

Consultation on applying Environment Act 2021 civil sanctions

Proposals to apply Environment Act 2021 civil sanctions

Consultation response document

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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**Introduction**

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 four 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.

**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.

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).

We are interested to hear whether you think our proposals to apply Environment Act 2021 civil sanctions are clear including the new powers available and our proposed approach to using them. We’re seeking you views on our proposed method of calculating Environment Act 2021 Variable Monetary Penalties (VMPs), particularly if the method is clear and reasonable. We’re also interesting to obtain your view on if the approach enables us to issue proportionate and fair Environment Act 2021 VMPs.

The consultation also seeks your view on our proposed approach to deciding whether to accept or reject an Environment Act 2021 Enforcement Undertaking (EU). We want to know if you think our approach is clear and if it enables us to consider accepting or rejecting and Environment Act 2021 EU in a fair and proportionate manner.

**The background information you need to complete this consultation is included in our consultation document. We refer you to specific sections for each question.**

You can view the consultation document, questions and all supporting documents below on our online consultation tool, [Citizen Space](https://consult.environment-agency.gov.uk/environment-and-business/applying-environment-act-2021-civil-sanctions):

* Consultation document on applying Environment Act 2021 civil sanctions
* Proposed Annex 4 of our enforcement and sanctions policy
* Revised Enforcement and Sanctions policy

**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.

**Responding to this consultation**

This consultation will run for 8 weeks from 8 January 2025 until 11:59pm on 5 March 2025.

Please refer to specified sections of the consultation document for full details of each proposal. Where relevant, use free text boxes to provide additional information explaining your answer.

**Please use this form if you are responding by email or post rather than online.** To return your completed response, please email this form to enquiries@environment-agency.gov.uk using the heading ‘Consultation on applying Environment Act 2021 civil sanctions’.

Or by post to:

Environment Agency

Consultation on applying Environment Act 2021 civil sanctions

National Customer Contact Centre

PO Box 544

Rotherham

S60 1BY

**The consultation will close at 11:59 on 5 March 2025.** We will consider all responses received by this date before finalising our proposals.

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

Please contact us if you need a copy of the consultation document sent to you. You can do this by contacting our National Customer Contact Centre:

* email: enquiries@environment-agency.gov.uk
* telephone: 03708 506 506 (Monday to Friday, 8am to 6pm)
* post:

Environment Agency

Consultation on applying Environment Act 2021 civil sanctions

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PO Box 544

Rotherham

S60 1BY

 **Consultation principles**

We’re running this consultation in accordance with the guidance set out in the government's [Consultation Principles](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf).

If you have any complaints about the way this consultation has been carried out (the process), please email consultation.enquiries@environment-agency.gov.uk. Otherwise, for all other queries relating to this consultation please email: enquiries@environment-agency.gov.uk

**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 or group?**

Please choose one of the following:

[ ]  (a) responding as an individual

[ ]  (b) responding on behalf of an organisation or group (for example a business, charity, not-for-profit organisation, trade association)

[ ]  (c) other

 If you chose (b) what is the name of the organisation, group or trade association?

 If you chose (c) please explain your area of interest.

**What sector do you represent?**

Please choose one of the following:

[ ]  Government & regulators

[ ]  Waste management

[ ]  Packaging

[ ]  Environment

[ ]  Business

[ ]  Industry

[ ]  other

If you selected 'other' please specify. **Please tell us how you found out about the consultation on applying Environment Act 2021 civil sanctions**

Please choose one of the following:

[ ]  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.

 **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.

**Please answer the following questions.**

**Privacy notice**

The Environment Agency would like to keep you informed about the outcomes of this consultation.

**If you would like to receive emails acknowledging your response and or telling you when we have published the summary of responses, please tick the relevant boxes below.**

[ ]  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 have ticked any of the above, please tell us your email address:**

Email:

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 explicit consent unless required to by law.

You can withdraw your consent to receive these email as 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 further 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 also email our Data Protection team: dataprotection@environment-agency.gov.uk.

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

In line 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 is kept confidential, we may still be required to provide a summary of it. For more information see our [Personal Information Charter](https://www.gov.uk/government/organisations/environment-agency/about/personal-information-charter). <https://www.gov.uk/government/organisations/environment-agency/about/personal-information-charter>.

This is a **required question**, please tick one of the following:

[ ]  yes

[ ]  no

If you answered *no*, please tell us why below as we will need to understand this when responding to any Freedom of Information requests.

**Applying Environment Act 2021 civil sanctions**

Please refer to the consultation document for full details of these proposals.

**What Environment Act 2021 civil sanctions are available**

*Please refer to the section of the consultation document called ‘what Environment Act 2021 civil sanctions are available’.*

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

Please choose one of the following:

[ ]  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?**

Please choose one of the following:

[ ]  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**

*Please refer to the section of the consultation document called ‘How we calculate Environment Act 2021 variable monetary penalties’.*

**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?**

Please choose one of the following:

[ ]  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?**

Please choose one of the following:

[ ]  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?**

[ ]  Strongly agree

[ ]  Agree

[ ]  Neither agree nor disagree

[ ]  Disagree

[ ]  Strongly disagree

[ ]  Prefer not to answer

Please explain your answer.

**How we consider and decide whether to accept an Environment Act 2021 enforcement undertaking***Please refer to the section of the consultation document called ‘How we consider and decide whether to accept an Environment Act 2021 enforcement undertaking’.*

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

Please choose one of the following:

[ ]  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?**

Please choose one of the following:

[ ]  Strongly agree

[ ]  Agree

[ ]  Neither agree nor disagree

[ ]  Disagree

[ ]  Strongly disagree

[ ]  Prefer not to answer

Please explain your answer.

**End of consultation**

**Publishing our consultation response**

We aim to publish a response to this consultation on GOV.UK within 12 weeks of the closing date and before we implement any changes. A link to our consultation response document will be added the consultation page of Citizen Space. We will also circulate the link to our response to all consultees and other interested parties who asked to be kept informed.

# **Would you like to find out more about us or your environment?**

Then call us on

03708 506 506 (Monday to Friday, 8am to 6pm)

Email: enquiries@environment-agency.gov.uk

Or visit our website

[www.gov.uk/environment-agency](https://www.gov.uk/environment-agency)

## **incident hotline**

0800 807060 **(24 hours)**

## **floodline**

0345 988 1188 **(24 hours)**

Find out about call charges (<https://www.gov.uk/call-charges>)

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