

The Scottish Environment Protection Agency's Enforcement Policy

Introduction to enforcement policy

The purpose of this policy is to ensure that SEPA staff, those we regulate and other stakeholders are aware of the general intent and principles underpinning our approach to enforcement action.

Enforcement action is only one tool in a package of measures which SEPA can deploy, often in partnership with others, to achieve positive outcomes for Scotland's environment, economy and communities. Where there is non-compliance our experience is that most of those we regulate respond to our advice and guidance and come into compliance. Many are also increasingly recognising the value of compliance and good environmental practice in delivering outcomes not just for the environment but for their business and the communities they operate in. In view of this, **advice and guidance will continue to be our main route to securing compliance**. However, there will be circumstances where it is appropriate for us to take enforcement action. Where appropriate, we will also liaise with other authorities to ensure compliance and to play our part in combating wider criminality (e.g. Police, Crown Office and Procurator Fiscal Service, Health & Safety Executive, Local Authorities, Revenue Scotland, HM Revenue & Customs).

Our enforcement policy

Our statutory purpose is to protect and improve the environment (including managing natural resources in a sustainable way) and, so far as not inconsistent with that, to contribute to improving the health and wellbeing of people in Scotland, and achieving sustainable economic growth. Enforcement action will be carried out in that context as part of a broader, evidence-based approach to regulation.

The intent behind enforcement action we do take will be to:

- secure compliance and change the behaviour
- stop or reduce the risk of harm arising from the non-compliance to an acceptable level
- ensure restoration and remediation of the environment

The form of enforcement action, alone or in combination, which will be used will differ depending on the particular nature of the non-compliance, the harm caused and the history of the responsible person in question, including any wider criminality. We are therefore not restricted to taking the least formal enforcement action in the first instance.

We will also consider what immediate action is needed to protect the environment.

Given the focus on behaviour change we will place an emphasis not just on stopping the offending and securing compliance but also on deterring future non-compliance, including the removal of financial benefit gained from illegal activity.

Our approach to enforcement will be underpinned by the five principles of better regulation i.e. **proportionality, accountability, consistency, transparency and targeting** plus a sixth principle of taking a **timely** approach. These principles in the context of enforcement are

described in more detail in the appendix to this enforcement policy. Further detail of how we will use enforcement action is also set out in our **guidance on the use of enforcement action**.

This enforcement policy also aligns with the intent of the [Scottish Regulators' Strategic Code of Practice](#).¹

APPENDIX

Proportionality

We will normally seek to use a type of enforcement action that is proportionate to the significance of the offence, the level of environmental harm, the impact on communities or the level of financial benefit arising from the offending. We will apply the **Lord Advocate's Guidelines** when deciding whether it is appropriate for us to use fixed or variable monetary penalties or enforcement undertakings in response to non-compliance. For the most serious offending, we will normally submit a report to the Crown Office and Procurator Fiscal Service (COPFS) for consideration of prosecution.

Consistency

We aim to ensure there is a consistency of approach to enforcement by taking a consistent approach to decision making. However, because we consider the individual circumstances of each case when taking enforcement action, particularly where we are aiming to change behaviour, the enforcement action we take will depend on those case-specific circumstances. The enforcement action we take in relation to one operator in order to change their behaviour may be different to the enforcement action we take in relation to another operator.

Accountability

All enforcement decisions made by us are made with an appropriate level of oversight within the organisation. We will record decisions to take enforcement action and retain records of all enforcement action taken by us with the exception of advice and guidance. There are usually legislative arrangements in place for appeals against enforcement action taken by us. We are also accountable to government in respect of enforcement action taken by us.

Transparency

If we take enforcement action, we will specify in writing what the non-compliance is and, where appropriate, anything that needs to be done to achieve compliance, together with a timescale. We will also, where appropriate, explain the consequences of non-compliance, and any arrangements that are in place to appeal against our decision to take enforcement action. We will publicise where we use enforcement action with more significant consequences, such as successful prosecutions resulting from reports we make to COPFS, fixed and variable monetary penalties, and enforcement undertakings, where we are

¹ <http://gov.scot/Resource/0046/00467429.pdf>

permitted to do so. Where permitted, we may publicise the use of enforcement action in other circumstances to achieve specific outcomes.

Targeting

We will use different types of enforcement action, as part of an evidence-based and intelligence-led approach to regulation, to achieve positive outcomes related to the protection and improvement of the environment and the wellbeing of Scottish communities (including tackling wider criminality). Where enforcement action is required we will use the enforcement action(s) that is most appropriate at achieving these outcomes, without being restricted to less formal enforcement action in the first instance.

Timely Application

We will endeavour to take appropriate enforcement action at the earliest practicable time to respond to non-compliance or environmental harm before it becomes chronic or persistent or established as a behaviour and, where possible, to achieve a lasting solution. We will normally allow a short period of time to comply, but will not normally delay enforcement action while non-compliance continues.