



THE DAERA ENVIRONMENT, MARINE & FISHERIES GROUP - ENFORCEMENT POLICY

1.0 INTRODUCTION

1.1 The Environment Marine & Fisheries Group' (EMFG), [incorporating the Northern Ireland Environment Agency (NIEA)] is part of the Department of Agriculture, Environment and Rural Affairs (DAERA). Among its responsibilities is to protect Northern Ireland's environment for the benefit of present and future generations.

1.2 The EMFG regulates activities which have the potential to pose a risk to human health or damage our natural environment.

- It is illegal to carry out a range of activities without registering compliance, making a notification, or being granted the appropriate licence, authorisation or exemption.
- And, it is an offence to fail to comply with any conditions set out in the relevant authorisations or licences.

1.3 The relevant statutory provisions under which we work can be found at <https://www.daera-ni.gov.uk/>; and also <http://www.netregs.org.uk/>

2.0 PURPOSE OF THIS ENFORCEMENT POLICY

2.1 This policy aims to ensure that EMFG staff, those we regulate and other stakeholders are aware of the general intent and principles underpinning our approach to enforcement. Significant work also goes into linked areas of prevention, education and compliance.

3.0 THE EMFG's APPROACH

3.1 Enforcement action is only one of many tools in a package of measures which the EMFG can employ to protect the environment and human health in Northern Ireland.

3.2 The need for enforcement action generally arises when those we regulate:

- Fail to obtain or comply with the rules and conditions of their licence/authorisation/exemption; or
- From the actions of those who choose to ignore environmental law.

3.3 All enforcement action carried out by the EMFG will be firm, fair and reasonable. Our overall approach to enforcement is underpinned by the five principles of better regulation:

- Proportionality;
- Accountability;
- Consistency;

- Transparency; and
- Targeted.

Proportionality

3.4 The sanction of prosecution is available for all criminal offences by law, however we will seek to use enforcement action that is proportionate to the significance of the offence. This includes the level of environmental harm, the impact on communities, the level of financial benefit arising from the offence(s), or the regulatory costs avoided by failure to make the necessary notification, registration or authorisation. For minor offences, our key objective will be to seek a return to compliance. For more serious offences, we will conduct prosecutions through Solicitors or submit a report to the Public Prosecution Service for Northern Ireland for consideration of prosecution.

Accountability

3.5. All enforcement decisions made by the EMFG will be made with an appropriate level of oversight within the organisation. All decisions to take enforcement action will be recorded and retained. Legislative arrangements are in place to allow appeals against enforcement action. The EMFG's work is also subject to scrutiny by the Northern Ireland Audit Office, the Public Accounts Committee of the Northern Ireland Assembly and the Criminal Justice Inspectorate.

Consistency

3.6 We will aim to take a consistent approach to our decision making with respect to enforcement. However, we will always consider the individual circumstances of each case.

Transparency

3.7 The EMFG will publish an annual report setting out a summary of all of the enforcement action that it has taken during the previous calendar year. We will also make available enforcement guidance which supports this policy.

Targeted

3.8 We will direct our enforcement activity towards individuals or businesses that:

- Cause or risk serious damage to the environment or human health;
- Operate illegally outside the regulatory regime;
- Persistently and/or intentionally break the law; or
- Acquire significant financial advantage from environmental crime.

4.0 ENFORCEMENT & PROSECUTION

4.1 In the case of those we regulate who fail to comply; advice and guidance will often be our first route to securing compliance. However, this is dependent on both the severity and impact of the non-compliance. We will also seek to educate stakeholders and the public to avoid breaches in the first place.

4.2 The choice of enforcement action taken is dependent on a range of factors and the circumstances of each case. The form, or forms, of enforcement action, which EMFG may use, will therefore differ depending on:

- the particular nature of the non-compliance;
- the harm caused or likely to be caused; and
- The history of the responsible person, including any previous non compliance or criminal conviction(s).

4.3 The EMFG has a number of options for enforcement action. These include:

- Written warnings;
- Works, Prohibition, Suspension and Enforcement notices;
- Review, variation or removal of licences;
- Seizure of vehicles, machinery, equipment and materials;
- Financial penalties;
- Injunctions; and
- Referral to the Public Prosecution Service for Northern Ireland (PPS) – for consideration of prosecution in the Magistrates or Crown Courts.

4.4 It is recognised that prosecution is a serious matter and a decision to take this approach is not taken lightly. Under certain circumstances, the EMFG might decide to recommend or pursue a prosecution without prior warning or prior use of other methods of enforcement. However, the decision to prosecute is taken only after careful consideration of all the circumstances. Prosecution is conducted either by Solicitors on our behalf or by the PPS. As a wholly independent body, PPS decisions are based on impartial assessment of the available evidence and whether or not prosecution is in the public interest.

4.5 Further measures can be taken after prosecution; such as the confiscation of assets under the Proceeds of Crime Act 2002. Our aim will be to deprive those convicted of the profits of their criminal activities. Any financial investigation will be conducted with the aim of obtaining a Criminal Confiscation Order which, if unpaid, can result in a prison sentence. If the offender is imprisoned for non payment, the Order remains in force until paid.

4.6 Where an offence results from a Company's activities, it may be possible to enforce against individuals within the Company or against the Company itself (or both). In doing so, it is usual to consider any part played in the offence by the senior officers of the Company, including Directors, Managers and the Company Secretary.

4.7 In addition to taking enforcement action, as part of our wider objectives we will also consider :

- Preventative action to protect the environment;
- Remedial action to repair any damage;
- How ongoing compliance can be secured;
- Deterrence to prevent further breaches of the law,
- The status of any existing licence, authorisation or exemption;

- How financial benefit gained from illegal activity can be removed; and
- We will always seek to recover appropriate costs and, where possible, ensure that the polluter pays.

5.0 FEEDBACK

5.1 If there is dissatisfaction with the level of service we provide, we welcome comment and constructive opinion about ways we can improve it. Comments on our regulatory activity can be made through an online feedback facility to the Department of Economy website <http://www.business.deti.ni.gov.uk/betterregulation/feedback.aspx>. This is part of the NICS's commitment to deliver Better Regulation.

5.2 Details of our complaints procedures can be found at www.daera-ni.gov.uk.