

Environment and Heritage Service

Enforcement and Prosecution Policy for Environmental Protection

1. Introduction and Scope

- 1.1. The aims of the Environment and Heritage Service (EHS) are to protect and conserve the natural and built environment and to promote its appreciation for the benefit of present and future generations. Within EHS the Environmental Protection Directorate has regulatory responsibilities for pollution control, control of the use and disposal of radioactive substances and waste management.
- 1.2. The regulatory functions of the Environmental Protection Directorate aim to protect the environment by consistent and fair application of the legislation we enforce. We will work co-operatively with those we regulate in order to secure improved performance and will offer information and advice where appropriate. We acknowledge, however, that enforcement action also needs to be taken to ensure compliance with legislative requirements.
- 1.3. This Policy sets out the general principles which the Environmental Protection Directorate intends to follow in relation to enforcement and prosecution. It is to be used in conjunction with more detailed specific guidance for staff in respect of each regulatory function. The implementation and effectiveness of the Policy will be monitored by the Director of Environmental Protection.

2. Principles governing decisions on enforcement action

In taking enforcement action we intend to be:

- **Consistent**
- **Proportionate**
- **Transparent**

2.1 Consistency

We aim to be consistent in the advice we provide, in our response to pollution and other incidents, in the use of our enforcement powers and in taking decisions on whether to prosecute. Any decision regarding enforcement action will be impartial and will not be influenced by any view with regard to the race, politics, gender, sexual orientation or religious beliefs of any offender, complainant or witness.

2.2 Proportionality

Enforcement action taken will be proportionate to the risks posed to the environment and to the seriousness of the breach of the law.

2.3 Transparency

We need to be transparent in our regulatory activities so that the public can be confident that we will be effective in protecting the environment and so that those we regulate know what is expected of them.

In dealing with those we regulate we will:

- provide an opportunity, where appropriate, to discuss what is required to comply with the law before formal enforcement action is taken; (This would not be appropriate if urgent action is required to protect the environment or to prevent evidence being destroyed or in some cases where there are serious or repeated breaches – see section 4.)
- 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.)
- provide written confirmation of any rights of appeal against formal enforcement action at the time the action is taken.

3. Methods of enforcement

A range of enforcement tools is available to our regulatory staff, including warning letters, enforcement and prohibition notices and prosecution. The choice of enforcement action taken will depend on the individual case, but we acknowledge that there will be circumstances where immediate prosecution will be appropriate.

4. Prosecution

4.1 Prosecution is an important part of any enforcement system. Prosecution acts as a punishment, a deterrent to others and as a means of avoiding a recurrence.

4.2 We recognise that the initiation of a prosecution is a serious matter and should only be taken after appropriate consideration of the implications and consequences.

4.3 **Sufficiency of evidence:** A prosecution will not be commenced or continued unless we are satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction. If the case does not pass this evidential test, it will not go ahead. (Where cases are brought by the Director of Public Prosecutions, he/she will make the final decision about whether a case will be brought to court.)

4.4 **Public interest:** In deciding whether to prosecute, we will consider the following factors:

- the effect of the offence on the environment;
- whether the offence was foreseeable;
- the intent of the offender;
- the history of the offender;

Other factors may be considered on a case by case basis where appropriate. These may include:

- the attitude of the offender;
- the deterrent effect of prosecution, on the offender and others; and,
- the personal circumstances of the offender.

4.5 If there is sufficient evidence, we will normally initiate prosecution under circumstances where one or more of the following occur :

- incidents or breaches have significant consequences for the environment;
- someone knowingly carries out activities without a relevant licence;
- someone fails to comply with formal remedial requirements, such as enforcement and prohibition notices;
- there are excessive or persistent breaches of regulatory requirements;
- there is reckless disregard for management or quality standards;
- someone fails to supply information when legally required without reasonable excuse or knowingly or recklessly supplies false or misleading information;
- our staff or authorised officers are obstructed in carrying out their duties.

4.6. Criminal proceedings will be taken 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, it may be necessary to consider any part played in the offence by the 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, was due to their neglect or they 'turned a blind eye' to the offence or the circumstances leading to it.

4.7 Where our regulatory staff and another enforcement body both have the power to prosecute, we will liaise with that other body, to ensure effective co-ordination, to avoid inconsistencies, and to ensure that any proceedings initiated are for the most appropriate offence.