limit within which you can appeal.

If you are being prosecuted by Safety & Standards then you have a right to challenge through the courts. We are required to provide you with certain information in advance to allow you to defend yourself.

We will only publish details of enforcement action that we have taken once the relevant appeal period has expired.

Challenging our advice, actions or decisions

Where you have no statutory right to appeal our actions or decisions, it is important to us that you are able to raise any concerns directly with us. This may be the case, for example:

- where we have dealt with non-compliance by issuing a warning letter, written advice or guidance on how to address the non-compliance; or
- where we have issued an enforcement notice in respect of which there is no statutory right to appeal.

Our officers will always aim to discuss with you, in the first instance, how you can best comply and we would encourage you to raise any disagreement about the officer's advice, guidance, proposed action or decision at this stage, with the officer concerned. Alternatively, you may choose to contact the officer's line manager. To obtain contact details for the relevant line manager please call our Processing Team on 0121 345 1218.

If you are unable to resolve the matter in this way you are entitled to ask us to review the advice, guidance, action or decision.

We are committed to dealing with non-compliance in a manner that is proportionate to the nature, seriousness and circumstances of the offence and our approach to doing this is set out in our [Enforcement Policy](#). If you feel that Safety & Standards has failed to follow the policy set out you are entitled to ask us to review our actions or decisions.

How to request a review

We have a two-stage review process. At each stage, it helps us to deal quickly with your request if you can state that you are requesting a review of our advice, guidance, an action or decision, give us as much information as possible, and include any documents or correspondence in support of your request. It is helpful if you can explain at this stage why you think we were wrong.

Stage one:

You can make your request by contacting the Processing Team Manager by email to opss.enquiries@beis.gov.uk, or in writing to: Processing Team Manager (Complaints), Office for Product Safety and Standards, PO Box 17200, Birmingham B2 2YT.

On receipt of your request, we will ask an appropriate manager in the relevant department or team to deal with it. It is likely that the manager will want to speak to you directly to confirm their understanding of the issue.

We expect most requests for review to be resolved at this stage.

Stage two:

If you are dissatisfied with the response that you receive after we have examined your initial request, you may request a further review.

You can make this request by contacting the Processing Team Manager and giving the reasons why you are not satisfied with the Stage One response. You should provide any reference number that you have been given and should request a review of the Stage One response within 28 days of receiving it.

On receipt of your request, we will ask a senior manager to review your complaint and our initial response. This manager may contact you to speak to you directly.

Our standards for handling challenges

- We will accept requests for review in writing, by email or letter.
- We will treat all requests for review seriously.
- We will treat you fairly and courteously.
- We will ensure, wherever possible, that staff tasked with investigating or dealing with your request for review have not been directly involved in any activities that may affect their objectivity or impartiality in respect of the subject of your request.
- We will deal with your request promptly
 - We will acknowledge initial receipt of a written request for review within 5 working days of receipt, using the contact details that you provide to us.
 - We will aim to provide a full response within 20 working days of receipt of the request for review. Our response will be in writing.
 - If we cannot respond fully within 20 working days of receipt of the request for review we will tell you, explain why, and give you a date by which you can expect an update.
 - If you ask for our response to be reviewed in line with Stage Two, we will acknowledge this within 5 working days of receipt and aim to respond fully within 20 working days.
 - If we cannot respond fully within 20 working days of receipt of a request to review our response we will tell you, explain why and give you a date by which you can expect an update.
- All requests for review will be logged so that we can monitor the types of requests received and the time taken to respond to them, and identify the best way of dealing with them.
- We will publish information in our annual report about the number and types of challenges we receive, and the percentage upheld.
- Your request for review will be treated with discretion and we will handle your personal information in accordance with the requirements of the Data Protection Act 1998.

Unresolved challenges

If, having followed both the stages of our internal challenges process, you are not satisfied with the way in which we have handled your challenge, you can contact your Member of Parliament and ask for your complaint to be referred to the Parliamentary and Health Service Ombudsman (PHSO). The PHSO can carry out independent investigations into complaints that injustice has been caused by maladministration on the part of UK government departments.

You can find out who your MP is at <http://findyourmp.parliament.uk> or by calling the House of Commons Information Office on 020 7219 4272.

Further advice is available from the Ombudsman's office: www.ombudsman.org.uk

The Parliamentary and Health Services Ombudsman
Office of the Parliamentary Commissioner for Administration
Millbank Tower
Millbank
London
SW1P 4QP

0345 015 4033

opca-enqu@ombudsman.org.uk

Annex A. Statutory rights to appeal: the Courts

You have a statutory right to appeal to the Courts in relation to the following actions. Appeals may be lodged within any magistrates' court in England, Wales or Northern Ireland. Businesses based in Scotland must make the appeal to the sheriff for the sheriff court district in which the Notice has been served upon the business.

The Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001 (*Statutory Instrument 2001 No 1701*)

You have a statutory right to appeal in relation to the following actions:

- a) Suspension Notice
- b) Detention of equipment, documents, records etc

Any time limit within which you must exercise your right to appeal will be specified in the notice.

Further information is in Schedule 13 of the Regulations: www.legislation.gov.uk/uksi/2001/1701/contents/made

The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (*Statutory Instrument 2012 No. 3032*)

You have a statutory right to appeal in relation to the following actions:

- a) Compliance Notice
- b) Enforcement Notice
- c) Recall Notice

You must exercise your right to appeal within 21 days of the notice being served.

Further information is in Schedule 3 of the Regulations: www.legislation.gov.uk/uksi/2012/3032/contents

The Timber and Timber Products (Placing on the Market) Regulations 2013 (*Statutory Instrument 2013 No. 233*)

You have a statutory right to appeal in relation to a Notice of Remedial Action.

You must exercise your right to appeal within 28 days of the notice being served, unless we specify that an appeal must be made within a shorter period of time.

Further information is in Part 3 of the Regulations: www.legislation.gov.uk/uksi/2013/233/contents

Annex B. Statutory rights to appeal, object or make representations to the Secretary of State

Energy Information Regulations 2011

Eco-design for Energy Related Products Regulations 2010

Heat Network (Metering and Billing) Regulations 2014

Nagoya Protocol (Compliance) Regulations 2015

Where Safety & Standards proposes to use issue a Compliance Notice or impose a Variable Monetary Penalty under the above regulations, we must first serve a Notice of Intent. This notice will explain the grounds for the proposed action, details of any proposed penalty and the requirements of any proposed notice.

Where we serve a Notice of Intent on you, you are entitled to make written representations and objections to us in relation to the proposed notice or penalty. You must do this within 28 days beginning on the day on which the notice was received. This allows you to raise any defences or concerns in relation to the proposed sanction.

We will take account of any written representations or objections that you send to us in deciding whether to proceed with the proposed action.

The Timber and Timber Products (Placing on the Market) Regulations 2013 (*Statutory Instrument 2013 No. 233*)

You have a statutory right to appeal in relation to seizure of timber. Your right to appeal is to the Secretary of State. The Notice will give you an address to which an appeal can be made.

You must exercise your right to appeal within 28 days of a seizure notice being served.

Provisions relating to appeals against seizure notices are set out in Part 3 of the Regulations: www.legislation.gov.uk/ukSI/2013/233/contents

The Alternative Fuels Infrastructure Regulations 2017 (*Statutory Instrument 2017 No. 897*)

You have a statutory right to object to a civil penalty that we impose on you. Your right to appeal is to the Secretary of State. The Civil Penalty Notice will give you an address to which a notice of objection can be sent.

You must exercise your right to object within 28 days of the date given on the Civil Penalty Notice and must set out the reasons for the objection.

The civil penalty is not payable while the objection is being considered. Following consideration of the objection, the Secretary of State may cancel the civil penalty, reduce it, or uphold it. You will be notified of the Secretary of State's decision.

Provisions relating to objections to Civil Penalty Notices are set out in Regulation 14 of the Regulations: www.legislation.gov.uk/ukSI/2017/897/introduction/made

Annex C. Statutory rights to appeal: the First Tier Tribunal

You have a statutory right to appeal to the First-tier Tribunal (General Regulatory Chamber) in relation to the actions listed under the regulations below.

The Tribunal may:

- withdraw, confirm or vary a requirement or notice;
- take such steps as we could take in relation to the act or omission giving rise to a requirement or notice;
- defer the decision whether to confirm a requirement or notice, or any matter relating to that decision, back to us;
- cancel, reduce or uphold a civil penalty .

Where you exercise your right to appeal, the notice, sanction or penalty is not in force until the outcome of the appeal is reached, other than where your appeal relates to a Stop Notice.

Further information on the First-tier Tribunal (General Regulatory Chamber) and how to appeal is available at: <https://www.gov.uk/guidance/environmental-fines-or-notices-appeal-against-a-regulator>

The Eco-design for Energy Related Products Regulations 2010 (*Statutory Instrument 2010 No. 2617*)

You have a statutory right to appeal to the First-tier Tribunal in relation to the following actions:

- a) Cost recovery
- b) Final Notice relating to a Compliance Notice¹
- c) Decision not to issue a certificate of discharge in relation to an Enforcement Undertaking
- d) Final Notice relating to a Variable Monetary Penalty¹
- e) Stop Notice
- f) Decision not to issue a Completion Certificate (in relation to a Stop Notice)
- g) Decision not to award compensation, or a decision on the amount of compensation
- h) Non-Compliance Penalty

The grounds on which you may appeal are set out in Schedules 4 and 5 of the Ecodesign for Energy-Related Products Regulations 2010: www.legislation.gov.uk/ukxi/2010/2617/contents

You must exercise your right to appeal within 28 days of receiving the notice or letter advising you of the sanction or decision.

The Energy Information Regulations 2011 (*Statutory Instrument 2011 No. 1524*)

You have a statutory right to appeal to the First-tier Tribunal in relation to the following actions:

- a) Cost recovery
- b) Final Notice relating to a Compliance Notice¹
- c) Decision not to issue a certificate of discharge in relation to an Enforcement Undertaking
- d) Final Notice relating to a Variable Monetary Penalty¹
- e) Stop Notice
- f) Decision not to issue a Completion Certificate (in relation to a Stop Notice)
- g) Decision not to award compensation, or a decision on the amount of compensation

h) Non-Compliance Penalty

The grounds on which you may appeal are set out in Schedule 4 of the Energy Information Regulations 2011: www.legislation.gov.uk/uksi/2011/1524/contents

You must exercise your right to appeal within 28 days of receiving the notice or decision.

Heat Network (Metering and Billing) Regulations 2014 (Statutory Instrument 2014 No. 3120)

You have a statutory right to appeal to the First-tier Tribunal in relation to the following actions:

- a) Compliance Notice
- b) Decision not to issue a certificate of discharge in relation to an Enforcement Undertaking
- c) Non-Compliance Penalty

The grounds on which you may appeal are set out in Schedule 4 of the Heat Network (Metering and Billing) Regulations 2014:

www.legislation.gov.uk/uksi/2014/3120/contents/made

You must exercise your right to appeal within 28 days of receiving the notice or letter advising you of the sanction or decision.

Nagoya Protocol (Compliance) Regulations 2015 (Statutory Instrument 2015 No. 821)

You have a statutory right to appeal to the First-tier Tribunal in relation to the following actions:

- a) Final Notice relating to a Compliance Notice¹
- b) Decision not to issue a certificate of discharge in relation to an Enforcement Undertaking
- c) Final Notice relating to a Variable Monetary Penalty¹
- d) Stop Notice
- e) Decision not to issue a Completion Certificate (in relation to a Stop Notice)
- f) Decision not to award compensation, or a decision on the amount of compensation
- g) Non-Compliance Penalty

The grounds on which you may appeal are set out in the Schedule to the Regulations:

www.legislation.gov.uk/uksi/2015/821/contents/made

You must normally complete the notice of appeal and send it to reach the tribunal within 28 days of the date you were sent the notice or letter advising you of the sanction or decision.

The Alternative Fuels Infrastructure Regulations 2017 (Statutory Instrument 2017 No. 897)

Where Safety & Standards has considered an objection to a Civil Penalty Notice and has upheld the civil penalty, or reduced it, you have a statutory right to appeal to the First-tier Tribunal in relation to the Civil Penalty Notice.

¹ Before we decide to impose a compliance notice or variable monetary penalty we must issue you with a 'Notice of Intent'. This gives 28 days for you to make written representations and objections to the proposed action – see Annex B.

Provisions relating to appeals against civil penalties are set out in Regulation 16 of the Regulations: www.legislation.gov.uk/ukxi/2017/897/introduction/made

You must normally complete the notice of appeal and send it to reach the tribunal within 28 days of the date you were sent the notice or letter advising you of the sanction or decision.

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<https://www.gov.uk/government/organisations/office-for-product-safety-and-standards>