



# Enforcement Policy

March 2009

## Introduction

1. Natural England works for people, places and nature to conserve and enhance biodiversity, landscapes and wildlife in rural, urban, coastal and marine areas. This includes conserving and enhancing the natural environment for its intrinsic value, the wellbeing and enjoyment of people, and the economic prosperity it brings.
2. This statement sets out Natural England's overarching policy and approach to enforcement and the general principles it intends to follow. The implementation and effectiveness of this policy will be monitored.
3. The appropriate use of enforcement powers, including prosecution, is important to secure compliance with the law and to ensure that those who cause damage to the natural environment are held accountable for their actions.
4. Natural England considers itself to be a firm but fair regulator who regulates to secure environmental outcomes using a proportionate approach. Natural England has general duties in respect of conserving and enhancing biodiversity. The use of enforcement is one of the tools that is used to enable these duties to be met.
5. Natural England also has a duty to have regard to the Regulators' Compliance Code. The Code reinforces Natural England's approach to enforcement and ensures that regulatory activities are carried out in a way that is transparent, accountable, proportionate and consistent; and that regulatory activities should be targeted only at cases where action is needed. Natural England has also adopted the Cabinet Office and Local Government Association's Enforcement Concordat, which is a voluntary non-statutory code of practice which sets out what businesses and other organisations we regulate can expect in relation to our enforcement work. Both documents are available from the Department for Business, Enterprise and Regulatory Reform website at <http://bre.berr.gov.uk/regulation/index>.

## Enforcement role

6. Natural England has direct enforcement responsibilities for the investigation of breaches of regulation and a duty to apply its regulatory powers to address offences relating to: Sites of Special Scientific Interest; heather and grassland burning; uncultivated land and semi-natural areas; breaches of wildlife licences and notices that we issue; pesticide poisoning to animals and complaints relating to injurious weeds.
7. Natural England also works in partnership, either in a statutory or advisory capacity, with other enforcement bodies in their investigation and enforcement work. As part of this work, information may be shared with these agencies.

8. Natural England engages with other stakeholders with the aim of working together to encourage compliance, reduce the need for enforcement action and ultimately to protect the natural environment.

## Enforcement aims

9. Natural England aims to prevent harm to the natural environment. It will use all its regulatory levers, including providing advice, guidance and land management incentive schemes, to encourage compliance with the law and ensure that the natural environment is conserved, enhanced, protected and restored.
10. Natural England recognises the part that enforcement, advice, guidance and partnership working play in achieving compliance and protection of the environment. However, where the environment is threatened or damaged Natural England will be robust in its enforcement response in order to protect that environment and restore the features.
11. In applying its enforcement policy Natural England also aims to:
  - deter future non-compliance;
  - so far as possible, eliminate any financial gain or benefit from non-compliance; and
  - change the behaviour of offenders and others.
12. Enforcement sends a clear message that a minority cannot spoil our natural environmental features for others to enjoy now and in the future.

## Principles of enforcement

13. Natural England will achieve these enforcement aims by adopting the following five principles of regulation.
14. **Consistent** in the way that enforcement action is carried out. All enforcement incidents will be considered individually as each will be unique in either the way it has arisen or the effect that it has had on the environmental features. Similar approaches will be taken in similar cases to achieve similar outcomes by taking into account a number of factors such as, the scale and severity of damage or disturbance that has been caused, history of previous non-compliance and attitude of offender.
15. In addition, any offers of restoration or mitigation will be taken into account but offenders will not avoid enforcement action just because they have carried out, or offered to carry out, restoration or mitigation works.
16. **Proportionate** yet responsive to the nature of the offence, the harm caused and the offender. Natural England will decide upon a balanced enforcement approach taking account of the risk to the environment, the seriousness of the breach, the environmental outcomes it will achieve and whether it is in the public interest to pursue.

17. **Transparent** in creating an understanding of legal responsibilities to achieve compliance thus avoiding the need to enforce. However, when enforcement is necessary those regulated and others know what they can expect of Natural England in its enforcement role. Enforcement action will be carried out in an open and transparent manner and any enforcement decision, remedial action or rights of appeal, clearly explained in writing. Legal requirements will be distinguished from voluntary actions and best practice advice.
18. **Targeted** yet proportionate in its enforcement approach. This will ensure that enforcement efforts and resources are aimed where they will be most effective to achieve outcomes, such as at those offenders who cause or risk causing serious environmental damage, those who deliberately breach legal obligations, or where the offence, although not serious in itself, is widespread in the area where it was committed. Natural England will develop a methodology to enable risks to be assessed to then inform future targeting of priorities.
19. **Accountable** for enforcement actions and use of public money to achieve aims and outcomes. Natural England will adhere to the four enforcement principles above and justify its choice of enforcement action for all offences, against which it can be expected to be judged. Enforcement action will be followed-up to ensure that aims and outcomes, such as restoration and behaviour towards compliance, have been achieved. Enforcement outputs and outcomes will be measured and published annually to evaluate performance in order to be responsive to change and to instil confidence in those that are regulated, the public and partners.

## Enforcement mechanisms

20. Natural England uses a range of proportionate enforcement mechanisms to deal with breaches of the legislation. The appropriate mechanism will depend on the circumstances of the offence and one or more mechanisms may be used at different stages of a case. In some cases one level of enforcement action may be appropriate and effective in dealing with the incident; in another case where an earlier enforcement mechanism has been unsuccessful further enforcement action may be taken.

## Investigations

21. Where there has been a complaint or reports of an alleged offence, Natural England will conduct an investigation in order to establish the facts, the severity and scale of the potential or actual harm, the seriousness of any potential breach of the law, and the wider relevance of the incident, including serious public concern. A formal investigation will comply with the legal requirements of the Police and Criminal Evidence Act 1984 and the Codes of Practice made under it.
22. A number of Natural England officers are designated as Wildlife Inspectors who can exercise powers in relation to certain provisions.

## Prosecutions

23. Natural England has a discretionary power, not a duty, to prosecute. The aim of prosecutions is to punish wrongdoing, prevent a recurrence and to act as a deterrent. The decision to prosecute is a serious step. Natural England applies the Code for Crown Prosecutors so that fair and consistent decisions are made about prosecutions. A prosecution will only proceed if:
- there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge; and
  - where it has been established that there is realistic prospect of a conviction, it is in the public interest to do so.

## Public interest factors

24. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender.
25. Some of the public interest factors that Natural England will consider when deciding whether to prosecute include:
- impact on the natural environment;
  - foreseeability of the offence and the circumstances leading up to it;
  - grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct;
  - the offence, although not serious in itself, is widespread in the area where it was committed;
  - a prosecution would have a significant positive impact on maintaining community confidence;
  - the deterrent effect of the prosecution;
  - the intent and attitude of the offender.
26. This is not an exhaustive list. The extent to which the public interest factors apply will vary in each case and Natural England will look at each case on its own merits before deciding what enforcement action to take.

## Alternatives to prosecution

27. In cases where Natural England consider that a prosecution is not the most appropriate or proportionate enforcement mechanism, a number of alternative enforcement mechanisms may be used.
28. A simple caution is a written acceptance by the offender that they have committed an offence. Natural England will only offer a simple caution where there is sufficient

evidence for a realistic prospect of conviction and in it is in the public interest to do so. Should an offender refuse to accept a caution, Natural England will review the case again to decide whether to prosecute.

29. A warning is a written notification that, in Natural England's opinion, an offence has been committed.
30. A prosecution, caution and warning letter or other enforcement action will be recorded and taken into account in deciding on subsequent enforcement action should the offender commit another offence that Natural England is responsible for enforcing.

## **Court Action**

31. If the environmental damage that has been caused is sufficiently serious then Natural England may, where the legislation allows, consider asking the Magistrates to refer the case to the Crown Court.
32. During the hearing, in addition to evidence submitted to the court concerning the offence, Natural England will bring to the courts attention any financial benefit that the offender has gained or may gain as a result of the offence. Where practical and appropriate to do so, Natural England will also seek restoration or mitigation measures in order to achieve our enforcement aims and objectives.

## **Penalties**

33. Legislation provides the courts with the ability to punish those who have not complied with it. Examples of penalties presently available to the courts for certain offences that Natural England is responsible for enforcing are:
  - £20,000 per offence in the Magistrates Court;
  - unlimited fine in the Crown Court.

## **Costs**

34. Following a successful prosecution, Natural England, will seek to recover the costs in bringing the prosecution action from the offender.

## **Publicity**

35. Any convictions will be publicised to draw attention to need to comply with legal responsibilities and to highlight the damage or disturbance caused to environmental features. Awareness raising through publicity should deter others from disregarding their responsibilities and protect the environment.

## Enforcement action against businesses, public bodies and individuals

36. Enforcement action, including prosecution, will be taken against those responsible for the offence. Whilst it will be usual practice to prosecute the business or public body where the offence occurred as a result of their activities, a formal investigation will seek to ascertain the management chain and the role played by individuals within the business or public body. If appropriate Natural England will consider taking enforcement action against those individuals who are clearly responsible for causing harm to the environment.

## Civil action

37. In certain circumstances, where regulating legislation does not provide the power to achieve compliance or prevent damage or disturbance to environmental features, Natural England will have to resort to civil action such as an injunction or possession order.

## Other information

38. This document sets out Natural England's enforcement policy. It is not intended to be a detailed guide to the law (please refer to the relevant legislation and get legal advice if necessary). Advice and guidance to enable compliance on the regulation that this policy applies to, along with information on the likely enforcement response that Natural England will take for offences, can be found on Natural England's website at [www.naturalengland.org.uk](http://www.naturalengland.org.uk). Copies of legislation can be found on the Office of Public Sector Information website <http://www.opsi.gov.uk>.
39. There are more details of our business and contact details on our website.