

Draft Order laid before Parliament under section 61(1) of the Regulatory Enforcement and Sanctions Act 2008, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2010 No.

ENVIRONMENT, ENGLAND

TRIBUNALS AND INQUIRIES, ENGLAND

The Environmental Civil Sanctions (England) Order 2010

Made - - - -

Coming into force - -

6th April 2010

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The Secretary of State makes this Order in exercise of the powers contained in sections 36, 39, 42, 46, 48 to 55, 63 and 65 of the Regulatory Enforcement and Sanctions Act 2008.

The Secretary of State has carried out consultation in accordance with section 60 of that Act.

The Secretary of State is satisfied, in accordance with section 66 of that Act, that the Environment Agency and Natural England (who are the regulators for the purpose of this Order) will act in accordance with the principles referred to in section 5(2) of that Act in exercising a power conferred by this Order.

In accordance with section 61(1) of that Act, a draft of this Order has been laid before, and approved by resolution of, each House of Parliament.

PART 1

Introduction

Citation, application and commencement

1. This Order may be cited as the Environmental Civil Sanctions (England) Order 2010; it applies in England and comes into force on 6th April 2010.

Regulators

2. These are the regulators for the purposes of this Order in relation to the offences under the provisions specified in Schedule 5 which are enforced by them—

- (a) the Environment Agency, and
- (b) Natural England.

PART 2

Civil sanctions, notices and undertakings

Civil sanctions, notices and undertakings

3.—(1) Schedule 1 makes provision for fixed monetary penalties.

(2) Schedule 2 makes provision for variable monetary penalties, compliance notices, restoration notices and third party undertakings.

(3) Schedule 3 makes provision for stop notices.

(4) Schedule 4 makes provision for enforcement undertakings.

(5) Those terms have the meanings specified in those Schedules.

Scope

4. Schedule 5 sets out the provisions creating the offences to which this Order relates.

Combination of penalties

5.—(1) A regulator may not serve a notice of intent relating to a fixed monetary penalty if a variable monetary penalty has been imposed or a compliance notice, restoration notice or stop notice has been served on that person relating to the same act or omission.

(2) A regulator may not serve a notice of intent relating to a variable monetary penalty, compliance notice or restoration notice, or serve a stop notice, on any person if, in relation to the same act or omission—

- (a) a fixed monetary penalty has been imposed on that person, or
- (b) that person has discharged liability for a fixed monetary penalty following service of a notice of intent to impose that penalty.

PART 3

Non-compliance and enforcement

Recovery of payments

6. The regulator may recover any fixed monetary penalty, variable monetary penalty or non-compliance penalty on the order of a court, as if payable under a court order.

Non-compliance penalties

7.—(1) If a person fails to comply with a compliance notice, a restoration notice or a third party undertaking, the regulator may serve a notice on that person imposing a monetary penalty (“a non-compliance penalty”) in respect of the same offence irrespective of whether a variable monetary penalty was also imposed in respect of that offence.

(2) The amount of the penalty must be determined by the regulator, and must be a percentage of the costs of fulfilling the remaining requirements of the notice or third party undertaking.

(3) The percentage must be determined by the regulator having regard to all the circumstances of the case and may, if appropriate, be 100%.

(4) The notice must include information as to—

- (a) the grounds for imposing the non-compliance penalty;
- (b) the amount to be paid;
- (c) how payment must be made;
- (d) the period in which payment must be made, which must not be less than 28 days;
- (e) the right of appeal;
- (f) the consequences of failure to make payment in the specified period;
- (g) any circumstances in which the regulator may reduce the amount of the penalty.

(5) If the requirements of the compliance notice or restoration notice are complied with or a third party undertaking is fulfilled before the time set for payment of the non-compliance penalty, the penalty is not payable.

(6) The person on whom the notice imposing the non-compliance penalty is served may appeal against it.

(7) The grounds of appeal are—

- (a) that the decision to serve the notice was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unfair or unreasonable for any reason
- (d) that the amount of the penalty was unreasonable;
- (e) any other reason.

Enforcement cost recovery notices

8.—(1) A regulator may serve a notice (“an enforcement cost recovery notice”) on a person on whom a variable monetary penalty notice, compliance notice, restoration notice or stop notice has been served requiring that person to pay the costs incurred by the regulator in relation to the imposition of that notice up to the time of its imposition.

(2) Costs include in particular—

- (a) investigation costs;
- (b) administration costs;
- (c) costs of obtaining expert advice (including legal advice).

(3) The enforcement cost recovery notice must specify—

- (a) how payment must be made;
- (b) the amount required to be paid and the period in which payment must be made, which must not be less than 28 days;
- (c) the grounds for imposing the notice;
- (d) the right of appeal; and
- (e) the consequences of failure to comply with the notice in the specified period.

(4) The person on whom the notice is served may require the regulator to provide a detailed breakdown of the amount.

(5) The person required to pay costs is not liable to pay any costs shown by that person to have been unnecessarily incurred.

(6) The person required to pay costs may appeal—

- (a) against the decision of the regulator to impose the requirement to pay costs;
- (b) against the decision of the regulator as to the amount of those costs; or
- (c) for any other reason.

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.

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

Fixed monetary penalties

Power to impose a fixed monetary penalty

1.—(1) A regulator may by notice impose a fixed monetary penalty on a person in relation to an offence under a provision specified in Schedule 5 if the table in that Schedule indicates that such penalty is possible for that offence.

(2) Before doing so the regulator must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) “Fixed monetary penalty” means a requirement to pay to a regulator a penalty of £100 for an individual or £300 for a body corporate.

Notice of intent

2.—(1) Where a regulator proposes to impose a fixed monetary penalty on a person, the regulator must serve on that person a notice of what is proposed (a “notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposal to impose the fixed monetary penalty;
- (b) the amount of the penalty;
- (c) a statement that liability for the penalty can be discharged by paying 50% of the penalty within 28 days beginning with the day on which the notice was received;
- (d) information as to—
 - (i) the effect of that discharge payment;
 - (ii) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received.
 - (iii) the circumstances in which the regulator may not impose the requirement (including any defences relating to the offence in relation to which the notice is served).

Discharge of liability

3. The penalty is discharged if a person who receives a notice of intent pays 50% of the amount of the penalty within 28 days beginning with the day on which the notice was received.

Making representations and objections

4. A person on whom a notice of intent is served may within 28 days beginning with the day on which the notice was received make written representations and objections to the regulator in relation to the proposed imposition of the fixed monetary penalty.

Service of final notice

5.—(1) If the person who has received a notice of intent does not discharge liability within 28 days the regulator may serve a final notice imposing a fixed monetary penalty.

(2) The regulator may not serve a final notice on a person where the regulator is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates.

(3) A regulator who serves a final notice relating to a fixed monetary penalty may not serve any other notice under this Order in relation to the offence.

Contents of final notice

6. A final notice must include information as to—
- (a) the amount of the penalty;
 - (b) the grounds for imposing the penalty;
 - (c) how payment may be made;
 - (d) the period of 56 days within which payment must be made;
 - (e) details of the early payment discounts and late payment penalties;
 - (f) rights of appeal; and
 - (g) the consequences of non-payment.

Discount for early payment

7. If a person who was served with a notice of intent made representations or objections concerning that notice within the time limit, that person may discharge the final notice by paying 50% of the penalty within 28 days beginning with the day on which the final notice was received.

Grounds of appeal

- 8.—(1) The person receiving the final notice may appeal against it.
- (2) The grounds for appeal are—
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable;
 - (d) any other reason.

Non-payment after 56 days

- 9.—(1) The penalty must be paid within 56 days of receipt of the final notice.
- (2) If the penalty is not paid within 56 days the amount payable is increased by 50%.
- (3) In the case of an appeal it is payable within 28 days of the determination of the appeal (if the appeal is unsuccessful), and if it is not paid within 28 days the amount of the penalty is increased by 50%.

Criminal proceedings

- 10.—(1) If a notice of intent for a fixed monetary penalty is served on any person—
- (a) no criminal proceedings for the offence may be instituted against that person in respect of the act or omission to which the notice relates before 28 days from the date the notice of intent is received, and
 - (b) if that person so discharges liability, that person may not at any time be convicted of the offence in relation to that act or omission.
- (2) If a fixed monetary penalty is imposed on any person, that person may not at any time be convicted of the offence in respect of the act or omission giving rise to the penalty.

Variable monetary penalties, compliance notices, restoration notices and third party undertakings

Imposition of a variable monetary penalty, compliance notice or restoration notice

1.—(1) A regulator may by notice impose—

- (a) a requirement to pay a monetary penalty to a regulator of such amount as the regulator may determine (“a variable monetary penalty”),
- (b) a requirement to take such steps as a regulator may specify, within such period as it may specify, to secure that the offence does not continue or recur (“a compliance notice”), or
- (c) a requirement to take such steps as a regulator may specify, within such period as it may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed (“a restoration notice”),

in relation to an offence under a provision specified in Schedule 5 if the table in that Schedule indicates that such penalty or notice is possible for that offence.

(2) Before doing so the regulator must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) A requirement under this paragraph may not be imposed on a person on more than one occasion in relation to the same act or omission.

(4) Where a variable monetary penalty is imposed in relation to an offence that is—

- (a) triable summarily only, and
- (b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),

the amount of the variable monetary penalty may not exceed the maximum amount of that fine.

(5) In any event the amount of a variable monetary penalty must not exceed £250,000.

(6) Before serving a notice relating to a variable monetary penalty the regulator may require the person to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of the offence.

Notice of intent

2.—(1) Where a regulator proposes to serve a notice under this Schedule on a person, the regulator must serve on that person a notice of what is proposed (a “notice of intent”).

(2) In the case of a proposed restoration notice or compliance notice the notice of intent must include—

- (a) the grounds for the proposed notice;
- (b) the requirement of the notice;
- (c) information as to—
 - (i) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;
 - (ii) the circumstances in which the regulator may not impose the notice (including any defences relating to the offence in relation to which the notice is served).

(3) In the case of a proposed variable monetary penalty the notice of intent must include—

- (a) the grounds for imposing the variable monetary penalty;
- (b) the amount of the penalty;
- (c) information as to—

- (i) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;
- (ii) the circumstances in which the regulator may not impose the penalty (including any defences relating to the offence in relation to which the notice is served).

Making representations and objections

3. A person on whom a notice of intent is served may within 28 days beginning with the day on which the notice was received make written representations and objections to the regulator in relation to the proposed imposition of a variable monetary penalty, restoration notice or compliance notice.

Third party undertakings

4.—(1) A person on whom a notice of intent is served may offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any third party affected by the offence (“a third party undertaking”).

(2) The regulator may accept or reject such a third party undertaking.

Final notice

5.—(1) After the end of the period for making representations and objections, the regulator must decide whether to—

- (a) impose the requirements in the notice of intent, with or without modifications, or
- (b) impose any other requirement that the regulator has power to impose under this Schedule.

(2) Where the regulator decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 6 or 7.

(3) The regulator may not impose a final notice on a person where the regulator is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates.

(4) The regulator must take into account any third party undertaking that it accepts in deciding—

- (a) whether or not to serve a final notice; and
- (b) the amount of any variable monetary penalty it imposes.

Contents of final notice – variable monetary penalty

6. A final notice for a variable monetary penalty must include information as to—

- (a) the grounds for imposing the penalty;
- (b) the amount to be paid;
- (c) how payment may be made;
- (d) the period within which payment must be made which must be not less than 28 days;
- (e) rights of appeal; and
- (f) the consequences of failing to comply with the notice.

Contents of final notice - compliance notice or restoration notice

7. A final notice relating to a compliance notice or restoration notice must include information as to—

- (a) the grounds for imposing the notice;
- (b) what compliance or restoration is required and the period within which it must be completed;

- (c) the rights of appeal; and
- (d) the consequences of failing to comply with the notice.

Appeals against a final notice

- 8.**—(1) The person receiving the final notice may appeal against it.
- (2) The grounds for appeal are—
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;
 - (d) in the case of a non-monetary requirement, that the nature of the requirement is unreasonable;
 - (e) that the decision was unreasonable for any other reason;
 - (f) any other reason.

Criminal proceedings

- 9.**—(1) If—
- (a) a variable monetary penalty, compliance notice or restoration notice is imposed on any person, or
 - (b) a third party undertaking is accepted from any person,

that person may not at any time be convicted of the offence in respect of the act or omission giving rise to the variable monetary penalty, compliance notice, restoration notice or third party undertaking except in a case referred to in sub-paragraph (2).

- (2) The case referred to in sub-paragraph (1) is a case where—
- (a) a restoration notice or compliance notice is imposed on a person or a third party undertaking is accepted from a person,
 - (b) no variable monetary penalty is imposed on that person, and
 - (c) that person fails to comply with the restoration notice, compliance notice or third party undertaking.

(3) Criminal proceedings for offences triable summarily to which a notice or undertaking in sub-paragraph (2) relates may be instituted at any time up to six months from the date when the regulator notifies the person that such person has failed to comply with that notice or undertaking.

SCHEDULE 3

Article 3

Stop notices

Stop notices

1.—(1) The regulator may serve a stop notice on any person in accordance with this Schedule in relation to an offence under a provision specified in Schedule 5 if the table in that Schedule indicates that such notice is possible for that offence.

(2) A “stop notice” is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(3) A stop notice may only be served in a case falling within sub-paragraph (4) or (5).

(4) A case falling within this sub-paragraph is a case where—

- (a) the person is carrying on the activity,

- (b) the regulator reasonably believes that the activity as carried on by that person is causing, or presents a significant risk of causing, serious harm to any of the matters referred to in sub-paragraph (6), and
 - (c) the regulator reasonably believes that the activity as carried on by that person involves or is likely to involve the commission of an offence under a provision specified in Schedule 5 by that person.
- (5) A case falling within this sub-paragraph is a case where the regulator reasonably believes that—
- (a) the person is likely to carry on the activity,
 - (b) the activity as likely to be carried on by that person will cause, or will present a significant risk of causing, serious harm to any of the matters referred to in sub-paragraph (6), and
 - (c) the activity as likely to be carried on by that person will involve or will be likely to involve the commission of an offence under a provision specified in Schedule 5 by that person.
- (6) The matters referred to in sub-paragraphs (4)(b) and (5)(b) are—
- (a) human health,
 - (b) the environment (including the health of animals and plants).
- (7) The steps referred to in sub-paragraph (2) must be steps to remove or reduce the harm or risk of harm referred to in sub-paragraph (4)(b) or (5)(b).

Contents of a stop notice

2. A stop notice must include information as to—
- (a) the grounds for serving the stop notice;
 - (b) the steps the person must take to comply with the stop notice;
 - (c) rights of appeal; and
 - (d) the consequences of non-compliance.

Appeals

- 3.—(1) The person on whom a stop notice is served may appeal against the decision to serve it.
- (2) The grounds for appeal are—
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable;
 - (d) that any step specified in the notice is unreasonable;
 - (e) that the person has not committed the offence and would not have committed it had the stop notice not been served;
 - (f) that the person would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been served;
 - (g) any other reason.

Completion certificates

- 4.—(1) Where, after service of a stop notice, the regulator is satisfied that the person has taken the steps specified in the notice, the regulator must issue a certificate to that effect (a “completion certificate”).
- (2) The stop notice ceases to have effect on the issue of a completion certificate.

(3) The person on whom the stop notice is served may at any time apply for a completion certificate.

(4) The regulator must make a decision as to whether to issue a completion certificate within 14 days of such an application.

(5) The person on whom the stop notice was served may appeal against a decision not to issue a completion certificate on the grounds that—

- (a) the decision was based on an error of fact;
- (b) the decision was wrong in law;
- (c) the decision was unfair or unreasonable;
- (d) the decision was wrong for any other reason.

Compensation

5.—(1) A regulator must compensate a person for loss suffered as the result of the service of the stop notice or the refusal of a completion certificate if that person has suffered loss as a result of the notice or refusal and—

- (a) a stop notice is subsequently withdrawn or amended by the regulator because the decision to serve it was unreasonable or any step specified in the notice was unreasonable;
- (b) the operator successfully appeals against the stop notice and the First-tier Tribunal finds that the service of the notice was unreasonable; or
- (c) the operator successfully appeals against the refusal of a completion certificate and the Tribunal finds that the refusal was unreasonable.

(2) A person may appeal against a decision not to award compensation or the amount of compensation—

- (a) on the grounds that the regulator's decision was unreasonable;
- (b) on the grounds that the amount offered was based on incorrect facts;
- (c) for any other reason.

Offences

6.—(1) Where a person on whom a notice is served does not comply with it within the time limit specified in the notice, the person is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding £20,000, or imprisonment for a term not exceeding twelve months, or both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

(2) In the application of this paragraph in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 the reference in sub-paragraph (1)(a) to twelve months is to be read as a reference to six months.

SCHEDULE 4

Article 3

Enforcement undertakings

Enforcement undertakings

1.—(1) A regulator may accept an enforcement undertaking from a person in a case where the regulator has reasonable grounds to suspect that the person has committed an offence under a provision specified in Schedule 5 and the table in that Schedule indicates that an enforcement undertaking may be accepted in relation to that offence.

(2) For the purposes of this Schedule, an “enforcement undertaking” is a written undertaking to take such action as may be specified in the undertaking within such period as may be so specified.

Contents of an enforcement undertaking

- 2.—(1) An enforcement undertaking must specify—
- (a) action to secure that the offence does not continue or recur,
 - (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,
 - (c) action (including the payment of a sum of money) to benefit any person affected by the offence, or
 - (d) where restoration of the harm arising from the offence is not possible, action that will secure equivalent benefit or improvement to the environment.
- (2) It must specify the period within which the action must be completed.
- (3) It must include—
- (a) a statement that the undertaking is made in accordance with this Schedule;
 - (b) the terms of the undertaking;
 - (c) how and when a person is considered to have discharged the undertaking.
- (4) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if both parties agree in writing.

Acceptance of an enforcement undertaking

3. If a regulator has accepted an enforcement undertaking then, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—
- (a) that person may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates,
 - (b) the regulator may not impose on that person any fixed monetary penalty, variable monetary penalty, compliance notice or restoration notice in respect of that act or omission.

General provisions on enforcement undertakings

- 4.—(1) A regulator must establish and publish the procedure for entering into an enforcement undertaking.
- (2) The regulator must consult such persons as it considers appropriate before doing so.
- (3) When it accepts an undertaking the regulator may publish it in whatever manner it sees fit.

Discharge of an enforcement undertaking

- 5.—(1) A regulator who is satisfied that an enforcement undertaking has been complied with must issue a certificate to that effect.
- (2) A regulator may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.
- (3) The person who gave the undertaking may at any time apply for such a certificate.
- (4) The regulator must make a decision as to whether to issue such a certificate, and give written notice of the decision to the applicant, within 14 days of such an application.
- (5) The person to whom the notice is given may appeal against a decision not to issue a certificate on the grounds that the decision—
- (a) was based on an error of fact;
 - (b) was wrong in law;

- (c) was unfair or unreasonable
- (d) was wrong for any other reason.

Inaccurate, incomplete or misleading information

6.—(1) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is regarded as not having complied with it.

(2) A regulator may by notice in writing revoke a certificate issued under paragraph 5 if it was issued on the basis of inaccurate, incomplete or misleading information.

Non-compliance with an enforcement undertaking

7.—(1) If an enforcement undertaking is not complied with the regulator may either—

- (a) serve a variable monetary penalty notice, compliance notice or restoration notice, or
- (b) bring criminal proceedings.

(2) If a person has complied partly but not fully with an undertaking, that part-compliance must be taken into account in the imposition of any criminal or other sanction on the person.

(3) Criminal proceedings for offences triable summarily to which an enforcement undertaking relates may be instituted at any time up to six months from the date when the regulator notifies the person that such person has failed to comply with that undertaking.

SCHEDULE 5

Article 4

Offences

In the following table—

- “FMP” is a fixed monetary penalty;
- “VMP” is a variable monetary penalty;
- “CN” is a compliance notice;
- “RN” is a restoration notice;
- “SN” is a stop notice;
- “EU” is an enforcement undertaking.

| Provision creating an offence | FMP | VMP | CN | RN | SN | EU |
|---|-----|-----|-----|-----|-----|-----|
| Destructive Imported Animals Act 1932(a) | | | | | | |
| section 6(1)(c), limited to acting in contravention of or failure to comply with the terms of a licence | No | Yes | Yes | Yes | Yes | Yes |
| section 6(1)(e) | No | Yes | No | No | No | No |
| Pests Act 1954(b) | | | | | | |

(a) 1932 c.12.
 (b) 1954 c. 68.

| Provision creating an offence | FMP | VMP | CN | RN | SN | EU |
|--|-----|-----|-----|-----|-----|-----|
| section 4(2) | No | Yes | No | No | No | No |
| Weeds Act 1959(a) | | | | | | |
| section 2(1) | No | Yes | No | No | No | No |
| section 4(2) | No | Yes | No | No | No | No |
| Salmon and Freshwater Fisheries Act 1975(b) | | | | | | |
| section 2(1) | No | Yes | No | No | No | No |
| section 2(2) | No | Yes | No | No | No | No |
| section 2(4) | No | Yes | No | Yes | Yes | Yes |
| section 4(1) | No | Yes | No | Yes | Yes | Yes |
| section 5(4) | No | Yes | No | Yes | Yes | Yes |
| section 9(2) | No | Yes | No | Yes | No | Yes |
| section 12(1) | No | Yes | No | Yes | Yes | Yes |
| section 12(3) | No | Yes | No | Yes | Yes | Yes |
| section 13(2) | No | Yes | No | Yes | Yes | Yes |
| section 14(8) | No | Yes | No | Yes | Yes | Yes |
| section 15(2) | No | Yes | No | Yes | Yes | Yes |
| section 18(1) | No | Yes | No | No | No | No |
| section 27 | No | Yes | No | No | No | No |
| section 31(2) | No | Yes | No | No | No | No |
| Wildlife and Countryside Act 1981(c) | | | | | | |
| section 1(1) | No | Yes | Yes | Yes | Yes | No |

(a) 1959 c. 54.

(b) 1975 c. 51; section 14 was substituted by the Environment Act 1995 (c. 25), section 105, Schedule 15, paragraph 13; section 15(2) was amended by the Environment Act 1995 (c. 25), section 105, Schedule 15, paragraph 14(2).

(c) 1981 c. 69; section 1(1) was amended by the Natural Environment and Rural Communities Act 2006 (c. 16), sections 47(1) and (2); section 1(5) was amended by the Countryside and Rights of Way Act 2000 (c. 37) section 81(1), Schedule 12, paragraph 1, section 102, Schedule 16, Part IV; section 5(1) was amended by the Wildlife and Countryside (Amendment) Act 1991 (c. 39), sections 1 (2) and (3) and the Countryside and Rights of Way Act 2000 (c. 37) sections 81(1), 102 and Schedule 16 Part IV; section 6(2) was amended by the Countryside and Rights of Way Act 2000 (c. 37), sections 81(1), 102, Schedule 12, paragraphs 3, 10(6) and Schedule 16, Part IV; section 7(1) was amended by the Countryside and Rights of Way Act 2000 (c. 37), sections 81(1), 102 and Schedule 16, Part IV; section 7(3) was amended by the Countryside and Rights of Way Act 2000 (c. 37), section 81(1), Schedule 12, paragraph 4(1); sections 8(1) and (3) were amended by the Countryside and Rights of Way Act 2000 (c. 37), sections 81(1), 102 and Schedule 16, Part IV; section 9(4) was substituted by the Conservation (Natural Habitats, &c) (Amendment) Regulations 2007 (S.I. 2007/1843), regulation 7(1) and (4); section 9(4A) was inserted by the Countryside and Rights of Way Act 2000 (c. 37), sections 81(1), Schedule 12, paragraph 5(b); section 11(1)(b) was amended by the Wildlife and Countryside (Amendment) Act 1991 (c. 39), section 2(2); section 11(2) was amended by the Wildlife and Countryside (Amendment) Act 1991 (c. 39) section 2(3); section 11(3) was amended by the Wildlife and Countryside (Amendment) Act 1991 (c. 39) section 2(4); section 17 was amended by the Countryside and Rights of Way Act 2000 (c. 37), section 102 and Schedule 16, Part IV; section 19XB was inserted by the Natural Environment and Rural Communities Act 2006 (c. 16), section 52 and Schedule 5, Part 1, paragraph 3; section 28P was substituted by the Countryside and Rights of Way Act 2000 (c. 37), section 75(1) and Schedule 9, paragraph 1; section 28S was inserted by the Natural Environment and Rural Communities Act 2006 (c. 16), section 58(1).

| Provision creating an offence | FMP | VMP | CN | RN | SN | EU |
|-------------------------------|-----|-----|-----|-----|-----|-----|
| section 1(2) | No | Yes | Yes | Yes | Yes | No |
| section 1(5) | No | Yes | Yes | Yes | Yes | No |
| section 5(1) | No | Yes | No | Yes | Yes | No |
| section 6(1) | No | Yes | Yes | Yes | Yes | No |
| section 6(2) | No | Yes | Yes | Yes | Yes | No |
| section 6(3) | No | Yes | Yes | Yes | Yes | No |
| section 7(1) | No | Yes | Yes | Yes | Yes | No |
| section 7(3) | No | Yes | Yes | Yes | Yes | No |
| section 7(4) | No | Yes | Yes | Yes | Yes | No |
| section 8(1) | No | Yes | Yes | Yes | Yes | No |
| section 8(3) | No | Yes | Yes | Yes | Yes | No |
| section 9(1) | No | Yes | Yes | Yes | Yes | No |
| section 9(2) | No | Yes | Yes | Yes | Yes | No |
| section 9(4) | No | Yes | Yes | Yes | Yes | No |
| section 9(4A) | No | Yes | Yes | Yes | Yes | No |
| section 9(5) | No | Yes | Yes | Yes | Yes | No |
| section 11(1) | No | Yes | No | Yes | Yes | No |
| section 11(2) | No | Yes | Yes | Yes | Yes | No |
| section 11(3) | No | Yes | Yes | Yes | Yes | No |
| section 13(1) | No | Yes | Yes | Yes | Yes | No |
| section 13(2) | No | Yes | Yes | Yes | Yes | No |
| section 14(1) | No | Yes | Yes | Yes | Yes | No |
| section 14(2) | No | Yes | Yes | Yes | Yes | No |
| section 17 | No | Yes | No | No | No | No |
| section 19XB(1) | No | Yes | No | No | No | No |
| section 19XB(2) | No | Yes | No | No | No | No |
| section 19XB(3) | No | Yes | No | No | No | No |
| section 19XB(4) | No | Yes | No | No | No | No |
| section 28P(1) | Yes | Yes | Yes | Yes | Yes | Yes |
| section 28P(2) | Yes | Yes | Yes | Yes | Yes | Yes |
| section 28P(3) | Yes | Yes | Yes | Yes | Yes | Yes |
| section 28P(5A) | Yes | Yes | Yes | Yes | Yes | Yes |
| section 28P(6) | No | Yes | Yes | Yes | Yes | Yes |
| section 28P(6A) | No | Yes | Yes | Yes | Yes | Yes |
| section 28P(8) | No | Yes | No | No | No | No |
| section 28S(3) | No | Yes | No | No | No | No |
| section 51(4) | No | Yes | No | No | No | No |

| Provision creating an offence | FMP | VMP | CN | RN | SN | EU |
|---|-----|-----|-----|-----|-----|-----|
| Salmon Act 1986(a) | | | | | | |
| section 32 | No | Yes | No | No | No | No |
| Environmental Protection Act 1990(b) | | | | | | |
| section 33(6) | No | No | No | No | Yes | No |
| section 71(3) | No | Yes | No | No | No | No |
| Water Resources Act 1991(c) | | | | | | |
| section 24(4)(a) | Yes | Yes | Yes | Yes | Yes | Yes |
| section 24(4)(b) | Yes | Yes | Yes | Yes | Yes | Yes |
| section 25(2)(a) | Yes | Yes | Yes | Yes | Yes | Yes |
| section 25(2)(b) | Yes | Yes | Yes | Yes | Yes | Yes |
| section 25C | No | Yes | No | No | No | No |
| section 80(1) | Yes | Yes | Yes | Yes | Yes | Yes |
| section 80(2) | Yes | Yes | Yes | Yes | Yes | Yes |
| section 161D(1) | No | Yes | No | No | No | No |
| section 199(4) | No | Yes | No | No | No | No |
| section 201(3) | No | Yes | No | No | No | No |
| section 202(4) | No | Yes | No | No | No | No |
| section 206(1) | No | Yes | No | No | No | No |
| section 206(3) | No | Yes | No | No | No | No |
| section 206(3A) | No | Yes | No | No | No | No |
| section 206(4) | No | Yes | No | No | No | No |
| Schedule 20, paragraph 7 | No | Yes | No | No | No | No |

(a) 1986 c. 62.

(b) 1990 c. 43; section 33(6) was amended by the Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), regulations 73, 74(2), Schedule 21, Part 1, paragraphs 2, 4(1), (5) and Schedule 23; section 71(3) was amended by the Clean Neighbourhoods and Environment Act 2005 (c. 25), section 46(2)(b) and by the Environment Act 1995 (c. 25), sections 112, 120, Schedule 19, paragraph 4(2) and Schedule 24.

(c) 1991 c. 57; section 25(2)(b) was amended by the Water Act 2003 (c. 37) sections 2(1), (3), 101(2) and Schedule 9, Part 1; section 25C was inserted by the Water Act 2003 (c. 37), section 30; section 80(1) was amended by the Environment Act 1995 (c. 25), section 120, Schedule 22, paragraph 141(a); section 80(2) was amended by the Environment Act 1995 (c. 25), section 120, Schedule 22, paragraphs 141(b) and (c); section 161D was inserted by the Environment Act 1995 (c. 25), section 120, Schedule 22, paragraph 162; section 199(4) was amended by the Water Act 2003 (c. 37) sections 8(1) and 5(b); section 201(3) was substituted by the Water Act 2003 (c. 37) section 70; section 202(4) was amended by the Environment Act 1995 (c. 25), section 120, Schedule 22, paragraphs 128 and 172(1); section 206(1) was substituted by the Environment Act 1995 (c. 25), section 112, Schedule 19, paragraph 5(2) and was amended by the Water Act 2003 (c. 37) section 101(1), Schedule 7, Part 1, paragraphs 1 and 11; section 206(3A) was inserted by the Environment Act 1995 (c. 25) section 112, Schedule 19, paragraph 5(4); and Schedule 20, paragraph 7 was amended by the Environment Act 1995 (c. 25) section 120, Schedule 22, paragraph 188.

| Provision creating an offence | FMP | VMP | CN | RN | SN | EU |
|--|-----|-----|-----|-----|-----|-----|
| Water Industry Act 1991(a) | | | | | | |
| section 120(9) | Yes | Yes | Yes | Yes | No | Yes |
| section 130(7) | Yes | Yes | Yes | Yes | No | Yes |
| section 133(5) | No | Yes | No | Yes | No | No |
| section 135A(2)(a) | No | Yes | No | No | No | No |
| Deer Act 1991(b) | | | | | | |
| section 8(5) | Yes | Yes | No | No | Yes | Yes |
| Land Drainage Act 1991(c) | | | | | | |
| section 53(2) | No | Yes | No | No | No | No |
| section 64(6) | No | Yes | No | No | No | No |
| section 69(4) | No | Yes | No | No | No | No |
| Protection of Badgers Act 1992(d) | | | | | | |
| section 3 | Yes | Yes | Yes | Yes | Yes | Yes |
| section 10(8) | Yes | Yes | Yes | Yes | Yes | Yes |
| Environment Act 1995(e) | | | | | | |
| section 110(1) | No | Yes | No | No | No | No |
| section 110(2)(a) | No | Yes | No | No | No | No |
| section 110(2)(b) | No | Yes | No | No | No | No |
| section 110(2)(c) | No | Yes | No | No | No | No |
| section 110(3) | No | Yes | No | No | No | No |
| Water Act 2003(f) | | | | | | |
| Section 4(4) | No | Yes | No | No | No | No |

(a) 1991 c. 56; section 120(9) was substituted by the Environment Act 1995 (c. 25), section 120, Schedule 22, paragraph 105(4); section 130(7) was substituted by the Environment Act 1995 (c. 25), section 120, Schedule 22, paragraph 108(3); section 133(5) was substituted by the Environment Act 1995 (c. 25), section 120, Schedule 22, paragraph 111; and section 135A(2)(a) was inserted by the Environment Act 1995 (c. 25), section 120, Schedule 22, paragraph 113.

(b) 1991 c. 54; section 8(5) was amended by the Regulatory Reform (Deer) (England and Wales) Order 2007 (S.I. 2007/2183), articles 4(1) and (5).

(c) 1991 c. 59.

(d) 1992 c. 51.

(e) 1995 c. 25.

(f) 2003 c. 37.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008. It permits the Environment Agency and Natural England to impose civil sanctions in relation to the offences specified in Schedule 5 to the Order.

The civil sanctions are fixed monetary penalties, variable monetary penalties, compliance notices, restoration notices and stop notices, and enforcement undertakings (article 3).

The Order makes provision for the procedure relating to fixed monetary penalties (Schedule 1), variable monetary penalties, compliance notices, restoration notices and third party undertakings (Schedule 2), stop notices (Schedule 3) and enforcement undertakings (Schedule 4).

It permits the regulator to serve a non-compliance notice imposing a penalty in the event of non-compliance with a compliance notice, restoration notice or third party undertaking (article 7).

Under article 8 the regulator may serve an enforcement cost recovery notice in relation to investigation and administration costs incurred by the regulator, and the costs of the regulator in obtaining expert advice.

Article 10 sets out the appeal mechanism. Appeals are to the First-tier Tribunal.

Articles 11 to 13 provide that guidance must be prepared and consulted on relating to the use of civil sanctions, and article 14 provides for publication of information on enforcement action taken by the regulator.

Article 15 provides powers of entry for persons authorised by Natural England in relation to this Order (persons authorised by the Environment Agency have powers of entry under the Environment Act 1995 (c. 25)).

A full impact assessment has been prepared and placed in the libraries of both Houses of Parliament. It is available at www.defra.gov.uk.

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£5.50