

Penalties for Breaching Environmental Legislation

This newsletter sets out the potential penalties and other implications for a business if it breaches environmental legislation. Understanding the regulator's approach to the enforcement and prosecution of environmental offences should enable businesses to minimise their risk of being prosecuted. It should also help:

- Reduce the level of any penalties if the business is prosecuted.
- Minimise any reputational damage to the business.

The main environmental regulators in England are the Environment Agency (EA) and local authorities, and Natural Resources Wales in Wales.

Penalties

Enforcement notices

Environmental regulators can, in some cases, serve an enforcement notice on a business requiring it to rectify a breach of environment law. The regulator may also have the power to order the closure or suspension of the business until the breach has been rectified. Breach of any of these types of notice is a criminal offence.

Clean-up notices

Environmental regulators can, in some cases, serve a notice on a business requiring it to clean up any contamination (including water pollution) they have caused. Breach of this type of notice is a criminal offence.

Fines and imprisonment

Most breaches of environmental law are criminal offences. The penalties are usually a fine and/or imprisonment. For cases tried in the:

- Magistrates' court, the maximum penalty is, since March 2015, usually an **unlimited fine** and/or six months' imprisonment.
- Crown Court, the maximum penalty is usually an **unlimited fine** and/or two years imprisonment.

The regulators can also prosecute the business' directors, managers, secretary or other similar officers (or person purporting to act in any such capacity), if it can be shown the offence was committed with their consent

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The information in this newsletter is not meant as a substitute for advice on particular issues and is written in general terms. You should seek specific advice before taking any action based on the information in this newsletter.

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This newsletter outlines the law as it stands at the date of writing in January 2016.

or connivance, or was attributable to their neglect.

Civil sanctions

New legislation has given regulators (including the EA and local authorities) the power to impose civil penalties on businesses, as an alternative to prosecuting, for certain types of breaches (including breaches of environmental legislation). Civil penalties include fixed monetary penalties and enforcement undertakings.

Related orders

For more serious offences, the court can make related orders, either at the same time as sentencing or in subsequent proceedings:

- **Directors' disqualification order.** The offender can be prohibited from acting as a company director. Breach of a directors' disqualification order is a criminal offence.
- **Recovery of assets.** A prosecutor (usually the EA in environmental cases in England) can refer cases to the Serious Organised Crime Agency (SOCA) after a conviction, asking SOCA to confiscate assets equal to the financial benefit gained from the criminal environmental activity.
- **Serious crime prevention order.** The High Court and Crown Court can make a serious crime prevention order (SCPO) after a person has been convicted of a serious offence, including a number of environmental offences, such as disposing of waste without a permit. An SCPO can be made against an individual or a business and may last for up to five years.

Sentencing guideline

- The Sentencing Council has published a sentencing guideline for environmental offences which sets out a 12-step sentencing process to punish offenders, prevent reoffending and remove financial gain.
- The guideline requires the court to consider the real economic impact of a fine and how to bring home to both the management and shareholders of a business the need to improve regulatory compliance.
- It will apply to the sentencing of organisations for environmental offences from 1 July 2014 (regardless of the date of the offence).

Adverse publicity

- A conviction for an environmental offence may lead to adverse local and, in some cases, national publicity. For example, the EA publicises environmental convictions on its website as part of its

“name and shame” policy.

- Local press sometimes also sit in on criminal court proceedings.
- There may be damage to the business’ reputation, even if it is found “not guilty” at the end of the proceedings.

Insurance

A conviction could increase the business’ insurance premiums.

Regulatory relationship

The business’ ongoing relationship with the regulator may be undermined.

Future sale of the business

A poor environmental compliance record, particularly prosecutions and convictions, can cause difficulties during the sale of a business, especially if the buyer requests environmental warranties and/or indemnities.

