

Enforcement undertaking acceptance guidance note

Regulatory Enforcement and Sanctions Act 2008, Section 50
Environmental Civil Sanctions (England) Order 2010, Regulation 3(4) & Schedule 4
Environmental Civil Sanctions (Wales) Order 2010, Regulation 3(4) & Schedule 4

Introduction

This guidance note only applies to those persons who have had their offer of an Enforcement Undertaking accepted by the Environment Agency. It explains what happens after the offer has been accepted and how it can be discharged. It also explains what could happen if the EU is not complied with and how the information contained in your offer may be used.

Acceptance of your offer

Once your offer has been accepted, it becomes a legally binding written agreement between you and the Environment Agency. As such, we can enforce against the actions you have offered.

Varying or extending an Enforcement Undertaking

An Enforcement Undertaking may be varied, or the period within which the action(s) must be completed may be extended, if both parties agree in writing. Applications should be made in writing to either of the addresses shown in Part 5 of the 'Enforcement Undertaking Offer form'.

Important We will only consider an application by you to vary or extend your EU, if we receive it before the original completion date(s) and you can demonstrate you have taken reasonable steps to comply.

Applications received after the relevant completion date(s) will normally be refused.

Discharging an Enforcement Undertaking

Once you believe you have fully complied with the Enforcement Undertaking, you can apply for a Completion Certificate at any time. Applications should be made in writing to either of the addresses shown in Part 5 of the 'Enforcement Undertaking Offer form'.

Important You must include sufficient information with your application to help us determine whether or not the undertaking has been fully complied with and whether or not we can issue a Completion Certificate. This may include documentary evidence, such as receipts or technical reports on works completed.

We will also require evidence demonstrating that all affected third parties have received any monies owing to them as part of your offer.

If you fail to provide such information, we can require it from you under written notice and may decide not to issue a certificate.

We will allow those with accepted Enforcement Undertakings to present to us on agreed terms, where necessary. We are also considering the approach of other regulators in presenting improvements and have been in talks with OFWAT

In some cases, we may also consider it appropriate to issue a Completion Certificate without the need for us to visit the site, where we have received an application in writing containing sufficient information for us to assess compliance along with a signed declaration from a senior person (e.g. Owner, Director, Board Member etc) in the organisation confirming that all actions contained in the EU have been fully complied with. For example, where we have received an electronic copy of an Environmental Monitoring Plan.

Once we have assessed your application, we will make a decision whether or not to issue a Completion Certificate and give you written notice **within 14 calendar days** of our receipt of your application, by either:

- issuing you with a Completion Certificate; or
- serving a Refusal Notice on you, outlining the reasons for our decision not to issue a certificate.

Important We may also revoke a Completion Certificate, if we believe it was granted on the basis of inaccurate, incomplete or misleading information. You will then be regarded as not having complied with the Enforcement Undertaking.

Appeals

You may appeal **within 28 calendar days** of being notified of our decision not to issue a Completion Certificate.

The grounds for appeal are that our decision was:

- was based on an error of fact;
- was wrong in law;
- was unfair or unreasonable; or
- was wrong for any other reason or in Wales, was wrong for any other similar reason.

Appeals must be made to the [First-tier Tribunal \(Environment\)](#). Please use this link to find out more.

Enforcement and sanctioning response

Failing to comply (either fully or in part) with an Enforcement Undertaking is likely to result in one of the following responses:

- serving a Variable Monetary Penalty, Compliance Notice or Restoration Notice on you; or
- prosecuting you for the original offence.

customer service line
08708 506 506

incident hotline
0800 80 70 60

floodline
0845 988 1188

www.environment-agency.gov.uk

Data protection notice

The Environment Agency is responsible for regulating environmental protection, flood defence, water resources and fisheries. It has a duty to discharge its functions to protect and enhance the environment and to promote conservation and recreation. The information provided will be processed by the Environment Agency to fulfil its regulatory and monitoring functions, and to maintain the relevant public register(s). The Environment Agency may also use and/or disclose it in connection with:

- offering/providing you with its literature/services relating to environmental matters;
- consulting with the public, public bodies and other organisations (e.g. Health and Safety Executive, local authorities, emergency services) on environmental issues;
- carrying out statistical analysis, research and development on environmental issues;
- providing public register information to enquirers;
- investigating possible breaches of environmental law and taking any resulting action;
- preventing breaches of environmental law;
- assessing customer service satisfaction and improving its service; or
- Freedom of Information Act/Environmental Information Regulations request.

The Environment Agency may pass it on to its agents/representatives to do these things on its behalf. You should ensure that any persons named on this form are informed of the contents of this data protection notice.

Disclosure of information

The Environment Agency will provide a copy of this form to the public register(s). However, if you consider that any information contained in this form that should not be released to the public register(s) on the grounds of commercial confidentiality, you must indicate which information it concerns and why it should not be released, giving your reasons in full.

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