

Enforcement and prosecution policy

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Introduction

1. The Environment Agency's aim is to provide a better environment for England and Wales both for the present and for the future. It will achieve much of this through education, by providing advice and by regulating the activities of others. Securing compliance with legal regulatory requirements, using enforcement powers including prosecution, is an important part of achieving this aim.
2. The Environment Agency's functions are extensive. They include pollution control, waste regulation, the management of water resources, flood defence, fisheries, conservation and navigation. The activities dealt with range from the regulation of recreational pursuits to the most complicated industrial processes.
3. Environment Agency staff work with local government and other regulators on matters such as planning, air pollution, public health and occupational safety to ensure coherent regulation. They also work with many conservation bodies, voluntary groups and non governmental organisations in order to achieve common goals.
4. The Environment Agency regards prevention as better than cure. It offers information and advice to those it regulates and seeks to secure co-operation avoiding bureaucracy or excessive cost. It encourages individuals and businesses to put the environment first and to integrate good environmental practices into normal working methods.
5. This policy sets out the general principles which the Environment Agency intends to follow in relation to enforcement and prosecution. It is to be used in conjunction with more detailed specific guidance for staff in respect of each of the Environment Agency's functions. The implementation and effectiveness of the policy will be monitored by the Environment Agency. It also outlines the Environment Agency's policy in relation to the Regulators' Compliance Code.

Purpose and methods of enforcement

6. The purpose of enforcement is to ensure that preventative or remedial action is taken to protect the environment or to secure compliance with a regulatory system. The need for enforcement may stem from an unlicensed 'incident' or from a breach of the conditions of a licensed activity. Although the Environment Agency expects full voluntary compliance with relevant legislative requirements and licence provisions, it will not hesitate to use its enforcement powers where necessary.
7. The powers available include enforcement notices and works notices (where contravention can be prevented or needs to be remedied), prohibition notices (where there is an imminent risk of serious environmental damage), suspension or revocation of environmental licences¹, variation of licence conditions, injunctions and the carrying out of remedial works. Where the Environment Agency has carried out remedial works, it will seek to recover the full costs incurred from those responsible.
8. Where a criminal offence has been committed, in addition to any other enforcement action, the Environment Agency will consider instituting a prosecution, administering a caution or issuing a warning.

PRINCIPLES OF ENFORCEMENT

9. The Environment Agency is a designated regulator with specified functions in accordance with the Legislative and Regulatory Reform Act 2006. It must have regard to and take account of the provisions contained in the Regulators' Compliance Code made under that Act when devising and implementing regulatory policies. However those provisions do not apply directly at an individual case level.

The Code provisions may not be followed where they are not considered to be relevant or they are outweighed by other relevant factors. For instance:

- where it is necessary to respond immediately to either prevent or respond to a serious breach or incident.
- where following the provisions would defeat the purpose of the proposed enforcement action.
- where there are reasonable grounds to suspect the commission of a serious criminal offence, in particular where such offending would have a damaging effect on legitimate business and desirable regulatory outcomes.

Additional further circumstances are set out in the Functional Guidance.

10. The Environment Agency believes in firm but fair regulation. Underlying the policy of firm but fair regulation are the principles of; **proportionality** in the application of the law and in securing compliance; **consistency** of approach, **transparency** about how the Environment Agency operates and what those regulated may expect from the Environment Agency, and **targeting** of enforcement action.

Proportionality

11. In general, the concept of proportionality is included in much of the regulatory system through the balance of action to protect the environment against risks and costs.
12. Some incidents or breaches of regulatory requirements cause or have the potential to cause serious environmental damage. Others may interfere with people's enjoyment or rights, or the Environment Agency's ability to carry out its activities. The Environment Agency's first response is to prevent harm to the environment from occurring or continuing. The enforcement action taken by the Environment Agency will be proportionate to the risks posed to the environment and to the seriousness of any breach of the law.

Consistency

13. Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Environment Agency aims to achieve consistency in, advice tendered, the response to pollution and other incidents, the use of powers and decisions on whether to prosecute.
14. However, the Environment Agency recognises that consistency does not mean simple uniformity. Officers need to take account of many variables; the scale of environmental impact, the attitude and actions of management and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgement and the Environment Agency, through its officers, needs to exercise discretion. The Environment Agency will continue to develop arrangements to promote consistency including effective arrangements for liaison with other enforcing authorities.

Transparency

15. Transparency is important in maintaining public confidence in the Environment Agency's ability to regulate. It means helping those regulated and others, to understand what is expected of them and what they should expect from the Environment Agency. It also means making clear why an officer intends to, or has taken enforcement action.

- 16 Transparency is an integral part of the role of Environment Agency officers and the Environment Agency continues to train its staff and to develop its procedures to ensure that:
- where remedial action is required, it is clearly explained (in writing, if requested) why the action is necessary and when it must be carried out; a distinction being made between best practice advice and legal requirements.
 - opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to protect the environment or to prevent evidence being destroyed.
 - where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event.
 - written explanation is given of any rights of appeal against formal enforcement action at the time the action is taken.

Targeting

17. Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to or risk of serious environmental damage, where the risks are least well controlled or against deliberate or organised crime. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.
18. The Environment Agency has systems for prioritising regulatory effort. They include the response to complaints from the public about regulated activities, the assessment of the risks posed by a licence holder's operations and the gathering and acting on intelligence about illegal activity.
19. In the case of regulated industries, management actions are important. Repeated incidents or breaches of regulatory requirements which are related may be an indication of an unwillingness to change behaviour, or an inability to achieve sufficient control and may require a review of the regulatory requirements, the actions of the operator and additional investment. A relatively low hazard site or activity poorly managed has potential for greater risk to the environment than a higher hazard site or activity where proper control measures are in place. There are, however, high hazard sites (for example, nuclear installations, some major chemical plants or some waste disposal facilities) which will receive regular visits so that the Environment Agency can be sure that remote risks continue to be effectively managed. The Environment Agency will continue to develop models and tools to enable risks to be assessed and compared.

PROSECUTION

Purpose

20. The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing, to avoid a recurrence and to act as a deterrent to others. It follows that it may be appropriate to use prosecution in conjunction with other available enforcement tools, for example, a prohibition notice requiring the operation to stop until certain requirements are met. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.
21. The Environment Agency recognises that the institution of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. Decisions about prosecution will take account of the Code for Crown Prosecutors.

Sufficiency of Evidence

22. A prosecution will not be commenced or continued by the Environment Agency unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious it may be. Where there is sufficient evidence, a prosecution will not be commenced or continued by the Environment Agency unless it is in the public interest to do so. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender.

Public Interest Factors

23. The Environment Agency will consider the following factors in deciding whether or not to prosecute:
 - environmental effect of the offence,
 - foreseeability of the offence or the circumstances leading to it,
 - intent of the offender, individually and/or corporately,
 - history of offending,
 - attitude of the offender,
 - deterrent effect of a prosecution, on the offender and others.
 - personal circumstances of the offender
24. The factors are not exhaustive and those which apply will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The

Environment Agency will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

Companies and individuals

25. Criminal proceedings will be taken against those persons responsible for the offence. Where a company is involved, it will be usual practice to prosecute the company where the offence resulted from the company's activities. However, the Environment Agency will also consider any part played in the offence by the officers of the company, including directors, managers and the company secretary. Action may also be taken against such officers (as well as the company) where it can be shown that the offence was committed with their consent, was due to their neglect or they 'turned a blind eye' to the offence or the circumstances leading to it. In appropriate cases, the Environment Agency will consider seeking disqualification of directors under the Companies Act.

Choice of court

26. In cases of sufficient gravity, for example serious environmental damage over a wide area, where circumstances allow, consideration will be given to requesting the magistrates to refer the case to the Crown Court. The same factors as listed in paragraph 22 (above) will be used, but including consideration of the sentencing powers of the Magistrates' Court.

Penalties

27. The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Environment Agency will continue to raise the awareness of the courts to the gravity of many environmental offences and will encourage them to make full use of their powers. Examples of penalties presently available to the courts for certain environmental offences are:-
- Magistrates' Courts; up to 6 months imprisonment and/or £20,000 fine.
 - Crown Court: up to 5 years imprisonment and/or an unlimited fine.
28. The Environment Agency will always seek to recover the costs of investigation and court proceedings.

Presumption of prosecution

29. Where there is sufficient evidence, the Environment Agency will normally prosecute in any of the following circumstances:-
- incidents or breaches which have significant consequences for the environment or which have the potential for such consequences. The Environment Agency takes seriously such incidents or breaches.
 - carrying out operations without a relevant licence. It is a pre-requisite to successful regulation that those required to be regulated come within the appropriate licensing system.
 - excessive or persistent breaches of regulatory requirements in relation to the same licence or site.
 - failure to comply or to comply adequately with formal remedial requirements. It is unacceptable to ignore remedial requirements and unfair to those who do take action to comply.
 - reckless disregard for management or quality standards. It is in the interests of all that irresponsible operators are brought into compliance or cease operations.
 - failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information. It is essential that lawful requests for information by the Agency are complied with and that accurate information is always supplied to enable informed regulation to be exercised.
 - obstruction of Environment Agency staff in carrying out their powers. The Environment Agency regards the obstruction of, or assaults on, its staff while lawfully carrying out their duties as a serious matter.
 - impersonating Environment Agency staff. The Environment Agency regards impersonation of staff, for example, in order to gain access to premises wrongfully, as a serious matter.

Alternatives to prosecution

30. In cases where a prosecution is not the most appropriate course of action, the alternatives of a caution or warning will be considered, the choice depending on the factors referred to above.
31. A caution is the written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought. It will be brought to the court's attention if the offender is convicted of a subsequent offence.

32. A warning is a written notification that, in the Environment Agency's opinion, an offence has been committed. It will be recorded and may be referred to in subsequent proceedings.
33. As with a prosecution, additional enforcement mechanisms may also be used in conjunction with a caution or warning.

Working with other regulators

34. Where the Environment Agency and another enforcement body both have the power to prosecute, the Environment Agency will liaise with that other body, to ensure effective co-ordination, to avoid inconsistencies, and to ensure that any proceedings instituted are for the most appropriate offence.