



Animal & Plant Health Agency

REGULATORY AND COMPLIANCE POLICY

1. Introduction

- 1.1 The Animal & Plant Health Agency (APHA) is an Executive Agency of the Department for Environment, Food and Rural Affairs (Defra). APHA is the national regulator in Great Britain responsible for the delivery of Government policies on animal health and welfare on behalf of Defra, the Scottish Government and the Welsh Government. APHA also conducts work for the Food Standards Agency and is the UK Management Authority under the Convention on International Trade in Endangered Species (CITES). APHA also implements and enforces plant and bee health policy and the release and marketing of genetically modified organisms (GMOs) in England, and in Wales on behalf of the Welsh Government.
- 1.2 APHA's purpose is to support this Government's drive to realise the potential of food and farming, nature and protecting us all from natural threats and hazards by having:
- A world-leading food and farming industry
 - A thriving rural economy, contributing to national prosperity and wellbeing
 - A nation protected against natural threats and hazards, with strong response and recovery capabilities
 - Excellent delivery, on time and to budget and with outstanding value for money
 - An organisation continually striving to be the best, focused on outcomes and constantly challenging itself.
- 1.3 APHA's vision is to be recognised as the agency that has a positive impact on:
- Controlling endemic and new or re-emerging animal, plant or bee related threats
 - Preventing the introduction and spread of exotic disease and pests
 - Improving the health and welfare of animals
- 1.4 Through our regulatory activities, we work to prevent, control or eradicate notifiable disease and pests, uphold food safety and ensure high standards of welfare in farmed animals. In most cases, the legal framework for managing animal disease risk and improving animal welfare designates the local authority as the enforcement body.
- 1.5 In England and Wales, APHA has enforcement responsibility for Egg Marketing. We aim to ensure that the consumer is provided with good quality eggs, of a common standard, by quality and weight, and accurately labelled by implementing the marketing standards for eggs in accordance with EC regulations and will take appropriate action if producers are found not to be compliant. APHA is also responsible for enforcing controls and restrictions concerning plant and bee health, and the release and marketing of genetically modified organisms (GMOs).
- 1.6 This document sets out our policy on compliance including the desired outcomes and the principles guiding our regulatory activities. We will advise and support the industry as a whole to comply with legislation and will carry out our regulatory role in a proportionate and effective way and in line with the provisions of the Regulators' Code. We will fully consider the level of risk in carrying out our regulatory activities and the impact on growth as required in the Enterprise Bill.
- 1.7 We recognise that the best way to achieve compliance is by providing clear advice and guidance to our customers. However, there are times when further action has to be taken to ensure compliance. This can include advisory letters, improvement/enforcement notices, warning letters, administrative sanctions and referral for investigation/prosecution.

1.8 In seeking to achieve compliance with the legislative framework, we work in close partnership with many bodies at local, regional and national level, including Central Government and local authorities. Local authorities are principal partners for APHA in compliance monitoring and enforcement. Whilst APHA is the regulator in the area of animal health, local authorities are the main statutory enforcement body so a close working relationship aims to achieve consistency and efficiency. An Animal Health and Welfare Framework exists in England, Wales and Scotland to promote partnership working and provide a risk based approach to inspection.

2. Principles of Better Regulation

2.1 The Legislative and Regulatory Reform Act 2006 requires regulators to have regard to the principles of good regulation when exercising its regulatory functions. The Regulators' Code has a statutory basis under the aforementioned Act; APHA's policies and practices are compatible with the Code's provision. APHA will exercise its regulatory activities in a way which is:

- **Proportionate** - Proportionality in regulatory action means taking account of the degree of the risk of harm caused by non-compliance. In the areas for which APHA is the regulator, some breaches of the law cause or have the potential to cause an increased risk or threat:-
 - o of animal disease or to human health;
 - o of plant and bee pests and disease;
 - o to animal welfare;
 - o to endangered species;
 - o to export trade;
 - o to the environmental safety of GMOs.

The regulatory action we take, whether acting in our own right or through our enforcement partners, will support economic growth and be proportionate to the seriousness of the offence and the extent of the risk or threat posed. In proposing a change in process or practice, we will comply with the Accountability for Regulator Impact (ARI) guidance, using Business Engagement Assessments to liaise with those that may be affected.

- **Accountable** - APHA is accountable to the individuals it regulates, the industry in which it operates and the public it protects. We work closely with the relevant Government Departments in England, Scotland and Wales who fund the work that APHA does and sets the priorities and legislative framework. APHA help them to develop policy that we can deliver, or work with others to deliver, that achieves their objectives in the regulation of animal, plant and bee health, animal welfare and the reduction of related risk.. APHA's activities are open to public scrutiny with clear and accessible policies. APHA publishes its strategic plans and business plans. APHA's annual report and accounts, laid before Parliament, set out what it has achieved and the resources used in doing so. Periodic missions from the European Commission's Food and Veterinary Office are carried out to verify the application of EU animal, plant and bee health and animal welfare legislation in UK. APHA has a complaints procedure that gives details of how an individual or business can make a complaint if they are dissatisfied with the service we provide. Details are available via the APHA website on gov.uk

- **Consistent** – APHA aims to achieve consistency in the action it takes to ensure compliance, in the way it uses its powers and in the way it liaises and cooperates with its partners. APHA will seek to ensure consistency through:
 - dialogue with partners at local, regional and national level;
 - training and quality assurance of our staff;
 - regular review of our operating instructions;
 - analysis of key performance indicators.

All non-compliances are considered individually as they often contain certain unique factors including the potential business impact of the non-compliance, the attitude and actions of the offender and the history of previous breaches.

- **Transparent** – Transparency helps those whom we regulate to understand what is required of them and sets out what they can expect from us in return. It is also important in maintaining public confidence in APHA's ability to regulate. Transparency also means making clear why an officer of APHA or one of our enforcement partners intends to, or has taken action to deal with non-compliance. Where remedial action is required, we explain clearly (in writing or verbally, as appropriate) why the action is necessary and when it must be carried out, making a clear distinction between best practice advice and legal requirements. A written explanation is given of any rights of appeal against formal regulatory action taken by our officers at the time such action is taken.
- **Targeted** – We will focus our resources on higher risk premises or activities, taking into account relevant risk criteria, earned recognition where appropriate and intelligence reflecting local need and national priorities. This means concentrating our interventions on activities which pose the most serious risk, either because they are in themselves inherently high risk or, for lower risk activities, because the individual, business or sector lacks appropriate controls or has a history of difficulty in complying with the regulatory framework.

2.2 APHA has had regard to the Regulators' Code in the preparation of this policy. In certain circumstances, APHA may conclude that a provision in the code is either not relevant or is outweighed by another provision. APHA will ensure any decision to depart from the code will be properly reasoned, based on material evidence and documented.

2.3 Where there is a need for APHA to share enforcement information with other agencies, APHA will follow the provisions of the Data Protection Act 1988.

3. Regulatory Activities

- 3.1 The regulatory activities of APHA are underpinned by a range of powers set out in the legislation, including the Animal Health Act 1981, the Animal Health and Welfare Act (Scotland) 2006, the Animal Welfare Act 2006, the Wildlife and Countryside Act 1981, the Plant Varieties and Seeds Act 1964, the Plant Health Act 1967, the Environmental Protection Act 1990, the Bees Act 1980 and secondary legislation made under these Acts and EU Regulations stemming from powers under the European Communities Act 1972. The specific powers depend on the particular piece of legislation, but include the powers:
- of entry to land, premises, vessels, vehicles and aircraft;
 - of inspection (of animals, plants, bees, equipment, records etc.);
 - to take samples and undertake tests;

- to undertake investigations;
- to seize records;
- to destroy wild animals, plants and bees
- to seize animals, plants and bees;
- to cause animals to be slaughtered;
- to require the cleansing of premises;
- to require the isolation or separation of animals, plants or bees;
- to prevent entry to land or agricultural buildings.

3.2 APHA also discharges obligations on official EU controls performed to ensure the verification of compliance with feed and food law, and animal health and welfare rules in the UK.

3.3 Licensing, registration and inspection - APHA licences, approves or registers a range of premises, such as markets (and other animal gatherings including shows), animal by-products plants (including rendering facilities, knackery yards, hunt kennels, maggot farms), quarantine centres, nurseries and other plant production sites, designated inspection points and egg producers. We licence movements of animals, the export of animals, animal by-products, plants and plant products, the import of animals, plants and bees and trade in bovine and porcine semen and embryos. APHA issues authorisations to hauliers for the transport of animals. We licence trade in endangered species and register certain birds kept in captivity. These licensing activities are supported by risk-based inspection regimes, often in partnership with local authorities and are designed to ensure ongoing compliance with the conditions of approval for the premises and activities concerned. We inspect farms and other holdings in response to reports about disease risk or conditions of animal welfare and to check compliance with welfare standards for the purposes of the single farm payment scheme. APHA inspects zoos, museums and other establishments that hold collections of endangered species.

3.4 Surveillance and testing - APHA undertakes surveillance to detect the presence or spread of animal diseases, for example bovine tuberculosis and salmonella, through testing samples taken on farm, at abattoirs, markets and at animal by-products plants. APHA performs surveillance to detect plant and bee pests and diseases to measure their spread, this is achieved through inspection and sampling on nurseries, in public spaces and in the natural environment. We also take samples as part of our activities to regulate the trade in endangered species, for example to establish the species or to verify that an animal has been captive bred.

3.5 Movement restrictions - Where an outbreak of notifiable animal disease or quarantine pest or disease in plant or bees is suspected or has been confirmed, APHA imposes movement restrictions on the holdings/places affected and, depending on the nature of the outbreak or incident, on movements of animals, plants or bees within a particular radius of the premises affected. Such restrictions may include the isolation of certain animals, plants or bees on affected holdings/places. APHA also imposes movement restrictions on holdings where periodic compulsory testing for disease is overdue (at present, bovine tuberculosis). Where movement restrictions are in place, animals can only be moved under licence, subject to strict conditions.

3.6 Slaughter, depopulation and seizure of animals - APHA has the power to cause animals to be slaughtered or depopulated in cases where disease has been confirmed or is suspected, or where animals have been exposed to disease. We also have powers to seize animals to prevent unnecessary suffering.

- 3.7 Destruction or treatment of plants – APHA has the power to cause plants to be destroyed in cases where pest or disease has been confirmed or is suspected, or where plants been exposed to pest or disease.
- 3.8 Intelligence gathering and dissemination – to provide an intelligence led approach to regulatory controls and interventions. The purpose is to provide timely threat assessments and reports to highlight areas of non-compliance or emerging trends within regulatory process that jeopardise effective disease control and export trade obligations. APHA will work in accordance with the National Intelligence Model (NIM) by using intelligence management processes that collect, evaluate and analyse wide ranging information, sourced from OGD's, NGO's, members of the public and staff. This will enable the prioritisation of resource within APHA and external enforcement partners to focus on high risk activities.

4. Regulatory Options

- 4.1 Advice and guidance - APHA recognises that most businesses and individuals want to comply with the law. We will endeavour to help those we regulate to comply with the legislative framework. In order for businesses and individuals to comply with the law, it is important that they understand what is required of them. APHA provides many sources of advice to those we regulate including, via our website, publications and network of offices across the country. The nature of our activities means that our field staff, whether veterinary officers, animal health officers, egg marketing inspectors, plant health inspectors, bee health inspectors, GMI inspectors or wildlife inspectors are often the most visible and accessible source of advice through their direct engagement with businesses. In most cases, advice and guidance is given when relatively minor non compliances are found. Where the risks involved are greater or where there are repeat offences, more formal action may be appropriate.
- 4.2 Warning Letters/Statutory Notices - Warning letters are sometimes issued to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further regulatory action. A warning letter should set out what should be done to rectify the breach and to prevent reoccurrence. If a similar breach is identified in future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence. Sometimes APHA will issue advice about good practice, but will clearly distinguish between what must be done to comply with the law and what is considered to be good practice. Certain legislation allows Statutory Notices to be served to require businesses to take specific actions or cease certain activities within specified time periods. These can include compliance, improvement, prohibition, suspension, revocation and remedial action notices. Such a notice will clearly set out the actions which must be taken and the timescales within which they must be taken. A Statutory Notice is legally binding; failure to comply can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.
- 4.3 Regulatory Actions – APHA has the powers to impose specific regulatory measures under certain legislation and these would be intended to be used in order to prevent further non-compliance from occurring where it is likely to, or to bring an

individual/business back into compliance. These powers can include suspension/revocation of approvals and authorisations or the imposition of specific requirements either on a temporary or permanent basis. All decisions taken by APHA will be in line with better regulation principles and may be alongside or as a result of other enforcement actions where appropriate. A more detailed overview of the considerations applicable to regulatory actions can be found in Annex A.

4.4 Administrative Penalties - APHA has authority under Eggs and Chicks (England) Regulations 2009 and Eggs and Chicks (Wales) Regulations 2010 to issue penalty notices for non-compliance. Such penalties may be imposed up to a maximum level set out in the relevant legislation. Each noncompliant case is assessed by APHA and the penalty imposed will depend on the severity of the contravention. Where an administrative penalty notice is not paid in full within 28 days, APHA and its enforcement partners will then consider initiating prosecution proceedings through the courts.

4.5 Referral for Investigation/ Prosecution - When considering whether an investigation for prosecution is necessary, APHA will have regard to the provisions of the Code of Crown Prosecutors as issued by the Director of Public Prosecutions. The Code is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. Some of the public interest factors that will be considered when deciding whether to refer for investigation with a view to prosecute include:

- the gravity of the alleged offence, taken together with the seriousness of any actual or potential harm.
- whether there has been reckless disregard of the regulations.
- whether the offence has been carried out for gain.
- the attitude of the offender.
- repeat offences or the likelihood of continuance of the offence.
- failure to comply with a statutory notice
- the wilful supply of false information, or intent to deceive.
- intentional obstruction of inspectors.

APHA has a complementary role with partner agencies e.g. local authorities. In most cases concerning animal health, other enforcement agencies will deal with particular breaches of legislation, so APHA may pass details of the offence to such partners. In carrying out these shared duties, APHA will still comply with this regulatory and compliance policy, but the other agencies will maintain the right to take any enforcement action they may consider to be necessary. In Scotland, prosecution is by the Procurators Fiscal at their sole discretion. In cases where it is deemed appropriate for APHA on behalf of the Secretary of State or Welsh or Scottish Ministers, to consider prosecution, the case will be referred to the Defra Investigation Service (DIS) to investigate. APHA will share sensitive information or personal data with other regulators and enforcement bodies if this is deemed necessary for the prevention or detection of crime – as is permissible under Section 29 of the Data Protection Act 1998.

ANNEX A

- All regulatory actions taken will be consistent and proportionate and in line with the intentions of the Regulators' Code.
- Regulatory action may be considered in order to address non-compliant activity that has been established through:
 - Information that APHA requests/holds as the competent authority under the legislation e.g. the return of journey logs under welfare in transport legislation.
 - Investigations undertaken by enforcement partners e.g. the non-compliant movement of cattle from an approved bovine TB facility.
 - Enforcement action resulting from enforcement partner investigations e.g. where a prosecution has been necessary.
- In cases where non-compliance is identified as a result of information that APHA requests/holds as the competent authority, it may be considered that the use of regulatory actions may be sufficient to prevent further non-compliance and/or bring about future compliance. For example, the compliance levels of authorised transporters of animals will be monitored and any non-compliance identified will be assessed as minor or major e.g. insufficient vehicle lighting (minor) or missing journey logs (major). Where necessary, regulatory action, such as suspension of the transporter authorisation, may be taken and, if appropriate, actions implemented that encourage compliance with legislative requirements in the future. Relevant enforcement partners would also be informed of the APHA decision.
- Regulatory action would not be considered in circumstances where an investigation (in line with an enforcement policy) would be necessary in order to establish whether offences have been committed and the nature of these offences e.g. in cases where welfare of animals may have been compromised during transport. These cases would be subject of formal investigations by enforcement partners. It may be necessary for regulatory action to be taken by APHA during or following these investigations, or where it is considered that a failure to take regulatory action would allow further non-compliance to occur e.g. where it is considered that allowing a transporter to continue to operate may further compromise the welfare of animals. Where a harmful plant pest is detected at the border, APHA may require that the material is destroyed to prevent the organism from being introduced into the country. This would not prejudice a separate investigation being conducted into the legality of the importation of the material.
- In the case where an individual or business is subject of regulatory action e.g. suspension of an authorisation to operate or requirement to comply with a corrective action, but intentionally contravenes or fails to comply then APHA may refer to enforcement partners for consideration of formal enforcement action. For example, if an animal by-products rendering site fails to ensure adequate separation of raw and

processed product, they will be served with an improvement notice by APHA (regulatory action). If they fail to comply with the requirements of this notice then this is an offence and APHA may be referred to enforcement partners for further action.