

[www.gov.uk/defra](http://www.gov.uk/defra)



Department  
for Environment  
Food & Rural Affairs

# **Enforcement policy statement**

**October 2015**



© Crown copyright 2015

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence v.3. To view this licence visit [www.nationalarchives.gov.uk/doc/open-government-licence/version/3/](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/) or email [PSI@nationalarchives.gsi.gov.uk](mailto:PSI@nationalarchives.gsi.gov.uk)

This publication is available at [www.gov.uk/government/publications](http://www.gov.uk/government/publications)

Any enquiries regarding this publication should be sent to us at:

[Better.Regulation@defra.gsi.gov.uk](mailto:Better.Regulation@defra.gsi.gov.uk)

PB 14316

## Contents

Introduction .....	1
Principles of enforcement .....	3
i) Proportionality .....	3
ii) Consistency .....	3
iii) Transparency .....	3
iv) Targeting .....	3
Enforcement options .....	4
1. Advice .....	5
2. Civil sanctions .....	5
3. Criminal sanctions .....	5
4. Other sanctions .....	9
Appeals .....	10

# Introduction

Defra's work encompasses everything we rely on; food, air, water and land. We are responsible for policy and regulations on:

- the natural environment, biodiversity, plants and animals
- sustainable development and the green economy
- food, farming and fisheries
- animal health and welfare
- environmental protection and pollution control
- rural communities and issues.

Our priorities are:

- A cleaner, healthier environment which benefits people and the economy
- A world-leading food and farming industry
- Excellent delivery, on time and to budget and with outstanding value for money
- A nation protected against natural threats and hazards, with strong response and recovery capabilities
- A thriving rural economy, contributing to national prosperity and wellbeing
- An organisation continually striving to be the best, focused on outcomes and constantly challenging itself.

Defra delivers its policies supported by a network of 35 agencies and public bodies. Some of these bodies are responsible for enforcing a wide range of legal obligations, many of which carry a criminal sanction for non-compliance.

The effective use of enforcement powers in regulation is important to secure compliance with the law and, where necessary, to ensure that those who have not complied may be held to account. Enforcement should be seen as part of the toolbox to achieve Defra's strategic priorities and outcomes.

The key regulatory bodies are as follows:

<b>Executive Agencies</b>	<a href="#">Animal and Plant Health Agency (APHA)</a> <a href="#">Veterinary Medicines Directorate (VMD)</a> <a href="#">Centre for Environment, Fisheries and Aquaculture Science (CEFAS)</a> <a href="#">Rural Payments Agency (RPA)</a>
<b>Non-Departmental Public Bodies (NDPBs)</b>	<a href="#">Environment Agency (EA)</a> <a href="#">Natural England (NE)</a> <a href="#">Marine Management Organisation (MMO)</a>
<b>Other</b>	<a href="#">Forestry Commission (FC)</a> <a href="#">Drinking Water Inspectorate (DWI)</a>

Some Defra legislation particularly with regards to animal health and welfare is enforced by local authorities.

## Who does this policy apply to?

This Enforcement Policy Statement is intended to set out the high-level general principles which must be followed by Defra's executive agencies as listed above. The non-Departmental Public Bodies listed above have their own enforcement policies/statements as required by the [Regulators Code](#)<sup>1</sup> which came into force in April 2014.

All regulators must ensure that non-compliance with legislation is dealt with fairly and proportionately but must also, under the statutory Growth Duty introduced by the [Deregulation Act 2015](#)<sup>2</sup>, to have regard to economic growth in any decisions that are made. This duty does not override the primary statutory responsibilities of the individual regulatory bodies and also does not apply to decisions to instigate criminal proceedings.

Within the Defra executive agencies the investigation of offences is conducted by Defra Investigation Services (DIS) who form part of the RPA, and also by Cefas officers. Both DIS and Cefas are authorised to conduct direct surveillance activities as governed by the [Regulation of Investigatory Powers Act 2000](#)<sup>3</sup>.

Prosecutions on behalf of the core Defra department and its executive agencies have been conducted by the Crown Prosecution Service (CPS) since 2011.

Defra is a signatory to the *Investigators' Convention* (2009), sponsored by the Government National Investigators' Group, and also to the [Prosecutors' Convention \(2009\)](#)<sup>4</sup>, sponsored by the Attorney General.

The two Conventions deal with the situation where potential criminal activity could be investigated and prosecuted by more than one investigative or prosecuting authority and seek to ensure that matters are co-ordinated from the earliest possible stage, so that only one investigation and prosecution takes place, or if this is not possible proper co-ordination takes place to ensure that the public can have confidence in the outcome of each case and that the law is enforced in a fair and effective way.

---

<sup>1</sup> <https://www.gov.uk/government/publications/regulators-code>

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2015/20/contents/enacted>

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2000/23/contents>

<sup>4</sup> [http://www.cps.gov.uk/legal/p\\_to\\_r/prosecutors\\_\\_convention/](http://www.cps.gov.uk/legal/p_to_r/prosecutors__convention/)

# Principles of enforcement

Defra believes in firm and fair regulation of the matters for which it has responsibility. Defra has adopted four enforcement principles for achieving this and expects its regulators to include these in their own policies.

## i) Proportionality

Proportionality in securing compliance will generally involve taking account of the degree of the risk of harm caused by non-compliance. Sometimes, however, the precautionary principle will require enforcement action to be taken even though the risks may be uncertain.

## ii) Consistency

Consistency means taking a similar approach in similar cases to achieve similar outcomes within which a degree of discretion is available. There are many variables to be taken into account in using discretion to achieve an outcome, such as the attitude and competence of the regulated person to bringing about the outcome sought.

## iii) Transparency

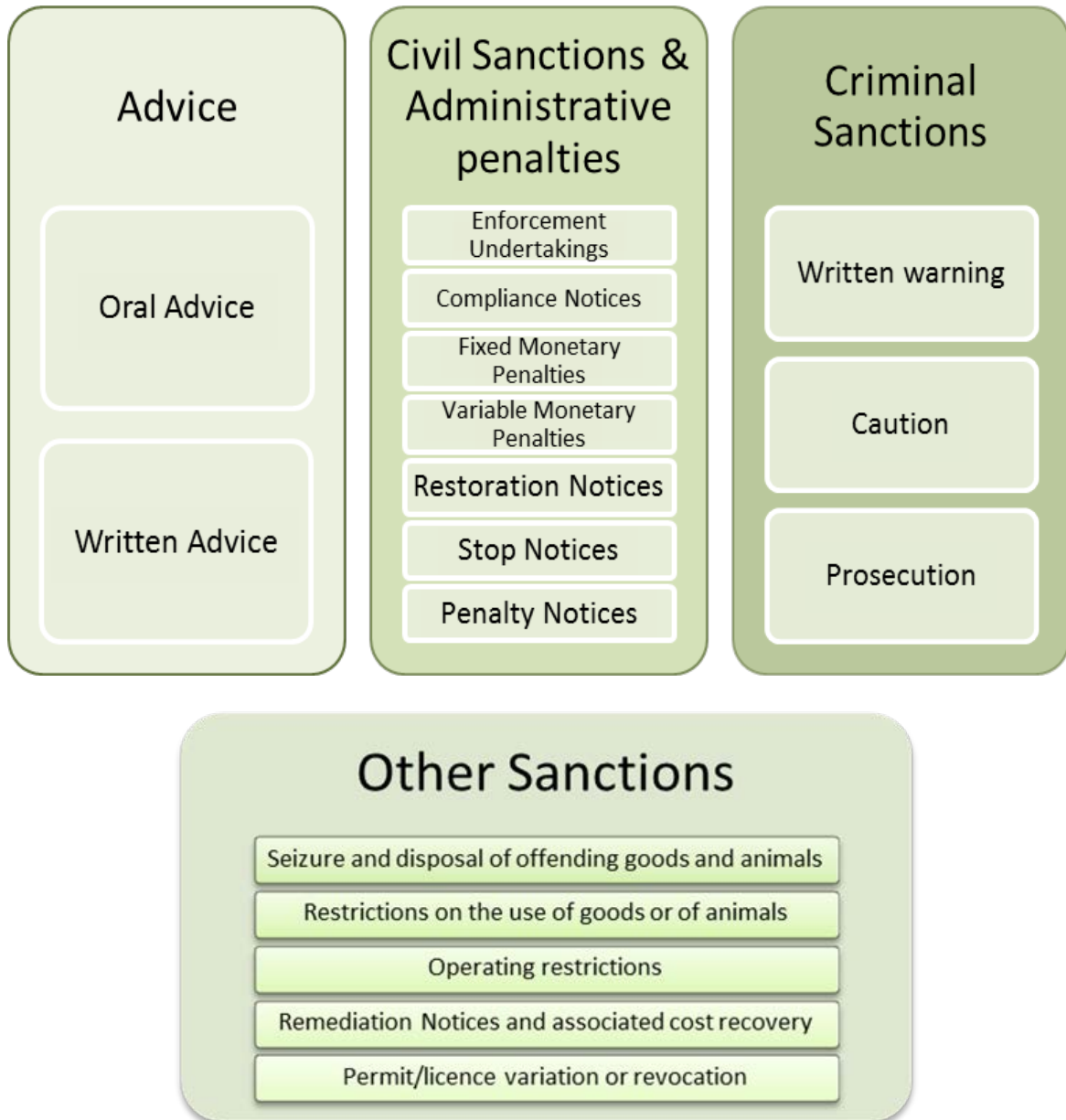
Transparency means helping those regulated to comprehend what is required of them at the outset and setting out what they may expect from Defra in return. It also involves making clear what remedial action is required from the regulated person and providing details of any rights of appeal etc.

## iv) Targeting

Targeting of enforcement action means prioritising and directing regulatory effort effectively. This means concentrating on the activities which create the most serious risk, either because the nature of the activity is inherently high-risk or because of a lack of appropriate controls or appropriate attitude in other less high-risk activities. It also involves identifying and focusing on those responsible for the risk.

# Enforcement options

Although investigation of the circumstances or matters discovered during inspection or following a complaint is vital before taking any enforcement action, such an investigation does not have to be a criminal investigation. Defra and its regulators shall seek a resolution of matters by taking the most appropriate enforcement option which may involve using one or more of the following tools:



## 1. Advice

Where a minor breach is found that can be easily rectified, advice may be given either orally or more formally in writing, reminding the regulated person of the need to obey the law without prejudice to other purely civil remedies.

## 2. Civil sanctions

Civil Sanctions introduced by the [Regulatory Enforcement and Sanctions Act 2008](#)<sup>5</sup> can be used for certain offences by Natural England and the Environment Agency. The [Environmental Civil Sanctions Order \(England\) 2010](#)<sup>6</sup> and the [Environmental Sanctions \(Miscellaneous Amendments\) Regulations 2010](#)<sup>7</sup> specify the offences for which they can be used. Civil Sanctions focus on putting right any harm that has been caused and include the voluntary Enforcement Undertaking option whereby those that have committed an offence can offer to undertake activities to make up for what they have done wrong.

There are also monetary civil sanctions which may be offered to the offender. Further action will not take place if this civil financial penalty is paid.

For more information please refer to the [Environment Agency's](#) and [Natural England's](#) own specific guidance.

In addition to these civil sanctions some specific legislation also allows for penalty notices to be issued to offenders requiring them to pay a specified sum of money set by the enforcing authority. If the offender fails to pay, then the authority may take alternative action for the original offence including prosecution.

## 3. Criminal sanctions

A criminal investigation is carried out for the purposes of gathering evidence to be used in a criminal trial. In such investigations, special provisions apply for the protection of suspects; most notably suspects are entitled to be cautioned in accordance with Code C of the Codes of Practice made under the Police and Criminal Evidence Act 1984 (PACE).

Where it is suspected that a criminal offence has been committed and the particular circumstances merit, at first sight, seeking a criminal sanction, then the matter may be subject to a criminal investigation.

In determining whether or not it is appropriate to begin a criminal investigation, the following issues will be considered:

- the impact or potential impact of the offence on the environment, people (including the food chain) or animals,
- the alleged offender's response to previous advice and guidance,

---

<sup>5</sup> <http://www.legislation.gov.uk/ukpga/2008/13/contents>

<sup>6</sup> <http://www.legislation.gov.uk/uksi/2010/1157/contents/made>

<sup>7</sup> <http://www.legislation.gov.uk/uksi/2010/1159/contents/made>



- the benefit, financial or otherwise, to the offender by avoidance of regulatory requirements, and
- the need to obtain a criminal conviction in order to achieve an enforceable remediation order.

If the criminal investigation concludes that an offence has been committed and there are no civil remedies available that would be commensurate to the offence then a decision will be made on the appropriate criminal sanction, be it a warning letter, a caution or a prosecution.

## **Warning letters**

Where there is evidence that an offence has been committed but a caution (see below) is not appropriate, a warning letter may be issued without prejudice to other purely civil remedies, informing the regulated person that they have committed an offence. Should they continue to offend, this warning letter may be taken into account in determining future action by the regulator and the courts.

## **Simple cautions and conditional cautions under Criminal Justice Act 2003**

A caution is a formal warning that may be offered to someone who has admitted to committing an offence. Offenders can decline to accept a caution, in which case the prosecutor may choose to pursue a prosecution.

The decision to offer a caution is made by the CPS in conjunction with the investigator but the cautions themselves are administered by the Police.

In some cases an offender may be referred to the Police in order that a Simple Caution can be issued. This results in an entry on the offender's criminal record which can be viewed by other law enforcement agencies.

A conditional caution (when available) is a caution that includes requirements to make reparation for the offence and/or takes steps to rehabilitation. If the offender does not keep their side of the arrangement, they may be prosecuted for the original offence.

## **Prosecution**

The purpose of prosecution is to secure a conviction and ensure the defendant may be punished by a court and act as a deterrent to the defendant and others. A prosecution may be appropriate where a person disputes the offence and/or their part in it, or where the matter is too serious for a warning or a Caution to be appropriate.

A decision by the CPS to prosecute will be taken in accordance with the two principles set out in the [Code for Crown Prosecutors \(2013\) \(7th Edition\)](#)<sup>8</sup>.

---

<sup>8</sup> [http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

Those two principles are:

### **i) Sufficiency of evidence**

Prosecutors must be satisfied that there is a “realistic prospect of conviction” on the available evidence. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious the allegation may be.

### **ii) Public interest factors**

In addition to the matters set out in the Code for Crown Prosecutors relating to the personal circumstances of the offender and the circumstances of the offence, prosecutors will consider other factors in deciding whether or not to prosecute. A number of these factors are linked to the priorities of Defra and its executive agencies which may be liable to change. It is therefore important that prosecutors are provided with sufficient information with regards to points a to i below but also regarding any other enforcement priorities that are specifically relevant to the case, and the impact of the offence(s) in question on those priorities.

The public interest factors include:

- a) The impact, or potential impact, of the offence on the environment, people (including the food chain) or animals having regard, in particular, to Defra’s strategic priorities and outcomes.
- b) The implications of the offence for the enforcement of the regulatory regime e.g. although no tangible harm comes of it, a failure to register a registerable activity undermines the integrity and efficiency of a regulatory regime and may deprive Defra of fee income.
- c) Other financial aspects of the offence (e.g. the benefit obtained from not seeking the requisite licence and undercutting legitimate operators).
- d) Whether the offence was committed deliberately or officials obstructed.
- e) Whether a conviction could give rise to a statutory remediation order.
- f) The previous enforcement record of the offender.
- g) The attitude of the offender, including their behaviour towards officials, and whether corrective measures to remedy the offence or prevent any reoccurrence are being put in place.
- h) Where offences are prevalent or difficult to detect, the general deterrent effect on others by making an example of the offender.
- i) If the offence arose from unusual circumstances where the situation could not have been foreseen or reasonable precautions have avoided the situation, reasonable steps were taken to mitigate the matter and the appropriate authorities were notified.

Prosecutors should not let any personal views about the ethnic or nation origin, gender, disability, age, religion/beliefs, political view, sexual orientation or gender identity of the suspect, victim or any witness influence their decisions.

Once a decision to prosecute has been made prosecutors must continually review this decision as the prosecution process develops and in light of any defence case put forward.

### **iii) Companies and company office holders**

Criminal proceedings will normally be commenced against those people responsible for the offence. Where there is sufficient evidence, consideration will also be given to prosecuting any company or other body corporate vicariously liable for the offence. Where there is a special statutory liability created, we may also consider prosecuting the appropriate company office holders in person where an offence was committed with their consent, connivance or neglect.

### **Sentencing**

In addition to punishment in the form of imprisonment or a fine, there are a number of ancillary orders that a court can issue upon application by the prosecuting authority. These can include disqualification from being a company director and confiscation orders if a confiscation investigation has been completed.

### **Proceeds of crime**

DIS employ accredited Financial Investigators under the Proceeds of Crime Act 2002 to conduct confiscation investigations. This involves proving how much financial benefit has been made from someone's criminal activity, and upon conviction, a confiscation order can be made by the court up to the value of the identified benefit, depending on the amount of the offender's available assets. A proportion of the money recovered is given to Defra to be used to fund further crime fighting and asset recovery work.

## 4. Other sanctions

In addition to the sanctions detailed above there are a number of other tools which Defra regulators can use to bring someone into compliance. Some of these may be used together or prior to a civil or criminal sanction if compliance is not achieved.

<b>Seizure and disposal of offending goods or animals</b>	<p>Certain provisions provide for seizure and disposal of goods and animals e.g. of unauthorised veterinary medicines or unidentifiable bovines.</p> <p>In some cases there is a requirement to take the matter to court in order to have the goods or animals “condemned”.</p>
<b>Imposition of restrictions on use of goods or animals</b>	<p>Such restrictions can be permanent or temporary e.g. the downgrading of eggs or the imposition of a whole-herd restriction notice preventing movement of cattle.</p>
<b>Service of Stop or Cessation Notices</b>	<p>Such notices prohibit the recipient from continuing an activity. It is an offence to disobey these notices.</p>
<b>Service of Remediation Notices</b>	<p>Such notices, also called reinstatement notices, require the recipient to carry out specified remediation work.</p> <p>Normally, only civil proof of an offence is required e.g. Section 17A (1) Forestry Act 1967 (as amended by Article 4 of the Regulatory Reform (Forestry) Order 2006 SI No. 780). There is normally a statutory appeal process against the notice or the particular requirements of the notice.</p>
<b>Carrying out of remediation in default of action by the recipient and recovering costs</b>	<p>Examples are section 17A, 24 and 26 Forestry Act 1967 in relation to illegally felled trees and section 10(1) and (2) of the Food and Environmental Protection Act 1985 in relation to illegal dumping at sea.</p>
<b>Variations or revocation of a licence, authorisation or permit</b>	<p>This applies to licences/permits/authorisations etc. For example in relation to sea-fishing or licenced waste operations.</p>

# Appeals

Appeals against a court conviction or sentence will be dealt with at court. However there may be occasions when someone wants to appeal against an enforcement notice or letter which they have received. Each Executive Agency has its own statutory and non-statutory appeals mechanisms. Under the Regulators Code, regulators are required to publish information about their appeals mechanisms. Enforcement notices should also specify how someone can appeal.

If you are not satisfied with a response following an appeal you have the right to escalate your case to the relevant ombudsman.