

SCHEDULE 26

Regulation 39(6)

Enforcement undertakings

Enforcement undertakings

1.—(1) The Agency may accept an enforcement undertaking from a person in a case where the Agency has reasonable grounds to suspect that the person has committed any of the following offences in relation to a regulated facility or an exempt facility that has been or is being operated in England—

- (a) regulation 38(1) (contravening regulation 12(1) or knowingly causing or knowingly permitting the contravention of regulation 12(1)(a)),
- (b) regulation 38(2) (failing to comply with, or contravening, an environmental permit condition),
- (c) regulation 38(4)(a) (failing to comply with a notice under regulation 61(1) requiring the provision of information),
- (d) regulation 38(5)(a) (failing to comply with the record-keeping requirements in paragraph 17(3) or (4) of Schedule 2), or
- (e) regulation 38(6) (acts of third parties) so far as it relates to an offence listed in paragraphs (a) to (d).

(2) But paragraph (1) does not apply to an offence in relation to a flood risk activity.

(3) 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 given 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 the Agency 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, that person may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates.

General provisions on enforcement undertakings

4.—(1) The Agency must establish and publish the procedure for entering into an enforcement undertaking.

(2) The Agency must consult such persons as it considers appropriate before doing so.

(3) When it accepts an undertaking, the Agency may publish it in whatever manner it sees fit.

Discharge of an enforcement undertaking

5.—(1) If the Agency is satisfied that an enforcement undertaking has been complied with, it must issue a certificate to that effect.

(2) The Agency 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 Agency 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) The Agency 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 Agency may bring criminal proceedings for the offence in respect of the act or omission to which the undertaking relates.

(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 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 6 months from the date when the Agency notifies the person that such person has failed to comply with that undertaking.

Appeals

8.—(1) An appeal against a decision of the Agency under paragraph 5 is to the First-tier Tribunal.

(2) The Tribunal may—

(a) affirm the decision;

(b) quash the decision and remit it to the Agency.

Guidance as to use of enforcement undertakings

- 9.**—(1) The Agency must publish guidance about its use of enforcement undertakings.
- (2) The Agency must revise the guidance where appropriate.
- (3) The Agency must consult such persons as it considers appropriate before publishing any guidance or revised guidance.
- (4) The Agency must have regard to the guidance or revised guidance in exercising its functions.

Publication of enforcement undertakings

- 10.**—(1) The Agency must from time to time publish the cases in which an enforcement undertaking has been entered into.
- (2) This paragraph does not apply in cases where the Agency considers that publication would be inappropriate.