

Compliance Policy and General Guidance for Protection of Areas of Special Scientific Interest (ASSIs)

Natural Heritage Directorate

Northern Ireland Environment Agency

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1. INTRODUCTION

This paper details the policy and procedures governing the action to be taken in response to reports of suspected offences affecting Areas of Special Scientific Interest (ASSI), designated under Part VI of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (NCALO) and Part IV of the Environment (Northern Ireland) Order 2002 (the Order) which came into effect on 3rd February 2003 and repealed NCALO Part VI.

The policy also applies to Natura 2000 Sites comprising Special Areas of Conservation (SAC) and Special Protection Areas (SPA) designated in accordance with the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (Habitats Regulations) and Nature Reserves declared in accordance with Part IV of NCALO. Responsibility for compliance action rests with Conservation Designations and Protection (CDP), a Unit within the Natural Heritage Directorate (NHD) of Northern Ireland Environment Agency (NIEA), an agency within the Department of the Environment (DOE).

The paper outlines the procedures which should be followed by officials involved in the investigation of offences under the Order and those required to consider evidence gathered through the investigative process. In addition, guidance is provided on the most effective means of responding to perceived threats to ASSIs and Natura 2000 Sites, collectively referred to in this paper as '*Designated Areas*'.

This document is intended to be a working document and will be updated further in light of case law, case studies and best practice.

2. LEGAL PROVISION

2.1 NCALO

The Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (**NCALO**) was made on 13 February 1985 and came into operation on 14 April 1985. The first ASSI (Carrickbawn) was declared on 30 October 1986. NCALO gave the Department the power to:

- Declare land as an ASSI;
- Conserve the land by requiring the landowner/occupier to notify the Department in writing of intent to carry out any operations or activities listed in the declaration;
- Vest land for the Department; and
- Seek restoration through the courts following a conviction under Article 25.

2.2 Environment (Northern Ireland) Order 2002

NCALO Part VI was replaced on 3 February 2003 with Part IV of the **Environment (Northern Ireland) Order 2002** (the Order). The Order aimed to provide the Department with a more comprehensive suite of powers which included the power to:

- Declare land as ASSI;
- Declare additional land as ASSI;
- Denotify ASSI land;
- Make it an offence under the Order for the landowner/occupier to carry out notifiable operations without written consent from NIEA;
- Make it an offence under the Order to knowingly and intentionally recklessly destroy or damage the features for which an ASSI was declared;
- Enter into Management Agreements (MA);
- Issue Management Notices when MAs were not adhered to by the landowner/occupier;
- Require Public Bodies to comply with legislation;
- Permit entry onto ASSI land;
- Prosecute offences under this Order; and

- Seek restoration of damage at the landowner/occupier's own expense in cases where a court conviction has been successful.

2.3 Public Prosecution Service

Offences under Part IV of the Environment Order are criminal matters and are brought to the courts by the Public Prosecution Service (PPS). The Department submits case files to PPS for their consideration for the appropriateness of pursuing prosecution. The final decision to proceed with prosecution rests with PPS.

2.4 Triable Either Way

All offences under the Order are classified as “**triable either way** “. This means that a case being brought for prosecution can be heard as a summary offence at the Magistrates Court or as an indictable offence at the Crown Court. More importantly this means there is *no longer the six month time limit*, as was the case under NCALO. The decision as to which court the case is contested in rests with the PPS.

2.5 Injunction / Enforcement Notices

Apart from the provision to refuse consent the Order does not give the Department the power to immediately stop reckless and intentional damaging activity from being carried out by the landowner/occupier or third parties. Currently the only *immediate* action available to Natural Heritage (NH) is to take out an **injunction** (refer to Annex C). This is a Civil Court Order normally proscribing certain actions and is used for prohibiting a person from doing something, or threatening to do something, which invades the legal or equitable rights of another.

When investigating reports of damage to ASSI land, NIEA will seek assistance from other government departments e.g. Planning Service, to prevent damaging activity. The Department may for example contact Planning Service who can issue an enforcement notice in cases where planning permission was not applied for or the conditions of a planning application were not met. If the offender, having been served with a formal notice, continues to cause damage the action is normally viewed unfavourably by the courts.

3. COMPLIANCE POLICY

3.1 NIEA as a Prosecuting Authority

NIEA has a discretionary power to pursue a prosecution where an offence under the Order has been committed. As outlined in section 2.4 offences under Part IV of the Environment Order are criminal matters and are brought to the courts by the Public Prosecution Service (PPS). NIEA recognises that protection of designated areas by means of prosecution or other forms of formal punitive action, will not in isolation necessarily secure the conservation of such areas.

Any enforcement action the Department has to take is a disappointment as this means that a special interest feature of the site has already been damaged. NIEA will continue to seek to secure the protection of designated areas through positive measures and co-operation by:

- Developing and maintaining good working relationships with landowners/occupiers;
- Advising landowners/occupiers about the legislative requirements for ASSIs; and
- Formulating the most appropriate land management practices with the landowners/occupiers.

3.2 NIEA will endeavour to ensure that equality of treatment and common standards are applied in each case of reported damage and enforcement action will be applied in an impartial and objective manner. Whilst compliance officers will necessarily exercise judgement in individual reports of damage (each case will be unique both in the way it occurred and the impact it has on the ASSI feature) they must adhere to Compliance Policy and Procedures to ensure a consistent approach. Ultimately, responsibility for monitoring the application of policy and procedures to ensure consistency rests with the Compliance Section.

3.3 Compliance action will be balanced, commensurate with the offence and kept to the most appropriate level. Verbal or written warnings and agreed remedial or compensatory measures will be applied when considered necessary.

In all cases of damage to ASSI land the overriding aim for NIEA will be restoration of the site to its former condition.

3.4 Cognisance will be taken of the Human Rights Act 1998 in the application of this policy, the enforcement of the provisions contained in the relevant legislation and in the prosecution of cases.

3.5 NIEA will consider the following when deciding on appropriate enforcement action:

- The nature of the offence;
- The scale of the damage;
- History of the offender i.e. previous incidents of non-compliance;
- Evidence; and
- Mitigating factors e.g. willingness to work with NIEA to get restoration.

3.6 In the event of a landowner/occupier carrying out an unauthorised action NIEA must in all cases assume the possibility of court action and progress the investigation accordingly. NIEA will not however automatically request the prosecution of every case of damage but will consider other options first. Formal letters will be issued in the following cases where a breach of the legislation has occurred:

- No damage has occurred but technically there was a breach e.g. non-consent;
- Damage is slight and recovery is readily achieved;
- NIEA would have agreed to the operation;
- Evidence is weak;
- There are other extenuating circumstances and the landowner/occupier takes a positive attitude to future conservation of the site; and
- The person who caused the damage is a new landowner who has not been formally notified of the ASSI status of the land.

3.7 The criteria used by NIEA in determining whether a case file should be sent to PPS will include:

- The severity and long term effect of the damage;
- Repeat offenders; and

- Those cases where the offender agreed during interview to restore the damage but did not fulfil the terms of the signed agreement.

In a process of continuous improvement, the Department will review and amend this list as required.

3.8 The proper collection of evidence relating to an offence is vitally important to the success of a prosecution and should be conducted in accordance with the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), failure to do so may result in such evidence being inadmissible in court. Evidence is likely to include witness statements, any information given by the offender that was obtained by an interview under caution that was held in accordance with PACE, photographic evidence of any damage, written reports from investigating staff etc. and may include samples or photographs.

4. COMPLIANCE ACTION – GENERAL GUIDANCE

4.1 Annex A is a process map detailing the action staff within CDP Compliance Section should follow when investigating a damage report. Application of this guidance should ensure equality of treatment and the application of common standards throughout Northern Ireland.

4.2 Enforcement Letters

Following formal investigations into cases of reported damage the Department will issue standard enforcement letters as a first step towards enforcement action. These letters will range from notice of site meetings to invitations for an interview under caution. These interviews provide the suspected offender with the opportunity to give their account of the incident and are conducted according to PACE (Police And Criminal Evidence).

4.3 Third Parties/New Landowner

As offences under the Order state that the person must know the land is ASSI land, enforcement letters to third parties will take the form of information letters and will have the designation papers for the site included in them. These letters will be sent by recorded delivery to ensure proof of posting. The Department will assess the severity of the damage and seek restoration where possible.

4.4 Non- Consented Operations

In those cases of investigated damage which are deemed to have an insignificant impact upon the condition of the site selection features but are technically a breach of the legislation, i.e. the landowner/occupier did not apply for consent before carrying out the work, the Department will issue a standard letter to remind the landowner/ occupier of the need to apply for consent.

4.5 Enforcement Action – inform other bodies

NH will approach other agencies with a request for them to take enforcement action, especially in those cases where their legislation may be more effective in getting a resolution, e.g. occurrences of rock armouring within ASSI land which do not have

planning permission. In such cases NIEA will assist other departments and promptly respond to any requests for information.

5. PROSECUTION ACTION – ENABLING POWERS

Prosecution and other action may be taken under the legislation detailed in this section.

5.1 Environment (Northern Ireland) Order 2002

- (a) Article 46 (1) deals with offences for non-compliance of Art 32(1) which prohibits an landowner/occupier from carrying out, or causing or permitting to be carried out in an ASSI, without the Department's consent, any operation or activity specified in the ASSI declaration.
- (b) Article 46 (2) & (3) deals with offences for non-compliance by public bodies (Refer to Art 39(1) and Art 39 (4)).
- (c) Article 46 (6) deals with offences committed by persons other than public bodies who intentionally or recklessly destroys or damages any of the flora, fauna, or geological, physiographical or other features by reason of which land is of special scientific interest, or intentionally or recklessly disturbs any of those fauna, and knew that what he destroyed, damaged or disturbed was within an ASSI.
- (d) Article 46 (9) A person who without reasonable excuse fails to comply with a requirement of a **management** notice is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.
- (e) Article 46 (11) A person who contravenes any byelaw made under Article 45 or intentionally obstructs any person authorised under paragraph (5) of that Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

5.2 Habitats Regulations

- (a) Regulation 16(3) – contravention of Reg. 16 which prohibits an landowner/occupier from carrying out, or causing or permitting to be carried out within a European Site, without the Department's consent, any operation or activity specified in the declaration. (See remainder of Reg. 16)
- (b) Regulation 66(2) and (3) – contravention of bylaws made in accordance with Regulation 23 which relate to European sites (see Regulation 9); and bylaws made in accordance with Regulation 31 which relate to European Marine sites (see Regulation 2).

6. LEVEL OF FINES

- 6.1** A person who, without reasonable excuse, contravenes Article 46 (1), (2), (3) or (6) of the Environment (NI) Order is liable on summary conviction to a fine not exceeding **£20,000** in accordance with Article 46(3) for each breach or on conviction on indictment to a fine.
- 6.2** A court convicting a person under Article 46 may issue an order under Article 47 requiring them to restore the land to its former condition. Failure to comply with this order, without reasonable excuse, is an offence under Article 47(4) and the person shall be guilty of an offence and liable on summary conviction:
- (a) To a fine not exceeding level 5 on the standard scale (currently £5000); and
 - (b) In the case of a continuing offence, to a further fine not exceeding £100 for each day during which the offence continues after conviction.
- 6.3** If, within the period specified in an order made under Article 47 (1) any operations specified in the order have not been carried out, the Department may in accordance with Article 47 (5) carry out those operations and recover from the person against whom the order was made any expense reasonably incurred by the Department in doing so.
- 6.4** A person who without reasonable excuse fails to comply with a requirement of a management notice is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.
- 6.5** Article 35 provides for Management Notices requiring landowners to restore land to favourable condition to be issued where they have failed to comply with an existing management agreement or where a management agreement cannot be negotiated on reasonable terms. Failure to comply with a Management Notice may result in the Department having the work carried out and recouping any expenses reasonably incurred by it carrying out the work from the landowner.

7. REASONABLE EXCUSE WITHIN THE LEGISLATION

7.1 In relation to an offence under Article 46 it is a reasonable excuse in any event for a person to carry out an operation without notifying the Department if-

- (a) The operation was authorised by a planning approval issued by Planning Service, or
- (b) The operation was the result of an emergency and the operation was notified to the Department as soon as practicable after it was commenced.

8. INVESTIGATION of DAMAGE REPORTS

8.1 In addition to reports of non-consented work the Compliance Section also receives damage reports for ASSI land. These reports are generated from various sources including:

- Formal site integrity monitoring by NIEA regional staff;
- NIEA officers on routine business;
- Various environmental groups; and
- Other interested parties, more often than not members of the general public.

8.2 Where the report does not originate from an official, details obtained from the complainant should include on the Incident Report Form–

- Name, address and status of the complainant;
- Day, date, time and place of the event, or the change to the site (in the latter case, the date and time of when the site was last seen before the change should also be recorded);
- Event/damage witnessed by the complainant; and
- Confirmation that they are prepared to act as a witness in any enforcement / prosecution action.

8.3 When damage reports are processed and the various checks completed, NIEA officials will visit the site to confirm:

- That there is damage;
- What type of damage has occurred;
- That the damage is within the ASSI; and
- Assess the impact of the damage upon the integrity of the site.

No information is accepted on hearsay.

8.4 When damage has been confirmed, an offence of the Environment (Northern Ireland) Order 2002 is deemed to have been committed and the formal process of enforcement will proceed. Please refer to Annex A.

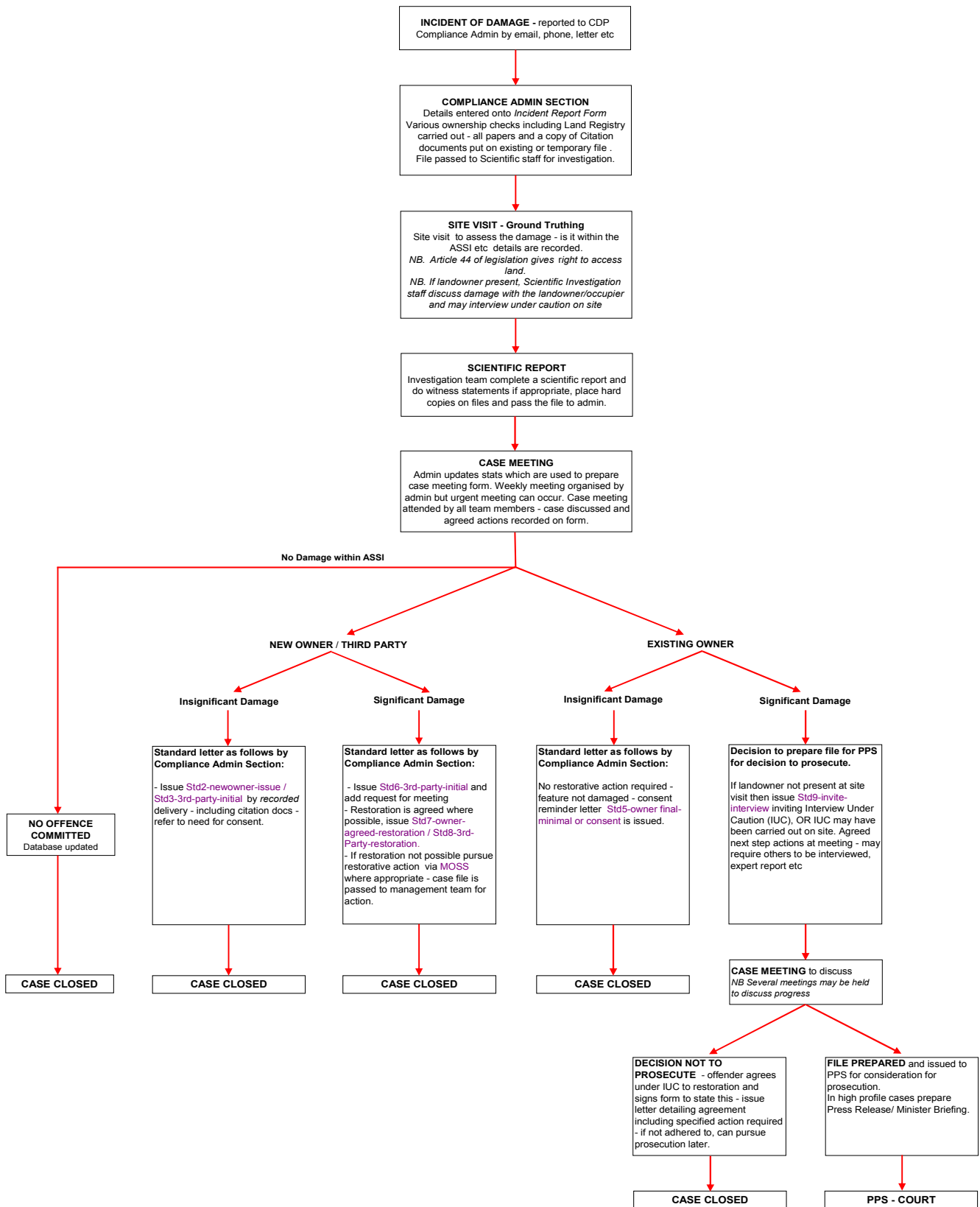
- 8.5** The initial investigation should confirm that an offence under the Order has been committed and that the information already received and detailed on the Incident Report Form is correct. NH investigation officers doing the site visit will if possible speak to the landowner/occupier. All substantive investigations involving compliance cases will be conducted by the Compliance Section and this will include conducting, where appropriate, interviews under caution.
- 8.6** In all cases of confirmed damage a Scientific Report will be completed by the NIEA official. This will provide detailed scientific information about the incident, the significance of the damage, the condition of the site post damage and in cases where the landowner/occupier is spoken to may give information about who carried out the work and why the activity was carried out. It is in the interest of all parties to bring a quick resolution to the issue and if necessary seek restorative action as soon as possible after the incident.

9. PREPARATION FOR COURT

- 9.1** The Compliance Section is responsible for the preparation and completeness of the case file which is issued to the Public Prosecution Service (PPS). This unit is also responsible for the liaison role with both PPS and Court Services prior to and during any court hearings.
- 9.2** All correspondence including requests for witness availability and interim instructions or requests from PPS will be the responsibility of the Compliance Section.
- 9.3** The Compliance Section will also liaise with the Departmental Press Officer and provide them with information on the outcome of any court case.
- 9.4** A member from the Compliance Section will attend all court hearings with the office copy of the case file.

Compliance Action Flow Process

ANNEX A



10. CONCORDAT ON GOOD ENFORCEMENT and COMPLIANCE ACTION

10.1 When pursuing compliance action we will adhere to the principles of good enforcement contained in the Concordat on Good Enforcement which requires NIEA to:

- Apply effectively the relevant legislation to ensure the proper protection of designated areas, taking into account the circumstances of the case and the attitude of the offender.
- Carry out our compliance function in an equitable, practical, courteous, efficient and consistent manner.
- Provide information and advice on relevant legislation or related guidance, and discuss general issues, specific compliance failures or problems with those experiencing difficulties, in a clear and straightforward manner.
- Provide the alleged offender with the opportunity to discuss the circumstances of the case and, if possible, resolve points of difference prior to formal compliance action, unless immediate action is required for the protection of the area or to prevent evidence being destroyed.

10.2 Accidental damage caused by the landowner/occupier

In the event of damage resulting from an accident which could not reasonably have been prevented, prosecution/action will not be taken under Article 46 but a warning letter may be issued. CDP Compliance Team will consider whether any remedial works should be undertaken and if the landowner/occupier should be held liable for any of the resultant costs.

10.3 Damage caused through lack of appreciation of the effects of ASSI declaration

Where it is evident that there has been no intention on the part of the landowner or occupier to damage the site, for example where land has been transferred and the new purchaser has not been informed of the status of the site, a standard letter with the citation documents will be issued. The letter will inform the landowner of the need to consult NH over any future change in management practices. Restoration should be at the landowners/occupier's expense if fault does not lie with NH.

10.4 Management Notices

Where there is clear evidence that an owner/occupier fails to comply with the requirements of a Management Notice the Department may as laid down in Article 35 of the Order -

(a) carry out the work or do the other things; and

(b) recover from the owner or occupier upon whom the notice was served any expenses reasonably incurred by it in carrying out the work or doing the other things.

In those cases where failure to comply with a Management Notice results in damage the person who without reasonable excuse is guilty of the offence is liable on summary conviction to a fine not exceeding the statutory minimum or on conviction on indictment to a fine.

10.5 Damage caused where a landowner/occupier has knowingly undertaken an operation without applying for consent, but where there has been no significant damage

When there is clear evidence that the owner/occupier was fully aware of their statutory obligation, failed to apply for consent and caused minimal, recoverable damage, NH may issue a warning letter. The letter will reinforce the need to consult NH over any change in management practices and it will clearly advise that any further breaches in the legislation will render them liable for prosecution.

10.6 Damage caused through carelessness

Each case must be examined on its merits. Where NH is convinced that the damage caused is so severe that the landowner/occupier should have been aware of it a prosecution will be considered. In other cases a warning letter will be issued making it clear that further breaches will render them liable for prosecution.

10.7 Serious damage caused where a landowner/occupier has failed to apply for consent to undertake a Notifiable Operation

Where it is clear that the omission has been deliberate, NH may pursue prosecution. Where there is reasonable doubt as to the intentions of the perpetrator of the damage, careful consideration will be given to an alternative course of action to be

followed. If NH pursues prosecution the landowner/occupier should expect to bear the cost of restoration following conviction as laid down in Article 47 of the Order.

10.8 Third party damage where the landowner/occupier was unaware of the damage

The landowner/occupier will be issued with a citation package and be encouraged to prevent any recurrence of the problem. If necessary a management agreement through which he may be able to obtain assistance may be considered.

10.9 Third party damage where the problem has been drawn to the attention of the landowner/occupier by NIEA but no action has been taken

Prosecution in such cases will be considered. However, where it is clear that the landowner/occupier took reasonable steps and cannot reasonably be expected to take action a warning letter may be issued.

10.10 Third party damage where the offender has been identified

NH will issue the offender with citation papers and an information letter. If the activity continues NH will consider prosecution of the offender. In many cases the control of third party activities by landowners is almost impossible, (e.g. dumping, bait digging etc) and it would not be appropriate to take action against the landowner. However all measures to prevent damage including the use of information signs should be considered.

11. INJUNCTION PROCEDURES

11.1 What is an Injunction?

An injunction is a court order issued by a Civil Court, which normally prohibits a person from doing something, or threatening to do something, which invades the legal or equitable rights of another. A person who fails to adhere to the injunction faces civil or criminal contempt of court and may have to pay damages or sanctions for failing to follow the court's order.

11.2 Types of Injunction

- Quia timet: to prevent an apprehended injury before it has occurred but where there are reasonable grounds for fearing that the injury will occur.
- Interlocutory or interim: usually granted pending the decision of a case.
- Perpetual: granted where a dispute has finally been settled, to ensure the right is maintained.

11.3 Injunction Hearing – Notifying the Defendant

It is desirable to serve the papers on the defendant and give them the opportunity to appear at the hearing. However, in cases of extreme urgency an application may be made ex parte i.e. without notifying the defendant. If an injunction is granted ex parte the defendant has the right to apply to the court to have the injunction discharged or varied and the injunction will normally initially be granted for a limited period, subject to confirmation.

11.4 Threat to ASSI

Application for an injunction may be made if there is ongoing damaging activity or if a landowner/occupier threatens, in the presence of an NIEA Official, to cause damage or carry out a notifiable operation without consent from this Department.

Any threat will be recorded and a witness statement prepared on return to the office. The threat should be witnessed by more than one official/person for it to be submitted to any potential court hearing. The officials should make a reasonable attempt to persuade the landowner/occupier to withdraw the threat and advise him/her that NIEA may seek an injunction. It is also important that the officials record any damage, preferably by digital camera, whilst on site.

11.5 Action within NIEA following threat

Approval to apply for an injunction must be obtained from senior management within CDP. If necessary a submission/case summary report should be prepared and this along with any other relevant material including photographs should be put on file. The information on this file will be used to form the basis of the affidavit

11.6 Application for the Injunction if approval to proceed is given

When senior management give approval to proceed, the case will be forwarded to the Departmental Solicitor's Office (DSO). The witness officials will be required to meet with DSO to review the case and prepare the draft affidavit (s) for the official's signature. The affidavit will then have to be sworn by the witness official for presentation to the Court by DSO accompanied by the witnesses.

11.7 Delivering the injunction

If granted NIEA will have to make arrangements to serve the injunction by personal delivery to the defendant as soon as possible.

ANNEX D

Admin Checks			Date Checked	Officer Initials	Comments / Detail
1	Check ownership details on MIA and print maps		_____	_____	_____
2	Print ownership details from sites database		_____	_____	_____
3	Ownership details confirmed on landweb – print folio – print map if changes	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	_____
4	New owner details passed to pre-dec section	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	_____
5	Is the landowner the possible offender?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	_____
6a	Have the current owners been notified re designation?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	_____
6b	Has a copy of notification letter been placed on Compliance file	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	_____ If no give detail
7	Is the landowner in receipt of Single Farm Payment (SFP)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	_____
8	Is there an existing compliance file?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	_____ File Ref:
9	Is there a management agreement?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	_____
10	Have reported operations been consented/assent NB Check NICMS	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	_____ If yes, give details below
11	Has planning permission been applied for?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	_____ If yes, give details below
12	Details of any other bodies informed e.g. LRM, WMU, Planning, Forestry etc (<i>If yes, update referrals</i>)				

TRIM FOLDER : DO1-

INCIDENT REPORT FORM – COMPLIANCE INFRACTION

1. Name of complainant:

2. Address/Tel No:

3. Status(e.g. neighbour):

4. ASSI Name:

5. Incident or damage reported: -

6. Date incident or damage reported to CDP:

7. Name and address of Landowner / Occupier:

8. Name and address of Offender (if different from above):

9. Is complainant prepared to act as witness?

10. Complete the [Admin Case History Checklist](#) form and attach

Recording Officer's signature _____

Recording Officer's name _____ Date _____

Glossary of Terms

ASSI	Area of Special Scientific Interest
CDP	Conservation Designations and Protection
CNCC	Council for Nature Conservation and the Countryside
DOE	Department Of the Environment
DSO	Departmental Solicitor's Office
NIEA	Northern Ireland Environment Agency
MA	Management Agreement
NCALO	Nature Conservation and Amenity Lands (Northern Ireland) Order 1985
NHD	Natural Heritage Directorate
NH	Natural Heritage
PACE	Police and Criminal Evidence
PPS	Public Prosecution Service
SAC	Special Areas of Conservation
SPA	Special Protection Areas