



Contents

1	Introduction	2
2	What is this policy for?.....	4
3	Our approach to dealing with non-compliance	5
4	Conduct of investigations.....	8
5	Decisions on enforcement action.....	10
6	Compliance advice, guidance and support	11
7	Agreeing actions.....	12
8	Statutory (Legal) Notices	14
9	Monetary penalties	16
10	Simple Caution	18
11	Prosecution	19
	Annex A – Compliance Notices	21
	Annex B – Stop Notices.....	22
	Annex C – Variable Monetary Penalties	23
	Annex D – Enforcement Undertakings.....	24
	Annex E – Non-Compliance Penalty Notices	28
	Annex F – Civil Penalties.....	29
	Annex G – Monetary Penalties	30

1 Introduction

- 1.1** The Office for Product Safety and Standards (OPSS) is part of the Department for Business, Energy and Industrial Strategy (BEIS) and exercises the powers of the Secretary of State in relation to a range of regulations:
- a) We are the national regulator for product safety¹, providing scientific and technical capability, enforcing in relation to cases that are nationally significant, novel or contentious, and working with local authorities, other market surveillance authorities and border control authorities to keep consumers safe and ensure business compliance.
 - b) We are the national regulator for legal metrology, ensuring weighing and measuring instruments are accurate and reliable, and guiding the work of local authorities to give confidence to consumers and businesses in goods traded by quantity.
 - c) We enforce in relation to a range of goods-based and standards-based regulations. These include energy efficiency and environmental pollution requirements in product design and performance, standards and measurement in the energy supply infrastructure and due diligence in the trade of designated raw materials – protecting consumers and the environment and helping to meet international commitments.
- 1.2** Our mission is to be a trusted product regulator for the UK, protecting people and places, enabling business to thrive, and empowering consumers to make good choices.
- 1.3** This policy sets out the approach we take to dealing with non-compliance by those that we regulate (hereafter referred to as “businesses”) and to potential product safety issues. References in this policy to non-compliance should also be taken to refer, where relevant, to potential product safety issues.
- 1.4** References in this policy to legislation should be taken to refer, where applicable, to that legislation as amended. Where legislation is in scope of the Northern Ireland Protocol², references to the legislation should be taken to refer to that legislation as applicable in Great Britain and/ or as applicable in Northern Ireland, depending on where non-compliance arises.
- 1.5** Across all of the areas in which we deliver regulation our aim is to support and enable businesses to meet their obligations: the intention is to give compliant businesses the confidence to innovate, invest and grow, while ensuring the necessary protections are in place. We take proportionate action in response to non-compliance, including tackling those that put people or the environment at risk and businesses that may gain an economic advantage by ignoring their compliance obligations.
- 1.6** For further information on what businesses can expect from us in terms of our regulatory approach, please see our [Service Standards](#) and the information on each regulatory area that is available by visiting our webpages at:

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

Our service standards also set out how non-compliance can be reported and how we deal with allegations or information about non-compliance (see also 3.4 and 3.5).

¹ Our product safety responsibilities cover all consumer products, except for vehicles, medicines and food. Examples of the products we cover include electrical appliances, toys, furniture and cosmetics.

² Legislation that is described as being in scope of The Northern Ireland Protocol is the EU legislation listed in Annex 2 to The Protocol of Ireland and Northern Ireland.

- 1.7** We are committed to delivering regulation in a manner that is risk-based, proportionate and consistent and we aim to be transparent and accountable about our regulatory approach and activities, in accordance with the statutory principles of good regulation³:
- a) Targeted – we use strategic and operational risk assessment to focus our resources where we believe they are most needed.
 - b) Proportionate – our activities and actions will reflect the level of risk to people and the environment and our responses to non-compliance will take account of the nature, seriousness and circumstances of the offence, as well as the impact of regulatory action on the business community or individual businesses.
 - c) Consistent – where circumstances are comparable, we will endeavour to act in a similar way and we will collaborate with other regulators where appropriate to promote coherent and complementary approaches.
 - d) Transparent – we will ensure that those we regulate are able to understand what they can expect of us and what is expected of them.
 - e) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures (see 2.4).

³ Legislative and Regulatory Reform Act 2006, Part 2

2 What is this policy for?

- 2.1** This document sets out our policy in respect of our approach to dealing with non-compliance. It is intended to:
- set the framework for our decision-making in relation to non-compliance; and
 - help those affected by our activities to understand how and why decisions are made.
- 2.2** This policy is available at:
<https://www.gov.uk/guidance/national-regulation-enforcement-services>
or by calling 0121 345 1201.
- Full information on accessibility options and tools can be found on the gov.uk website:
<https://www.gov.uk/help/accessibility>
- 2.3** The policy will be reviewed every two years, or as necessary in the event of relevant changes to the legislative or regulatory environment. Where substantive reviews or revisions are planned, we will engage and consult with interested parties. Enquiries or feedback about this policy should be sent to opss.enquiries@beis.gov.uk for the attention of the Deputy Director (Regulation and Legal).
- 2.4** If you have a concern about our approach, or the behaviour of our staff, please send us your comments or complaint. Our aim is to resolve any problems or difficulties quickly and fairly. We manage complaints about our service and about the conduct of our officers through our [Complaints Procedure](#), available via this link or by calling 0121 345 1201.
- 2.5** If your concern relates to action that we are taking in relation to your business, your rights to challenge our action or to appeal against it are explained in our [Challenges and Appeals Guidance](#), available via this link or by calling 0121 345 1201.

3 Our approach to dealing with non-compliance

- 3.1** We are committed to dealing with non-compliance in a manner that is timely and proportionate to its nature, seriousness and circumstances, taking account of the need to act quickly to prevent or minimise risks to public safety.
- 3.2** Our approach is determined through a careful consideration of the circumstances of the non-compliance, the approach of the business to dealing with the non-compliance (see also 5.5), and the evidence available. The factors that we will take account of include:
- the impact or potential impact of the non-compliance or product safety issue;
 - the willingness and ability of the business to prevent non-compliance, taking account of compliance history, business size, capacity and the stage in the business lifecycle;
 - the maturity of the legislation and levels of awareness of its requirements;
 - the steps taken by the business to prevent the non-compliance and any clear reasons for the failure;
 - the likely impact of the proposed action on the business, both in terms of remedying the non-compliance and in terms of economic costs;
 - the likely impact of the proposed action on the wider business community, both in terms of deterring non-compliance and in terms of economic benefits to legitimate businesses; and
 - the ability and willingness of the business to address the non-compliance or product safety issue in an effective manner – we will take account of an early, positive and co-operative approach.
- 3.3** Where we require the business to take action to remedy any non-compliance we will:
- clearly explain the nature of the non-compliance(s);
 - discuss what is required to achieve compliance, taking into account the circumstances;
 - clearly explain any advice, actions required or decisions that we have taken;
 - set reasonable timescales in relation to any actions required;
 - provide in writing details of how to appeal against any advice provided, actions required or decisions taken, including any statutory rights to appeal;
 - explain what will happen next; and
 - keep in touch, where required, until the matter is resolved.
- 3.4** Where a product presents a serious risk, we may take urgent action ourselves to address that risk where a business is unable or unwilling to take appropriate action within the timescales required to protect public safety.
- 3.5** We welcome approaches from businesses that seek advice and clarification on compliance related issues, as explained in our [Service Standards](#), and we encourage these at an early stage.

- 3.6** Where we receive notification from a business that it has failed to comply with regulations that we enforce, our primary concerns will be to ensure protection for people and the environment, and to ensure adequate steps are taken to address the non-compliance and its effects, and to minimise the likelihood of future non-compliance. We will take account of the willingness of the business to work with us when considering the actions that must be taken.
- 3.7** A business that is the subject of an investigation by us into non-compliance, can, nonetheless, seek advice from us with a view to mitigating the impact of the non-compliance or preventing recurrence. Where appropriate, we will allocate responsibility for providing this advice to an officer who is not involved in the investigation.
- 3.8** We work closely with other regulators where we share responsibility for delivering regulation or there is an overlap of remit, seeking to coordinate with them to ensure a joined-up, consistent approach, for example with local authorities in relation to consumer product safety and legal metrology.
- 3.9** When we are acting at the border, we will work with border control agencies to ensure that non-compliant products are not placed on the market.
- 3.10** We share information with other regulators where we consider this to be appropriate and we will refer any identified non-compliances that fall beyond our remit to the regulator responsible for that area of legislation. In doing so, we will handle personal information in accordance with the requirements of the General Data Protection Regulation (GDPR). Details on how we will use personal data, and your rights are set out in our [Privacy notice](#).
- 3.11** Where we identify non-compliance which results in products being seized, recalled, withdrawn from sale, or removed from the market, and we consider that the non-compliance presents a risk beyond the UK, we will, where sharing such information is permissible and appropriate, make a referral to our counterpart(s) in the relevant country(ies).
- 3.12** We will respond to identified non-compliance by any public body in the same way as those within the wider market and business community.
- 3.13** We are committed to treating those we regulate in a fair, unbiased and objective manner. BEIS is a public authority for the purposes of the Human Rights Act 1998 and we apply the principles in the Act and the European Convention on Human Rights. In particular, we will have due regard to the right to property, the right to a fair trial and the right to respect for private and family life, home and correspondence.
- 3.14** Non-compliance that has been identified will be recorded and will be taken into account in future risk assessment to inform our activities and in the event that further non-compliance is identified.

Publication

- 3.15** We publish [details of enforcement actions](#) we have taken that have a statutory basis, including where there is a specific legislative requirement to publish. This includes Enforcement Undertakings (see section 7.2 and Annex D), statutory notices (see section 8), monetary penalties (see section 9), simple cautions (see section 10) and prosecutions (see section 11).
- 3.16** We may consider whether it is appropriate to publish details of any agreement that we enter into with a business (see section 7) that does not have a statutory basis⁴.

⁴ Such agreements are sometimes referred to as 'voluntary undertakings' or 'business improvement plans'.

- 3.17** We do not publish details of cases that have been resolved through the provision of compliance advice, guidance or support alone (see section 6); cases in which enforcement action has been overturned on appeal; or cases in which we have determined, on the basis of information provided, that publication would be inappropriate.
- 3.18** The details that we publish in relation to our enforcement actions are updated on a periodic basis⁵, including to identify where a Completion Certificate has been issued in relation to action(s) that we required a business to take (see Annex B and Annex D).

⁵ The list of statutory enforcement actions taken is available at:
<https://www.gov.uk/government/publications/statutory-enforcement-actions>

4 Conduct of investigations

- 4.1** We will exercise our powers and conduct our investigations properly and in accordance with relevant legislation and related codes of practice, ensuring that inherent protections for those we regulate are followed; such legislation will include but is not limited to:
- The Police and Criminal Evidence Act 1984
 - The Criminal Procedure (Scotland) Act 1995
 - The Criminal Procedure and Investigations Act 1996
 - The Regulation of Investigatory Powers Act 2000
 - The Regulation of Investigatory Powers (Scotland) Act 2000
 - The Criminal Justice and Police Act 2001
 - The Justice (Northern Ireland) Act 2002
 - The Protection of Freedoms Act 2012
- 4.2** We will exercise powers in accordance with the requirements of the particular legislation under which we are acting, and with any associated guidance or codes of practice. We work across a range of legislation, which establishes our specific powers. While these vary, a number of common themes can be identified:
- a) Officers have the power to enter business premises, inspect and test products and equipment; to examine documents; to purchase goods, including for testing; to require information; to seize products and documentation; and to serve notices for investigation purposes.
 - b) The obstruction of an authorised officer exercising their statutory powers constitutes a criminal offence⁶. In this case 'obstruction' is taken to mean:
 - intentionally obstructing an officer;
 - failing to provide information or assistance that may be reasonably expected; or
 - knowingly giving false or misleading information.
- 4.3** In the event that products or other forms of evidence are seized in the course of an investigation, officers will provide the business with written notice setting out the grounds on which the seizure has taken place, the next steps in the process, and any rights to appeal.

Communication with businesses during investigations

- 4.4** We will always endeavour to conduct and conclude investigations into potential non-compliance as quickly and efficiently as possible. We acknowledge that our investigations can cause concern and create uncertainty for a business. To mitigate this, our officers will observe the following principles:
- a) We will inform a business at the earliest appropriate opportunity that we have started an investigation, and the reasons for this.
 - b) We will inform a business at the earliest appropriate opportunity of the specific offence that we are investigating.
 - c) We will provide a business with regular updates on our investigation and will inform the business of when they can expect the next update.

⁶ Most legislation that we enforce provides for an offence of obstruction. Exceptions include: the Alternative Fuels Infrastructure Regulations 2017 and the Alternative Fuel Labelling and Greenhouse Gas Emissions (Miscellaneous Amendments) Regulations 2019.

- d) We will provide a business with contact details for the officer who will act as the main point of contact during our investigation.
 - e) We will inform a business when a decision has been made as to any action that we propose to take in response to a non-compliance.
- 4.5** Where we take action against a business, we will explain the appropriate rights to make representations and rights to appeal or challenge the decision.
- 4.6** Where a business has entered into a partnership with a local authority through [Primary Authority](#), we will, at the request of the business, seek to co-ordinate with the primary authority, in order to streamline communications with the business.

5 Decisions on enforcement action

5.1 There are a wide range of actions available to us in dealing with non-compliance. These include actions that are set out in the relevant legislation and these may vary between legislative areas.

The actions available to us are flexibly deployed, depending on the nature of the non-compliance and the desired outcome of the intervention. They include:

- advice, guidance and written warnings (see section 6);
- agreeing actions with the business (see section 7);
- issuing statutory notices; (see section 8);
- imposing a monetary penalty (see section 9);
- instituting criminal proceedings in England or Wales (see section 11), or offering a simple caution (see section 10);
- reporting a case to the Procurator Fiscal in Scotland or the Public Prosecution Service in Northern Ireland (see section 11); or
- referring the matter to another enforcement body for investigation or action.

5.2 Our investigations are conducted by competent officers with oversight by the senior officer responsible for the investigation, who is responsible for ensuring that the investigation draws on the appropriate data and expertise.

5.3 Investigations are reviewed on a regular basis, or when new information comes to light, to ensure that due process is being followed and those cases are progressing as quickly and effectively as possible. Consideration is given, at each review, to the evidence gathered and to:

- a) whether it is considered to be in the public interest to progress the case (see 11.4); and
- b) the evidential bar that we need to satisfy in respect of a particular enforcement action.

5.4 We ensure our decisions as to the appropriate response to non-compliance are taken in a manner that is objective and impartial and is not subject to any improper or undue influence. Decisions are taken at an appropriate level and are informed by all available information. Investigating officers do not, in most cases, have responsibility for deciding to take enforcement action. However, responsibility for such decisions may be delegated to an officer in circumstances where decisions may need to be made at speed by frontline officers in order to respond effectively to risk, or in circumstances where proportionate and consistent decision-making is guided by reference to clear criteria.

5.5 When non-compliances are identified we base our response on a consideration of the following principles (see also 3.2). We aim to:

- respond in a manner proportionate to the nature, seriousness and circumstances of the offence;
- tackle harm associated with non-compliance, where appropriate;
- change the behaviour of the offender;
- tackle any financial gain or benefit from non-compliance; and
- deter future non-compliance.

When decisions are reviewed each of the above principles is given due regard to ensure that the proposed action is the most appropriate given the circumstances of the case.

6 Compliance advice, guidance and support

- 6.1** We use compliance advice, guidance and support, where appropriate, in responding to non-compliance or a potential safety issue. Compliance advice, guidance or support may be used alongside other actions or may be used as the sole response to non-compliance or a potential safety issue where we consider this to be an effective and proportionate response.
- 6.2** Advice and guidance are provided to assist businesses in addressing actual, suspected or potential non-compliance as quickly and efficiently as possible in order to prevent further non-compliance. We will always seek to identify and discuss alternative routes to compliance with a view to supporting businesses in their own compliance efforts.
- 6.3** Where we consider it appropriate, our advice and guidance may be accompanied by a warning about future conduct, in the form of a letter.
- 6.4** We are more likely to consider advice or guidance alone to be the appropriate response (whether or not accompanied by a written warning) where one or more of the factors below is judged to be significant:
- a) The risk associated with the non-compliance is relatively low.
 - b) The legislation has been recently implemented or, for other reasons, does not have a high profile in the business community.
 - c) The business has a good record of compliance.
 - d) The business had acted in good faith, demonstrating a commitment to compliance.
 - e) The non-compliance can be attributed to the act or default of a third party.
 - f) The business has demonstrated a willingness to rectify the issues, for example through positive action to limit the impact of the non-compliance and/or to prevent recurrence.
- 6.5** Advice and guidance provided in response to actual, suspected or potential non-compliance will always be confirmed in writing, (including where it is included in a warning letter) and will usually set out:
- the nature of the actual, suspected or potential non-compliance;
 - what should be done to address the non-compliance;
 - a timescale for the completion of any actions required; and
 - in the case of a warning letter, the possible consequences of failing to rectify the non-compliance.
- 6.6** If a recurrence of the issue is identified in the future, such written advice and warnings will be taken into account in considering the most appropriate enforcement action to take on that occasion.

7 Agreeing actions

- 7.1** We may, where we consider this to be an effective and proportionate response to non-compliance or a potential safety issue, enter into an agreement with a business as to the steps that it will take to address the non-compliance and ensure it does not recur.
- 7.2** Where we have agreed actions proposed by a business and all of the actions are completed within the specified timeframe, we will not take further enforcement action in respect of the non-compliance(s) to which the agreement relates. However, we will take any failure to complete the agreed actions within the specified timeframe very seriously and will consider whether further enforcement action is appropriate.
- 7.3** Certain regulations provide a statutory basis for such agreements, which are then referred to as 'Enforcement Undertakings'. In these cases, provisions are set out in the regulations in relation to: the process for making an agreement; the requirements for the agreement; the consequences for the business of complying with the agreement or failing to comply with it; and the requirement for publication of details of the agreement. Further guidance on Enforcement Undertakings, and the criteria that we will consider when deciding whether to agree an Enforcement Undertaking, is provided in [Annex D](#) and is applicable to the following regulations:
- The Ecodesign for Energy Related Products Regulations 2010
 - The Energy Information Regulations 2011
 - The Heat Network (Metering and Billing) Regulations 2014
 - The Nagoya Protocol (Compliance) Regulations 2015⁷
- 7.4** Where the legislation does not provide a statutory basis for such agreements, we may nevertheless decide to agree actions proposed by a business where we are satisfied:
- that the business has provided sufficient detail – in relation to both the non-compliance(s) or potential safety issue and any proposed action(s) – to enable us to make an informed decision;
 - that the time period proposed for completing the proposed actions is achievable and appropriate, having regard to the nature, seriousness and circumstances of the relevant non-compliance;
 - that there is evidence of a positive commitment to the proposed actions and that the business is likely to meet that commitment;
 - that any actions that are proposed in order to address ongoing non-compliance appear adequate to secure that the non-compliance does not continue;
 - that any corrective action proposed is adequate to address the harm; and
 - that any actions that are proposed in order to prevent future non-compliance appear adequate to secure that the non-compliance does not recur.
- 7.5** We publish details of any Enforcement Undertaking that we accept. Where a Completion Certificate is issued in relation to an Enforcement Undertaking (see Annex D), this information will be included in the published details of the Enforcement Undertaking, on the occasion of the next update. The published details are updated on a periodic basis.

⁷ The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity is also referred to as 'Access and Benefit Sharing'.

- 7.6** Where we enter into an agreement with a business that has proposed actions to address non-compliance and there is no statutory basis for that agreement⁸, we may consider whether it is appropriate to publish details of the agreement. Where we consider it appropriate to publish details of the agreement, we will, should we subsequently be satisfied that the proposed actions have been completed, update the published details to reflect this.

⁸ Such agreements are sometimes referred to as 'voluntary undertakings' or 'business improvement plans'.

8 Statutory (Legal) Notices

- 8.1** We use statutory notices as the response to non-compliance or a potential safety issue, where we consider this to be an effective and proportionate response. These notices are named differently under different legislation and vary in their nature. They may, for example:
- require that any non-compliance is rectified;
 - require that action is taken to prevent future non-compliance;
 - prohibit specified activities until the non-compliance has been rectified and/or safeguards have been put in place to prevent future non-compliance;
 - prohibit the placing of non-compliant goods on the market; or
 - require that any harm arising from non-compliance is addressed, for example through corrective action or by providing information about the harm.
- 8.2** A statutory notice will clearly set out:
- the relevant legislation;
 - the grounds for taking the enforcement action;
 - contact details for the investigating officer;
 - actions which must be taken and any applicable timescales; and
 - an explanation of the relevant appeals process (see our [Challenges and Appeals Guidance](#)).
- 8.3** In respect of certain statutory notices, the legislation requires us to issue a notice or letter of intent setting out our intention to serve a statutory notice. In these cases, the notice or letter of intent will clearly set out the period within which the business may make representations. Any representations made will be taken into account in making the decision as to whether to serve the statutory notice(see our [Challenges and Appeals Guidance](#)).
- 8.4** Certain regulations set out specific provisions in relation to the process for issuing statutory notices. Further guidance on these provisions is provided in [Annex A](#), [Annex B](#), and [Annex F](#), in relation to Compliance Notices and Stop Notices that are issued under the following regulations:
- The Alternative Fuels Infrastructure Regulations 2017 (see [Annex F](#), Compliance Notices)
 - The Alternative Fuel Labelling and Greenhouse Gas Emissions (Miscellaneous Amendments) Regulations 2019 (see [Annex F](#), Compliance Notices)
 - The Ecodesign for Energy Related Products Regulations 2010 (see [Annex A](#), Compliance Notices and [Annex B](#), Stop Notices)
 - The Energy Information Regulations 2011 (see [Annex A](#), Compliance Notices and [Annex B](#), Stop Notices)
 - The Heat Network (Metering and Billing) Regulations 2014 (see [Annex A](#), Compliance Notices)

- The Nagoya Protocol (Compliance) Regulations 2015⁹ (see [Annex A](#), Compliance Notices and [Annex B](#), Stop Notices)

8.5 We will take any failure to comply with the requirements of a statutory notice very seriously and further enforcement action is likely to result. This may involve prosecution or imposition of a civil penalty.

⁹ The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity is also referred to as 'Access and Benefit Sharing'.

9 Monetary penalties

- 9.1** We are able to deal with non-compliance with certain regulations by imposing a monetary penalty. We can impose monetary penalties without recourse to the criminal courts.
- 9.2** Monetary penalties are available to us under the following legislation:
- The Alternative Fuels Infrastructure Regulations 2017 (see [Annex F](#))
 - The Alternative Fuel Labelling and Greenhouse Gas Emissions (Miscellaneous Amendments) Regulations 2019 (see [Annex F](#))
 - The Ecodesign for Energy Related Products Regulations 2010 (see [Annex C](#) and [Annex E](#))
 - The Energy Information Regulations 2011 (see [Annex C](#) and [Annex E](#))
 - The Heat Network (Metering and Billing) Regulations 2014 (see [Annex E](#))
 - The Measuring Instruments Regulations 2016 (see [Annex G](#))
 - The Nagoya Protocol (Compliance) Regulations 2015 (see [Annex C](#) and [Annex E](#))
 - The Non-Automatic Weighing Instruments Regulations 2016 (see [Annex G](#))
- 9.3** We will take any failure to pay a monetary penalty very seriously and further action is likely to result. This may involve pursuing the penalty as a debt in the relevant civil court or prosecution, where this is provided for in the legislation that we are enforcing¹⁰.

Calculation of penalty

- 9.4** OPSS will determine what level of monetary penalty is reasonable and proportionate, based on its assessment of the nature, seriousness and circumstances of the case:
- ‘reasonable’ means an ordinary reasonable person would regard the proposed level of the monetary penalty as appropriate to the offence;
 - ‘proportionate’ means there is a clear relationship between the level of the proposed monetary penalty and both the value of the non-compliance (if known) and how seriously the non-compliance undermined the aims of the legislation.
- 9.5** In determining the level of the monetary penalty, OPSS will consider any relevant factors that assisted in determining the nature, seriousness and circumstances of the case, including in relation to the following matters:
- a) any early action to remedy the non-compliance or its effects;
 - b) any restorative or restitutional action taken in relation to any loss suffered resulting from the non-compliance;
 - c) prompt and complete voluntary disclosure in relation to the non-compliance;
 - d) culpability (blame) and harm factors, when determining the seriousness of the non-compliance;
 - e) the compliance history of the person;
 - f) the length of time of the non-compliant behaviour;
 - g) any financial gain attributable to the non-compliance;

¹⁰ The following regulations provide for the imposition of civil penalties only: The Alternative Fuels Infrastructure Regulations 2017; The Alternative Fuel Labelling and Greenhouse Gas Emissions (Miscellaneous Amendments) Regulations 2019.

- h) any available information concerning the financial position of the business and its ability to pay the penalty; and
- i) whether the total monetary penalty is proportionate to the non-compliant behaviour.

10 Simple Caution

- 10.1** We may use simple cautions (previously known as ‘formal cautions’) as a proportionate alternative to prosecution, other than in Scotland and Northern Ireland.
- 10.2** A simple caution will only be considered:
- where we are satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the offender (the full Code test is met under the [‘Code for Crown Prosecutors’](#));
 - the offender admits the offence;
 - the offender consents to being cautioned; and
 - it is in the public interest to offer a simple caution in respect of the offence rather than to prosecute.
- 10.3** Simple cautions will be used in accordance with Ministry of Justice guidance [‘Simple Cautions for Adult Offenders’](#)¹¹ and other relevant guidance.
- 10.4** Where a simple caution is offered and declined, we are likely to consider prosecution.
- 10.5** When offering a simple caution, we will notify the offender of the consequences. A simple caution is likely to influence how we and others deal with any similar non-compliance in the future. It will form part of the offender’s criminal record and may be cited in court if the offender is subsequently prosecuted for a similar offence. In certain circumstances, a simple caution may be revealed as part of a criminal record check. Where a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

¹¹ Available at: <https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors>

11 Prosecution

- 11.1** We may decide to prosecute, or to report a case to the Procurator Fiscal in Scotland or the Public Prosecution Service in Northern Ireland, in respect of more serious or recurrent non-compliance, or where other enforcement actions, such as agreed undertakings or statutory notices have failed to secure compliance.
- 11.2** When deciding whether to report a case to the Procurator Fiscal in Scotland we have regard to the provisions of the [Prosecution Code](#)¹² and associated guidance.
- 11.3** When deciding whether to report a case to the Public Prosecution Service in Northern Ireland we have regard to the provisions of the [Code for Prosecutors](#)¹³.
- 11.4** When deciding whether to prosecute in England or Wales we have regard to the provisions of the [Code for Crown Prosecutors](#)¹⁴. This sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out a test called the Full Code Test which has two stages that must be satisfied:
- a) the 'Evidential Stage' – is there enough evidence against the defendant?
- Prosecution will only be considered where we are satisfied that there is sufficient reliable evidence to provide a realistic prospect of conviction against each alleged offender.
- b) the 'Public Interest Stage' – is it in the public interest for the case to be brought to court?
- Before deciding that prosecution is appropriate, we will consider all relevant circumstances and will balance factors for and against prosecution carefully and fairly, considering each case on its merits, having regard to public interest criteria including:
- How serious is the offence committed?
 - What is the level of culpability of the business?
 - What are the circumstances and extent of the harm caused to the market, consumers or the environment?
 - Is a prosecution proportionate?
- 11.5** A conviction at prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious non-compliance a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the non-compliance. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.
- 11.6** In some circumstances we may seek a direction from the court that the person convicted reimburse the expenditure reasonably incurred in investigating the offence or exercising its powers.

¹² The Prosecution Code (Crown Office & Procurator Fiscal Service), available at: <https://www.copfs.gov.uk/publications/prosecution-policy-and-guidance>

¹³ The Code for Prosecutors (Public Prosecution Service for Northern Ireland), available at: <https://www.ppsni.gov.uk/publications/code-prosecutors>

¹⁴ The Code for Crown Prosecutors, Crown Prosecution Service), available at: <https://www.cps.gov.uk/publication/code-crown-prosecutors>

11.7 In respect of some non-compliance, we may apply for the forfeiture of a dangerous product.

Dated: 11 February 2021

Name: Elizabeth Thornhill

Job title: Deputy Director (Regulation and Legal)

Review Due: February 2023

Annex A – Compliance Notices

This annex is applicable to the following legislation only:

- **The Energy Information Regulations 2011**
- **The Ecodesign for Energy Related Products Regulations 2010**
- **The Heat Network (Metering and Billing) Regulations 2014**
- **The Nagoya Protocol (Compliance) Regulations 2015¹⁵**

A Compliance Notice is a written notice issued by us which requires a business to take action to achieve compliance with the law and/or return to compliance within a specified period. For example, a business could be required to take steps to re-label products or make minor adjustments to its design, manufacturing or product testing processes.

To use a Compliance Notice we 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. Failure to comply with the requirements of a Compliance Notice is likely to lead to further enforcement action. This may involve a further civil sanction; prosecution; and/or a Non-compliance Penalty Notice (see [Annex E](#)).

We are likely to serve a Compliance Notice in order to prevent an offence from reoccurring or continuing. For example, a Compliance Notice may be considered appropriate to prevent further supply of non-compliant product to consumers or distributors.

We are less likely to consider a Compliance Notice to be appropriate when compliance cannot be achieved by simple adjustments to processes or labelling.

Before issuing a Compliance Notice we will serve a Notice of Intent which will set out:

- the grounds for the proposed notice;
- the requirements of the proposed notice;
- information as to the right to make representations and objections within 28 days beginning with the day on which the Notice of Intent was received;
- the business' right to offer a Third Party Undertaking; and,
- the circumstances in which we may not impose the Compliance Notice.

Once the period for making representations and objections has expired we will consider any representations or objections and will decide whether to revoke, vary or confirm the proposed notice. Where we decide to vary or confirm the proposed notice we will issue a Final Notice. Where the business offers a Third Party Undertaking, and we decide to accept this offer, we may decide to revoke the proposed notice.

A Compliance Notice can be used independently or in combination with other civil sanctions (as set out in Annexes B and C). This allows us to tailor the combination of civil sanctions to the circumstances to achieve constructive enforcement outcomes. A Compliance Notice cannot be imposed more than once in relation to the same act or omission.

¹⁵ The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity is also referred to as 'Access and Benefit Sharing'.

Annex B – Stop Notices

This annex is applicable to the following legislation only:

- **The Ecodesign for Energy Related Products Regulations 2010**
- **The Energy Information Regulations 2011**
- **The Nagoya Protocol (Compliance) Regulations 2015**

A Stop Notice is a written notice which prohibits a business from carrying on an activity and requires a business to take immediate action in relation to an offence.

It can be used either to prohibit non-compliant activities or to restrict non-compliant products being made available on the market until the business has taken the steps specified in the notice. It may also be issued where we reasonably believe a business may be likely to put a non-compliant product onto the market or fail to comply with other statutory obligations.

The Stop Notice is designed to encourage compliance by prohibiting a business from carrying on with the activity until all the steps needed to secure compliance with the law have been taken. For example, the notice could specify that a business improves the product in order to bring it into compliance.

To use a Stop Notice we must reasonably believe that the person is carrying on the activity and that the activity involves or is likely to involve the commission of an offence, or that the person is likely to not comply with an applicable implementing measure.

Failure to comply with the requirements of a Stop Notice is likely to lead to further enforcement action. This may involve a further civil sanction; prosecution; and/or a Non-compliance Penalty Notice (see [Annex E](#)).

It is a criminal offence to ignore a Stop Notice.

When serving a Stop Notice we will clearly explain:

- the grounds for serving the Stop Notice;
- the activity which is prohibited;
- the steps the business must take to comply with the Stop Notice;
- the period within which the activity must stop;
- the consequences of non-compliance; and
- your right to appeal.

We may decide to issue a Stop Notice if we reasonably believe that an offence is being committed and will continue to be committed.

We are unlikely to issue a Stop Notice if the business has taken immediate steps to cease a particular course of action.

Completion Certificates

When we are satisfied that all steps set out in the Stop Notice have been taken we will issue a Completion Certificate. When a Completion Certificate is issued, the Stop Notice ceases to have effect.

A Completion Certificate can be applied for at any time and we must decide whether or not to issue one within 14 days of the application. Where we decide not to issue a Completion Certificate you are entitled to appeal against our decision. We will explain your rights to you when we inform you of our decision.

Annex C – Variable Monetary Penalties

This annex is applicable to the following legislation only:

- **The Ecodesign for Energy Related Products Regulations 2010**
- **The Energy Information Regulations 2011**
- **The Nagoya Protocol (Compliance) Regulations 2015**

A Variable Monetary Penalty is a financial penalty designed to eliminate financial gain or benefit that arises from a failure to comply. Variable Monetary Penalties have no financial limit but are calculated based on the circumstances of the particular non-compliance (see [Calculation of Penalty](#)).

To use a Variable Monetary Penalty we must be satisfied beyond reasonable doubt that an offence has been committed. This is the same standard of proof as is required for compliance notices and prosecutions. We will take any failure to pay a Variable Monetary Penalty very seriously and further enforcement action is likely to result. This may involve prosecution.

Before issuing a Variable Monetary Penalty we will serve a Notice of Intent which will set out:

- the grounds for the proposed penalty;
- the amount to be paid;
- an explanation of the decision-making process for the amount to be paid (see [Calculation of Penalty](#));
- information as to the right to make representations and objections within 28 days beginning with the day on which the Notice of Intent was received;
- the business' right to offer a Third Party Undertaking; and
- the circumstances in which we may not impose the penalty.

Once the period for making representations and objections has expired we will consider any representations or objections and will decide whether to revoke, vary or confirm the proposed penalty. Where we decide to vary or confirm the proposed penalty we will issue a Final Notice. Where the business offers a Third Party Undertaking, and we decide to accept this offer, we may decide to revoke the proposed penalty.

A Variable Monetary Penalty can be issued in conjunction with a Compliance Notice or a Stop Notice. Where notices are combined for the same offence, we will endeavour to issue them at the same time. A Variable Monetary Penalty cannot be imposed more than once in relation to the same act or omission.

We are likely to consider issuing a Variable Monetary Penalty where a non-compliance that we consider to be moderate to serious has given rise to financial benefits. The aim of the penalty is to eliminate that financial gain and to deter future non-compliance.

We are unlikely to issue a Variable Monetary Penalty where the cost of complying with a Compliance Notice has already removed any financial benefit associated with the non-compliance, or where we believe that it has deterred future non-compliance.

Annex D – Enforcement Undertakings

This annex is applicable to the following legislation only:

- **The Ecodesign for Energy Related Products Regulations 2010**
- **The Energy Information Regulations 2011**
- **The Heat Network (Metering and Billing) Regulations 2014**
- **The Nagoya Protocol (Compliance) Regulations 2015**

However, in relation to other legislation that does not provide a statutory basis for such agreements, we may nevertheless decide to agree actions proposed by a business (see section 7.4).

An Enforcement Undertaking is an agreement through which a business commits to undertake specific actions within a specified timeframe. The actions that are specified in the agreement must be:

- a) actions to ensure that the offence does not continue or recur;
- b) actions to ensure that the position is, so far as possible, restored to what it would have been if the offence had not been committed;
- c) actions (including the payment of a sum of money) to benefit any person affected by the offence.

An Enforcement Undertaking may be proposed to us by a business that brings non-compliance to our attention, as well as in circumstances where a non-compliance has already come to our attention or that of another regulator. In either case, the proposed Enforcement Undertaking will be assessed on a case by case basis and the decision as to whether to accept the Enforcement Undertaking rests with us. An Enforcement Undertaking may be accepted only where we have reasonable grounds to suspect that an offence has been committed.

Where the actions specified in the Enforcement Undertaking include a commitment to offset detriment caused to a third party, we will require evidence that this has been fulfilled, usually by confirmation in writing.

Where we accept an Enforcement Undertaking and all of the actions specified in the undertaking are completed within the specified timeframe, no further enforcement action will be taken in respect of the offence(s) to which the undertaking relates.

We will take any failure to meet the commitments in an Enforcement Undertaking very seriously and further enforcement action is likely to result. This may involve a further civil sanction; prosecution; and/or a Non-compliance Penalty Notice (see [Annex E](#)).

Offering an Enforcement Undertaking

We aim to acknowledge receipt of an offer of an Enforcement Undertaking within 5 working days. Please note that expert, technical and/or legal consultation may be required to assess offers and provide a substantive response. Whilst there is no prescribed time frame within which we are required to respond to an Enforcement Undertaking offer, we will aim to do so within 28 calendar days of receiving the offer.

In order for us to make an informed decision on an Enforcement Undertaking offer, it is important that we are provided with key information about the alleged offence(s) when the offer is made, including:

- Full details of the alleged offence which has been committed, including relevant dates;
- An assessment of the impact of the non-compliance;
- Any identified failures which have contributed to the offence occurring;
- Any actions already taken to stop non-compliance from continuing, and prevent it from recurring; and
- Details of any action already taken towards the restoration of the position to what it would have been had the offence not been committed, as well as any actions taken to benefit third parties who may have been affected by the alleged offence.

The Enforcement Undertaking offer must set out the specific actions that are proposed and must specify the timeframe within which each action will be completed.

- a) Actions to secure that the offence(s) does not continue or recur might, for example, include:
 - actions to ensure that affected products are identified, quarantined and not placed on the market unless first re-worked to meet regulatory requirements.
 - actions to address any identified deficiencies which allowed the alleged offence(s) to occur, such as improvements to the business's internal compliance programme.
- b) Actions to secure the restoration of the position might, for example, include:
 - tracing non-compliant items and recovering these from the supply chain.
 - identifying and compensating purchasers of non-compliant products.
- c) Actions to benefit any third parties affected by the offence might, for example, include:
 - payment of compensation to other businesses within the supply chain who have suffered financial loss as a result of the offence. Where agreements have been reached with regard to compensation this should be evidenced to us in writing.
 - actions to secure benefit or improvement to the environment where the offence has, directly or indirectly, had an adverse environmental impact.

Where an offer proposes a donation or the carrying out of works for a third party, it should be communicated to the recipients that the proposal is the result of an Enforcement Undertaking which has been offered in response to non-compliance.

- a) Such offers must clearly state that the payment is an unrestricted donation from which the offender derives no benefit e.g. offset against a carbon scheme, tax offset etc.
- b) Donations cannot be made to an organisation with whom the donor has a personal or family relationship, or with the trustees or management of that organisation.

There is no prescribed form on which to make an offer of an Enforcement Undertaking to us, however we can provide a pro-forma on request.

The circumstances in which an Enforcement Undertaking is likely to be accepted

An Enforcement Undertaking offer will be considered on a case by case basis on its own merits. We are more likely to consider it appropriate to accept an offer of an Enforcement Undertaking where we are satisfied that the acceptance of the proposed undertaking is a proportionate response to the relevant non-compliance, taking account of the nature, seriousness and circumstances of the non-compliance. In making our decision, we will have regard to the following criteria:

- a) Whether the proposal includes sufficient detail - in relation to both the offence(s) and any proposed specified action(s) - to enable us to make an informed decision;
- b) Whether the specified time period provided in the offer is achievable and appropriate, having regard to the nature, seriousness and circumstances of the relevant non-compliance;
- c) Whether the offer has been made as an early and proactive response to non-compliance that has been identified, whether by the person making the proposal or by another;
- d) Whether there is evidence of a positive commitment to the proposed actions and, in the case of a business, whether this commitment is evident at an appropriate level of the business;
- e) Whether we are satisfied, taking account of information provided in the proposal and from any other source, that the person making the offer is likely to meet that commitment;
- f) Whether any actions that are proposed in order to address ongoing non-compliance appear adequate to secure that the offence does not continue;
- g) Whether any actions that are proposed in order to prevent future non-compliance appear adequate to secure that the offence does not recur;
- h) Whether any actions that are proposed in order to restore the position to what it would have been if the offence had not been committed appear adequate to restore the position in so far as it is possible to do so;
- i) Whether any actions that are proposed to benefit any person affected by the offence (including the payment of a sum of money) appear proportionate to the impact of the offence.

The circumstances in which an Enforcement Undertaking is not likely to be accepted

We are unlikely to consider it appropriate to accept an offer of an Enforcement Undertaking:

- a) when there is insufficient detail as to how non-compliance will be resolved;
- b) if the level of non-compliance is not fully acknowledged by the business;
- c) in respect of non-compliance in relation to which we have already served notice of our intention to impose a monetary penalty;
- d) in respect of non-compliance in relation to which we have commenced or recommended legal proceedings or where we have already determined that a prosecution is appropriate in the public interest;
- e) in respect of non-compliance in relation to which we are aware that another regulator has commenced legal proceedings or has already determined that a prosecution is appropriate in the public interest;
- f) in respect of non-compliance that involved intent or the falsification of information or documentation;
- g) that includes a clause denying liability;
- h) that sets up defences for possible non-compliance with the Enforcement Undertaking;
or
- i) that purports to restrict our ability to publish details of the Enforcement Undertaking.

Completion Certificates

When we are satisfied that the Enforcement Undertaking has been fulfilled we will issue a Completion Certificate. A Completion Certificate can be applied for at any time once it has completed all the actions agreed in the Enforcement Undertaking. We must then decide whether or not to issue one within 14 days of the application. Where we decide not to issue a Completion Certificate you are entitled to appeal against our decision. We will explain your rights to you when we inform you of our decision.

Publication

We publish [details](#) of Enforcement Undertakings that we have accepted (see 3.11). Where a Completion Certificate has been issued in relation to an Enforcement Undertaking, this information will be included in the published details of the Enforcement Undertaking, on the occasion of the next update. The published details are updated on a periodic basis.

Annex E – Non-Compliance Penalty Notices

This annex is applicable to the following legislation only:

- **The Energy Information Regulations 2011**
- **The Ecodesign for Energy Related Products Regulations 2010**
- **The Heat Network (Metering and Billing) Regulations 2014**
- **The Nagoya Protocol (Compliance) Regulations 2015**

Where we have issued a Compliance Notice or Stop Notice, or have accepted a Third Party Undertaking or Enforcement Undertaking and there has been a failure to comply with the requirements of the notice, or to meet the commitments in the undertaking, we may issue a Non-Compliance Penalty Notice, requiring payment of a financial penalty. This is the case irrespective of whether a variable monetary penalty was also issued in respect of the same non-compliance.

The Non-Compliance Penalty Notice will set out:

- the reasons for which the penalty is imposed;
- the amount of the penalty;
- how the penalty must be paid;
- the date by which payment must be paid, which will usually be 28 days from the date of the notice but may be longer where we consider this appropriate;
- any circumstances that may lead us to reduce the amount of the non-compliance penalty;
- an explanation of the relevant appeal process (see our [Challenges and Appeals Guidance](#)); and,
- the consequences of failure to pay the penalty by the date specified.

Where the requirements of the original Compliance Notice, Stop Notice, Third Party Undertaking or Enforcement Undertaking are met within the period specified for payment of the Non-Compliance Penalty, then the penalty does not have to be paid.

Penalty amount

We determine the amount of the non-compliance penalty as a percentage of the costs of fulfilling the remaining requirements of the notice or enforcement undertaking. The percentage is determined having regard to all the circumstances of the case and may, if appropriate, be 100%.

Annex F – Civil Penalties

This annex is applicable to the following legislation only:

- **Alternative Fuels Infrastructure Regulations 2017**
- **The Alternative Fuel Labelling and Greenhouse Gas Emissions (Miscellaneous Amendments) Regulations 2019**

Compliance Notices

A Compliance Notice is a written notice issued by us which requires a business to take action to achieve compliance with the law and/or return to compliance within a specified period.

We are able to issue a Compliance Notice where we consider that there has been non-compliance with certain obligations set out in the regulations. The Compliance Notice will set out:

- the reasons for which the notice has been served;
- the steps required to remedy the non-compliance;
- the date by which the non-compliance must be remedied;
- an explanation of the relevant process to challenge the Compliance Notice (see our [Challenges and Appeals Guidance](#));
- the likely amount of the civil penalty that may be imposed if there is a failure to remedy the breach; and,
- the basis on which the likely amount of the civil penalty is calculated (see [Calculation of Penalty](#)).

We will take any failure to comply with the requirements of a Compliance Notice very seriously and may impose a civil penalty.

Civil Penalty Notices

Where we have issued a Compliance Notice and there has been a failure to comply with the requirements of that Notice, we may issue a Civil Penalty Notice, requiring payment of a financial penalty. The Regulations^{16,17} specify the maximum penalty that may be imposed in relation to non-compliance with particular obligations.

The Civil Penalty Notice will set out:

- the reasons for which the penalty is imposed;
- the amount of the penalty and how it has been calculated (see [Calculation of Penalty](#));
- how the penalty must be paid;
- the date by which payment must be paid, which will usually be 28 days from the date of the notice but may be shorter where we consider this appropriate;
- an explanation of the relevant process to object to the penalty (see our [Challenges and Appeals Guidance](#)); and
- an explanation of the steps that may be taken to recover any unpaid penalty.

An unpaid penalty becomes a civil debt. The Office for Product Safety and Standards will take action to recover the unpaid penalty.

¹⁶ Alternative Fuels Infrastructure Regulations 2017, Regulation 13

¹⁷ Alternative Fuel Labelling and Greenhouse Gas Emissions (Miscellaneous Amendments) Regulations 2019, Regulation 14

Annex G – Monetary Penalties

This annex is applicable to the following legislation only:

- **The Measuring Instruments Regulations 2016** (in respect of a failure to comply with an obligation under regulation 33; with a requirement imposed by or under regulation 60(6); or with a direction given under regulation 63 or 65)
- **The Non-Automatic Weighing Instruments Regulations 2016** (in respect of a failure to comply with an obligation under regulation 32; with a requirement imposed by or under regulation 54(6); or with a direction given under regulation 59 or 60)

The Regulations^{18, 19} specify a maximum penalty that may be imposed of £50,000. A Monetary Penalty is calculated based on the circumstances of the particular non-compliance (see [Calculation of Penalty](#)).

Before issuing a Monetary Penalty we will serve a Notice of Intent which will set out:

- the reasons for proposing the penalty;
- the amount to be paid;
- information as to the right to make representations and objections within 28 days beginning with the day on which the Notice of Intent was received; and
- how those representations may be made.

Once the period for making representations has expired we will consider any representations and will decide whether to revoke, vary or confirm the proposed penalty. Where we decide not to impose the proposed penalty we will notify the recipient of the Notice of Intent of our decision. Where we decide to vary or confirm the proposed penalty we will issue a Monetary Penalty Notice setting out:

- the grounds for imposing the penalty;
- the amount of the penalty;
- the period within which the penalty must be paid and how payment may be made;
- rights of appeal and the period within which an appeal may be made; and
- the consequences of non-payment.

We will take any failure to pay a Monetary Penalty very seriously. An unpaid penalty becomes a civil debt and it will accrue interest²⁰. The Office for Product Safety and Standards will take action to recover the unpaid penalty and interest.

© Crown Copyright 2021

Office for Product Safety and Standards

4th Floor Cannon House, 18 The Priority Queensway, Birmingham B4 6BS

¹⁸ Measuring Instruments Regulations 2016, Schedule 7, paragraph 2(2)(a)

¹⁹ Non-automatic Weighing Instruments Regulations 2016, Schedule 5, paragraph 2(2)(a)

²⁰ Interest accrues at the rate specified in section 17 of the Judgments Act 1838