

Guidance on the use of enforcement action for SEPA regulated Climate Change Regimes

February 2023

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This guidance is intended for use by SEPA and by those whom we regulate. It could change as a result of changes to legislation, future Government guidance or experience in its use. If you wish to make any comments on the Guidance please email: emission.trading@sepa.org.uk

For information on accessing this document in an alternative format or language please contact SEPA by emailing to equalities@sepa.org.uk

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<http://contactscotland-bsl.org/>

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1. Purpose

This guidance has been published to explain how we will use enforcement powers under the following legislation aimed at preventing or limiting emissions of greenhouse gases:

- the Energy Saving Opportunity Scheme Regulations 2014 (“the ESOS Regulations”)
- Greenhouse Gas Emissions Trading Scheme Order 2020 (“the ETS Order”) (As amended) and the Greenhouse Gas Emission Trading Scheme Regulations 2012 (As amended) (together the ETS Legislation)
- the Fluorinated Greenhouse Gas Regulations 2015 (“the F Gas Regulations”).
- The Air Navigation (Carbon Offsetting and Reduction Scheme for International Aviation) Order 2021 (CORSIA)

We call these the Climate Change Regimes.

Note - Enforcement under the Ozone-Depleting Substances Regulations 2015 is dealt with under SEPA’s Guidance on the Use of Enforcement Action.

<https://www.sepa.org.uk/media/219242/enforcement-guidance.pdf>.

The Enforcement measures referred to in that Guidance apply to the Ozone-Depleting Substances Regulations 2015.

This guidance is directed at any person (including a business or public body) who is subject to the requirements of the Climate Change Regimes and for whom we are the enforcing authority.

The aim of this guidance is to make clear what enforcement action we can take in respect of a person who is responsible for non-compliance with the requirements of the Climate Change Regimes (in this document they are referred to as the “**responsible person**”) and the circumstances under which different types of enforcement action might be appropriate.

This guidance supports our Enforcement Policy:

(<http://www.sepa.org.uk/regulations/enforcement/>)

This sets out our approach to enforcement, and which is based on the five better regulation principles of:

Proportionality

Consistency (fairness and legal correctness)

Transparency

Accountability

Targeted (efficient, effective and evidence based).

These principles and the principle of taking a timely approach form the foundations of our approach to enforcement and this guidance.

2. Background

2.1 Why SEPA needs enforcement powers

As Scotland's principal environmental regulator, one of our most important roles is to protect and improve the environment, health and wellbeing of the people of Scotland.

One way in which we do this is by using both our regulatory powers and our advisory role to tackle climate change and to help Scotland's businesses and organisations move to a low carbon economy. We assess compliance with and, where necessary, enforce national legislation that aims to reduce greenhouse gas emissions and to improve energy efficiency.

Where a responsible person fails to comply with the conditions of their permit or with the applicable legislative requirements or fails to obtain a permit when one is required, we need to be able to take action to rectify this. In this guidance we refer to these failures as non-compliance.

Ideally, we will seek to work with the responsible person (that is, the person responsible for the non-compliance) and use advice and guidance to achieve our enforcement outcomes. However, there are situations where this type of partnership approach will not secure our desired enforcement outcomes and another form of enforcement action is appropriate or required from the outset.

2.2 Our approach to enforcement

Regulation is about changing behaviour, in a way that generates positive outcomes for the environment, communities and the economy. In individual cases where we identify non-compliance with the requirements of the Climate Change Regimes the outcomes we seek to achieve are:

- to secure compliance with regulatory requirements, to bring the activity under regulatory control and stop non-compliance;
- to address any financial benefits attributable to the non-compliance;
- to deter future non-compliance;
- to ensure a level regulatory playing field;
- to maintain the integrity of the relevant Climate Change Regime in order to deliver the desired outcomes of reducing greenhouse gas emissions and where appropriate, improving energy efficiency.

2.3 The types of enforcement action available

The form of enforcement action, or combination of enforcement actions, which we use to achieve our enforcement outcomes, will differ depending on the nature of the non-compliance, the harm caused and the compliance history of the responsible person. The action which we expect to deliver our enforcement outcome(s) most effectively,

and in a proportionate way, will normally be the appropriate enforcement action for us to use.

However, in certain circumstances the legislation may require us to take a specific form of enforcement action.

Further guidance on how we make enforcement decisions can be found in the [enforcement decision making](#) section 11 of this guidance.

2.4 Enforcement action that we can take

The table below sets out the different enforcement tools that are available to us under the Climate Change Regimes together with an overview of the circumstances in which it may be appropriate to use them.

It should be noted that this is not a hierarchy of enforcement actions or a series of sequential enforcement steps. We will take whatever action is most appropriate to achieve our outcomes, particularly to change behaviour. In general, we are not limited to choosing one type of enforcement action and in some circumstances a combination of enforcement actions may be appropriate.

Table A: The different types of enforcement actions available to SEPA

Enforcement action	Role of the enforcement action	When would its use be appropriate?
<p>Advice and guidance including warning letters (<i>in response to non-compliance</i>)</p>	<p>To inform and raise awareness and where it is the most appropriate tool to achieve our desired outcome(s). This may be done when we give a written 'warning' about non-compliance.</p>	<p>Where there is a minor non-compliance, and there is no evidence of deliberate, repeat or continued offending.</p> <p>Where a change in behaviour will result from giving the responsible person a better understanding of what needs to be done to comply with their obligations.</p> <p>At all stages irrespective of any other enforcement action that we consider appropriate.</p>
<p>Final Warning Letters</p>	<p>To raise awareness of non-compliance and as a final attempt to change behaviour without using a statutory notice or imposing a civil penalty.</p> <p>To make it clear to the responsible person that a failure to take preventative steps to stop the non-compliance is likely to result in further enforcement action.</p>	<p>Where we consider that the threat of further enforcement action being taken is needed.</p> <p>Advice and guidance on how to comply with obligations will also be provided.</p>

<p>Statutory Notices</p>	<p>Different statutory notices fulfil different roles, depending on the circumstances of the non-compliance. Their availability is dependent on the precise wording of the relevant legislation.</p> <p>Notices we can use are:</p> <p>An enforcement notice – useful if remedial steps or preventative steps need to be taken to address non-compliance; and</p> <p>A revocation notice – has the effect that the permit ceases to authorise the carrying out of a regulated activity.</p>	<p>To specify the steps that need to be taken to remedy the non-compliance or to ensure that a non-compliance does not occur.</p> <p>For example:</p> <ul style="list-style-type: none"> - In cases where a responsible person is operating an ETS installation without a permit, this might include a requirement to cease operating. - We may revoke an ETS permit if an operator has failed to pay their subsistence fees or may be required to do so where we consider that installation has ceased operation.
<p>Civil Penalty Notices</p>	<p>To change behaviour, deter future non-compliance and punish more significant non-compliance. They may be used to remove financial benefit (money made or costs avoided) as a result of the non-compliance.</p>	<p>Liability to a civil penalty, calculated in accordance with the relevant legislation, arises in respect of specific non-compliances. For most civil penalties (but not all) we have discretion to waive or reduce the penalty.</p>
<p>Prosecution (Reporting matters to the Crown Office and Procurator Fiscal Service (COPFS) for consideration of prosecution)</p>	<p>To punish significant and serious offending. Prosecution is a strong deterrent for future non-compliance.</p>	<p>The legislation may specify certain non-compliances which are criminal offences and subject to prosecution.</p>

3. Examples of non-compliances that may lead to enforcement action

Under the ESOS Regulations:

- Failure to comply with a requirement of the ESOS Regulations;
- Failure to notify the scheme administrator of compliance;
- Failure to maintain records; or
- Failure to undertake an energy audit.

Under the ETS Legislation:

- Contravention or likely contravention of a condition of a permit or an aviation emissions monitoring plan; the ETS Order, the Monitoring and Reporting Regulation, Free Allocation Regulation or Activity Level Change Regulations
- Late submissions of emissions, activity level or improvement reports;
- Under-surrender of allowances;
- Failure to monitor the annual reportable emissions of the installation;
- Failure to apply for a variation of the permit;
- Operating without a permit;
- Failure to surrender a permit;
- Exceeding an emissions target; or
- Providing false or misleading information or statements.

Under the F Gas Regulations:

- Intentional release of a F Gas;
- Failure of Operator to take measures to prevent release of a F Gas;
- Carrying out maintenance activities and recovery of a F Gas without appropriate qualifications;
- Failure to conduct leak checks as and when required;
- Failure to install and use an automatic leak detection system as and when required; or
- Failure to retain records for a minimum of five years.

Under CORSIA

- Failure to apply or make revised application for an Emission Monitoring Plan
- Failure to comply with a condition of Emissions Monitoring Plan
- Failure to monitor and report emissions
- Failure to keep records
- Failure to comply with an enforcement notice or information notice
- Providing false or misleading information or refusal to allow access to premises

4. How the use of enforcement actions is governed

We have robust internal governance arrangements for enforcement decisions which ensure that decisions about the use of enforcement action are made consistently and at an appropriate level in the organisation.

From time to time, we may publish regulatory position statements on our web site. Where relevant we will consider these in deciding if, or what, enforcement action may be appropriate.

Other safeguards

There are statutory appeal mechanisms in the relevant legislation for challenging any formal enforcement action which we may take.

In addition, if we consider that you are the responsible person liable to a civil penalty, we will make you aware of this and we will give you an opportunity to explain why you believe you are not liable to the penalty, or why the proposed penalty should be waived or reduced, before we make a final decision. The types of factors that we generally take into account when making our decision are listed in Appendix C – [Civil Penalties](#)

A responsible person who receives a civil penalty notice from us will still be entitled to appeal against the decision to serve the penalty notice, whether or not they have already made representations.

When we issue a statutory notice or a civil penalty notice, we always include information on any right of appeal against that notice.

5. How SEPA determines which enforcement action is appropriate

We will collect the facts and/or evidence about the non-compliance before making a decision on what enforcement action(s) may be appropriate.

The form of enforcement action which we use will differ depending on:

- the enforcement outcome(s) we are seeking to achieve;
- the significance of the non-compliance dependent on the Enforcement Factors.

There may also be circumstances where we have a statutory duty to take a specific type of enforcement action. For example, Article 47 of the ETS Order prescribes circumstances in which we are required to issue a civil penalty.

6. Who can action be taken against?

Under the ESOS Regulations enforcement action will be directed at the responsible undertaking (that is the relevant undertaking which, in terms of the Regulations, is responsible for a participant's compliance with the scheme).

Under the ETS Legislation enforcement action may be taken against an operator or the holder of the permit or a UK administered aircraft operator. There are circumstances where a permit holder may be assigned liability for non-compliances by previous operators.

Under the F Gas Regulations enforcement action may be taken against the operator who is in day-to-day control of the equipment that uses F Gas or whose function relies upon it.

Under CORSIA enforcement action may be taken against a person, organisation, or enterprise whom is an aeroplane operator and for whom the UK is the administering state.

7. Combining the different types of enforcement action

We may combine different types of enforcement action where we consider this will achieve the desired enforcement outcomes.

However, there may be circumstances where legislation prevents us from combining enforcement actions. For example, Article 51 of the ETS Order prevents the imposition of a civil penalty for a failure to comply with a condition of a Hospital and Small Emitter permit if the failure also gives rise to a penalty for under-reporting of emissions in accordance with Article 56.

8. Publishing and publicising information

We may be required to publish the name of a person who is subject to a mandatory excess emission penalty imposed under the ETS Legislation. Publication may also be an element of a penalty imposed under the ESOS Regulations. If publication is required, the legislation prescribes the information which must be published and when it may be published. The ESOS Regulations also specify where it must be published and the period (1 year) for which it must be published (although we do have discretion to waive or extend that time period).

Information relating to other Climate Change penalties we impose may be published on our website.

The information we will publish, and how it will be published, is set out in our Communicating Penalties and Undertakings Policy, available on the SEPA website <http://www.sepa.org.uk/regulations/enforcement/>

We may publicise the use of particular enforcement actions in other ways when we consider it would be appropriate for the purpose of securing one or more of our enforcement outcomes.

9. How SEPA will evaluate the effectiveness of our approach to enforcement

We will review this guidance and our governance procedure and make any necessary amendments in light of experience.

We will also review the circumstances in which the various enforcement actions have been used and how effective they were in achieving the desired enforcement outcome(s).

10. Cost recovery

In certain circumstances we are entitled to recover the costs of carrying out enforcement action or the costs of work we carry out preparatory to taking enforcement action.

11. Enforcement decision making

Choosing what enforcement action we will take

When we identify or become aware of a potential non-compliance we will undertake an investigation, appropriate to the circumstances, to collect the available evidence regardless of what any eventual enforcement action may be. Any enforcement action we take must be supported by sufficient evidence.

Having identified through investigation that a non-compliance has occurred, the enforcement outcomes we will seek to achieve are one or more of the following:

- to secure compliance with regulatory requirements, to bring the activity under regulatory control and stop non-compliance;
- to address any financial benefits attributable to the non-compliance;
- to deter future non-compliance;
- to ensure a level regulatory playing field;
- to maintain the integrity of the relevant scheme in order to deliver the desired outcomes of reducing greenhouse gas emissions and improving energy efficiency.

For any non-compliance there may be a number of different enforcement outcomes we want to achieve. Having identified the outcomes we will then identify what enforcement action is required to secure the desired outcome(s).

In deciding which action to take we will consider how effective that action will be at achieving our desired outcomes together with the significance of the non-compliance

which is assessed using our enforcement factors. Further guidance on these can be found in [What are the enforcement factors](#) section 12 of this guidance.

The choice of enforcement action is not simply determined by applying a set of prescriptive rules that depend on the combination of factors involved. Instead, we will decide how important each factor is in the circumstances of each case, based on the evidence available.

By taking into account all these factors and how effective enforcement action is expected to be in the individual circumstances, we make an informed and reasoned judgement about which enforcement action or combination of enforcement actions is:

- most likely to produce the desired outcome(s); and
- is proportionate to the significance of the non-compliance.

In any event and taking into account all the circumstances of the case we must be satisfied that whatever action we take is reasonable.

Example:

We will consider which enforcement action, or combination of actions, would best change behaviour in light of the responsible person's behaviour towards the non-compliance.

If the responsible person provides us with the details of a non-compliance voluntarily or through a self-reporting mechanism and takes steps to rectify it, then we may consider that advice and guidance might be an appropriate response – depending on other factors. For example, if a reporting deadline is missed, but the responsible person advises SEPA of the potential non-compliance, submits the report within an agreed timeframe after the due date and provides a reasonable explanation for the failure to comply, SEPA is likely to consider the use of advice and guidance or a warning letter rather than imposing a penalty.

However, if the responsible person does not co-operate with the investigation or does not take steps available to them to rectify the non-compliance then we may consider that advice and guidance is unlikely to change their behaviour – depending on the other factors - and another type of enforcement action is necessary. Similarly, if the responsible person has missed a reporting deadline on a previous occasion and received warning letter then more formal enforcement action may be appropriate.

Table B below indicates the most common outcomes associated with each enforcement action. This table is indicative only because we will consider the facts of each individual case when deciding which enforcement action(s) are likely to be effective at delivering the outcomes for an individual case.

Table B: Enforcement actions and their principal outcomes

	Restore mechanisms to reduce greenhouse gas emissions to meet climate change objectives	Secure compliance	Deter future non-compliance	Remove financial benefit
Advice and guidance	√	√	√	
Final Warning Letter/Warning Letter		√	√	
Statutory Notice – Enforcement Notice	√	√	√	
Statutory Notice – Revocation Notice		√		
Variation of permit conditions		√		
Civil Penalty			√	√
Criminal sanctions (where available)			√	√

12. What are the enforcement factors?

To determine what enforcement action, or combination of actions, is most appropriate or proportionate to secure the outcome(s), we will review the evidence against our enforcement factors. In all cases we will consider:

- intent;
- foreseeability;
- impact;
- financial implications;
- deterrent effect;
- previous history;
- other circumstances.

However, this is not an exclusive list and depending on the particulars of an individual case other factors may have to be considered. Using the facts and or evidence we will decide how important each factor is in the circumstances of each case.

Intent

We will consider the following questions to help determine the level of intent:

- Was the non-compliance committed deliberately, recklessly or with negligence?
- Was the non-compliance proactively reported to SEPA?
- Was any false or misleading information provided?
- Has the responsible person worked constructively with SEPA to rectify the non-compliance and mitigate any harm?
- Has the responsible person cooperated fully and helpfully with our investigation?
- Was the responsible person aware of their legal obligations i.e., were they aware of permit requirements, or have they had correspondence, information or previous SEPA warnings or discussion?
- Was the non-compliance the result of a genuine accident or exceptional events?

Foreseeability

Here, we will consider the following questions:

- Could the circumstances leading to the non-compliance reasonably have been foreseen?
- Was the responsible person aware of the risks associated with the activity, and the preventative measures that might have been taken?
- Were preventative measures taken or not taken?

Where the circumstances could have reasonably been foreseen, we will normally apply a form of enforcement action beyond advice and guidance or the issuing of a warning letter.

Impact

In assessing impact, we will consider:

- The extent and significance of the non-compliance;
- Whether steps have been taken to mitigate the effect of the non-compliance;
- Whether the non-compliance undermines important aspects of the transparency, reliability and effectiveness of the relevant scheme or trust in it, taking into account the length of time that a person has been required to comply with the legislation and taken to put the situation right.

Financial implications

We will ask the following questions when determining the level of financial benefit:

- Is legitimate business being undercut?
- Has revenue accrued or have costs been avoided, such as costs saved by not obtaining a permit or registering as a participant?

Deterrent effect

We will consider the deterrent effect, both on the responsible person and others, when choosing which form of enforcement action is most appropriate.

Previous history

We will consider how well the responsible person has responded to advice and guidance, or other enforcement actions that we have taken in the past.

We will also take into account the degree of previous non-compliance (including site-specific non-compliance or previous non-compliance by the responsible person).

We will also have regard to our compliance assessment scheme (CAS), where appropriate, and previous enforcement actions taken against the responsible person, including in other legal regimes such as PPC (Pollution Prevention and Control), Waste Management Licencing (WML) and CAR (Controlled Activities Regulations).

We will also take into account the general attitude of the responsible person towards meeting their regulatory obligations and SEPA in general. For example, in the past has the responsible person worked proactively and constructively with SEPA?

Where non-compliance has continued or been repeated, despite us taking enforcement action, we will normally change our enforcement response to pursue a more effective course of enforcement action.

Other circumstances

In most cases we will also consider whether, in all the circumstances of the case, it is reasonable to take a particular form of enforcement action. However, in some cases we may be required to take a particular form of enforcement action.

Appendices - The different types of enforcement tools

Appendix A. Final Warning Letters

What is a final warning letter?

A final warning letter is a written warning about a particular non-compliance. It provides a reasonable opportunity for the responsible person to address that non-compliance and take preventative steps to stop the non-compliance from continuing or recurring.

It provides a final chance for the responsible person to change their behaviour and come into compliance before we take further enforcement action.

If we issue a final warning letter, we will be clear about the steps to be taken to rectify or prevent further non-compliance in order to avoid further enforcement action.

A final warning letter might say, for example -

Any further/continued non-compliance is likely to result in enforcement action being taken against you by SEPA. Such enforcement action could include the imposition of a civil penalty.

When a final warning letter may be used

A final warning letter may be an appropriate response in circumstances where:

- Advice and guidance, or other warnings, has not been effective;
- Giving a final warning is expected to change the behaviour of the responsible person;
- We consider that the responsible person should be given an opportunity to remedy the non-compliance or to take preventative steps to ensure that the non-compliance does not recur. This may apply where, for example, there is no history of offending; or
- A monetary penalty is not required to change the behaviour of the responsible person.

When SEPA will not use a final warning letter

We may take enforcement action, where it is appropriate to do so, without issuing a final warning letter. A final warning letter is not a prerequisite to us taking another form of enforcement action, including imposing a civil penalty.

We will not use a final warning letter in circumstances where:

- A notice of intent to impose a civil penalty will be served;
- A final warning letter has previously been issued to the same responsible person for a similar non-compliance;

- Advice and guidance alone are likely to change the behaviour of the responsible person and the threat of further enforcement action is unnecessary; or
- Where there has been financial benefit to the operator and another enforcement action is needed to remove this benefit.

In addition, there will be circumstances where it is not appropriate to use a final warning letter. This will be determined when reviewing the circumstances of the non-compliance against our [enforcement factors](#) described in section 12 of this guidance.

Appendix B - Statutory Notices

What is a statutory notice?

A statutory notice is a formal notice, served by us, requiring the responsible person to take (or cease to take) action to address the non-compliance. It will inform the recipient what they need to do and failure to comply with requirements of the notice may attract a civil penalty or it may be a criminal offence.

The responsible person may wish to seek independent legal advice if we serve a statutory notice on them.

When a statutory notice may be used

A statutory notice may only be used where the relevant legislation permits this.

Generally, a statutory notice is used when we wish to specify the measures to be taken to prevent, stop or remedy non-compliance.

The statutory notices we can use include:

- **Enforcement notices** - identifying a contravention or likely contravention of the ETS Order, the Monitoring and Reporting Regulations, a permit or an aviation emissions monitoring plan (Article 44 of the ETS Order) OR identifying a failure to comply with a requirement of the ESOS Regulations or the F -Gas Regulations and, in each case, requiring steps to be taken.
- **Revocation notices** - revoking a permit under the ETS Order.

What to expect in a statutory notice

A statutory notice will usually state the legislation which allows SEPA to issue the notice and will specify the grounds on which SEPA is issuing the notice. This is likely to include the details of the contravention that SEPA has identified. The statutory notice will also set out:

- who needs to take action;
- the steps to be taken;
- a date by which the steps must be taken;
- whether or not an appeal can be made (see below).

The notice may also set out the consequences of the notice and/or the consequences of failing to comply with the notice.

Appealing against a statutory notice

Information explaining how to appeal a statutory notice will be included with the notice.

Can SEPA recover costs it has incurred in investigating non-compliance and issuing a statutory notice?

Subject always to specific provisions in our charging scheme, we do have the ability to charge in some circumstances. For example, we can charge for carrying out a determination of reportable emissions under Article 45 of the ETS Order, which may be a precursor to enforcement action. We also have discretion to charge a fee if we revoke a permit issued under the ETS Order.

Under the F-Gas Regulations we have the power to recover costs incurred in serving a civil penalty notice.

Combining the use of different types of enforcement action

A statutory notice may be used alone or in conjunction with other enforcement action to secure our enforcement outcomes.

When is a statutory notice not likely to be used?

We are unlikely to use a statutory notice in circumstances where a civil penalty notice has been or may be imposed which achieves the same outcomes in a particular case.

Appendix C - Civil Penalties

What is a civil penalty?

The penalties under the ESOS Regulations, ETS Legislation and F Gas Regulations are civil penalties. The civil penalties under the ETS Legislation and F Gas Regulations are solely financial while civil penalties under the ESOS Regulations include financial and publication¹ penalties (or a combination of these). The maximum potential penalty for each type of non-compliance is set out in the legislation.

Before imposing a civil penalty, we must be satisfied that we have enough evidence that the responsible person has committed the non-compliance to which the penalty relates.

Discretion

In circumstances where a person is liable to a civil penalty, we will consider whether we can exercise discretion to waive or reduce the penalty. Generally, the ESOS Regulations, F Gas Regulations and ETS Legislation empower us to exercise discretion but there are some non-compliances under the ETS Legislation for which a penalty is mandatory i.e., the legislation does not allow the exercise of discretion.

One or more of the following options may be available to us in applying discretion:

- (a) waive the penalty;
- (b) modify or vary the maximum penalty.

Where we have the power to do so we will apply our discretion in two ways:

Firstly, we will consider whether the imposition of a penalty is an appropriate enforcement action having regard to the enforcement outcome we wish to achieve and the enforcement factors as described in the [enforcement decision making](#) section 11 of this guidance.

Secondly, if we decide that the imposition of a penalty is justified, we will ascertain the maximum potential penalty in accordance with the relevant legislation and we will then consider whether there are any mitigating factors which justify the imposition of a lesser penalty or even waiving it entirely.

At this stage we will notify you, in writing, that we intend to issue a penalty notice to you. Our notification (Notice of Intent) will contain:

- a description of the non-compliance giving rise to the liability;
- details of the maximum potential penalty to which you are liable and how it is ascertained;

¹ Generally, publication involves publishing on a publicly accessible website details of the name of the person who has incurred the penalty, the failure for which the penalty has been imposed and the amount of any financial penalty. Publication will normally be for a period of one year, but SEPA has discretion to extend publication periods.

- any factors we are already aware of that might justify the imposition of a lesser penalty;
- an invitation to make representations to SEPA before we make the final decision to serve a penalty notice;
- details of the time period within which to make representations – this will normally be 28 days.

Your representations may include information:

- that the alleged non-compliance did not occur or that you are not responsible for it;
- that there is a defence available;
- that the amount of the penalty is incorrect;
- that there are mitigating factors which indicate that the penalty should be reduced or waived;
- regarding the likely financial impact of the penalty or your ability to pay it and could include proposing an alternative payment strategy. For example, this might involve staged or regular instalments.

Mitigating factors

The mitigating factors which we are likely to consider will usually fall into one or more of the following categories:

- intent;
- foreseeability;
- impact;
- financial implications;
- deterrent effect;
- previous history.

These are the same as our [enforcement factors](#) - see section 12 for further detail on these. However, this is not an exhaustive list and depending on the particulars of an individual case there may be other factors which you believe we should consider before we make a final decision. Using the facts and or evidence we will decide how important each factor is in the circumstances of each case.

Hospital and small emitter installations – Annual Emissions Target Exceedance

Under the ETS Order (Schedule 7 paragraph 19) an operator participating in the hospital and small emitter scheme (“a H&SE installation”) is required not to exceed an annual emissions target. If an operator of an H & SE installation exceeds their emissions target the Operator is liable to a mandatory civil penalty (Article 54).

The only circumstances in which we may reduce or waive this penalty are where we have evidence that the installations emissions target for the scheme year which the penalty relates is incorrectly calculated (Article 54(3)).

Frequently Asked Questions

I have received a penalty notice – how do I pay it?

Details on how to pay the penalty will be provided in the letter accompanying the notice. The penalty notice will also specify the date by which the penalty must be paid.

I want to appeal against a penalty or enforcement notice – what do I do?

Information on how to appeal including the time limit for submitting an appeal will be attached to the Notice. Appeals for ESOS and F Gas penalties should be submitted to:

Planning and Environmental Appeals Division
Ground Floor
Hadrian House
Callendar Business Park
Callendar Road
Falkirk,
FK1 1XR
Tel: 0300 244 6668
Fax: 0131 244 8990
Email: DPEA@gov.scot

Guidance on how appeals are processed can be found here:

<http://www.gov.scot/Topics/Environment/Appeals>

Appeals for penalties imposed under the ETS Order should be submitted to:

The Scottish Land Court,
George House
126 George Street
Edinburgh
EH2 4HH
Email: SLCourtMailbox@scotcourtribunals.gov.uk

What could happen if I fail to comply with an enforcement notice?

If you fail to comply with an enforcement notice issued under the ETS Order or F Gas Regulations, we may issue a civil penalty. Failure to comply with an enforcement notice issued under the ODS Regulations is a criminal offence.

What will happen if I don't pay a financial penalty?

SEPA can take action to recover the penalty using civil debt recovery procedures. In some cases, a failure to pay the penalty on time (or at all) may also lead to liability to a further civil penalty.

What will SEPA do with the penalty I pay?

We are required to pass any penalty paid to us to the Scottish Government.