
DRAFT STATUTORY INSTRUMENTS

2010 No.

The Environmental Civil Sanctions (England) Order 2010

PART 4

Administration

Withdrawing or amending a notice

- 9.** A regulator may at any time in writing—
- (a) withdraw a fixed monetary penalty notice;
 - (b) withdraw a variable monetary penalty notice, a non-compliance penalty notice or an enforcement cost recovery notice or reduce the amount specified in the notice;
 - (c) withdraw a compliance notice, restoration notice or stop notice or amend the steps so as to reduce the amount of work necessary to comply with the notice.

Appeals

- 10.—**(1) An appeal under this Order is to the First-tier Tribunal.
- (2) In any appeal (except in relation to a stop notice) where the commission of an offence is an issue requiring determination, the regulator must prove that offence according to the same burden and standard of proof as in a criminal prosecution.
- (3) In any other case the tribunal must determine the standard of proof.
- (4) All notices (other than stop notices) are suspended pending appeal.
- (5) The Tribunal may suspend or vary a stop notice.
- (6) The Tribunal may, in relation to the imposition of a requirement or service of a notice—
- (a) withdraw the requirement or notice;
 - (b) confirm the requirement or notice;
 - (c) vary the requirement or notice;
 - (d) take such steps as the regulator could take in relation to the act or omission giving rise to the requirement or notice;
 - (e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the regulator.

Guidance as to use of civil sanctions

- 11.—**(1) Where power is conferred on a regulator in this Order to impose a civil sanction in relation to an offence—
- (a) the regulator must publish guidance about its use of the sanction;

- (b) in the case of guidance relating to a fixed monetary penalty, variable monetary penalty, compliance notice, restoration notice or stop notice, the guidance must contain the relevant information;
 - (c) the regulator must revise the guidance where appropriate;
 - (d) the regulator must have regard to the guidance or revised guidance in exercising its functions.
- (2) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in paragraph (1)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed;
 - (b) the circumstances in which it may not be imposed;
 - (c) the amount of the penalty;
 - (d) how liability for the penalty may be discharged and the effect of discharge; and
 - (e) rights to make representations and objections and rights of appeal.
- (3) In the case of guidance relating to a variable monetary penalty, a compliance notice or a restoration notice, the relevant information referred to in paragraph (1)(b) is information as to—
- (a) the circumstances in which the requirement is likely to be imposed;
 - (b) the circumstances in which it may not be imposed;
 - (c) in the case of a variable monetary penalty, the matters likely to be taken into account by the regulator in determining the amount of the penalty (including voluntary reporting by any person of their own non-compliance); and
 - (d) rights to make representations and objections and rights of appeal.
- (4) In the case of guidance relating to a stop notice, the relevant information referred to in paragraph (1)(b) is information as to—
- (a) the circumstances in which the regulator is likely to serve the notice;
 - (b) the circumstances in which it may not be imposed; and
 - (c) rights of appeal.

Additional guidance

12. The regulator must issue guidance relating to the use of non-compliance penalties and enforcement cost recovery notices specifying—

- (a) the circumstances in which they are likely to be imposed;
- (b) the circumstances in which they may not be imposed;
- (c) matters to be taken into account in establishing the amount involved;
- (d) rights of appeal.

Consultation on guidance

13. The regulator must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this Order.

Publication of enforcement action

14.—(1) Where a power is conferred on a regulator to impose a civil sanction under this Order in relation to an offence, the regulator must from time to time publish—

- (a) the cases in which the civil sanction has been imposed,

- (b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged by payment of the penalty following the notice of intent and without further action being taken;
- (c) where the civil sanction is a variable monetary penalty, restoration notice or compliance notice, the cases in which a third party undertaking has been accepted;
- (d) cases in which an enforcement undertaking has been entered into.

(2) In paragraph (1)(a) the reference to cases in which the civil sanction has been imposed does not include cases where the sanction has been imposed but overturned on appeal.

(3) This article does not apply in cases where the regulator considers that publication would be inappropriate.

Power of entry

15.—(1) Any person authorised in writing to do so by Natural England may, on producing the authorisation if required, enter any premises (other than premises used exclusively as domestic premises) at any reasonable time to ascertain whether a compliance notice, restoration notice or stop notice has been complied with or an undertaking accepted under this Order has been fulfilled.

(2) For the avoidance of doubt this power does not include a power to seize any property.