

Scottish Environment Protection Agency

June 2016

Policy for communicating penalties and undertakings

1. Purpose of this document

This document explains our approach to publishing information about penalties which have been issued by us and undertakings which have been accepted by us.

It aims to make clear:

- What information we will publish;
- When we will publish that information;
- Where we will publish that information;
- In which circumstances and how we might publicise penalties and undertakings.

We also set out the situations when information will not or might not be published by us.

This document relates to:

- Penalties¹ which have been issued by us, costs recovery notices issued by us, and undertakings² which have been accepted by us under the Environmental Regulation (Enforcement Measures)(Scotland) Order 2015;
- Civil penalties under the [Greenhouse Gas Emissions Trading Scheme Regulations 2012 \(ETS\)](#)³, the [CRC Energy Efficiency Scheme Order 2013 \(CRC\)](#)⁴ and the [Energy Savings Opportunities Scheme Regulations 2014 \(ESOS\)](#)⁵;
- Fixed penalty notices under the [Transfrontier Shipment of Waste Regulations 2007](#).⁶

¹ Fixed monetary penalties, variable monetary penalties, and non-compliance penalties

² Enforcement undertakings and variable monetary penalty undertakings

³ <http://www.sepa.org.uk/regulations/climate-change/eu-emissions-trading-system/>

⁴ <http://www.sepa.org.uk/regulations/climate-change/carbon-reduction-commitment/>

⁵ <http://www.sepa.org.uk/regulations/climate-change/energy-savings-opportunities-scheme/>

⁶ <http://www.sepa.org.uk/regulations/waste/transfrontier-shipment-of-waste/>

2. Background: Publication

Enforcement action is a key part of our Regulatory Strategy and allows us to improve compliance levels, tackle environmental crime and drive behaviours in a positive direction.

We want our enforcement activities to deter and discourage offenders and for these to be fairly, consistently and proportionately applied alongside our other regulatory work, including audits, inspections and monitoring activities.

The courses of enforcement action available are now broad and span serious offending that will continue to be reported by us for consideration for prosecution by the Crown Office and Procurator Fiscal Service and lower level offences that we will deal with directly, via new enforcement measures intended to address non-compliant activity and poor performance.

This [Policy](#)⁷ complements our Enforcement Policy and explains what we will do to communicate penalties and undertakings.

We are required under the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 (the Order) to publish the number and type of cases in which fixed monetary penalties, variable monetary penalties, non-compliance penalties and costs recovery notices have been imposed, and the number and type of cases in which a Variable Monetary Penalty undertaking (VMP undertaking) or enforcement undertaking has been accepted by us.

We have also been given the discretion by the Order to publish, in such manner as we think fit:

- Final fixed monetary penalty notices imposed by us;
- Final variable monetary penalty notices imposed by us;
- Non-compliance penalty notices imposed by us;
- VMP undertakings accepted by us; and
- Enforcement undertakings accepted by us.

We are also required to publish some information about some civil penalties under the [ETS](#)⁸, [CRC](#)⁹ and the [ESOS](#)¹⁰.

⁷ <http://www.sepa.org.uk/regulations/how-we-regulate/policies/>

⁸ <http://www.sepa.org.uk/regulations/climate-change/eu-emissions-trading-system/>

⁹ <http://www.sepa.org.uk/regulations/climate-change/carbon-reduction-commitment/>

¹⁰ <http://www.sepa.org.uk/regulations/climate-change/energy-savings-opportunities-scheme/>

We have undertaken, in terms of our Guidance on the use of enforcement action, to publish information about fixed monetary penalties, variable monetary penalties and non-compliance penalties issued and undertakings accepted by us.

We have also undertaken in that Guidance to report details of enforcement actions on our website, and to report a summary of enforcement actions in our annual enforcement report [Enforcement Policy](#)¹¹

We may also, in terms of that Guidance, publicise the use of particular enforcement actions in other ways when we consider it appropriate to secure one or more of our enforcement outcomes – to achieve the behaviour change that will effectively protect and, where possible, improve the environment, secure the well-being of people in Scotland and contribute to the sustainable use of resources.

¹¹ <http://www.sepa.org.uk/regulations/how-we-regulate/policies/>

3. Summary: what information will we publish

Type of enforcement action	What will be published	How it will appear on the SEPA website
Fixed monetary penalties (including fixed penalties issued by us under the Transfrontier Shipment of Waste Regulations 2007)	<ul style="list-style-type: none"> number of penalties, type of cases and total amount of penalties 	<ul style="list-style-type: none"> annual enforcement report
	<ul style="list-style-type: none"> name/address*, date of penalty, details of offence, and penalty amount 	<ul style="list-style-type: none"> table of penalties
Civil penalties under ETS, CRC and ESOS	<ul style="list-style-type: none"> number of penalties, type of cases and total amount of penalties 	<ul style="list-style-type: none"> annual enforcement report
Civil penalties under ETS, CRC and ESOS (excluding civil penalties for breaches of emissions targets by operators of installations in the Small Emitter and Hospital Opt-Out Scheme under ETS)	<ul style="list-style-type: none"> name/address*, date of penalty, details of the failure resulting in penalty, and penalty amount 	<ul style="list-style-type: none"> table of penalties
	<ul style="list-style-type: none"> all notices issued* 	<ul style="list-style-type: none"> link from table of penalties
Variable monetary penalties	<ul style="list-style-type: none"> number of penalties, type of cases and total amount of penalties 	<ul style="list-style-type: none"> annual enforcement report
	<ul style="list-style-type: none"> name/address*, date of penalty, details of offence, and penalty amount 	<ul style="list-style-type: none"> table of penalties
	<ul style="list-style-type: none"> all final notices* 	<ul style="list-style-type: none"> link from table of penalties
VMP undertakings	<ul style="list-style-type: none"> number of undertakings and type of cases 	<ul style="list-style-type: none"> annual enforcement report
	<ul style="list-style-type: none"> name/address*, date undertaking accepted, and details of offence 	<ul style="list-style-type: none"> table of undertakings
	<ul style="list-style-type: none"> copies of all undertakings accepted* 	<ul style="list-style-type: none"> link from table of undertakings
enforcement undertakings	<ul style="list-style-type: none"> number of undertakings and type of cases 	<ul style="list-style-type: none"> annual enforcement report
	<ul style="list-style-type: none"> name/address**, date undertaking accepted, details of offence, and any non-compliance certificates issued 	<ul style="list-style-type: none"> table of undertakings
	<ul style="list-style-type: none"> copies of all undertakings accepted** 	<ul style="list-style-type: none"> link from table of undertakings
non-compliance penalties	<ul style="list-style-type: none"> number of penalties, type of cases and total amount of penalties 	<ul style="list-style-type: none"> annual enforcement report
	<ul style="list-style-type: none"> name/address*, date of penalty, details of offence, and penalty amount 	<ul style="list-style-type: none"> table of penalties

	<ul style="list-style-type: none"> • all penalty notices** 	<ul style="list-style-type: none"> • link from table of penalties
Costs recovery notices	<ul style="list-style-type: none"> • number of notices, type of cases and total amount of costs 	<ul style="list-style-type: none"> • annual enforcement report
	<ul style="list-style-type: none"> • name/address* *, date of notice, and amount of the costs required to be paid 	<ul style="list-style-type: none"> • table of costs recovery notices

*addresses of individuals will not be included

**names and addresses of individuals will not be included

4. Publication: what information we will and won't publish

4.1 Tables of penalties, costs recovery notices and undertakings

The following will be published on our website:

- A table of penalties imposed or issued by us which will include, for each fixed monetary penalty notice (including fixed penalty notices under the Transfrontier Shipment of Waste Regulations 2007), variable monetary penalty notice, civil penalty notice under ETS, CRC and ESOS, or non-compliance penalty notice, the name and address of the person on whom the penalty was imposed (except for addresses of individuals), the date the penalty notice was imposed, the offence or failure to which the penalty relates, and the amount of the penalty.
- A table of costs recovery notices issued by us which will include, for each notice, the name and address of the person on whom the notice was issued (except for names and addresses of individuals), the date the costs recovery notice was issued, and the amount of the costs required to be paid.
- A table of VMP undertakings and enforcement undertakings accepted by us which will include, for each undertaking, the name and address of the person who has given the undertaking (except for names and addresses of individuals giving enforcement undertakings and the addresses of individuals giving VMP undertakings), the date the undertaking was accepted and the details of the offence to which the undertaking relates. If any non-compliance certificates are issued in relation to enforcement undertakings, we will include them in the table.

We will not publish:

- Information about any notice of intent issued in relation to a fixed monetary penalty, a variable monetary penalty or an ETS, CRC or ESOS civil penalty.
- Information about VMP undertakings and enforcement undertakings that have been offered but not accepted by us.
- Cases which have been overturned on appeal.

4.2 When we will publish the tables

We will publish the tables and information referred to above:

- On our website with this being updated quarterly.
- Within a reasonable time after the period for making an appeal has expired in relation to a penalty notice or costs recovery notice or non-compliance penalty or if an appeal has been made, when that appeal has been withdrawn or determined (and liability for the penalty/costs confirmed).

- Within a reasonable time after an undertaking has been accepted or a non-compliance certificate is issued (or, if an appeal has been made, after that appeal is withdrawn or determined).

4.3 When we will remove information after publication

We will ensure that information is removed from these tables 3 years after first publication. We will not otherwise remove details from these tables when they are updated, unless required by law or the penalty is subsequently modified or withdrawn. For example, for CRC and ESOS penalties which include a publication penalty, the statutory period for publication cannot exceed one year unless SEPA decides to publish the penalty for longer on the basis that the seriousness of the failure justifies a longer period.

If, for any reason, we withdraw a penalty notice after it has been imposed, we will remove details of that penalty notice from these tables, and any links to those notices.

4.4 Enforcement undertakings

In addition to publishing details of enforcement undertakings in the table of undertakings, we will publish for no longer than 3 years after first publication:

- The enforcement undertakings themselves (i.e. once accepted by us) and any subsequent amendments accepted by us.
- Any non-compliance certificates associated with these enforcement undertakings but only after the period for making an appeal has expired in relation to that certificate, or if an appeal has been made, when that appeal has been withdrawn or determined.

The above information will be made available through links on the published table of undertakings on our website.

We will not publish:

- Enforcement undertakings which have not been accepted by us.
- The personal names and addresses, signatures, personal telephone numbers and personal e-mail addresses from undertakings (and non-compliance certificates).

4.5 Variable monetary penalties and associated penalty notices/undertakings

In addition to publishing details in the table of penalties/undertakings, we will publish for no longer than 3 years after first publication copies of all:

- Final variable monetary penalty notices imposed by us.
- Civil penalty notices issued by us under ETS, CRC and ESOS (except for civil penalties for breaches of emissions targets by operators of installations in the Small Emitter and Hospital Opt-Out Scheme under ETS).

- Non-compliance penalty notices issued by us.
- VMP undertakings accepted by us.

We will publish:

- The name of anybody who has been issued with a variable monetary penalty by us.
- Information associated with any notice but only after the period for making an appeal has expired in relation to such a penalty notice or, if an appeal has been made, when that appeal has been withdrawn or determined (and liability to the penalty has been confirmed).

Again, this information will be made available through links on the published tables of penalties and undertakings on our website.

We will not publish:

- The personal addresses, signatures, personal telephone numbers and personal e-mail addresses from notices and undertakings that we intend to publish.
- Fixed monetary penalty notices - these will be included in the table of penalties but without a link to more detailed information.
- VMP undertakings that have been offered but not accepted by us.

4.6 Annual enforcement report

We will publish an annual enforcement report in which criminal prosecutions and the use of new enforcement measures, under the Order, will be set out in accordance with this policy.

The table of penalties, table of undertakings and the links to more detailed information about variable monetary penalties, civil penalty notices under ETS, CRC and ESOS, non-compliance penalty notices, VMP undertakings and enforcement undertakings will all be included in the annual enforcement report.

In summary, the annual enforcement report will include the:

- Number of cases in which fixed monetary penalties (including fixed penalty notices under the Transfrontier Shipment of Waste Regulations 2007), variable monetary penalties, non-compliance penalties and costs recovery notices have been imposed, and the number of cases in which a VMP undertaking or enforcement undertaking has been accepted by us.
- Type of cases in relation to which these measures were imposed, issued or accepted by describing the different offences.
- Total monetary amount of penalties imposed or issued, and for costs recovery notices we will set out the total amount of costs required to be paid.

- Number of cases in which civil penalties under ETS, CRC or ESOS have been issued.
- Type of cases in relation to which these measures were imposed by describing the grounds in relation to which they were imposed.
- Total monetary amount of penalties issued.

We might also decide to publicise in addition to publishing where we think this would be useful in terms of a deterrent effect for particular penalties issued by us or undertakings accepted by us.

4.7 Publication: when we might not publish information

Except for the information we are required to publish as set out above, where there are compelling reasons (such as where disclosure may prejudice an ongoing investigation) we may decide not to publish information regarding the penalties imposed by us or undertakings accepted by us or non-compliance certificates issued by us.

There may also be circumstances where what does or does not go on the public register may be subject to Ministerial directions. We will therefore ensure that we keep within the spirit of, for example, national security directions and do not publish information where this is to be specifically excluded from our public registers.

5. Informing the public and wider interests of the outcomes of our enforcement actions

We know that the reputational impacts of negative media attention following a successful prosecution or imposition of a penalty can be very significant. Our position is clear in that full compliance is a non-negotiable part of our Regulatory Strategy - we want and expect behaviours that will deliver this and will use publicity as part of our overall approach.

The purpose of enforcement action is to deter and discourage non-compliant and illegal practices and for the fines or penalties imposed to punish offenders. Enforcement is also integral to us being able to deliver on our statutory purpose to protect the environment whilst having regard to the well-being of people in Scotland and sustainable use of natural resources.

We will continue to publish information about how many cases we report to the Crown Office and Procurator Fiscal Service and the number of convictions arising in the criminal courts, including when a Publicity Order has been made by the court.

We will do this via our website and may also publicise:

- Penalties and undertakings in such a way as to be fair and proportionate whilst not shying away from drawing attention to non-compliance and environmental harm caused by poor performance and non-compliant activity.
- Any variable monetary penalties imposed or undertakings accepted by us (including non-compliance certificates issued by us).

We may decide to publicise:

- Civil penalty notices issued by us under ETS, CRC or ESOS, for example, where the same person has previously been issued with a civil penalty notice under any of these schemes.

To publicise a penalty or undertaking (or non-compliance certificate), we will consider: putting a statement on our website or our media centre; issuing a press release; or, making a statement on our social media channels.