

The Civil Sanctions Regime

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25 March 2019

“The whole purpose of the civil enforcement legislation and regime is to avoid unnecessary criminalisation” – *Forager Ltd v Natural England* [2017] UKUT 148 (AAC), para. 25.

Introduction

- Environmental Civil Sanctions (England) Order 2010
- Powers:
 - Fixed monetary penalties;
 - Variable monetary penalties;
 - Compliance notices;
 - Restoration notices;
 - Third party undertakings;
 - Stop notices;
 - Enforcement undertakings.

Scope of Powers

- Limitations upon powers (art 5)
- Court's role (art 6)
- Non-compliance penalty (art 7)
- Costs recovery (art 8)
- Right of appeal (art 10)
- Standard of proof
- Regulatory Guidance
- Publication (art 14)
- Power of entry but not seizure (art 15)

Constitutional Implications

- When is criminalisation unnecessary?
- Should *de facto* crimes be dealt with by regulation?
- Separation of powers issues
- Role of the right of appeal

FMPs

- £100 or £300
- Beyond reasonable doubt
- Notice of intent, then final notice
- Grounds of appeal
- EA Guidance para. 7.3.11
- NE Guidance Annex 2 para. 4.3

VMPs

- Limitations on fines
- Beyond reasonable doubt
- Notice of intent
- Final notice
- Rights of appeal
- EA Guidance para. 7.3.2
- NE Guidance Annex 2, para. 5.4

Compliance Notices

- Requirement to take specified steps
- Notice of intent
- Final notice
- Rights of appeal
- Effect of compliance
- EA's Guidance para. 7.3.3
- NE's Guidance Annex 2 para. 2.4

Restoration notices

- Duty to take certain steps to restore the position
- Notice of intent
- Final notice
- Rights of appeal
- Effect on prosecution
- EA's Guidance para. 7.3.4
- NE's Guidance Annex 2, para. 3.6

Third Party Undertakings

- Possible response to a notice of intent
- To benefit third party affected by the offence
- May be accepted or rejected by third party

Stop Notices

- Prohibits specified activity from being carried on, until specified steps are taken
- Nature of specified steps
- Completion certificate
- Failure to comply: prosecution
- Availability
- Contents
- Right of appeal
- Compensation
- EA's Guidance para. 7.3.5
- NE's Guidance, Annex 2 para. 1.3

Enforcement Undertakings

- Eligibility
- Content
- Potential for variation
- Effect
- Compliance certificate
- Failure to comply

The *Forager* Litigation

- The site
- The activity
- The stop notice
- Failure to specify steps
- This could be corrected
- Standard of proof
- Significant risk
- Serious harm
- *mens rea*
- Subsequent steps imposed

Evans v Natural England ENV/2015/0001

- The site
- The activity
- FTT's view of the Appellant
- Effect of European designation
- Conduct and credibility
- Potential level of environmental harm
- Point of appeal against stop notice?

Warren v Natural England NV/2018/0006

- The activity
- Approach to appeals: *de novo* but giving weight
- Standard of proof
- Appellate powers
- Criticisms of Natural England

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