



**Cyfoeth
Naturiol**
Cymru
**Natural
Resources**
Wales

Consultation Document

Enforcement and Prosecution Policy
– demonstrating that compliance and
enforcement is undertaken in accordance
with the better regulation principles.

Date of issue: 17 January 2013
Responses by: 28 February 2013



Noddir gan
Lywodraeth Cymru
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Overview

This consultation seeks views on the enforcement policy and associated guidance proposed for Natural Resources Wales, following a decision to transfer civil sanctions powers to Natural Resources Wales.

How to respond

Please submit your comments using the questionnaire at the back of this document, by 28 February 2013, in any of the following ways:

Email

LivingWales@Wales.GSI.Gov.UK

Post

Natural Resources Wales

Living Wales Programme Office

Welsh Government

Sarn Mynach

Llandudno Junction

Conwy

LL31 9RZ

Data protection

The information you send to us will be published in a summary of responses to this consultation. Normally the names and addresses (or part of them) of their authors are published along with the response. If you do not wish to be identified as the author of your response, please state this clearly when you write or e-mail.

Natural Resources Wales is seeking your views on its proposed enforcement policy and associated guidance on the use of civil sanctions.

On 12th August 2012, the Welsh Government issued a second consultation on the proposed arrangements for establishing a new single environmental body for Wales. This body is now established and is called Natural Resources Wales.

During this earlier consultation, views were sought on specific aspects of implementing the new body, including the overarching duties, and proposed legal and working arrangements. Welsh Government asked specifically whether Natural Resources Wales should have powers to use civil sanctions. Of those who responded, to this question, 98% expressed their strong support for these powers.

As an environmental regulator with the powers to use civil sanctions Natural Resources Wales wants to ensure that we can demonstrate that compliance and enforcement work will be undertaken in accordance with the better regulation principles. We are therefore publishing our enforcement policy and guidance, to show that we are acting in a proportionate, transparent, consistent, accountable and targeted manner when undertaking enforcement work.

This document summarises the approach we would like to take to enforcement, and we hope that you will let us know what you think.

Our Enforcement and Prosecution Policy covers all offences for which Natural Resources Wales will be the responsible enforcing authority. These include all the offences which were the responsibility of the previous enforcing authorities of Countryside Council for Wales, the Forestry Commission in Wales and the Environment Agency in Wales.

The accompanying document, Guidance on Enforcement and Sanctions, explains in further detail how we will apply this policy, and how we will make decisions about our enforcement responses to offences.

A third document, the Offences Response Options will list each of the offences and the available responses to those offences that we could take. As this is a list of legislation and responses available to us by law, this is not included in this consultation, but will be published on our website. An example of the information which will be contained within this document is however included as part of this consultation in Appendix 4 of the guidance.

The policy and guidance covers offences with the options to use civil sanctions as well as those offences for which civil sanctions are not available.

This consultation is about our proposed approach to the policy and guidance. We are not re consulting on whether Natural Resources Wales should have access to civil sanctions powers or not, as this was covered in the earlier consultation in August 2012.

What are we proposing and why?

The transfer of civil sanctions powers to Natural Resources Wales means that we must undertake compliance and enforcement work in accordance with the better regulation principles

These principles mean that our compliance and enforcement work must be:

- Transparent – with clear rules and processes;
- Accountable – we explain our performance;
- Consistent – the same approach is applied within and across sectors;
- Proportional – our actions are governed by the environmental risk;
- Targeted – we focus on the most important environmental outcomes.

These are also referred to as the Hampton principles and came out of the Hampton review into regulatory processes by the UK Government in 2005. A statutory Regulators' Compliance Code was also introduced to further ensure that regulation was carried out in accordance with these principles.

Better regulation aims to find the right balance – a proportionate, risk-based response that will drive environmental improvements and reward good performance, but still provide the ultimate reassurance that tough action will be taken against those who fail to meet acceptable standards.

We will focus on environmental priorities, working with businesses and individuals whose activities pose higher environmental risks or who are struggling to comply with legislative requirements. We aim to reduce our interventions with companies and individuals that comply with (or exceed) the legal requirements to an absolute minimum.

The Macrory review followed Hampton in 2008, to look at what could be done to improve compliance among UK businesses. It found that many regulatory sanctioning regimes were over reliant on criminal prosecution and lacking flexibility. Civil sanctions were introduced in England and Wales under the regulatory Enforcement and sanctions Act (2008) to implement some of the recommendations from the work by Macrory.

Whilst the Hampton Principles and Regulators compliance code do not apply to Wales, the Welsh Government was keen to ensure that a consistent approach was taken to regulation across the UK. In September 2009 Welsh Government published its' Inspection Audit and Regulation in Wales Policy Statement, setting out Wales' commitment to working with partners in the UK to ensure this consistency was achieved.

What are civil sanctions?

The Environment Agency was given the powers to use civil sanctions in July 2010 for offences under some specific legislation in England and Wales. These powers will transfer to Natural Resources Wales

They are available for offences under the following regulations:

- Control of Pollution (Oil Storage) (England) Regulations 2001
- Environment Act 1995
- Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000
- Hazardous Waste (England and Wales) Regulations 2005
- Hazardous Waste (Wales) Regulations 2005
- Land Drainage Act 1991
- Nitrate Pollution Prevention Regulations 2008 (England only)
- Producer Responsibility Obligations (Packaging Waste) Regulations 2007
- Salmon Act 1986
- Salmon and Freshwater Fisheries Act 1975
- Sludge (use in agriculture) Regulations 1989
- Transfrontier Shipment of Waste Regulations 2007
- Water Industry Act 1991
- Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003
- Water Resources Act 1991.
- EU emissions trading scheme
- Carbon reduction commitment

Future expansion of those powers to the wider business may be considered in the future if called for and supported.

Civil sanctions do not replace any of our other enforcement tools. They do provide a more flexible range so that the most appropriate enforcement action can be chosen when an offence occurs. They focus on investment in environmental clean-up rather than paying fines.

We need to be able to demonstrate that we are working in accordance with the better regulation principles in order to maintain our access to civil sanctions powers. It is likely that we will be audited against the requirement of these principles during our first year of operation. Success in this audit would mean Natural Resources Wales would retain access to civil sanctions and could consider applying them more widely.

How is this different to what we currently have?

The 3 organisations whose functions are transferring to Natural Resources Wales on 1st April 2013 currently have 3 separate enforcement policies. The Forestry Commission in Wales works to the enforcement policy of the DEFRA family, as part of the Forestry Commission GB (FC Enforcement Policy) The Countryside Council for Wales has a separate stand alone policy (CCW Enforcement Policy). The Environment Agency in Wales works to the Environment Agency (England and Wales) policy and guidance documents (EA Enforcement Policy).

Of these 3 organisations only the Environment Agency currently has access to civil sanctions, and has been audited against the requirement of the Better Regulation Principles. As these powers will transfer to Natural Resources Wales, we are proposing that our enforcement policy is based on the current policy of the Environment Agency which has already been through the audit process.

Your views

We are seeking your views on our proposed approach to enforcement as defined in our Enforcement and Prosecution Policy, and further explained in the accompanying guidance document.

Please feel free to make any comment you wish on these documents, and we would particularly welcome your views on the following questions:

Question1: Do you agree with the proposed approach to the application of enforcement sanctions, for Natural Resources Wales?

Yes

Mainly

No

Question 2: Do these documents clearly explain what we take into consideration when making a decision about an enforcement response?

Yes

Mainly

No

Question 3: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Please enter here

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here:

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The NRW is committed to promoting and achieving equality and fairness for all our customers so it would be helpful if you could answer a few questions to help us monitor and understand who has responded to this consultation.

It will be used to help us monitor who we deliver services to, and help us improve. It is confidential, and will not be attributed back to you or published with your response. Giving information about you is entirely voluntary and you do not have to provide any or parts of this information.

Thank you for your contribution.

Are you male or female? <i>Tick one box</i>	Male			Female			
How old are you? <i>Tick one box</i>	Under 18	18 - 29	30 - 44	45 - 59	60 - 75	Over 75	
Do you have a long term illness or disability? <i>Tick one box</i>	Yes			No			
Do you consider yourself to be? <i>Tick one box</i>	Hetero-sexual	Gay or lesbian	Bisexual	Other	Prefer not to say		
What is your religion? <i>Tick one box</i>	Christian	Muslim	Buddhist	Hindu	Jewish	Sikh	Other
How would you describe your ethnic origin? <i>Tick one box only</i>							
White - British							
White - Irish							
White – Any other background							
Mixed - White and Black African							
Mixed - White and Black Caribbean							
Mixed - White and Black Asian							
Mixed – Any other mixed background							
Asian or Asian British - Indian							
Asian or Asian British - Pakistani							
Asian or Asian British - Bangladeshi							
Asian or Asian British – Any other background							
Black or Black British - African							
Black or Black British - Caribbean							
Black or Black British – Any other background							
Other Ethnic group - Chinese							
Other Ethnic Group – Gypsy or Traveller							
Any other Ethnic Group <i>(please specify)</i>							