
STATUTORY INSTRUMENTS

2010 No. 1157

The Environmental Civil Sanctions (England) Order 2010

PART 3

Non-compliance and enforcement

Non-compliance penalties

7.—(1) If a person fails to comply with a compliance notice, a restoration notice or a third party undertaking, the regulator may serve a notice on that person imposing a monetary penalty (“a non-compliance penalty”) in respect of the same offence irrespective of whether a variable monetary penalty was also imposed in respect of that offence.

(2) The amount of the penalty must be determined by the regulator, and must be a percentage of the costs of fulfilling the remaining requirements of the notice or third party undertaking.

(3) The percentage must be determined by the regulator having regard to all the circumstances of the case and may, if appropriate, be 100%.

(4) The notice must include information as to—

- (a) the grounds for imposing the non-compliance penalty;
- (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;
- (g) any circumstances in which the regulator may reduce the amount of the penalty.

(5) If the requirements of the compliance notice or restoration notice are complied with or a third party undertaking is fulfilled before the time set for payment of the non-compliance penalty, the penalty is not payable.

(6) The person on whom the notice imposing the non-compliance penalty is served may appeal against it.

(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.