**Annex 4: Environment Act 2021 – the Environment Agency's approach to applying civil sanctions and accepting enforcement undertakings**

**1. Environment Act 2021 civil sanctions**

Civil sanctions may be imposed for breaches of legal requirements under some of the waste and resource efficiency regulatory regimes, pursuant to the Environment Act 2021.

The civil sanctions in the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 (referred to as pEPR or the pEPR regime - extended producer responsibility for packaging) came into force on 1 January 2025. Other obligations under the Environment Act 2021 will fall within the scope of this annex as they come into force. Sometimes the breach is also a criminal offence, but not always. Find the full list of every breach and offence we regulate and the enforcement action available to us in the [offence response options](https://www.gov.uk/government/publications/offence-response-options-environment-agency) document.

Where we have the power to impose a civil sanction in relation to the breach of a requirement or prohibition, and the breach of that same requirement or prohibition is also described in the legislation as an offence and subject to criminal sanctions, we will assess the nature and circumstances of the breach to determine the most appropriate enforcement response. Our usual approach will be to seek to make use of the powers we have to apply civil sanctions, to reflect the intention of the legislation in providing civil sanction powers. We will reserve criminal prosecution for conduct which has particularly reprehensible elements, such as fraud, bad faith, misleading statements or conduct.

In deciding whether and what type of civil sanction to impose in relation to pEPR, we will consider the impact the breach has on the integrity of the pEPR regulatory framework. This means the trust in, transparency, reliability and effectiveness of the pEPR regulatory framework. It may include consideration of the length of time a person has been required to comply with the law.

Maintaining the integrity of the pEPR regulatory framework plays a vital part in reducing the UK’s contribution to climate change, promoting green growth, driving down the generation of packaging waste, increasing the recycling of packaging waste, and encouraging the use of more environmentally sustainable packaging and packaging that is easier to recycle. pEPR seeks to achieve these key goals by placing full financial responsibility on producers for the end of life costs of packaging.

Where we determine that a civil sanction is appropriate, we must be satisfied on the balance probabilities that a breach has occurred before we impose a civil sanction. We will make sure that the recipient of a notice of intent understands the case against them. We will set out the alleged breach and the reasons for the proposed penalty.

When we impose a civil sanction, the notice will include the date by which the penalty must be paid. If we consider it appropriate to do so, we may extend the time for payment.

The following explains where we would normally use or accept Environment Act 2021 civil sanctions. The examples are not exhaustive.

* 1. **Fixed monetary penalties (civil standard)**

The fixed monetary penalty in pEPR is £1000. If the penalty is not paid (and an appeal is not made) within 56 days of receipt of the final notice, the amount of the penalty is increased by 50%.

In relation to pEPR, we will normally issue fixed monetary penalties for breaches such as:

* where reprocessors or exporters fail to report the information at paragraphs 20 or 21 of Schedule 8 of the Regulations in accordance with regulation 91
* where producers fail to keep the records and evidence specified in regulation 34, in accordance with regulation 25
* where a person fails to maintain records and supply information when served with an information notice under regulation 110.

**1. 2 Variable monetary penalties (civil standard)**

We may issue variable monetary penalties for more serious breaches, including:

* for more serious breaches with greater culpability and which may undermine the regulatory regime
* to remove an identifiable financial gain or saving as a result of the breach.

Read **Section 2** below to find out how we calculate a variable monetary penalty.

In relation to pEPR, we will normally consider issuing a variable monetary penalty where a producer or compliance scheme breaches obligations under regulations 25 or 43, to:

* register as a producer
* report packaging data
* recycle packaging waste
* keep evidence of consumer waste
* furnish a certificate of compliance
* assess the recyclability of household packaging
* keep records of recyclability assessments
* report the results of the recyclability assessments

Full and timely compliance with these obligations is essential to the integrity of the pEPR regime.

We may also consider issuing a variable monetary penalty where a reprocessor or exporter breaches its conditions of accreditation and/or registration. (This could be in addition to cancellation of a registration or cancellation and/or suspension of an accreditation).

**1.3 Compliance notices**

We may issue a compliance notice where we:

* require the person to take action to be compliant, for example, where an individual or business has regularly submitted data returns as required but stops doing so; or
* have given advice and guidance, it has not been followed and improvements have not been made.

We may issue a compliance notice in conjunction with a variable monetary penalty or fixed monetary penalty.

**1.4 Enforcement undertakings**

An enforcement undertaking is a voluntary offer to put right the effects of a breach, its impact on third parties and to make sure it cannot happen again. The Environment Agency must have reasonable grounds to suspect that a person has contravened a requirement. If an enforcement undertaking is offered it is not an admission of liability for any breach to which it relates. If we accept the offer it becomes a legally binding agreement between us and the person who makes the offer. If the person complies with the undertaking then:

* we cannot prosecute or impose a civil sanction for the corresponding breach or offence
* the person will not get a criminal record or have to pay a penalty, but we will publish details about the offer on the GOV.UK website and it may be included in the public register, where required.

The offer needs to include some form of environmental benefit or improvement, such as the prevention of littering, or an increase in the reuse and recycling of packaging and may include the payment of a sum of money to a third party.

The offeror must also state the action it will take to ensure future compliance, for example investing in an environmental management system or packaging and packaging waste data systems.

Read **Section 3** below for more information, including what we expect an offer to include and how we decide whether to accept it.

**1.5 Enforcement cost recovery notices**

We will always try to recover the money we have spent on work connected with imposing a civil sanction. We can serve an enforcement cost recovery notice which will require the person to pay the actual cost to the Environment Agency. If the person is unable to pay the amount due for the civil sanction and the enforcement cost recovery notice, we may reduce the sanction but are unlikely to reduce the enforcement cost recovery notice. This is because we have a duty to protect public money.

We cannot serve an enforcement cost recovery notice with a fixed monetary penalty. We would also expect cost recovery to be offered as part of an EU.

**2. Variable monetary penalties (civil standard)**

We use a stepped approach to calculate the variable monetary penalty, 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/) (referred to as the ‘guideline’). The guideline explains how a court should assess a suitable penalty for an environmental offence. It follows a stepped approach. It applies to individual offenders (aged 18 and over) and organisations. We use a similar stepped approach to calculate a variable monetary penalty.

We have adjusted the steps in the guideline so that they are appropriate for the calculation of Environment Act 2021 variable monetary penalties, as a number of the steps in the guideline are only relevant to criminal offences. Once we have determined the breach category (step 1) and starting point and category range (step 2), we will consider whether there are any aggravating and mitigating factors which should result in the starting point penalty being adjusted up or down (these are set out in step 3).

The starting point for the most serious, deliberate offence by a large organisation is £1 million (within a range of between £450,000 to £3 million) – that is the top of the tariff scale.

Under Environment Act 2021 civil sanctions, we may impose a variable monetary penalty up to an unlimited amount. We believe it is appropriate for us to consider the levels of penalties and guidance issued by the courts when they sentence environmental offences.

We may treat very large organisations under the guideline in a class of their own. This is in line with the guideline and how the courts deal with fines for very large organisations. An example of this is the judgment in the case [R v Thames Water Utilities Limited (2015) EWCA Crim 960](http://www.bailii.org/ew/cases/EWCA/Crim/2015/960.html) where the court held that applying a mechanistic increase or reduction is not considered helpful.

Some helpful guidance has been provided in the landmark case of R v Southern Water Services Limited in July 2021. We will consider the approach and guidance set out in these and other cases, particularly decisions of the Court of Appeal and the Supreme Court on sentencing very large organisations.

**Step 1: determining the breach category**

We will use culpability (blame) and harm factors when we work out the category of breach.

We will use the definitions in the guideline to assess culpability.

We will use the categories of harm in the guideline, but where appropriate we will substitute harm to the integrity of the regulatory regime rather than to the environment.

Together the culpability and harm factors indicate how serious the breach is. We will use the result to identify our starting point and category range when we assess the appropriate penalty.

**Step 2: starting point and category range**

When we calculate a variable monetary penalty we will assess the size of the organisation, by turnover or equivalent. If the non-compliant person is an individual, we will assess turnover or income, whichever is appropriate.

By the end of step 2 we will have identified our starting point and category range.

**Step 3: set the final penalty amount**

In step 3 we may adjust the penalty from the starting point within the penalty range by assessing the following aggravating and mitigating factors, to ensure the penalty as a whole is fair and proportionate.

These are the factors we will assess:

* financial gain – whether or not a profit has been made or costs avoided as a result of the breach
* history of non-compliance – includes the number, nature and time elapsed since the previous non-compliance
* attitude of the non-compliant person – the person’s reaction, including co-operation, self-reporting, acceptance of responsibility, exemplary conduct and steps taken to remedy the problem
* personal circumstances – including financial circumstances (such as profit relative to turnover), economic impact and ability to pay (only if sufficient evidence is provided); also for a public body whether the proposed penalty would have a significant impact on the provision of its service (only if sufficient evidence is provided)
* any other relevant factors that may warrant adjustment.

These factors differ to those listed in the guideline. We have selected applicable factors from the list. We have also taken factors from other steps in the guideline. We have then adjusted and simplified them so they are relevant to the regimes under which we can impose Environment Act 2021 civil sanctions.

We will normally adjust a penalty within the range but, in some circumstances, it may be appropriate to move outside the identified category range.

At the end of step 3 we will have calculated the final penalty amount.

**3. Enforcement undertakings**

**3.1 When the Environment Agency will accept an offer**

We are more likely to accept offers when they are offered early and proactively.

Generally, we will only consider accepting an enforcement undertaking offer when:

* we are confident the terms of the enforcement undertaking will be complied with
* we believe a breach of relevant legislation has occurred
* we consider the enforcement undertaking to be the correct regulatory outcome taking into account:
	+ the nature of the breach and its impact
	+ other forms of enforcement available, to remedy the issues concerned – but we will retain our discretion to accept offers which may be exceptional or otherwise desirable in the public interest
* the offer is above what the company would normally need to do to comply
* the offer is given in good faith
* the offeror makes a positive commitment, at the right company level to stop the non-compliant conduct or alleged breach and to maintain compliance
* the offeror rectifies the consequences of the conduct
* the offer does not contain restrictions on how we may publish its acceptance and it is shown that any necessary action has started or will start at the earliest opportunity.

**3.2 When the Environment Agency will not accept an offer**

We will not normally accept an offer:

* for a breach we consider to have caused:
	+ category 1 harm, unless there is, at most, low culpability
	+ category 2 harm, unless there is, at most, negligence
* where the breach was intentional, however we will not rule it out, as we will always apply discretion
* where we have already decided that a prosecution is appropriate in the public interest
* made after issue of a variable monetary penalty notice of intent.

We will not normally accept an enforcement undertaking offer if it contains:

* a clause denying liability
* any clause that sets up defences for possible breach of an enforcement undertaking.

**3.3 How the Environment Agency secures consistency when assessing offers**

We will establish that:

* the offer includes reasonable payment to cover our costs for the time spent on the breach and assessing the offer – this meets the ‘polluter pays’ principle
* a payment made to a project the Environment Agency is involved with does not contribute to funding its core activity
* the offer of payment to a third party is an unrestricted offer with no benefit to the offeror
* the offer of payment to a third party secures a benefit or improvement to the environment, such as the prevention of littering, or an increase in the reuse and recycling of packaging
* the action in the offer secures a benefit or improvement to the environment, such as the prevention of littering, or an increase in the reuse and recycling of packaging, for example, it is for a relevant charity or to address the actual impact
* an offer to a local authority contains no financial contribution to their core activities.

An offeror may pay the offer in instalments. We will consider the request if the offeror can give evidence of their inability to pay it outright – such as certified accounts or records.

**3.4 When the offer is accepted**

Once an offer has been accepted, it becomes a legally binding written agreement between the offeror and the Environment Agency.

**3.5 Failure to comply with an enforcement undertaking**

If an offeror fails to comply, either fully or in part, with an enforcement undertaking, we are likely to do one of the following:

* serve a variable monetary penalty or compliance notice on the offeror
* prosecute for the offence
* vary or extend the time for complying with an enforcement undertaking, but only in exceptional circumstances.

**4. Appeals against Environment Act 2021 civil sanctions**

Where we can impose an Environment Act 2021 civil sanction our notices will set out rights of appeal. There is guidance on [how to appeal to a tribunal against a fine or notice for an environmental offence](https://www.gov.uk/guidance/environmental-fines-or-notices-appeal-against-a-regulator).

The grounds of appeal against the imposition of a civil sanction, or in the case of an Enforcement Undertaking the decision not to issue a certificate of compliance, are set out in the table below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Ground of appeal** | **FMP** | **VMP** | **CN** | **EU** |
| Decision was based on an error of fact | Yes | Yes | Yes | Yes |
| Decision was wrong in law  | Yes | Yes | Yes | Yes |
| Decision was unreasonable  | Yes | Yes | Yes | Yes |
| Amount is unreasonable  | No | Yes | No | No |
| Nature of the requirement is unreasonable | No | No | Yes  | No |
| Wrong for any other reason  | No | No | No | Yes |

In relation to an enforcement cost recovery notice, the person required to pay costs may appeal:

* + against the decision to impose the requirement to pay costs or
	+ against the decision as to the amount of those costs.