



Policy paper

Environment Agency enforcement and sanctions policy

Updated 11 December 2023

Applies to England

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1. Introduction

This document sets out the Environment Agency's enforcement and sanctions policy. It applies to England only.

The Environment Agency is responsible for enforcing laws that protect the environment. We aim to use our enforcement powers efficiently and effectively to secure compliance. This contributes to our work to create better places for people and wildlife, and support sustainable development.

This document explains:

- the results we want to achieve
- the regulatory and penalty principles we uphold
- the enforcement and sanction options available to us how we make enforcement decisions
- the enforcement framework for the climate change schemes and the control of mercury regime

In this document where we refer to a:

- Regulatory Enforcement and Sanctions Act 2008 (RES Act) civil sanction, we mean a RES Act notice, penalty or enforcement undertaking
- climate change civil penalty, we mean a penalty under a climate change scheme European Union Emissions Trading Scheme (EU ETS), CRC Energy Efficiency Scheme (CRC), Energy Savings Opportunity Scheme (ESOS), Fluorinated Greenhouse Gas regime (F gas) and Climate Change Agreements (CCA)
- mercury civil penalty, we mean a civil penalty under the Control of Mercury (Enforcement) Regulations 2017

2. Outcome focused enforcement

The 4 outcomes we want to achieve are to:

- stop illegal activity from occurring or continuing
- put right environmental harm or damage, also known as restoration or remediation
- bring illegal activity under regulatory control, and so in compliance with the law
- punish an offender and deter future offending by the offender and others

To get the best outcome for the environment and for people, we will use the full range of enforcement and sanctioning options available to us.

3. Enforcement and sanction regulatory principles

We must follow the requirements of the [regulators' code](https://www.gov.uk/government/publications/regulators-code) (<https://www.gov.uk/government/publications/regulators-code>). It is a framework for how regulators should engage with those they regulate.

Find out [how the Environment Agency meets the regulators' code](https://www.gov.uk/government/publications/regulators-code-and-the-environment-agency) (<https://www.gov.uk/government/publications/regulators-code-and-the-environment-agency>).

The requirements of the code do not apply where:

- we can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach of the law
- following it would defeat the purpose of the proposed enforcement action

We believe in firm but fair regulation. To meet this commitment we apply the following principles when we carry out enforcement activities.

3.1 Act proportionately

We will act proportionately when we apply the law. We will take account of and balance the:

- risk posed to people and the environment
- seriousness of the breach of the law
- impact on the environment, people and legitimate business
- cost of taking enforcement action against the benefit of taking it
- impact on economic growth

3.2 Have regard to the growth duty

We will have regard to the [growth duty and guidance](https://www.gov.uk/government/publications/growth-duty) (<https://www.gov.uk/government/publications/growth-duty>). This means we will

only take enforcement action or impose a sanction when we need to and in a proportionate way.

We must protect people and the environment. We will make sure our enforcement action supports rather than hinders legitimate business.

We will not allow operators to pursue economic growth at the expense of protecting people and the environment. We will deal with non-compliant activity and behaviour appropriately because it harms:

- people and the environment
- businesses that are compliant – it can disrupt competition and act as a disincentive to invest in compliance

Our approach to making decisions on the RES Act, climate change and mercury civil penalties (as set out in [annexes 1 to 3](https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy) (<https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy>)) takes account of the growth duty.

The decision to start a prosecution and any decisions we make during proceedings are not subject to the growth duty.

3.3 Be consistent

Consistency means taking a similar approach in similar circumstances to achieve similar ends. We aim to be consistent in:

- the advice we give
- our response to breaches of the law
- the use of our powers and decisions on whether to prosecute
- how we choose what sanction is appropriate in similar factual circumstances

This does not mean every enforcement decision on what action to take will be exactly the same, as each set of circumstances may differ. Our staff will use their professional judgement and discretion, taking account of many factors, such as the:

- scale of environmental impact
- attitude and actions of individuals and managers of businesses
- history of previous breaches or offences

3.4 Be transparent

We will make clear to people and businesses we regulate:

- what they have to do to comply with the law
- what they can expect from us
- what breach or offence we think has been or is being committed
- why we intend to take or have taken enforcement action
- their right to make representations (such as comments or giving additional information) or to appeal

This document sets out our policy for dealing with breaches and offences. It shows how we have made sure our actions are understood by those we regulate.

3.5 Target enforcement action

We will mainly direct our regulatory effort:

- towards those whose activities cause or could cause the greatest risk of serious environmental damage
- where the risks are least well controlled
- where a breach undermines a regulatory framework
- where we suspect deliberate or organised crime

We will take action against law breakers and those directly responsible for risk or who are best placed to control it.

We will monitor (check) permitted or other activities to assess compliance.

We will categorise incidents and breaches at permitted sites based on one of the following:

- our classification systems that assess the impact
- the potential risk to the environment or human health
- the impact on the integrity of the scheme or regulatory framework

We will prioritise and pursue investigations that involve:

- serious environmental harm or harm to human health
- organised crime
- overt criminal activity
- substantial illegal gain

- threats of violence
- other aggravating factors

3.6 Be accountable

We will be responsible for each enforcement decision and action we take and will explain it where appropriate.

4. Enforcement and sanction penalty principles

When we carry out any enforcement activity we aim to:

- change the behaviour of the offender
- remove any financial gain or benefit arising from the breach
- be responsive and consider what is appropriate for the particular offender and regulatory issue, including punishment and the public stigma that should be associated with a criminal conviction
- be proportionate to the nature of the breach and the harm caused
- take steps to ensure any harm or damage is restored
- deter future breaches by the offender and others

5. Liability for enforcement action

5.1 Establishing liability

Before we decide to start a prosecution case we must:

- meet the test in the [Code for Crown Prosecutors](https://www.cps.gov.uk/publication/code-crown-prosecutors) (<https://www.cps.gov.uk/publication/code-crown-prosecutors>) this means we must be satisfied there is a realistic prospect of securing a conviction
- be sure it is the most appropriate enforcement action to take based on the evidence in the case and that it is in the public interest
- consider the resulting implications and consequences

To impose a RES Act civil sanction we must be satisfied beyond reasonable doubt that an offence has been committed.

To accept an enforcement undertaking offer we must have reasonable grounds to suspect that an offence has been committed.

For climate change and mercury civil penalties we need to be satisfied that a breach has occurred on the balance of probabilities (the 'standard of proof' in civil cases) – this means it is more likely than not to have occurred.

5.2 When we will prosecute an insolvent company or individual

Where an individual or company is going through an insolvency procedure:

- we can still start or continue to prosecute, where the test under the Code for Crown Prosecutors is met, but we would need to get permission from the court or insolvency practitioner
- we will not normally apply a financial penalty where we have discretion, that is where the penalty is not mandatory
- they are excluded from qualifying for ESOS

Under CRC if the insolvent body is a company within a group, then the remaining solvent members of that group are responsible for its liabilities.

5.3 Taking action against the Crown

The Crown:

- is not criminally liable for any contravention of any provision
- cannot be subject to a RES Act civil sanction
- may be liable to a climate change or mercury civil penalty

We may apply to the high court for a declaration that any act or omission of the Crown is unlawful. This action is unusual and whether we take it will depend on all of the following:

- the seriousness of the incident or breach
- whether liability is admitted
- the response of the offender

6. Rights, records and cost recovery

6.1 When the Environment Agency will publish enforcement action

Each of the regimes we regulate has its own approach to the publication of enforcement action.

We must publish details of our enforcement action when we are required to by law. We are required to publish:

- details of enforcement action on a [public register](https://www.gov.uk/guidance/access-the-public-register-for-environmental-information) (<https://www.gov.uk/guidance/access-the-public-register-for-environmental-information>) for some regimes, for example, environmental permitting
- certain information about [penalties for the climate change schemes](https://www.gov.uk/government/publications/climate-change-regimes-civil-penalties-imposed) (<https://www.gov.uk/government/publications/climate-change-regimes-civil-penalties-imposed>)
- a RES Act [civil sanction that has been imposed or an enforcement undertaking offer accepted](https://www.gov.uk/government/publications/enforcement-undertakings-accepted-by-the-environment-agency) (<https://www.gov.uk/government/publications/enforcement-undertakings-accepted-by-the-environment-agency>), unless we consider this to be inappropriate

The Rehabilitation of Offenders Act 1974 requires us to remove published information on convictions and formal cautions after a certain period of time. The time period will depend on the nature of the offence or penalty.

We will meet the requirements of the data protection legislation by not publishing information regarding an individual (as opposed to a company) unless required to by law, or unless exemptions from data protection legislation allow us to do so. Public register and other requirements may override this exclusion.

Taking all of this into account, and except where we think ongoing enforcement action may be compromised, we will normally publish details of:

- all criminal convictions
- variable monetary penalties
- enforcement undertakings
- notices relating to breaches or enforcement other than information notices and notices of intent We will not publish details of notices under:
- CRC, where we have only used them to allow a participant to buy allowances in a special allocation

- ESOS, where there is an ongoing investigation and until we know that an operator is within the scope of the scheme we may use an enforcement notice to check if an operator is within scope

For any RES Act, climate change or mercury civil penalty we impose, we will normally publish information on the:

- name of the person we imposed the penalty or sanction upon
- legal requirement that was not complied with
- penalty amount

Where we revoke an EU ETS permit or CCA as an enforcement action we will generally publish equivalent information about this.

We will publish results of criminal proceedings as soon as reasonably possible. These will normally remain available for 12 months.

In civil proceedings we will generally not publish information until any appeal has been determined or the time for appealing has passed. When we do publish this information it will normally remain available for 12 months.

After 12 months, we may make information about penalties publicly available under the government's open data rules.

6.2 Representations and appeals

When we decide to serve an enforcement or similar notice, we will generally already have engaged with those concerned on the breach that caused it.

When we decide to impose a RES Act civil sanction (except a stop notice), a climate change or mercury civil penalty we will:

- serve a notice of intent
- provide an opportunity to make representations in writing
- give the person 28 days to make representations
- consider the representations received before making our final decision on whether to serve the penalty or the amount
- notify the person of our final decision
- give concise reasons for doing so

For climate change civil penalties involving an additional daily penalty we will not serve the notice of intent until the total available daily penalty is known.

When we decide to take formal enforcement action we will notify the person of their right to appeal. This will include their right to request that we review our decision, where appropriate.

See more information on civil sanction appeals in [annex 1 \(https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/annex-1-res-act-the-environment-agencys-approach-to-applying-civil-sanctions-and-accepting-enforcement-undertakings\)](https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/annex-1-res-act-the-environment-agencys-approach-to-applying-civil-sanctions-and-accepting-enforcement-undertakings).

6.3 Victim's right to review

Where we have completed an investigation into a criminal offence and made the decision not to prosecute the responsible party, an identified victim can request that we review that decision. Normally we will know the identity of any victims. We will tell the victim of our decision not to prosecute and advise that they may have that decision reviewed. They will need to inform us within 5 working days if they wish us to review it.

6.4 When the Environment Agency can recover costs

Where the law allows, we will always seek to recover the costs of:

- investigations
- enforcement proceedings
- the imposition of a civil sanction or the acceptance of an enforcement undertaking
- any remedial works we carry out

7. Enforcement options

We aim to make sure our enforcement response is proportionate and appropriate to each situation. Our first response is usually to give advice and guidance or issue a warning to bring an offender into compliance where possible.

We have a range of civil sanctions available to use for many of the offences we are responsible for enforcing. They were introduced by the:

- Regulatory Enforcement and Sanctions Act 2008 (RES Act)

- Environmental Civil Sanctions (England) Order 2010
- Environmental Civil Sanctions (Miscellaneous Amendments) Regulations 2010
- Control of Mercury (Enforcement) Regulations 2017
- Environmental Permitting (England and Wales) (Amendment) (England) (No. 2) Regulations 2023
- Environmental Civil Sanctions (England) (Amendment) Order 2023

We will normally consider all other options before considering criminal proceedings. Generally, prosecution is our last resort.

Not all breaches are an offence. The legislation specifies whether a breach is an offence or not. This may limit what we can do about a breach.

Find the full list of every breach and offence we regulate and the enforcement action available to us in the [offence response options \(https://www.gov.uk/government/publications/offence-response-options-environment-agency\)](https://www.gov.uk/government/publications/offence-response-options-environment-agency).

7.1 Interventions

7.1.1 Advice and guidance

We can support an individual or a business who has committed an offence or is likely to commit an offence by giving advice and guidance.

This will be without prejudice to (this means, will not affect) any other enforcement action that may be required.

The advice and guidance can be verbal or written and may be recorded. Any continued or further breach may influence our later choice of enforcement action.

Our objective is to provide an opportunity for the operator to return to compliance and stay compliant.

7.1.2 Warnings

We can issue a written warning if we believe an individual or business has committed an offence. This will set out:

- the offence we believe has been committed
- the actions we expect to be taken by when
- what will happen if action is not taken

We can do one of the following:

- send a warning letter
- issue a site warning, normally as a result of a compliance visit at a site with an environmental permit

The warning will be kept on record. Any continued or further breach may influence our later choice of enforcement action.

7.1.3 Notices, powers and orders

Many of the regimes we enforce contain powers to serve specific enforcement notices. We may serve these where appropriate. These require the recipient to stop offending or to restore or remediate the environment.

7.2 Civil penalties for climate change schemes

Climate change schemes have a specific civil penalties framework. Read [annex 2 \(https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/annex-2-climate-change-schemes-the-environment-agencys-approach-to-applying-civil-penalties\)](https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/annex-2-climate-change-schemes-the-environment-agencys-approach-to-applying-civil-penalties) to find out how we work out the penalty for each breach.

7.3 RES Act civil sanctions

We may choose to impose a RES Act civil sanction to get the outcomes we want.

RES Act civil sanctions are not available for all offences. Find the full list of every breach and offence we regulate and the enforcement action available to us in the [offence response options \(https://www.gov.uk/government/publications/offence-response-options-environment-agency\)](https://www.gov.uk/government/publications/offence-response-options-environment-agency) document.

The following explains where we might use or accept RES Act civil sanctions. The examples are not exhaustive.

7.3.1 Fixed monetary penalties

We may issue fixed monetary penalties:

- where we have given advice and guidance, it has not been followed and improvements have not been made

- for minor offences or where there is no direct environmental impact, such as paperwork and administrative offences

The fixed monetary penalty is £300 for businesses and £100 for individuals. Paying 50% of the sum due within 28 days of receiving the notice of intent that the penalty will be imposed will clear legal responsibility for the fixed monetary penalty. Or if representations have been made within the 28 day period but a final notice is served, legal responsibility can still be cleared by paying 50% of the sum due within 28 days of the final notice.

The outcome we want to achieve is a change in the offender's behaviour.

7.3.2 Variable monetary penalties

We may issue variable monetary penalties for more serious offences, including:

- when there is evidence of negligence or mismanagement
- when there is an environmental impact
- to remove an identifiable financial gain or saving as a result of the breach
- where prosecution is not necessary or can be avoided to get the most appropriate outcome

Read [annex 1 \(https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/annex-1-res-act-the-environment-agencys-approach-to-applying-civil-sanctions-and-accepting-enforcement-undertakings\)](https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/annex-1-res-act-the-environment-agencys-approach-to-applying-civil-sanctions-and-accepting-enforcement-undertakings) to find out how we calculate a variable monetary penalty.

We may issue a variable monetary penalty in conjunction with a compliance or restoration notice.

7.3.3 Compliance notices

We may issue a compliance notice where we:

- require the offender to take action to come back into compliance, for example, where an individual or business has regularly submitted data returns as required but stops doing so
- have given advice and guidance, it has not been followed and improvements have not been made

Our objective is to achieve a change in the offender's behaviour.

We may issue a compliance notice in conjunction with a variable monetary penalty or restoration notice to change the offender's

behaviour and to put right environmental damage.

7.3.4 Restoration notices

This is a formal notice which requires the offender to put right any damage caused by an offence.

The offender will be required to take the steps set out in the notice by the specified dates to restore the situation as far as possible to what it would have been if the offence had not been committed.

We may issue a restoration notice when:

- the restoration has not voluntarily been done
- we have given advice and guidance, but it has not been followed and the damage has not been put right
- there is no other suitable enforcement notice available

Our objective is to get the environmental harm or damage put right.

We may issue a restoration notice in conjunction with a variable monetary penalty or a compliance notice.

7.3.5 Stop notices

A stop notice requires an activity to stop immediately. It remains in force until the required actions set out in the notice, to remove or reduce the harm or risk of harm, are completed. We do not have to serve notice of intent before we serve a stop notice.

We can issue a stop notice when an activity by an individual or business is:

- causing or presents a significant risk of causing serious harm to human health or the environment, including the health of animals and plants
- committing or likely to commit a specified offence

We can also issue a stop notice when an activity by an individual or business is likely to continue:

- and will cause or will present a significant risk of causing serious harm to human health or the environment, including the health of animals and plants
- or will involve or will be likely to involve a specified offence being committed

7.3.6 Enforcement undertakings

An enforcement undertaking is a voluntary offer by an offender to put right the effects of their offending, its impact on third parties and to make sure it cannot happen again. The Environment Agency must have reasonable grounds to suspect that the offender has committed a specified offence. If

an enforcement undertaking is offered it is not an admission of guilt for any offence to which it relates. If we accept the offer it becomes a binding agreement between us and the person who makes the offer. If the offender complies with the undertaking then:

- we cannot prosecute for the original offence
- the offender will not get a criminal record for that offence, but we will publish the details on the GOV.UK website and it may be included in the public register

Where it is not possible to fully restore any environmental damage then the offer needs to include some form of:

- environmental benefit or improvement
- compensation for damage to the natural capital, for example money for a project to improve river quality following a water pollution incident

The offeror must also state the action it will take to ensure future compliance, for example investing in an environmental management system.

See [annex 1 \(https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/annex-1-res-act-the-environment-agencys-approach-to-applying-civil-sanctions-and-accepting-enforcement-undertakings\)](https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/annex-1-res-act-the-environment-agencys-approach-to-applying-civil-sanctions-and-accepting-enforcement-undertakings) for more information, including what we expect an offer to include and how we decide whether to accept it.

7.3.7 Enforcement cost recovery notices

We will always try to recover the money we have spent on work connected with an offence and imposing a sanction. We can serve an enforcement cost recovery notice which will require the offender to pay the actual cost to the Environment Agency. If the offender is unable to pay the amount due for the civil sanction and the enforcement cost recovery notice, we may reduce the sanction but are unlikely to reduce the enforcement cost recovery notice. This is because we have a duty to protect public money.

We cannot serve an enforcement cost recovery notice with a fixed monetary penalty.

7.3.8 Non-compliance penalty notices

We can serve a non-compliance penalty notice or prosecute if an offender fails to comply with the requirements of a:

- compliance notice restoration notice
- third party undertaking a payment to someone affected by an environmental incident

We will normally serve a non-compliance penalty notice and determine the amount of this penalty by assessing:

- what it will cost the offender to fulfil the remaining requirements of the compliance, restoration notices or third party undertaking
- the reasons for the breach
- public interest factors

The notice will no longer be payable if the requirements of the original compliance notice or restoration notice are complied with or a third party undertaking is fulfilled before the time set for payment.

If a non-compliance penalty notice does not achieve compliance with the original notice we may still prosecute for the original offence.

7.4 Criminal proceedings

If the Environment Agency decides to prosecute it will:

- exercise prosecutorial independence
- ensure any case put forward for prosecution meets the test in the [Code for Crown Prosecutors \(https://www.cps.gov.uk/publication/code-crown-prosecutors\)](https://www.cps.gov.uk/publication/code-crown-prosecutors)

7.4.1 Prosecutorial independence in decision making

To ensure a fair decision-making process, the decision to prosecute must be taken independently of the investigator. This is particularly important where the prosecutor works for the same organisation as the investigator.

The Environment Agency is a non-departmental public body. Our power to prosecute is set out in law and is controlled by our board. When we decide to prosecute we are not influenced by a government department or minister or any third party. It is an independent decision.

The board delegates authority under the Non-Financial Scheme of Delegation to start proceedings or to caution to the joint approval of a senior operational manager and a senior lawyer. Both of these roles have separate line management.

The approval must be based on the:

- senior operational manager's decision there is justification to prosecute or caution following the investigation

- senior lawyer's review of the case file and decision that the proposed prosecution or caution meets the test laid down in the Code for Crown Prosecutors

The Environment Agency's Chief Prosecutor supervises conduct of all prosecution cases and our lawyers have the power to stop a case which it is no longer in the public interest to pursue. The Chief Prosecutor reports to the Director of Legal Services and both these roles are independent of operational line management.

8. Fixed penalty notices

We can use fixed penalty notices (not a RES Act civil sanction) for specific offences. They are listed in the [offence response options \(https://www.gov.uk/government/publications/offence-response-options-environment-agency\)](https://www.gov.uk/government/publications/offence-response-options-environment-agency) document.

The fixed penalty notice is a financial penalty and gives the offender the chance to pay a fixed amount of money by a set date. If the penalty is paid by the set time the offender is no longer liable for that offence and no further action will be taken.

We will keep a record of the issue and payment of a fixed penalty notice. Any continued or further breach may influence our later choice of enforcement action.

If the fixed penalty notice is not paid we will normally prosecute for the original offence.

8.1 Formal caution

We can only use a formal caution where we consider we could bring a prosecution and the offender:

- admits the offence
- consents to be cautioned

We will keep a record of the formal caution. It will be produced in court if the offender is later found guilty of a further offence.

We will use a formal caution to deter future offending.

If the offender will not accept the formal caution we will normally prosecute for the original offence.

8.2 Prosecution

We can prosecute a person or business we believe has committed a crime against the legislation we enforce. More generally, we can prosecute if:

- the offence involves fraud
- our staff are assaulted, intimidated or threatened while carrying out their regulatory duties

We will also carry out joint prosecutions with other partner organisations (such as the Health and Safety Executive and Natural England) where it is in the public interest or when legislation requires us to do so.

The provisions in the legislation state what penalty the courts can apply. This could be a specified maximum fine, unlimited fine or imprisonment.

The decision to prosecute is not taken lightly. We will be sure:

- there is sufficient evidence we must be sure of a realistic prospect of securing a conviction
- it is in the public interest to commence criminal proceedings

Even then, we will consider if a different response is more appropriate.

8.3 Orders imposed by the court ancillary to prosecution

We can apply for ancillary orders following a conviction. The court imposes these and can include:

- disqualification of a director
- confiscation of assets, under the Proceeds of Crime Act 2002
- a criminal behaviour order
- forfeiture of equipment used to commit the offence
- disqualification from driving
- a compensation order
- vehicle seizure
- a remediation order

8.4 Other action we may take after a conviction

If the holder of an environmental permit is convicted, we may review and reconsider their competence to hold that permit. We may give them time to prove their competence or suspend or revoke their permit.

9. How the Environment Agency makes enforcement decisions

How we make enforcement decisions for climate change schemes is set out in [annex 2 \(https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/annex-2-climate-change-schemes-the-environment-agencys-approach-to-applying-civil-penalties\)](https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/annex-2-climate-change-schemes-the-environment-agencys-approach-to-applying-civil-penalties).

In every other case we will consider all the individual facts and circumstances of the potential breach or offence. We will test the evidence and then weigh up the public interest factors. Then we will make an overall judgement and decide:

- whether to take enforcement action
- how to choose the enforcement option
- which enforcement option we will choose

Our Non-Financial Scheme of Delegation sets out the level at which enforcement decisions can be taken.

We will also check whether a [regulatory position statement \(https://www.gov.uk/government/collections/basic-rules-environmental-permitting-regulatory-positions\)](https://www.gov.uk/government/collections/basic-rules-environmental-permitting-regulatory-positions) has been published.

We see our enforcement responses as a hierarchy. We will use prosecution for the most serious cases. We will use RES Act civil sanctions where:

- a significant response is in the public interest
- a civil sanction is a quicker and more proportionate way of dealing with the offence, taking into account the circumstances of the case

9.1 Public interest factors

We must weigh up all the public interest factors.

For each case we will consider the factors and assess how important each one is. The weight of each factor varies, one factor could outweigh a number of others.

9.1.1 Intent

We are more likely to prosecute when an offence has been committed deliberately, recklessly or because of serious negligence.

When an offence has been committed accidentally or is a genuine mistake we are more likely to:

- give advice and guidance
- impose an available civil sanction or accept an enforcement undertaking

9.1.2 Foreseeability

Where the circumstances leading to an offence could reasonably have been foreseen and no action to avoid or prevent it was taken we will normally:

- impose a sanction higher than advice and guidance
- issue a warning

9.1.3 Environmental effect

We will normally consider a prosecution, formal caution or a variable monetary penalty where the offence is classified as a category 1 or 2, under our:

- Common Incident Classification Scheme
- Compliance Classification Scheme
- Reservoirs Dam Risk Categorisation Scheme

We will retain our discretion to accept appropriate enforcement undertaking offers which may be exceptional or otherwise in the public interest.

The more serious the environmental effect is, the more significant our enforcement response will be. Our choice will be based on the potential or actual harm, including the risk to people, communities and the environment.

We will also consider prosecution, formal caution or a variable monetary penalty where it may not be obvious that an offence has a detrimental environmental impact, but it undermines the environmental objectives of the regime. For example, water abstraction or producer responsibility offences.

9.1.4 Nature of the offence or breach

We will normally prosecute when the offence impacts on our ability to be an efficient and effective regulator, including where:

- Environment Agency staff are obstructed in conducting their duties
- we are targeting a particular type of offending
- we are given false or misleading information

9.1.5 Financial implications

We will normally impose a variable monetary penalty or prosecute if the offending is motivated by financial gain including:

- undercutting a legitimate business
- making a profit from the illegal activity
- avoiding costs, such as costs saved by not applying for a permit

9.1.6 Deterrent effect

When we choose a sanction we will consider the most appropriate response to achieve:

- specific deterrence of the offender
- general deterrence of others who may be tempted to offend

We want to prevent future offending by both the offender and others.

9.1.7 Previous history and repeat offending

We will check if the offender has a history of non-compliance or offending, including the:

- degree, number and nature of the breaches or offences
- time elapsed since the previous breach or offence

This includes site specific offences and general failures by the offender.

We will normally escalate our enforcement response if previous sanctions have failed to achieve the desired outcome. For example, if we have previously issued a formal caution to encourage a change in behaviour to prevent future offending, and the person commits the same offence again, then we are likely to prosecute or serve a variable monetary penalty where available.

9.1.8 Attitude

We will normally consider a prosecution or a variable monetary penalty if the offender:

- has a poor attitude to the offence
- is uncooperative during the investigation
- is uncooperative to the suggested or required remediation

We are likely to apply a lesser sanction, such as advice and guidance, where the offender:

- voluntarily provides us with details of the offence
- reports the matter to us promptly
- has independently remedied the breach

9.1.9 Personal circumstances

We will consider the offender's personal circumstances, including:

- serious ill health
- the ability to pay if the sanction includes a financial penalty or requirement to carry out costly remediation

We may modify our proposed penalty if it would have a significant impact on a public or charitable body's ability to continue to provide their services. We will only consider this if the public or charitable body provides evidence to demonstrate this impact.

9.2 How we may deal with particular situations

9.2.1 Serious offences

We will normally consider prosecution, subject to public interest factors, if an offence is serious. We may feel it needs to be heard in a public forum.

Features that make an offence serious are when it has:

- been intentional, reckless, negligent or involves outright criminal activity
- caused serious harm (or has the potential to cause such harm) to the environment or to people

Or when the offender has:

- committed large scale and protracted non-compliance with regulatory provisions
- subjected Environment Agency staff to harassment, alarm, distress or fear of violence

- intentionally, recklessly or wilfully made a false or misleading statement or record
- obstructed the Environment Agency in carrying out its duties, thus preventing it from investigating potential criminal activity
- impersonated an Environment Agency officer
- failed to comply with a stop notice

9.2.2 Minor breach

We will normally choose a lower response, including a RES Act civil sanction, to help bring a business back into compliance where a minor breach has been committed. We consider a minor breach to be where there is no impact on the environment.

9.2.3 Repeat offending

Continued repeat offending will normally result in us increasing the level of our enforcement response and imposing or seeking a more severe sanction.

We will not normally accept an enforcement undertaking for an offence where a similar one has been previously accepted.

9.2.4 Failure to comply with a notice

If a recipient fails to comply with a notice we will normally seek a sanction that is likely to deter or punish.

9.2.5 Operating without a permit, licence or other authority

We are likely to impose a sanction that aims to punish or deter the offender if they did not have the necessary authorisation.

9.2.6 Multiple operations

We will always have regard to the compliance history of an offender, such as repeated breaches of a similar type or demonstration of overall management failure.

9.2.7 Body corporate

Where an offence is as a result of a company's activities, we will usually enforce against the company.

Where an offence is committed by a body corporate as a result of the consent, connivance or neglect of any director, manager, secretary or other officer, that person could also be guilty of an offence. We may enforce against that person.

We can take action against a corporate body, an individual or both. We will use the full range of enforcement options available to us. We may, under the Companies Act emphasise to a court that it has the power to disqualify directors.

9.2.8 Juveniles

We will not normally prosecute a juvenile's first offence.

9.2.9 When the Environment Agency can combine sanctions and offences

It is not normally possible to combine criminal and civil sanctions for the same type of offence unless legislation specifically allows it. We will consider all the circumstances very carefully if we do want to combine sanctions.

Where a number of compliance failures have occurred from the same or related incidents, where it is possible and correct to do so, we will assess all of those failures and try to take a single enforcement response. Our response will match the overall level of offending.

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