

Natural Resources Wales Enforcement and Sanctions Guidance Policy

Annex 2 Enforcement Undertakings

When we will accept an offer

We are more likely to accept offers when they are offered early and demonstrate a clear link to our Area Statements priorities and pursue the sustainable management of natural resources. Applications for an Enforcement Undertaking should be made in writing using the Enforcement Undertaking Offer Form

Generally, we will only consider accepting an Enforcement Undertaking (EU) offer when:

- we believe that a breach of relevant legislation has occurred;
- we consider the Enforcement Undertaking to be the correct regulatory outcome taking into account
 - the nature and impact of the offence
 - the significance of the issues concerned to the environment and the community.

the offer is over and above what the company would need to do to comply

- The offeror
 - Makes a positive commitment to stop the offending conduct or alleged breach
 - Rectifies the consequence of the conduct, demonstrating that any necessary remediation or restoration work commenced at the earliest opportunity and interacting with any Third Party affected by the offence
 - Commits not to recommence the offending conduct

We will not normally accept an offer:

- for an incident classified as High or for a Major/Significant offence as defined in our Incident Categorisation Guidance, ([add link?](#))

- where the offence was intentional or negligent in cases involving intent or of the most severe environmental impact, (but we do not rule it out, as discretion will always apply);
- where we have already determined that a prosecution is appropriate in the public interest;
- where we have commenced legal proceedings or issued a VMP notice of intent

if the offer contains a clause denying liability or setting up defences for a possible breach of the enforcement undertaking

How we ensure consistency when assessing offers

- We will establish that: The offer contributes towards reasonable costs we have incurred to assess the offer and for subsequent monitoring activities. This is line with the 'Polluter Pays' Principle.
- Any payment made to a project that NRW or a Local Authority is involved in does not contribute to funding its core activity
- The offer of payment to a Third Party is unrestricted with no benefit to the offeror
- The offer of payment to a Third Party protects and enhances the natural resources of Wales and relates to the objectives of the breached legislation
- Where the offer relates to an incident that caused an environmental impact it should
 - Put right the environmental harm it caused
 - Achieve equivalent benefit to the environment plus compensation where the harm cannot be directly restored
 - Include a financial contribution to a local or related environmental cause/charity (even where the breach does not have a direct impact on the environment, for example, packaging waste producer responsibility regime breaches)
- Offers proposing to contribute to a project to improve the ecological status of water bodies which would be unaffordable without this contribution are carefully considered
- If an offer is made to pay in instalments, the offeror provides evidence of their inability to pay outright (such as certified accounts)

Examples of actions which could be included in your offer:

- training of staff;
- undertaking works to prevent a recurrence (including undertaking pollution studies and pollution reduction programs); and

- implementing a program to improve your overall compliance with the legislation.

We would wish to see the following elements included in an internal compliance program:

- details of the monitoring and reporting mechanisms the person will adopt;
- demonstrable Board and senior management commitment to, and involvement with, the entire program;
- the assignment of responsibility for the compliance program to a named senior manager of the person;
- the development and dissemination throughout the organisation of a clear compliance policy;
- the identification of compliance issues and operating procedures for compliance;
- the development and delivery of a compliance training program to key personnel groups within the organisation;
- the establishment of permanent procedural checking and monitoring mechanisms, such as nominating a compliance officer and procedures to prevent future breaches and to ensure that any potential breaches are not only averted but also reported to senior management;
- the commitment to an independent audit of the compliance program at regular intervals (usually annually), for a specified period (usually 3 years);
- a requirement to report to us at a specified time on the steps taken to implement the compliance program.

The Enforcement Undertaking may also include:

The name of a senior manager who is responsible for monitoring and complying with the undertaking; and the name of a Natural Resources Wales officer to whom the contact officer must report.

Generally, the person giving the undertaking will be responsible for:

- monitoring how the undertaking is implemented; and
- reporting this to Natural Resources Wales in the specified manner.

The way the person giving the undertaking proposes to do this must be set out in the Enforcement Undertaking offer and we must be satisfied that this is adequate. In resolving any matter, we want to find ways to redress the offence.

When the offer is accepted

Once your offer has been accepted, it becomes a legally binding written agreement between you and Natural Resources Wales.

If an offeror fails to comply, either fully or in part, we are likely to:

Serve a VMP, compliance notice or restoration notice; or

- Prosecute for the original offence; or
- Vary or extend the time for complying with an enforcement undertaking

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.

We will only consider an application 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.

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.

You must include

- sufficient information to help us determine whether or not the undertaking has been fully complied with evidence demonstrating that all affected third parties have received any monies owing to them as part of your offer.

Once we have assessed your application, we will decide whether or not to issue a Completion Certificate within 14 calendar days of receiving your application, by either:

- issuing you with a Completion Certificate; or
- serving a Refusal Notice, outlining the reasons for our decision

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

Third-Party Undertakings

A TPU is similar to an enforcement undertaking but can only be offered where an offender has already received a notice of intent to serve one of the following:

- VMP
- compliance notice
- restoration notice

A TPU can only be used to make an offer to compensate someone who has been affected by the offence.