
DRAFT STATUTORY INSTRUMENTS

2024 No.

The Management of Hedgerows (England) Regulations 2024

PART 4

Enforcement

Enforcement

9. The Regulator must enforce the requirements of regulations 5 and 6.

Civil sanctions

10.—(1) The Regulator may impose one or more civil sanctions if, in any case, the Regulator considers that an offence has been committed under regulation 7(1) or (2).

(2) Schedule 1 makes provision relating to the issue by the Regulator of stop notices in connection with an offence.

(3) Schedule 2 makes provision for—

- (a) the imposition by the Regulator of variable monetary penalties; and
- (b) the issue by the Regulator of compliance notices and restoration notices,

in connection with an offence.

Non-compliance penalty

11.—(1) If a person fails to comply with the requirements of a compliance notice or a restoration notice the Regulator may serve a notice on that person imposing a monetary penalty (“a non-compliance penalty”) in respect of the same offence.

(2) The Regulator may impose a non-compliance penalty in respect of an offence irrespective of whether a variable monetary penalty was also imposed in respect of that offence.

(3) The amount of the non-compliance penalty must be determined by the Regulator and must be a percentage of the estimated costs of fulfilling the remaining requirements of the compliance notice or restoration notice, as the case may be.

(4) The percentage referred to in paragraph (3) must be determined by the Regulator having regard to all the circumstances of the case and may be up to 100%.

(5) A notice served under paragraph (1) must include information as to—

- (a) the grounds for imposing the non-compliance penalty;
- (b) the amount to be paid to the Regulator;
- (c) how payment must be made;
- (d) the period in which payment must be made, which must not be less than 28 days;
- (e) the right of appeal;
- (f) the consequences of failure to make payment in the specified period;

- (g) any circumstances in which the Regulator may reduce the amount of the penalty.
- (6) The person on whom the notice imposing the non-compliance penalty is served may appeal against it in writing before the end of the period specified by the Regulator in the notice which must not be less than 28 days.
- (7) The grounds of appeal are—
 - (a) that the decision to serve the notice was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unfair or unreasonable for any reason;
 - (d) that the amount of the penalty was unreasonable;
 - (e) any other reason.

Enforcement cost recovery notices

- 12.**—(1) The Regulator may serve a notice (“an enforcement cost recovery notice”) on a person on whom a variable monetary penalty notice, compliance notice, restoration notice or stop notice has been served requiring that person to pay the costs incurred by the Regulator in relation to the notice up to—
- (a) in the case of a variable monetary penalty notice, compliance notice or restoration notice, the time of its imposition; or
 - (b) in the case of a stop notice, the time of service.
- (2) In this regulation “costs” include in particular—
- (a) investigation costs;
 - (b) administration costs;
 - (c) costs of obtaining expert advice, including legal advice.
- (3) The enforcement cost recovery notice must specify—
- (a) the grounds for serving the notice;
 - (b) the amount to be paid;
 - (c) how payment must be made;
 - (d) the period in which payment must be made, which must not be less than 28 days;
 - (e) the right of appeal;
 - (f) the consequences of failure to make payment in the specified period.
- (4) The person on whom the notice is served may request that the Regulator provide a detailed breakdown of the amount to be paid.
- (5) The Regulator must comply with a request made under paragraph (4).
- (6) The person on whom the notice is served is not liable to pay any costs shown by that person to have been incurred unnecessarily.
- (7) The person on whom the notice is served may appeal against it in writing before the end of the period specified by the Regulator in the notice which must not be less than 28 days.
- (8) The grounds of appeal are—
- (a) that the decision of the Regulator to impose the requirement to pay costs is unfair or unreasonable;
 - (b) that the decision of the Regulator as to the amount of those costs is unfair or unreasonable;
 - (c) any other reason.

(9) Where a person on whom the notice is served fails to pay the full amount to be paid as specified in the notice before the end of the period for payment specified in the notice, the Regulator may recover the amount outstanding as a debt, together with interest on that amount, calculated in accordance with paragraph (10).

(10) Where the Regulator exercises the power conferred under paragraph (9), interest may be charged to the amount to be paid for each day from the end of the period for payment specified in the notice to the date on which payment of that amount, and of any associated costs, is made in full.

(11) For the purposes of paragraphs (9) and (10), the rate of interest applicable on any day is one percentage point above the Bank of England base rate.

(12) In paragraph (11) “Bank of England base rate” means—

- (a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) if an order under section 19 of the Bank of England Act 1998⁽¹⁾ (reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

Recovery of payments

13. The Regulator may recover any variable monetary penalty or non-compliance penalty, or any costs specified in an enforcement cost recovery notice, on the order of a court, as if payable under a court order.

Withdrawing or amending a notice

14.—(1) The Regulator may at any time in writing—

- (a) withdraw a variable monetary penalty notice, a non-compliance penalty notice or an enforcement cost recovery notice or reduce the amount specified in the notice;
- (b) withdraw a compliance notice, restoration notice or stop notice or amend the steps so as to reduce the amount of work necessary to comply with the notice.

(2) Paragraph (1) does not prevent the Regulator from withdrawing a notice and issuing a replacement notice.

Appeals

15.—(1) Any appeal under these Regulations is to the First-tier Tribunal.

(2) In any appeal, except in relation to a stop notice, where the commission of an offence is an issue requiring determination, the Regulator must prove that offence according to the same burden and standard of proof as in a criminal prosecution.

- (3) In any other case the Tribunal must determine the standard of proof.
- (4) All notices (other than stop notices) are suspended pending appeal.
- (5) The Tribunal may suspend or vary a stop notice.
- (6) The Tribunal may, in relation to the imposition of a requirement or service of a notice—
 - (a) withdraw the requirement or notice;
 - (b) confirm the requirement or notice;
 - (c) vary the requirement or notice;

(1) 1998 c. 11.

- (d) take such steps as the Regulator could take in relation to the act or omission giving rise to the requirement or notice;
 - (e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the Regulator.
- (7) The Tribunal may, in the case of an appeal under paragraph 5(2) of Schedule 1, decide any issue relating to compensation.

Guidance as to use of civil sanctions and enforcement of relevant offences

16.—(1) As regards each power to issue civil sanctions in relation to an offence under these Regulations, the Regulator must publish guidance—

- (a) about the intended use of the sanction;
 - (b) about how the offence is to be enforced.
- (2) Guidance under paragraph (1)(a) must include the information set out in paragraph (4)
- (3) Guidance under paragraph (1)(b) must include the information set out in paragraph (5).
- (4) The information referred to in paragraph (2) is information as to—
- (a) the circumstances in which the civil sanction is likely to be imposed;
 - (b) the circumstances in which the civil sanction may not be imposed;
 - (c) rights of appeal;
 - (d) as regards the power to issue a variable monetary penalty, a compliance notice or a restoration notice only, the rights to make representations and objections;
 - (e) as regards the power to issue a variable monetary penalty only, the matters likely to be taken into account by the Regulator in determining the amount of the penalty, which must include the voluntary reporting by any person of their own non-compliance.
- (5) The information referred to in paragraph (3) is information as to—
- (a) the sanctions (including criminal sanctions) to which a person who commits an offence may be liable;
 - (b) the action which the regulator may take to enforce the offence;
 - (c) the circumstances in which the Regulator is likely to take any such action.
- (6) The Regulator must revise the guidance issued under paragraph (1)(a) and (b) where appropriate from time to time, subject to regulation 18.
- (7) The Regulator must have regard to the current guidance under paragraph (1)(a) when exercising the power to issue a civil sanction to which it relates.

Guidance as to use of non-compliance penalties

17.—(1) The Regulator must publish guidance about the intended use of non-compliance penalties and enforcement cost recovery notices, which must include the information set out in paragraph (2).

- (2) The information referred to in paragraph (1) is information as to—
- (a) the circumstances in which they are likely to be imposed;
 - (b) the circumstances in which they may not be imposed;
 - (c) rights of appeal;
 - (d) matters to be taken into account by the Regulator in determining amounts.

Consultation on guidance

18. The Regulator—

- (a) may consult such persons as the Regulator considers appropriate before publishing any guidance or revised guidance in relation to the intended use of enforcement cost recovery notices under these Regulations; and
- (b) must consult such persons as the Regulator considers appropriate before publishing any other guidance or revised guidance under these Regulations,

Publication of enforcement action

19.—(1) As regards each power to issue civil sanctions in relation to an offence under these Regulations, the Regulator must, from time to time, publish a document in respect of the relevant period which sets out—

- (a) the cases in which the civil sanction has been imposed;
- (b) as regards the power to issue a variable monetary penalty, restoration notice or compliance notice only, the cases in which an undertaking offered under paragraph 3(b) of Schedule 2 has been accepted by the Regulator under paragraph 4(2) of Schedule 2.

(2) In paragraph (1)(a) the reference to cases in which the civil sanction has been imposed does not include cases to the extent that a sanction has been imposed but is overturned on appeal.

(3) This regulation does not apply in cases where the Regulator considers that publication would be inappropriate.

Right to enter and inspect

20.—(1) Any person authorised in writing by the Regulator may, on producing the authorisation if required, at any reasonable hour enter any land or premises (other than premises used exclusively as domestic purposes) to undertake an inspection—

- (a) to ascertain or verify whether there is or has been any breach of the requirements set out in regulation 5 or 6;
- (b) to determine whether any of the powers conferred on the Regulator by these Regulations should be exercised in relation to the land or premises or any other land or premises;
- (c) to determine how any such power should be exercised in relation to the land or premises or any other land or premises;
- (d) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land or premises or any other land or premises.

(2) Subject to paragraph (3), the authorised person must—

- (a) inform the owner of the land or premises of the purpose of the proposed inspection and, where possible, agree a suitable date and time for that inspection;
- (b) if it is not possible to agree a suitable date and time, notify the owner of the land or premises in writing of the purpose of the inspection and the date and time at least 48 hours in advance of that inspection.

(3) The requirement in paragraph (2) does not apply where, in any case, the authorised person has reason to suspect that an offence under regulation 7(1) or (2) is being committed on the land or premises.

Right to enter and inspect: supplementary provisions

21.—(1) A person authorised to enter and inspect any land or premises in pursuance of a right of entry and inspection conferred under or by virtue of regulation 20 (referred to in this regulation as “a right of entry”)—

- (a) on request, must produce evidence of that authority and state the purpose of entry before entering;
- (b) may be accompanied by such other persons as considered necessary;
- (c) on leaving the land must, if the owner or occupier is not then present, leave it as effectively secured as it was at the time of entry.

(2) Any person who wilfully obstructs a person acting in the exercise of a right of entry is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Powers of entry and examination etc.

22. When entering any premises or land under regulation 20 the Regulator may—

- (a) bring any equipment or materials required for the authorised purpose in question;
- (b) make such examination and investigation as may be necessary which includes but is not limited to the power to—
 - (i) observe and view;
 - (ii) require explanations;
 - (iii) seek or require information or records;
 - (iv) take copies of documents;
 - (v) direct other public bodies and local authorities, to exercise such functions as they may have to investigate as appropriate;
 - (vi) take possession of and detain substances or articles found;
- (c) make such measurements, take such samples and photographs and make such recordings as the Regulator considers necessary for the purpose of any such examination or investigation.