

Enforcement Policy

January 2011



INTRODUCTION

1. The Northern Ireland Environment Agency (NIEA), an executive agency within the Department of the Environment, aims to protect, conserve and promote the natural environment and built heritage of Northern Ireland for the benefit of present and future generations. We do this through education and advice and the regulation of activities which have the potential to pose a risk to human health or damage our natural or built environment.
2. NIEA is responsible for implementing a wide range of legislation covering water quality, pollution prevention and control, waste management, the protection of historic monuments and buildings, and nature conservation and the countryside. The legislation we work under and when a licence or permission may be required is outlined in the Agency's Environmental Legislation and Service Standards document (available at www.ni-environment.gov.uk/legislation-and-service.pdf)
3. We will continue to work closely with those we regulate to ensure that they fully understand their responsibilities and comply voluntarily, through direct contact with operational staff, seminars, and practical guidance provided on the NIEA website and at www.NetRegs.gov.uk. However, enforcement action will be taken where necessary to deal with an 'unlicensed' incident or a breach of the conditions of a licence and to prevent environmental damage.
4. In addition to routine enforcement duties carried out by staff throughout NIEA, our Environmental Crime Unit handles cases involving serious and persistent offenders and those involved in criminality, which result in breaches of environmental legislation. The unit supports collaboration on enforcement across a number of regulatory regimes.
5. NIEA staff work closely with other statutory bodies to ensure an effective, co-ordinated and proportionate enforcement response for example, through liaison with Planning Service in relation to listed buildings.
6. Our **Customer Charter** is available on our website at www.ni-environment.gov.uk

POLICY PURPOSE

7. The purpose of this Enforcement Policy is to provide guidance to staff and external stakeholders on the Agency's approach to enforcement. It should also ensure that our enforcement activities make the best possible contribution to protecting our environment, heritage and human health and to the wider delivery of Agency objectives. It outlines the principles and framework that we will follow to deliver consistent and proportionate enforcement and promote public confidence in our enforcement process. The operation of the policy will be monitored by the Chief Executive.

OBJECTIVES OF ENFORCEMENT

8. In carrying out our statutory functions, NIEA has obligations to regulate and monitor potentially damaging activities, respond to breaches of environmental legislation and investigate suspected environmental crime. Our enforcement activity has four main objectives:
 - to ensure that preventative action is taken to protect the environment

- to see that remedial action is taken to redress damage
- to secure compliance with regulatory systems; and
- to avoid recurrence by acting as a deterrent

9. While the Agency expects full voluntary compliance, we will not hesitate to use our enforcement powers where deemed necessary.

NIEA PRINCIPLES OF ENFORCEMENT

10. NIEA believes that in most cases, working with operators and landowners in a positive manner will result in compliance and sound environmental protection measures. However, where there is observed or potential harm to the environment or human health, breach of environmental legislation or operation without a licence, the presumption will be to take enforcement action commensurate to the significance of the incident or risk.

11. The cause and severity of environmental breaches will vary considerably. When determining the appropriate response, priority will be given to those incidents where, in the Agency's opinion, the greatest harm is likely to be caused. Assessment of priority will be guided by the principles of enforcement outlined below.

12. All enforcement action carried out by NIEA will be firm, fair and reasonable, with due regard to the Government's Enforcement Concordat (Cabinet Office 1998). NIEA will follow the key principles of: proportionality, consistency, transparency, accountability and targeting, in addition to the polluter pays principle.

Proportionate

13. On deciding what enforcement action to take, NIEA will consider the seriousness of the incident or breach and the risks posed to the environment or human health. Our first response will be to prevent harm from occurring or continuing to the natural environment, built heritage or public health. Follow-up action taken to achieve compliance will be proportionate to the severity of an incident.

Consistent

14. We aim to be consistent in the advice we provide, in our response to incidents, in the use of our enforcement powers and in taking decisions on whether to submit a case to the Public Prosecution Service (PPS). However, consistency is not a simple matter of uniformity so, while we will consider how similar situations were handled previously, we will also take account of a variety of other factors appropriate to circumstances. Any decision regarding enforcement action will be impartial.

Transparent

15. We want to help those we regulate to understand what we expect of them and what they should expect from us. It also means making clear why we have taken, or intend to take, enforcement action. Where we have appropriate discretion in the legislation being enforced, we will:

- Provide an opportunity to discuss what is required to comply with the law before formal enforcement action is taken, although this may not be appropriate if urgent action is required to avert or mitigate damage or there is a need to prevent evidence being destroyed, or in some cases where there are serious breaches;
- Confirm in writing where remedial action is found to be necessary (in cases where urgent action is required, confirmation and explanation will be issued as soon as practicable after the event); and
- Provide written confirmation of any rights of appeal against formal enforcement action at the time the action is taken.

Targeted

16. Regulatory effort should be directed primarily towards those whose activities actually or potentially give rise to the most serious risks to health, the natural environment or built heritage and those who benefit financially from criminal activity. In prioritising action, NIEA will consider amongst other factors; complaints from the public, the risk and control technologies of licensed sites, risks and damage associated with activities, environmental sensitivity and information received on illegal activities.

17. NIEA will direct its focus on those individuals or businesses that:

- cause or risk serious damage to the environment or heritage
- operate unregistered outside the regulatory regime
- persistently break the terms and conditions of their licence or consent; and / or
- intentionally break the law

Accountable

18. As a Regulator, we are accountable to the public for our actions while remaining independent in the decisions we take. The Agency's work is subject to external scrutiny by the Northern Ireland Audit Office, the Public Accounts Committee of the Northern Ireland Assembly and also by the Criminal Justice Inspectorate.

19. NIEA will publish biennial reports to inform the people and businesses of Northern Ireland about the range of regulatory and enforcement work undertaken by the Agency.

Polluter pays

20. Where, when and how we can apply the polluter pays principle varies with the particular enforcement activity. We will implement it when possible and in accordance with our aim to achieve consistency in response to incidents. The Agency wants to ensure that action is taken to put damage right by requiring those responsible to meet the cost of preventative and remedial measures. When possible, we will seek to recover full costs.

ENFORCEMENT ACTION

21. NIEA has a range of enforcement powers upon which it may rely to secure compliance with a regulation and protect the environment. Where informal discussions have been unsuccessful, or a serious breach of legislation has occurred or is likely to occur, formal enforcement action will be taken to ensure

compliance with the law. The powers available include:

- Warning letters
- Works, prohibition, suspension or enforcement notices
- Review, variation or revocation of licences
- Financial penalties
- Injunction
- Case submission to Public Prosecution Service
- Confiscation by due process

22. We will conduct financial investigations where it appears that significant personal financial gain has been accrued from the proceeds of unlawful activity. The financial investigation will be conducted with a view to initiating confiscation proceedings under the Proceeds of Crime Act 2002. Criminal Confiscation Orders are required to be paid with a prison sentence in default. Following imprisonment the Order remains in force until paid. NIEA will continue to work with the Serious Organised Crime Agency, the Police and the Public Prosecution Service as appropriate to obtain a confiscation order where a defendant has benefited from the proceeds of unlawful activity.

23. Under the Environmental Liability Regulations (2009), when the Agency becomes aware of possible environmental damage or an imminent threat of environmental damage, it must assess the damage and identify an operator. It may then require the operator to submit proposals for remediation of the damage and subsequently serve a remediation notice. We may also take steps to prevent or remedy environmental damage, require additional relevant information and action and use appropriate powers of entry where we have reasonable grounds to suspect imminent threats of or actual environmental damage.

PROSECUTION

Purpose

24. Prosecution is an important part of any enforcement system - acting as both a punishment and a deterrent. We recognise that the initiation of a prosecution is a serious matter which should only be taken after appropriate consideration of the implications and consequences, one of which may be imprisonment. The choice of enforcement action taken will depend on the individual case and there may be circumstances where we might wish to prosecute without prior warning or recourse to other methods of enforcement.

25. As a regulator, it is the responsibility of NIEA to investigate breaches of the legislation for which it is responsible by gathering evidence and presenting this to the prosecutor. *The decision to prosecute and to conduct the case on behalf of NIEA is ultimately made by the Public Prosecution Service for Northern Ireland, (PPS).* The PPS is wholly independent from both the investigating agency and government. Its decisions will be based on impartial and professional assessment of the available evidence and the public interest.

When we are likely to seek prosecution

26. If we consider there is sufficient evidence, we will normally submit a case to the PPS, recommending prosecution where one or more of the following circumstances occur:

- Incidents or breaches that have significant consequences on the environment whether natural or built
- Someone carries out activities without a relevant licence or consent
- Someone fails to comply with formal remedial requirements
- There are excessive or persistent breaches of regulatory requirements
- Failure to report an incident that threatened or caused significant environmental damage
- There is reckless disregard for management or quality standards
- Someone fails to supply information when legally required
- Our staff or authorised officers are obstructed in carrying out their duties
- Someone fails to comply with a fixed penalty notice

Evidential Test

27. A prosecution will not be commenced or continued unless the PPS is satisfied that the Evidential Test for Prosecution is met; i.e. that there is sufficient, admissible and reasonable evidence that an offence has been committed and that there is a realistic prospect of conviction.

Public Interest Test

28. Once the PPS is satisfied that the Evidential Test has been met, it will then consider whether it is in the public interest to prosecute. The presumption is that where there has been a contravention of criminal law the public interest requires prosecution, although prosecutors must exercise their discretion. The following are examples of some public interest considerations for prosecution which may be relevant to the NIEA context:

- The effect of the offence on the natural or built environment
- Whether the offence was foreseeable or the circumstances leading to it
- The intent of the offender, individually and / or corporately
- Whether financial benefit has been accrued from the proceeds of unlawful activity and / or
- The history of the offender

Companies and individuals

29. Should the PPS consider that the Evidential and the Public Interest Tests for Prosecution are met, criminal proceedings will be brought 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, in some cases it may be necessary to consider any part played in the offence by the senior 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, knowledge or connivance, or was due to lack of reasonable diligence on their part.

Courts

30. Environmental law gives the courts considerable powers. Should legal proceedings be instigated, such cases can be dealt with at either Magistrates or Crown Courts.

31. Magistrates' courts can impose substantial financial penalties and / or up to 6 months imprisonment in some cases. Unlimited fines and up to 5 years imprisonment can be imposed by the higher courts. In certain cases the courts may also impose an order requiring restoration work to be carried out. Where possible we will seek to recover the costs of the investigation and court proceedings.

WORKING WITH OTHERS

32. Where appropriate, we will work with other enforcement agencies to co-ordinate regulation, investigation or prosecution. This will include working with Planning Service, the Police Service of Northern Ireland and the Serious Organised Crime Agency. We will also work closely with our equivalent enforcement agencies in Great Britain, the Republic of Ireland and across Europe to share intelligence and mount joint investigations to prevent, deter and act against criminal environmental activity.

FEEDBACK

33. Where there is dissatisfaction with the level of service we provide, we welcome comment and constructive opinion about ways we could improve it.

34. As legislation differs between sectors, appeals against our decisions, or some action we have taken, are generally handled by the individual team dealing with the matter.

35. The Agency does have a general complaints procedure which is available on our website at www.ni-environment.gov.uk or by phoning our customer co-ordinator on 028 9056 9213.

36. Comments on our regulatory activity can also be made through an online feedback facility on the Department of Enterprise, Trade and Industry (DETI) website, as part of the NICS commitment to deliver better regulation.

www.detini.gov.uk/deti-better-regulation-index/better-regulation-newpage-8.htm

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Our aim is to protect, conserve and promote the natural environment and built heritage for the benefit of present and future generations.



An Agency within the Department of the
Environment
www.doeni.gov.uk



**INVESTORS
IN PEOPLE**