

EA Blessed With New Civil Sanctions

It is not a pleasant experience being the subject of a criminal investigation, and facing prosecution in the criminal courts. Many hold the view that the process can be a disproportionate and unnecessary response especially when used in relation to technical breaches of legislation, where little or no harm has in fact been caused. Yet, for decades those who pass our laws have included the sanction of criminal prosecution for those failing to meet regulatory requirements.

Traditionally, regulators have had limited enforcement options available to them following a breach of the law, and there has been a tendency to overuse the criminal courts. However, after many years of debate, in 2008 the Regulatory Enforcement and Sanctions Act reached the statute books enabling regulators to seek a wider choice of sanctions designed to achieve a more proportionate response to established breaches.

The Environment Agency was one of the first regulators to be granted these powers and, from the 4th January 2011, the Environment Agency now has at its disposal a new range of civil sanctions which complement its other enforcement tools.

In brief terms the new powers include:
 Fixed Monetary Penalties (FMPs)
 Set at £300 for businesses and £100 for individuals, with discounts for prompt payment, FPNs are likely to be used where only minor or no direct environmental impact has been caused by an offence.

Variable Monetary Penalties (VMPs)

VMPs – available in sums up to £250,000 per offence - are available for more serious offences either to punish the offender or to remove an identifiable financial gain or saving resulting from the non-compliance.

Compliance Notices

These require the offender to return to a state of legal compliance. They will ordinarily be used where advice or requests to meet applicable requirements have not produced the desired result and a formal notice is thought appropriate.

Restoration Notices

These require the offender to take steps to put right any damage caused as a result of non-compliance.

Stop notices

Stop notices require a business to immediately cease (or not to start) an activity that is causing, or presents a significant risk of causing, serious harm to human health or the environment and where an offence is being, or is likely to be, committed.

Enforcement undertakings

Enforcement undertakings are binding agreements voluntarily made between the business and the EA for the business to undertake specific actions to:-

- Ensure that the offence does not continue or recur.
- Restore the position, as far as possible, to what it would have been if the offence had not been committed.
- Take action to benefit anyone effected by the offence, such as paying money
- Take any other action specified by the ministerial order granting this power to the regulator.

It is vital that businesses understand the new regime and sanctions available. They provide a real opportunity for businesses to engage with the EA, and expert advice, taken promptly, could help avoid the painful and costly alternative of prosecution.

Osborn Abas Hunt has closely followed the development of the Regulatory Enforcement and Sanctions legislation and can provide training, advice and assistance in respect of these new powers.