Guidance: The Environmental Protection (Microbeads) (Wales) Regulations 2018

April 2018

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Introduction

It is estimated that around 12.2 million tonnes of plastic makes its way into the global oceans each year. Plastic pollution is one of the biggest challenges facing the marine environment today. Microbeads are one source of plastic pollution. These tiny pieces of plastic are added to products such as shower gels, toothpaste and face scrubs. They are washed down the drain and can end up in the marine environment. Microbeads are an avoidable source of plastic pollution, and in many cases natural alternatives are available.

The Environmental Protection (Microbeads) (Wales) Regulations 2018 was laid in the National Assembly for Wales on 18 May 2018 and the Statutory Instrument is available to view on www.legislation.gov.uk along with the accompanying explanatory memorandum. The ban will be introduced on 30 June 2018 and will include manufacture, sale and offer to supply.

The Environmental Protection (Microbeads) (Wales) Regulations 2018 is a piece of secondary legislation made under Section 140 of the Environmental Protection Act 1990 (EPA 1990). Civil sanctions are available to the Welsh Ministers by virtue of section 140 (9) of the EPA 1990 and sections 62(1) and paragraph 1 of Schedule 7 to the Regulatory Enforcement and Sanctions Act 2008 (RES Act 2008).

Welsh Ministers have designated Local Authorities as the Regulator and the provision has been made for the use of civil sanctions as an alternative to criminal sanctions.

This guidance document is issued by The Welsh Local Government Association, on behalf of Local Government in Wales, and concerns enforcement of the ban.

Scope

The Regulations make it an offence to:

- use microbeads in the manufacture of any rinse-off personal care product
- supply*, or offer to supply, any rinse-off personal care product containing microbeads

*Supply in relation to a rinse-off personal care product is defined as a means to supply by way of sale or its presentation as a promotional prize or gift in the course of a business.

Once the ban is in place it will be a criminal offence for anyone to manufacture, sell or offer to supply any rinse-off cosmetic or personal care products which contain plastic microbeads in Wales.

There are also some related offences, for example, it will be an offence to fail to comply with a stop notice or fail to provide certain information within a reasonable period of being requested in writing to do so.

The ban applies in Wales. There is similar legislation in place or planned for the rest of the UK.

Plastic is defined as a synthetic polymeric substance that can be moulded, extruded or physically manipulated into various solid forms and which retains its final manufactured shape during use in its intended applications.

A microbead is defined as a water-insoluble solid plastic particle of less than or equal to 5mm in any dimension.

The ban extends to all rinse off personal care products containing microbeads, regardless of the purpose for which they are added. It is not limited to microbeads added for exfoliating or cleansing purposes.

A rinse off personal care product means any substance, or mixture of substances, manufactured for the purpose of being applied to any relevant human body part in the course of any personal care treatment, by an application which entails at its completion the prompt and specific removal of the product (or any residue of the product) by washing or rinsing with water, rather than leaving it to wear off or wash off, or be absorbed or shed, in the course of time.

Rinse-off personal care products for the purpose of this ban include, but are not limited to: shower gels, body washes, liquid soaps, solid soaps, beaded hand cleaners, bath foams, bath bombs, face washes and cleansers, rinse-off face serums, make up removers, scrubs and exfoliators manufactured for use on the face, lips, hands, feet, or any other part of the body.

Also included are shaving gels, shaving creams, toothpaste, mouthwash, teeth whitening products, in-shower and rinse off fake tan products, depilatory creams and gels, hair bleaching creams, skin lightening creams and nail polish remover.

Using technical advice from industry, the following rinse off products (although within scope of the ban) are unlikely to contain microbeads: intimate washes, bath oils, shampoos, conditioners, conditioning mousses, hair masks, hair serums, hair dyes. Furthermore, leave on products such as face and/or body masks would fall outside of the scope of the regulation.

For further guidance in identifying a microbead see Annex 1.

Enforcement and Sanctions

Who is responsible for enforcement?

In Wales, Local Authorities are responsible for making sure that businesses comply with the ban on manufacture and sale of rinse-off personal care products containing plastic microbeads.

For the purpose of enforcement, the regulator is the Local Authority with responsibility for the location where the product was manufactured or supplied. The microbead ban is set out in secondary legislation under the Environmental Protection Act 1990. Subsequently, the provision of Primary Authority applies.

Where a business has entered a Primary Authority partnership with a single local authority (the 'primary authority'), they can obtain advice from their primary authority on complying with the requirements of the microbead ban, and this advice will be respected by all local authorities. The primary authority will be notified of any enforcement action under the microbead ban provisions that is proposed by a local authority against the business, and may 'block' an enforcement action that is inconsistent with advice that it has given the business. Further information on Primary Authority is available at https://www.gov.uk/government/publications/primary-authority-statutory-guidance

How can we investigate?

The regulator must investigate in accordance with the Regulations.

The regulator will also have regard to the Regulator's Code when exercising their responsibilities in this area. A copy of the Regulator's Code is available here – https://www.gov.uk/government/publications/regulators-code

When exercising powers of investigation, the regulator must also act in accordance with the codes of practice issued under Section 48 of the Protection of Freedoms Act 2012 and Section 66 of the Police and Criminal Evidence Act 1984.

It is suggested that the regulator may investigate:

- In response to a consumer complaint or referral from another Local Authority
- As a result of a referral or intelligence.

What actions could regulators take?

The regulator must work in accordance with the enforcement policy of the Local Authority they work for. In addition to the options listed in their Local Authority's enforcement policy, regulators are able to take the described actions or civil sanctions while enforcing the microbead ban. This guidance details the criminal and civil sanctions relevant to these Regulations.

The Regulations create a **criminal sanction** for non-compliance with the ban which can result in prosecution. As an alternative to prosecution **civil sanctions** can be imposed in response to unlawful activity. **Non-statutory options** are also available to the regulator. The regulator should give consideration to the recommendations given in the Regulator's Code when deciding which enforcement action to take.

Civil Sanctions available: Variable Monetary Penalties, Compliance Notices, Enforcement Undertakings and Stop Notices.

Non-compliance penalties are also available for use if compliance notices or third party undertakings (TPU) are not complied with.

For detailed enforcement and sanctions guidance see Annex 2.

For guidance on how we recover costs see Annex 3.

Help and advice

Please contact your local authority: https://www.gov.uk/find-local-council

Annex 1 – Identifying a Microbead

Microbeads are commonly produced from a range of compounds, many of which are also used legally in rinse-off products in formats that are not solid and/or are not water insoluble. Only solid, water-insoluble plastic particles are affected by the ban. Regulators may need to use a range of evidence to determine if a product contains or is likely to contain microbeads. The following suggestions of ways to identifying potentially non-compliant products are intended to be a guide for the regulator to use to assist their regulatory activities.

Consider likely problem countries of origin

Non-compliant products may enter the UK market following importation from other countries. The Regulations do not ban the importation of these products per se, but as the sale is banned, Local Authority Trading Standards (LATS) at borders should inform the LATS responsible for the destination of the goods as they may be able to prevent the sale of the products.

At the time of this guidance publication, the following countries are either implementing or in the process of implementing a similar ban; Canada, the United States of America, Australia, Taiwan, South Korea, New Zealand, Italy, India and a joint call for an EU wide ban by some EU nations.

As intelligence is gathered at the borders, the country of origin of imported non-compliant products could be circulated by the regulator to help raise awareness of the issue. This may also be done when specific products are identified.

Consider likely products

An extensive (but not exhaustive) list of personal care products which may contain microbeads is on page 3 of this document under ‘Scope’. From discussion with representatives of the cosmetics industry, we have been advised that face scrubs, shower gels and toothpastes will be key products to look out for. Glitter has also been highlighted as a substance which may be included in rinse-off personal care products. If glitter falls within the definition of a microbead and plastic given in the Regulations, it will also be included in the ban.

Visual test

As stated in the definition, a microbead is equal to or less than 5mm, although the majority are 1mm or less. Microbeads on the upper end of this scale may be visible to the naked eye. There may be a large number of microbeads in a product which

could give it a granular appearance. The colour of these particles should be considered; some natural exfoliators may be the same size and colour as microbeads which limits the usefulness of visual identification. In some cases, microbeads are bright colours, while natural exfoliators such as silica have a more neutral appearance. The visual check is limited by size as well as material. Microbeads may be present but too small to identify.

Feel test

A feel test will successfully identify microbeads. If the texture of the product between the fingers is not smooth, then it may be that microbeads are present. This technique is limited by the fact by solid particles of non-plastic materials may also be present.

Ingredient list

In some cases, an ingredient list will be a useful tool. Following the feel/visual test, the ingredients list is the next best source of information to determine whether any microbeads identified in the product are from non-plastic origin. For example, ingredients such as silica, clay, nut/seed/fruit kernels or extracts will be listed on the ingredients list, if microbeads from substances such as these are present.

An exhaustive list of all plastics used in rinse-off personal care products does not exist, but there are some ingredients which have been highlighted through engagement with the cosmetics industry. Polyethylene and polyethylene terephthalate are two plastic ingredients which microbeads may be made from. Considerations must be given to the state of the material. Due to available evidence, the scope of the ban is limited to solid plastic microbeads. Ingredients lists may indicate a plastic is present, but it must be both solid and water-insoluble to be included in the scope of the ban.

Product information file

The product information file will provide details of any microbead included in the product.

Chemical testing

Local Authorities should contact materials testing labs to determine the feasibility of testing samples for plastic. Where such tests are available they should be included in the fair use contract Trading Standards hold with individual labs so should not incur excess additional charges, although there may be a charge for the initial setting up the tests.

Annex 2 – Dealing with Non-compliance

Option 1 - Non-Statutory Approaches

The regulator may give a warning or provide advice to the business in question. A warning is a written notification that states that the regulator believes that an offence has been committed. This type of non-statutory option provides the offender with the opportunity to correct their actions without escalation to civil or criminal sanctions. Warnings may be given as:

- a warning letter; or
- a site warning that is normally issued on-site or otherwise as a result of a compliance visit to a permitted site or activity.

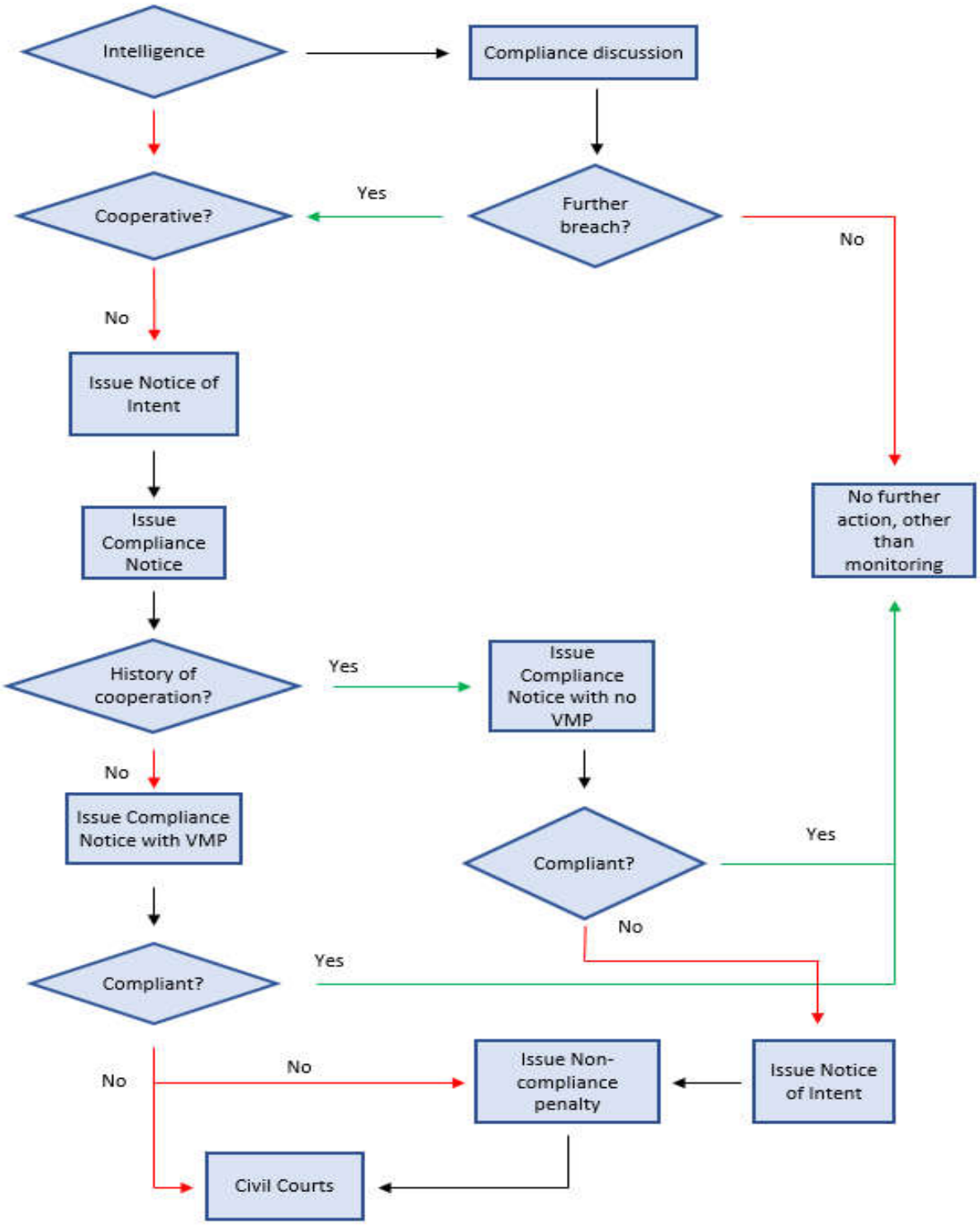
It will be recorded and may, in the event of further non-compliance, influence the subsequent choice of sanction.

Option 2 - Civil Sanctions

If the regulator considers a civil sanction to be the most appropriate approach they have the option of using Variable Monetary Penalties (VMPs), Compliance Notices (CNs), Stop Notices (SNs) or accepting Enforcement Undertakings.

Civil sanctions can be used alone or in combination. An outline of the options that the Regulator can take can be found in the below schematic.

Table 1: Schematic showing the possible civil sanctions which could apply.



Variable Monetary Penalties (VMP)

A VMP is a penalty fine which is used to remove illicit financial benefit achieved through gain or cost avoidance, and to deter future non-compliance. VMPs are proportionate monetary penalties which the regulator may impose for the cases of non-compliance where the regulator decides that prosecution is not in the public interest. They can be used as an alternative to prosecution if:

1. the offence is classed as medium
2. the offence is classed as significant but there are strong mitigating factors.

For a VMP to be used the standard of proof required is beyond reasonable doubt. A VMP may not be imposed on a person on more than one occasion in relation to the same act or omission.

Before serving a notice relating to a VMP on a person the regulator may require the person to provide information for the purpose of establishing the amount of any financial benefit arising as a result of that offence.

The level of the monetary penalty will be determined by the regulator, up to a maximum amount of £5000 for non-compliance with the ban, and a higher penalty, given the nature of the offence, of £20,000 for providing false or misleading information, or obstructing or failing to assist an enforcement officer.

Issue	Maximum Penalty Amount
Manufacture, supply or sale of rinse-off cosmetic or personal care product containing plastic microbeads.	£5,000
Failing to supply records relating to the manufacture, supply or sale of rinse-off cosmetic or personal care product containing plastic microbeads	£5,000
Giving false or misleading information to an enforcement officer	£20,000
Obstructing or failing to assist an enforcement officer.	£20,000

Table 2: Maximum variable monetary penalties

Protocol for serving a VMP

Regulator must first serve a notice of intent which must include:

1. the grounds for the VMP (including the offences which are believed to be committed)
2. the amount to be paid along with justification. The amount may not be more than 10% of the annual turnover of the business or higher than the maximum penalty amount (£5,000 or £20,000 depending on the offence).
3. the rights of the person to make representation and objections to the regulator within 28 days of the notice being received

4. the circumstances in which the regulator may not impose the VMP.

Once the 28 days allowed for representations and objections has passed the regulator must consider any that have been received and decide whether to proceed with notice unchanged, change the notice or proceed with any other requirement that the regulator has the power to impose.

When imposing the final notice, the regulator must be satisfied that the person would be convicted of the offence which the notice relates too, and may not impose a final notice if they are not.

The regulator must consider any third party undertakings it accepts when deciding whether to serve the final notice or not, and the amount of the VMP it imposes.

The final notice must include:

1. the grounds for imposing the penalty
2. the amount to be paid which may not be more than 10% of the annual turnover of the business or higher than the maximum penalty amount (£5,000 or £20,000 depending on the offence).
3. how payment may be made
4. the period within which payment must be made (which must not be less than 28 days)
5. the rights of appeal
6. consequences of failing to comply with the notice

When deciding the amount of the VMP the regulator should consider the following aggravating factors:

- The size of the business
- Scale of the offence
- The impact on the environment
- The level of financial benefit gained from the offence; and
- Any other relevant matters.

And the following mitigating factors:

- Preventative measures taken in advance of the offence
- Co-operation with the regulator
- Voluntary reporting of regulatory non-compliance
- Restoration undertaken
- Attitude to offence and prompt response
- Personal circumstances
- Other case-specific mitigating factors.

The grounds for appealing against the final notice are:

1. that the decision was based on an effort of fact
2. the decision was wrong in law

3. in the case of a variable monetary penalty, that the amount is unreasonable
4. the decision is unreasonable for any other reason
5. for any other reason.

Appeals against VMPs are made to the First-tier Tribunal. Appeals should be made so that they are received by the First-tier Tribunal within 28 days of the date on which the notice was served.

The notice is suspended during the appeal.

If a VMP is imposed, then the person may not at any time be convicted of the offence that the VMP relates to.

If an individual does not pay, they cannot be prosecuted for the original offence. Instead the debt can be recovered through the civil courts.

Compliance Notices

A Compliance Notice (CN) corrects a specific issue and tells a business the steps it must take to fix it. The notice must ensure that the offender takes action to stop the non-compliance, addresses the underlying causes and comes back into compliance. These are often used where previous advice or guidance to encourage compliance was not being followed and a formal notice is necessary to ensure compliance.

The notice is appropriate when the aim of enforcement is to secure future compliance and prevent harm to the environment. The regulator would be unlikely to use them for offences classified as technical or minor but may do so if its attempts at obtaining voluntary future compliance have been ignored. The regulator may consider their immediate use for offences classified as medium or significant.

The standard of proof require before a compliance notice can be served is beyond reasonable doubt.

If the business or person is uncooperative in informal discussions, a VMP may be issued alongside the CN.

Protocol for serving a CN

Regulator must first serve a notice of intent which must include:

1. the grounds for the proposed compliance notice (including the suspected offences)
2. actions required, why and by when
3. indicators of success
4. the circumstances in which the regulator may not serve a compliance notice
5. how to make representations and objections to the regulator
6. the opportunity to propose Enforcement Undertakings.

The person may make representations and objections to the regulator in relation to the proposed imposition of the compliance notice within 28 days beginning with the day on which the notice was received.

Once the 28 days allowed for representations and objections has passed the regulator must consider any that have been received and decide whether to proceed with notice unchanged, change the notice or proceed with any other requirement that the regulator has the power to impose.

When imposing the final notice, the regulator must be satisfied that the person would be convicted of the offence which the notice relates too, and may not impose a final notice if they are not.

The final notice must contain:

1. the grounds for imposing the penalty
2. the amount to be paid which may not be more than 10% of the annual turnover of the business or higher than the maximum penalty amount (£5,000 or £20,000 depending on the offence).
3. how payment may be made
4. the period within which payment must be made (which must not be less than 28 days)
5. the rights of appeal
6. consequences of failing to comply with the notice.

The grounds for appealing against the final notice are:

- that the decision was based on an error of fact
- that the decision was wrong in law
- in the case of a non-monetary requirement, that the nature of the requirement is unreasonable
- that the decision was unreasonable for any other reason
- any other reason.

Appeals against compliance notices are made to the First-tier Tribunal. Appeals should be made so that they are received by the First-tier Tribunal within 28 days of the date on which the notice was served.

A criminal prosecution may be pursued if:

1. a CN is imposed on a person and no VMP has been imposed
2. the person fails to comply with the CN.

The person is liable to be convicted of the offence for which the compliance notice was served.

Stop Notices

A Stop Notice (SN) is a notice prohibiting a person from carrying on the activity specified in the notice until the person has taken the steps outlined in the notice.

The regulator may issue a stop notice if it reasonably believes that:

1. The person is carrying on or is likely to carry on the activity
2. The activity being carried on or likely being carried on is or likely is causing or presents a significant risk of causing serious harm to the environment (including health of animals)
3. The activity as carried on by that person involves or is likely to involve the commission of an offence under regulation 3(1) or (2).

SNs are appropriate when the regulator reasonably believes that the person is likely to continue the activity and the aim of enforcement is to stop them. The regulator would be unlikely to issue SNs in response to technical or minor offences but will do so if all attempts at stopping an activity voluntarily have been exhausted. The immediate use of stop notices for offences classified as medium or significant should be considered. If an offence is classified as significant a prosecution is likely to accompany a SN.

A SN can be issued with any other civil sanction, and SNs can also be served in combination with steps leading to a criminal prosecution.

Protocol for serving a Stop Notice

There is no requirement to serve a notice of intent when serving a SN.

- A SN must include:

1. The grounds for serving the notice
2. The steps the person or business must take to comply with the notice
3. Associated rights of appeal
4. The consequences of non-compliance.

The recipient may decide to appeal. The grounds of an appeal are:

- that the decision was based on an error of fact
- that the decision was wrong in law
- that the decision was unreasonable
- that any step specified in the notice is unreasonable
- that the person has not committed the offence and would not have committed it had the notice not been served
- that the person would not by any reason of defence have been liable to be convicted of the offence had the SN not been served
- any other reason.

Appeals must be lodged to the First-tier Tribunal within 28 days of the notice being served.

SNs are not suspended during the appeal process.

Completion certificates must be issued by the regulator after the service of an SN if they are satisfied that the person has taken the steps specified in the notice.

Once a completion certificate has been issued the notice ceases to have effect.

The person who received the SN can apply for the completion certificate at any time.

The regulator must give a written notice of the decision of whether to issue a completion certificate within 14 days of receiving the request for the completion certificate.

If the regulator decides not to issue the completion certificate, then the person who made the application may appeal. Grounds of an appeal are:

- that the decision was based on an error of fact
- the decision was wrong in law
- the decision was unfair or unreasonable
- that the decision was wrong for any other reason.

There are also cases in which a person who is served the SN may be entitled to compensation for loss suffered as a result of the service of an SN or the refusal of a completion certificate.

These are when:

- the SN 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
- the person successfully appeals against the SN and the First-tier Tribunal finds that the service of the notice was unreasonable
- the person successfully appeals against the refusal of a completion certificate and the First-tier Tribunal finds that the refusal was unreasonable.

The person is also able to appeal against a decision not to award compensation or the amount of compensation awarded:

- on the grounds that the regulator’s decision was unreasonable
- on the grounds that the amount offered was based on incorrect facts
- for any other reason.

Non-compliance with an SN is an offence and the persons/business is liable to a summary conviction or conviction in indictment and the associate fine or imprisonment.

On summary conviction the person is liable to a fine or imprisonment for up to twelve months, or both. On conviction on indictment the person is liable to imprisonment for up to two years, a fine, or both.

Enforcement Undertakings

Enforcement Undertakings (EUs) are voluntary proposals presented to the enforcement agency as a means of making amends for non-compliance and its effects. If the regulator accepts the proposals, then a legally binding voluntary agreement is entered in between the regulator and the person who made the proposal. The regulator may accept EUs from a person in a case where the regulator has reasonable grounds to suspect that the person has committed an offence.

EUs provide an opportunity to recompense and, if completed, mean that the person can avoid civil or criminal sanctions for that particular case. They will only be accepted if there is reasonable belief that the terms will be delivered. They are unlikely to be accepted if another sanction is being considered or is underway. Once accepted the person cannot be convicted for the offence to which EU relates to, unless there is non-compliance with the EU. They cannot be served in combination VMP, CN or SN.

An EU must specify:

- the action required to ensure that the offence does not reoccur

or

- the action (including the payment of a sum of money) to benefit any person affected by the offence

or

- the action that will secure benefit to the environment equivalent to restoration of what has been or is likely to have been damaged or destroyed by the commission of the offence.

It must also:

- specify the period within which the action must be completed
- include a statement that the undertaking is made in accordance with the Statutory Instrument
- include the terms of the undertaking
- include information as to how and when the person giving that undertaking is to be considered to have discharged the undertaking.

The EU and its timeframe may be altered if both parties agree in writing.
Once the EU has been complied with the regulator must issue a certificate to confirm this.

If the regulator decides not to issue the completion certificate, then the person who made the application may appeal.

Grounds of an appeal are:

- that the decision was based on an error of fact
- the decision was wrong in law
- the decision was unfair or unreasonable
- that the decision was wrong for any other reason.

The notice is suspended during the appeal. Appeals are made to the First-tier Tribunal.

If the person does not comply with the EU then the regulator may serve a VMP, CN, non-compliance penalty or stop notice. The regulator may also begin criminal proceedings.

If a person partially complies then this must be considered by the regulator when considering the next sanction to impose.

If criminal proceedings are begun, then it must be started within 6 months of the date on which the regulator notified the person who offered the EU that they have failed to comply with it.

Non-Compliance Penalties

A Non-Compliance Penalty (NCP) is a fine that the regulator can impose when a business doesn't complete all of the steps required by a CN by the completion date. The NCP can be imposed even if a VMP was also imposed for the offence. NCP can be served where there are strong mitigating factors, as failure to comply with a compliance notice or TPU would usually lead to prosecution. NCPs are written notices issued by the regulator that imposes a monetary penalty. The payment of the NCP does not preclude the prosecution of the person or business for the original offence if the person continues their non-compliance, as even once a NCP has been served the TPU and CN are still outstanding.

The person who has been served the NCP does not have to pay if the steps required by the CN or TPU are completed within the time specified for paying the NCP.

The regulator determines the amount of the NCP. It may be up to 100% of the cost of fulfilling the requirements of the CN or TPU. If the notices have been partially complied with then the penalty will be reduced accordingly.

The NCP notice must include:

1. the grounds for imposing it
2. the amount to be paid
3. payment deadline (which must not be less than 28 days)
4. how to pay
5. consequences of failing to pay
6. rights of appeal
7. if appropriate: how payment can be avoided e.g. by a future deadline by which to comply with the original CN.

Appeals can be lodged if the person feels as though the amount is unreasonable. The grounds for appeal are:

- the decision to serve the notice was based on an error of fact
- the decision war wrong in law
- the decision was unfair or unreasonable for any reason
- the amount of the penalty was unreasonable
- any other reason.

If the penalty is not paid the regulator can recover the amount through the civil courts.

The notice is suspended during the appeal.

Option 3 - Criminal Sanctions

The sanction of prosecution is available to the regulator.

If it is decided that a criminal sanction is appropriate the case must be assessed in accordance with the requirements of the Code for Crown Prosecutors before commencing a prosecution.

A criminal sanction should only be pursued if the regulator believes that the circumstances of the offence warrant this response. A prosecution should be pursued if the person does not comply with the SN, CN or EU.

Criminal proceedings may not be brought if more than 3 years have elapsed since the commission of an offence under regulation 3. Information relating to an offence pursuant to regulation 3 must be tried within 12 months of it coming to the knowledge of the prosecutor.

The factors which must be considered when deciding on the type of sanction to carry out are vast. The circumstances of the offence should be considered, as should the outcome that is desired.

Listed are some factors to consider:

- Intent: an offence committed wilfully or due to gross negligence is more likely to result in prosecution than one committed by accident or genuine mistake. Those may be dealt with by warning, advice, guidance or a civil sanction
- foreseeability: not taking precautions to avoid a foreseeable breach is likely to result in a civil sanction rather than advice, guidance or a warning
- environmental effect
- nature of the offence
- financial implications
- deterrent effect
- previous history
- attitude of the offender

- personal circumstance
- Serious offences: when criminality, gross negligence or reckless behaviour or the seriousness of an offence makes it a topic which is of interest to the public then a prosecution will usually be pursued.
- minor breaches
- repeat offending
- failure to comply with a notice.

Annex 3 – Cost Recovery

How we recover our costs

The regulator can take action to recover the costs of imposing a VMP or CN including:

- investigation costs
- administration costs
- costs of obtaining expert advice (including legal advice).

When recovering costs, the regulator should send an ‘enforcement costs recovery notice’, which states:

- the grounds for the enforcement cost recovery notice
- how much the business must pay
- how to pay
- when to pay (which must not be less than 28 days)
- the businesses right of appeal
- the consequences of failure to pay by the due date.

The regulator must be able to provide a detailed breakdown of the costs. A business doesn’t have to pay those it can show to have been unnecessary.

Appeals against enforcement cost recovery notices may be made against:

- the decision of the regulator to impose the requirement to pay costs
- the decision of the regulator as to the amount of those costs
- any other reasons

Appeals are to be made to the First-tier tribunal. The notice will be suspended while an appeal is pending a decision.

How we recover payments

The regulator should recover VMPs and NCPs as if they were payable under a court order.

Contacts

Please consult your Local Authority for further advice and information.