

# **ENFORCEMENT AND PROSECUTION POLICY**

# **THE ENVIRONMENT AGENCY ENFORCEMENT AND PROSECUTION POLICY**

## **INTRODUCTION**

1. The Environment Agency's aim is to provide a better environment for England and Wales both for the present and for the future. It will achieve much of this through education, by providing advice and by regulating the activities of others. Securing compliance with legal regulatory requirements, using enforcement powers including prosecution, is an important part of achieving this aim.
2. The Agency's functions are extensive. They include pollution control, waste regulation, the management of water resources, flood defence, fisheries, conservation and navigation. The activities dealt with range from the regulation of recreational pursuits to the most complicated industrial processes.
3. Agency staff work with Local Government and other Regulators on matters such as planning, air pollution, public health and occupational safety to ensure coherent regulation. They also work with many conservation bodies, voluntary groups and non governmental organisations in order to achieve common goals.
4. The Agency regards prevention as better than cure. It offers information and advice to those it regulates and seeks to secure co-operation avoiding bureaucracy or excessive cost. It encourages individuals and businesses to put the environment first and to integrate good environmental practices into normal working methods.
5. This Policy sets out the general principles which the Agency intends to follow in relation to enforcement and prosecution. It is to be used in conjunction with more detailed specific guidance for staff in respect of each of the Agency's functions. The implementation and effectiveness of the Policy will be monitored by the Agency.

## PURPOSE AND METHODS OF ENFORCEMENT

6. The purpose of enforcement is to ensure that preventative or remedial action is taken to protect the environment or to secure compliance with a regulatory system. The need for enforcement may stem from an unlicensed 'incident' or from a breach of the conditions of a licensed activity. Although the Agency expects full voluntary compliance with relevant legislative requirements and licence provisions, it will not hesitate to use its enforcement powers where necessary.
7. The powers available include enforcement notices and works notices (where contravention can be prevented or needs to be remedied), prohibition notices (where there is an imminent risk of serious environmental damage), suspension or revocation of environmental licences<sup>1</sup>, variation of licence conditions, injunctions and the carrying out of remedial works. Where the Agency has carried out remedial works, it will seek to recover the full costs incurred from those responsible.
8. Where a criminal offence has been committed, in addition to any other enforcement action, the Agency will consider instituting a prosecution, administering a caution or issuing a warning.

## PRINCIPLES OF ENFORCEMENT

9. **The Agency believes in firm but fair regulation.** Underlying the policy of firm but fair regulation are the principles of; *proportionality* in the application of the law and in securing compliance; *consistency* of approach, *transparency* about how the Agency operates and what those regulated may expect from the Agency, and *targeting* of enforcement action.

### Proportionality

10. In general, the concept of proportionality is included in much of the regulatory system through the balance of action to protect the environment against risks and costs.
11. Some incidents or breaches of regulatory requirements cause or have the potential to cause serious environmental damage. Others may interfere with people's enjoyment or rights, or the Agency's ability to carry out its activities. The Agency's first response is to prevent harm to the environment from occurring or continuing. The enforcement action taken by the Agency will be proportionate to the risks posed to the environment and to the seriousness of any breach of the law.

## **Consistency**

12. Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Agency aims to achieve consistency in, advice tendered, the response to pollution and other incidents, the use of powers and decisions on whether to prosecute.
13. However, the Agency recognises that consistency does not mean simple uniformity. Officers need to take account of many variables; the scale of environmental impact, the attitude and actions of management and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgement and the Agency, through its officers, needs to exercise discretion. The Agency will continue to develop arrangements to promote consistency including effective arrangements for liaison with other enforcing authorities.

## **Transparency**

14. Transparency is important in maintaining public confidence in the Agency's ability to regulate. It means helping those regulated and others, to understand what is expected of them and what they should expect from the Agency. It also means making clear why an officer intends to, or has taken enforcement action.
15. Transparency is an integral part of the role of Agency Officers and the Agency continues to train its staff and to develop its procedures to ensure that:-
  - where remedial action is required, it is clearly explained (in writing, if requested) why the action is necessary and when it must be carried out; a distinction being made between best practice advice and legal requirements.
  - opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to protect the environment or to prevent evidence being destroyed.
  - where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event.
  - written explanation is given of any rights of appeal against formal enforcement action at the time the action is taken.

## **Targeting**

16. Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to or risk of serious environmental damage, where the risks are least well controlled or against deliberate or organised crime. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.
17. The Agency has systems for prioritising regulatory effort. They include the response to complaints from the public about regulated activities, the assessment of the risks posed by a licence holder's operations and the gathering and acting on intelligence about illegal activity.
18. In the case of regulated industries, management actions are important. Repeated incidents or breaches of regulatory requirements which are related may be an indication of an unwillingness to change behaviour, or an inability to achieve sufficient control and may require a review of the regulatory requirements, the actions of the Operator and additional investment. A relatively low hazard site or activity poorly managed has potential for greater risk to the environment than a higher hazard site or activity where proper control measures are in place. There are, however, high hazard sites (for example, nuclear installations, some major chemical plants or some waste disposal facilities) which will receive regular visits so that the Agency can be sure that remote risks continue to be effectively managed. The Agency will continue to develop models and tools to enable risks to be assessed and compared.

## **PROSECUTION**

### **Purpose**

19. The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing, to avoid a recurrence and to act as a deterrent to others. It follows that it may be appropriate to use prosecution in conjunction with other available enforcement tools, for example, a prohibition notice requiring the operation to stop until certain requirements are met. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.
20. The Agency recognises that the institution of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. Decisions about prosecution will take account of the Code for Crown Prosecutors.

## Sufficiency of Evidence

21. A prosecution will not be commenced or continued by the Agency unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious it may be. Where there is sufficient evidence, a prosecution will not be commenced or continued by the Agency unless it is in the public interest to do so. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender.

## Public Interest Factors

22. The Agency will consider the following factors in deciding whether or not to prosecute:
- **environmental effect** of the offence,
  - **foreseeability** of the offence or the circumstances leading to it,
  - **intent** of the offender, individually and/or corporately,
  - **history** of offending,
  - **attitude** of the offender,
  - **deterrent effect** of a prosecution, on the offender and others.
  - **personal circumstances** of the offender
23. The factors are not exhaustive and those which apply will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Agency will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

## Companies and Individuals

24. Criminal proceedings will be taken against those persons responsible for the offence. Where a Company is involved, it will be usual practice to prosecute the Company where the offence resulted from the Company's activities. However, the Agency will also consider any part played in the offence by the officers of the Company, including Directors, Managers and the Company Secretary. Action may also be taken against such officers (as well as the Company) where it can be shown that the offence was committed with their consent, was due to their neglect or they 'turned a blind eye' to the offence or the circumstances leading to

it. In appropriate cases, the Agency will consider seeking disqualification of Directors under the Companies Act.

### **Choice of Court**

25. In cases of sufficient gravity, for example serious environmental damage over a wide area, where circumstances allow, consideration will be given to requesting the magistrates to refer the case to the Crown Court. The same factors as listed in paragraph 22 (above) will be used, but including consideration of the sentencing powers of the Magistrates' Court.

### **Penalties**

26. The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Agency will continue to raise the awareness of the courts to the gravity of many environmental offences and will encourage them to make full use of their powers. Examples of penalties presently available to the courts for certain environmental offences are:-

- Magistrates' Courts; up to 6 months imprisonment and/or £20,000 fine.
- Crown Court: up to 5 years imprisonment and/or an unlimited fine.

27. The Agency will always seek to recover the costs of investigation and Court proceedings.

### **Presumption of Prosecution**

28. Where there is sufficient evidence, the Agency will normally prosecute in any of the following circumstances:-

**incidents or breaches which have significant consequences for the environment or which have the potential for such consequences.** The Agency takes seriously such incidents or breaches.

**carrying out operations without a relevant licence.** It is a pre-requisite to successful regulation that those required to be regulated come within the appropriate licensing system.

**excessive or persistent breaches of regulatory requirements** in relation to the same licence or site.

**failure to comply or to comply adequately with formal remedial requirements.** It is unacceptable to ignore remedial requirements and unfair to those who do take action to comply.

**reckless disregard for management or quality standards.** It is in the interests of all that irresponsible operators are brought into compliance or cease operations.

**failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information.** It is essential that lawful requests for information by the Agency are complied with and that accurate information is always supplied to enable informed regulation to be exercised.

**obstruction of Agency staff** in carrying out their powers. The Agency regards the obstruction of, or assaults on, its staff while lawfully carrying out their duties as a serious matter.

**impersonating Agency staff.** The Agency regards impersonation of staff, for example, in order to gain access to premises wrongfully, as a serious matter.

### **Alternatives to Prosecution**

29. In cases where a prosecution is not the most appropriate course of action, the alternatives of a caution or warning will be considered, the choice depending on the factors referred to above.
30. A caution is the written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought. It will be brought to the Court's attention if the offender is convicted of a subsequent offence.
31. A warning is a written notification that, in the Agency's opinion, an offence has been committed. It will be recorded and may be referred to in subsequent proceedings.
32. As with a prosecution, additional enforcement mechanisms may also be used in conjunction with a caution or warning.

## **Working with other Regulators**

33. Where the Agency and another enforcement body both have the power to prosecute, the Agency will liaise with that other body, to ensure effective co-ordination, to avoid inconsistencies, and to ensure that any proceedings instituted are for the most appropriate offence.