

Consultation on applying Environment Act 2021 civil sanctions

Proposals to apply Environment Act 2021 civil sanctions

January 2025

We are the Environment Agency. We protect and improve the environment.

We help people and wildlife adapt to climate change and reduce its impacts, including flooding, drought, sea level rise and coastal erosion.

We improve the quality of our water, land and air by tackling pollution. We work with businesses to help them comply with environmental regulations. A healthy and diverse environment enhances people's lives and contributes to economic growth.

We can’t do this alone. We work as part of the Defra group (Department for Environment, Food & Rural Affairs), with the rest of government, local councils, businesses, civil society groups and local communities to create a better place for people and wildlife.

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# Background

The Environment Act 2021 introduced a new form of civil sanction for use in various new or amended regulatory regimes being addressed by the Act. These include regimes for which the Environment Agency is or will be the regulator, including:

* extended producer responsibility
* the deposit return scheme
* digital waste tracking
* hazardous waste
* international waste shipments

The new form of civil sanction is described in the Environment Act 2021 as being ‘a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008’ (RES Act). In contrast to RES Act civil sanctions, these new civil sanctions can be imposed in relation to a breach whether or not it is an offence, and the detailed requirements of the RES Act, such as the standard of proof, can be changed.

Packaging extended producer responsibility has been the subject of 4 public consultations, in 2019, 2021, 2022 and 2023, the last of these being a consultation on the draft regulations themselves, which include the new form of civil sanctions. Subsequently the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 were laid in Parliament on 24 October and came into force on 1 January 2025. We will need to be able to use these Environment Act 2021 civil sanctions and therefore need to amend our Enforcement and Sanctions Policy (ESP) to cover the new form of civil sanction for this purpose.

We are aware that draft regulations which include the new form of civil sanction are also under development in relation to the deposit return scheme and digital waste tracking. Defra consultations on these schemes took place in 2021 and 2022 respectively. We anticipate it will be necessary to revise the ESP again in relation to the use of civil sanctions in these other regimes as the new regulations are introduced.

In respect of introducing the new civil sanctions, a Defra spokesperson said:

“Through the Environment Act 2021, we introduced a range of new civil sanctions that will give the Environment Agency a greater range of options to help ensure maximum compliance with incoming environmental regulations, including extended producer responsibility for packaging. The new civil sanctions will aid the Environment Agency’s ability to secure compliance with environmental regulations and will enable it to take swift and proportionate enforcement action in response to non-compliance with regulatory requirements.”

# About this consultation

The consultation describes how the Environment Agency proposes to apply Environment Act 2021 civil sanctions when they become available in future waste regimes, for example the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024.

The new civil sanction powers introduced through the Environment Act 2021 are separate to the civil sanctions we impose and enforcement undertakings we accept or reject under the RES Act.

We will update our [Offence Response Options documents](https://www.gov.uk/government/publications/offence-response-options-environment-agency) to give clarity on all powers available for use following the introduction of new regulations enabling us to impose or accept Environment Act 2021 civil sanctions.

To implement these changes, we need to revise our published [ESP](https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/environment-agency-enforcement-and-sanctions-policy). We previously consulted on amendments to the ESP in [May 2024](https://www.gov.uk/government/consultations/enforcement-and-sanctions-policy-updates-to-include-uk-ets-and-corsia).

Our ESP details how we use our enforcement and sanctioning powers to secure compliance with laws that protect the environment. It covers the range of actions we can take when we identify that a breach or an offence has occurred.

These actions include:

* use of notices to stop illegal activity and restore and remediate any damage to the environment
* provision of advice and guidance
* use of warning letters
* provision of simple cautions
* civil penalties
* civil sanctions
* criminal prosecutions

We undertake outcome focused enforcement to achieve 4 outcomes:

1. Stop illegal activity from occurring or continuing.
2. Put right environmental harm or damage, also known as restoration or remediation.
3. Bring illegal activity under regulatory control, and so in compliance with the law.
4. Punish an offender and deter future offending by the offender and others.

**This will not change.**

Our regulatory principles will remain unchanged which are to:

* act proportionately
* have regard to the growth duty and only take enforcement action or impose a sanction when we need to and in a proportionate way
* be consistent
* be transparent
* target our enforcement action
* be accountable

Our penalty principles will remain unchanged which means when we carry out any enforcement activity we aim to:

* change the behaviour of the offender
* remove any financial gain or benefit arising from the breach or offence
* be responsive and consider what is appropriate for the particular offender and regulatory issue, including punishment and the public stigma that should be associated with a criminal conviction
* be proportionate to the nature of the breach and the harm caused
* take steps to ensure any harm or damage is restored
* deter future breaches by the offender and others

## What we are consulting on

This consultation focuses on the amendments we need to make to our ESP in relation to new civil sanction powers available to us following their introduction through the Environment Act 2021.

We want to add a new annex **(Annex 4)** to explain our approach to using these new civil sanction powers, particularly in relation to the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 which came into force on 1 January 2025. We will outline the new powers available and our proposed approach to using these powers. This includes an explanation of how we determine the most appropriate enforcement response where the breach is also a criminal offence; as well as our methodology for calculating Environment Act 2021 variable monetary penalties where applicable, and our approach to accepting or rejecting Environment Act 2021 enforcement undertakings. We will also outline the appeal process.

We have made minor amendments to our main enforcement and sanctions policy to enable the new Annex 4 to fit within it. We’re consulting to seek your views on our proposals. We will consider your feedback and use this to refine our proposals. We will then publish the consultation response document on the consultation page on GOV.UK. We will also publish the revised enforcement and sanctions documents on GOV.UK.

## What we are not consulting on

This consultation does not include any matters relating to Annex 1, Annex 2 or Annex 3 of the ESP.

We are not consulting on the principles of the main ESP itself which remain unchanged.

# The consultation

To help us when we come to analyse the consultation responses, we would like you to answer a few questions about you, or where relevant, about your organisation.

### Are you responding as an individual or on behalf of an organisation?

Please choose one of the following:

1. Individual response
2. Response on behalf of an organisation or group (for example, business, charity, not-for-profit organisation, trade association)
3. Other

If you chose b), what is the name of the organisation or group? For example, business, environmental group etc.

If you chose c) ‘other’, please explain your area of interest.

### What sector do you represent?

Please choose one of the following:

* Government and regulators
* Waste management
* Packaging
* Environment
* Business
* Industry
* Other

If you selected ‘other’, please tell us your sector.

### Please tell us how you found out about the consultation on applying Environment Act 2021 civil sanctions

* From the Environment Agency
* From another organisation
* Through the organisation you’re a member of
* Press article
* Through a trade association
* Other

If you selected ‘other’, please specify.

### We would like to keep you informed about the outcomes of this consultation. Would you like to receive emails acknowledging your response and telling you when we have published the summary of responses?

Please choose all of the following that apply:

* Yes, I would like to receive an email acknowledging my response
* Yes, I would like to receive an email to let me know the consultation response document is published
* No, I would not like to receive any emails regarding this consultation

If you selected ‘Yes’ please provide your email address.

## How we will use your information

After the consultation has closed, the Environment Agency will summarise responses in a consultation response document and make this publicly available on GOV.UK. We may include comments or quotes, unless you specifically request that we keep your response confidential.

We will not publish names of individuals or personal data, but we will publish the name of the organisation for those responses made on behalf of organisations.

We will not respond individually to responses. If you have asked to be notified, we will contact you to let you know when the consultation response document is published.

In accordance with the Freedom of Information Act 2000, we may be required to publish your response to this consultation but will not include any personal information. If you have requested your response to be kept confidential, we may still be required to provide a summary of it.

## Privacy notice

The Environment Agency would like to keep you informed about the outcomes of the consultation. If you would like to receive an email acknowledging your response and telling you when we’ve published the summary of responses, please provide your email address with your response.

By giving us your email address, you consent for us to email you about the consultation. We will keep your details until we have notified you of the response document publication. We will not share your details with any other third party without your clear and full consent unless required to do so by law.

You can withdraw your consent to receive these emails at any time by contacting us at: enquiries@environment-agency.gov.uk.

The Environment Agency is the data controller for the personal data you provide. For more information on how we deal with your personal data please see our [personal information charter](https://www.gov.uk/government/organisations/environment-agency/about/personal-information-charter) on GOV.UK.

You can email our Data Protection team: dataprotection@environment-agency.gov.uk.

### Can we publish your response? We will not include personal information.

This is a required question. Please select one of the following:

* Yes
* No

If you answered ‘No’, please tell us why as we will need to understand this when responding to any Freedom of Information requests.

## What Environment Act 2021 civil sanctions are available

We are introducing a new annex (**Annex 4**) to our ESP which outlines our new powers to use Environment Act 2021 civil sanctions and our proposed approach to using these powers. This includes an explanation of how we determine the most appropriate enforcement response where the breach is also a criminal offence; as well as our methodology for calculating Environment Act 2021 variable monetary penalties where applicable, and our approach to accepting or rejecting Environment Act 2021 enforcement undertakings. There is a particular focus on the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 which came into force on 1 January 2025.

### Question 1: Is it clear in Annex 4 of the enforcement and sanctions policy, what Environment Act 2021 civil sanctions are available to us?

* Strongly agree
* Agree
* Neither agree nor disagree
* Disagree
* Strongly disagree
* Prefer not to answer

Please explain your answer.

### Question 2: Is it clear in Annex 4 of the enforcement and sanctions policy, how we will use the Environment Act 2021 civil sanctions that are available to us?

* Strongly agree
* Agree
* Neither agree nor disagree
* Disagree
* Strongly disagree
* Prefer not to answer

Please explain your answer.

## How we calculate Environment Act 2021 variable monetary penalties

In **Annex 4, Section 2,** we explain how we will calculate Environment Act 2021 variable monetary penalties, using a stepped approach which is based on the steps in the [Sentencing Council’s Definitive Guideline for the Sentencing of Environmental Offences](https://www.sentencingcouncil.org.uk/publications/item/environmental-offences-definitive-guideline/) ‘the guideline’. We have adjusted the steps in the guideline so that they are appropriate for the calculation of Environment Act 2021 variable monetary penalties. We have closely aligned our approach with [Annex 2 (Climate change schemes – the Environment Agency’s approach to applying civil penalties).](https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/25ff081a-21dc-45a7-8b2d-8d3631f42de6)

### Question 3: Is our method for calculating Environment Act 2021 variable monetary penalties, including our approach to assessing aggravating and mitigating factors together in Step 3, clear?

* Strongly agree
* Agree
* Neither agree nor disagree
* Disagree
* Strongly disagree
* Prefer not to answer

Please explain your answer.

### Question 4: Is our method for calculating Environment Act 2021 variable monetary penalties, including our approach to assessing aggravating and mitigating factors together in Step 3, reasonable?

* Strongly agree
* Agree
* Neither agree nor disagree
* Disagree
* Strongly disagree
* Prefer not to answer

Please explain your answer.

### Question 5: Do you think our approach to calculating Environment Act 2021 variable monetary penalties, will enable us to issue proportionate and fair variable monetary penalties?

1. Strongly agree
2. Agree
3. Neither agree nor disagree
4. Disagree
5. Strongly disagree
6. Prefer not to answer

Please explain your answer.

## How we consider and decide whether to accept an Environment Act 2021 enforcement undertaking

In **Annex 4, Section 3**, we have explained our approach to assessing offers of Environment Act 2021 enforcement undertakings, and our approach to accepting or rejecting such offers.

### Question 6: Is our approach to considering and accepting or rejecting an Environment Act 2021 enforcement undertaking clear?

* Strongly agree
* Agree
* Neither agree nor disagree
* Disagree
* Strongly disagree
* Prefer not to answer

Please explain your answer.

### Question 7: Do you think our approach enables us to consider whether to accept or reject an Environment Act 2021 enforcement undertaking in a fair and proportionate manner?

* Strongly agree
* Agree
* Neither agree nor disagree
* Disagree
* Strongly disagree
* Prefer not to answer

Please explain your answer.

# Responding to this consultation

### Important dates

This consultation will open on **8 January 2025** and close at **11:59pm on the 5 March 2025**

## How to respond

You can view the [consultation documents and questions online on Citizen Space](https://consult.environment-agency.gov.uk/environment-and-business/applying-environment-act-2021-civil-sanctions/), which is the Environment Agency’s consultation website.

### Respond online

We encourage you to submit your response on Citizen Space, as it helps us to:

* gather all responses in one place
* summarise responses quickly and accurately
* reduce the cost of the consultation

### Respond by email

If you prefer, you can submit your response by email using the response form, which you can find under the ‘Related’ section of the consultation on Citizen Space.

Please email your response form with the subject header of ‘Consultation on applying Environment Act 2021 civil sanctions’ to enquiries@environment-agency.gov.uk.

### Respond by post

If you prefer, you can submit your response by post using the Response form, which you can find under the ‘Related’ section of the consultation on Citizen Space.

Please send your response form to:

Environment Agency

Consultation on applying Environment Act 2021 civil sanctions

National Customer Contact Centre

PO Box 544

Rotherham

S60 1BY

### Ask for a printed version of the consultation document

Please contact us if you need a printed version of the document to be posted to you.

National Customer Contact Centre

Telephone: 03708 506 506

Minicom for the hard of hearing: 03702 422 549

Monday to Friday, 8am to 6pm

**Publishing our consultation response**

We aim to publish our response to the consultation on GOV.UK within 12 weeks of this consultation closing and before we implement any changes. A link to this document will be added to the consultation page of Citizen Space.

## Consultation principles

We’re running this consultation in line with the guidance set out in the government's [consultation principles.](https://www.gov.uk/government/publications/consultation-principles-guidance)

If you have any queries or complaints about the way this consultation has been carried out (the process), please email consultations.enquiries@environment-agency.gov.uk.

Otherwise, for all other queries relating to this consultation please email enquiries@environment-agency.gov.uk.