
STATUTORY INSTRUMENTS

2022 No. 311

The Ivory Prohibition (Civil Sanctions) Regulations 2022

PART 3

Enforcement undertakings

Actions which may be specified in an enforcement undertaking

8. The actions prescribed under paragraph 10(1)(c)(ii) of Schedule 1 to the Act (enforcement undertakings) are those which have the aim of securing that—

- (a) the offence ceases at the earliest possible opportunity, and
- (b) matters in relation to the suspected offence referred to in paragraph 10(1)(a) of Schedule 1 are, so far as is possible, restored to the position that existed before the offence occurred.

Procedure for entering into an enforcement undertaking

9.—(1) An offer of an enforcement undertaking to the Secretary of State under paragraph 10(1) of Schedule 1 to the Act must—

- (a) be made in writing;
- (b) where the Secretary of State has informed P by a notice in writing that an offer of an enforcement undertaking may be considered, be made within the period of 28 days beginning with the day on which the Secretary of State sent the notice to P.

(2) If, having considered the circumstances of the suspected offence to which an offer of an enforcement undertaking relates and the terms of the undertaking offered by P, the Secretary of State decides—

- (a) that it is appropriate to accept P's offer, or
- (b) that it may be appropriate to accept P's offer if made in revised terms,

the Secretary of State must, within the period of 28 days beginning with the day on which P's offer was received, send a notice informing P of the Secretary of State's decision.

(3) Where the Secretary of State informs P that an offer of an enforcement undertaking may be accepted if made in revised terms, P must, within the period of 28 days beginning with the day on which the Secretary of State sent the notice referred to in paragraph (2) to P—

- (a) offer an enforcement undertaking in revised terms to the Secretary of State, or
- (b) inform the Secretary of State in writing that no further offer of an enforcement undertaking will be made.

(4) Where—

- (a) P has failed, within the period specified in paragraph (1)(b), to offer an enforcement undertaking in response to a notice sent by the Secretary of State inviting P to make such an offer,

- (b) the Secretary of State has decided to refuse P's offer or revised offer of an enforcement undertaking,
- (c) P has informed the Secretary of State in accordance with paragraph (3)(b) that no further offer will be made, or
- (d) P has failed to offer an enforcement undertaking in revised terms within the period specified in paragraph (3),

the Secretary of State must send a notice informing P that the suspected offence will not be dealt with by agreeing an enforcement undertaking and indicating any action which the Secretary of State proposes to take in relation to the suspected offence.

- (5) The notice referred to in paragraph (4) must be sent to P—
 - (a) where the Secretary of State has decided to refuse P's offer or revised offer of an enforcement undertaking, within the period of 28 days beginning with the day on which the Secretary of State received the relevant offer;
 - (b) where P has notified the Secretary of State that no offer of an enforcement undertaking in revised terms will be made, within the period of 28 days beginning with the day on which the Secretary of State received P's written notification;
 - (c) where P has failed to offer an enforcement undertaking in response to an invitation to offer an enforcement undertaking or to offer an enforcement undertaking in revised terms, within the period of 30 days beginning with the day on which the Secretary of State sent the relevant invitation to P.

Terms of an enforcement undertaking

- 10. An enforcement undertaking must—
 - (a) specify the date on which the suspected offence referred to in paragraph 10(1)(a) of Schedule 1 to the Act ceased, or where that suspected offence is continuing, specify the date by which it must cease, which must be the earliest possible date,
 - (b) include details of each of the actions which P intends to take as part of the enforcement undertaking, and
 - (c) specify the date by which P intends to complete each action.

Publication of enforcement undertaking

- 11. The Secretary of State may publish details of enforcement undertakings agreed, including, but not limited to—
 - (a) the name of any relevant business of P;
 - (b) the terms of the undertaking;
 - (c) the period within which the undertaking must be completed;
 - (d) information about any certificate of compliance issued in relation to an undertaking.

Variation of an enforcement undertaking

12.—(1) Where an enforcement undertaking has been agreed, P may at any time before a certificate of compliance is issued, request that the Secretary of State vary the terms of the undertaking.

- (2) The request referred to in paragraph (1) must—
 - (a) be made in writing, and
 - (b) include details of the reason for the request to vary the enforcement undertaking.

- (3) The Secretary of State may—
 - (a) if satisfied that it is appropriate to do so, vary the terms of the undertaking, including by extending the period specified for compliance;
 - (b) if not satisfied that it is appropriate to vary the terms of the undertaking, refuse P’s request.
- (4) The Secretary of State must inform P of the result of the request for variation within the period of 28 days beginning with the day on which the Secretary of State receives P’s request.

Circumstances in which a person may be regarded as having complied with an enforcement undertaking

13.—(1) Where, for reasons beyond P’s control, it becomes impossible for P to comply with or to comply fully with the terms of an enforcement undertaking, P may request that the Secretary of State regard P as having complied with the undertaking.

- (2) The request referred to in paragraph (1) must—
 - (a) be made in writing,
 - (b) include details of the terms of the undertaking which have not been complied with,
 - (c) give the reasons why, in P’s opinion, it is impossible to comply with or to comply fully with the terms of the undertaking, and
 - (d) be sent before the end of the period specified for compliance with the undertaking.
- (3) The Secretary of State may—
 - (a) if satisfied that for reasons beyond P’s control it is impossible for P to comply with or to comply fully with the terms of the undertaking—
 - (i) vary the terms of the undertaking, including by extending the period specified for compliance;
 - (ii) determine that P should be regarded as having complied with the undertaking;
 - (b) if not satisfied that for reasons beyond P’s control it is impossible to comply with or to comply fully with the terms of the undertaking, refuse P’s request.
- (4) The Secretary of State must, within the period of 28 days beginning with the day on which the Secretary of State receives P’s request, inform P of the result of the request.

Monitoring of compliance with an enforcement undertaking

- 14.**—(1) The Secretary of State may monitor P’s compliance with the terms of an enforcement undertaking—
- (a) by requiring P to allow an accredited civilian officer to enter, on reasonable notice and at a reasonable time, premises owned, occupied or controlled by P, for the purpose of ascertaining whether P is complying or has complied with the terms of the undertaking;
 - (b) where an accredited civilian officer has entered premises in accordance with subparagraph (a), requiring P to facilitate examination, measurement or photography of any item on the premises that the accredited civilian officer reasonably believes is or may be relevant to the question of whether P is complying or has complied with the terms of the undertaking;
 - (c) by requiring P to produce any document or record which the Secretary of State or an accredited civilian officer reasonably believes is or may be relevant to the question of whether P is complying or has complied with the terms of the undertaking;
 - (d) by requiring P to assist an accredited civilian officer in taking copies of any document or record on premises entered in accordance with paragraph (a), or produced in accordance

with sub-paragraph (c), which the accredited civilian officer reasonably believes is or may be relevant to the question of whether P is complying or has complied with the terms of the undertaking;

(e) by monitoring advertising of any item which is or may be relevant to the question of whether P is complying or has complied with the terms of the undertaking.

(2) A notice given under paragraph (1)(a) must—

(a) be in writing,

(b) be given to P and, if P is not the occupier of the premises, to the occupier, and

(c) set out the purpose of the proposed entry.

(3) The requirement in paragraph (2)(b) may be complied with by delivering or leaving the notice at P's address or sending it there by post.

(4) In paragraph (1)(a), "premises" does not include any premises used wholly or mainly as a dwelling.

Certification of compliance with an enforcement undertaking

15.—(1) This regulation applies where—

(a) P has complied with all the terms of an enforcement undertaking agreed with the Secretary of State, or

(b) the Secretary of State has determined in accordance with paragraph (3)(a)(ii) of regulation 13 (circumstances in which a person may be regarded as having complied with an enforcement undertaking) that, for reasons beyond P's control, it is impossible for P to comply with or to comply fully with the terms of the undertaking and that P should be regarded as having complied with the undertaking.

(2) Where this regulation applies, P may apply to the Secretary of State for a certificate of compliance with the terms of the enforcement undertaking.

(3) Where paragraph (1)(a) applies, P's application for a certificate of compliance must be accompanied by evidence sufficient to demonstrate P's compliance with each of the steps specified in the enforcement undertaking.

(4) Where—

(a) the Secretary of State is satisfied that P has complied fully with all the terms of the enforcement undertaking, or

(b) paragraph (1)(b) applies,

the Secretary of State must, within the period of 28 days beginning with the day on which the Secretary of State receives P's application for a certificate of compliance, issue a certificate of compliance to P.

(5) Where the Secretary of State is not satisfied that P has complied fully with all the steps specified in the enforcement undertaking, the Secretary of State must, within the period of 28 days beginning with the day on which P's application was received, notify P of the steps which, in the opinion of the Secretary of State, have not been fully complied with.

(6) Where paragraph (5) applies, P may, within the period of 28 days beginning with the day on which the Secretary of State sent the notification referred to in that paragraph, submit to the Secretary of State further evidence to demonstrate compliance with the terms of the enforcement undertaking.

(7) Paragraphs (8) and (9) apply where the Secretary of State has considered any further evidence submitted by P in accordance with paragraph (6).

(8) If the Secretary of State is satisfied that P has complied fully with the terms of the enforcement undertaking, the Secretary of State must, within the period of 28 days beginning with the day on which the further evidence is received, issue to P a certificate of compliance.

(9) If the Secretary of State is not satisfied that P has complied fully with the terms of the enforcement undertaking, the Secretary of State must, within the period of 28 days beginning with the day on which the further evidence is received—

- (a) inform P that the Secretary of State is not satisfied that P has complied fully with the terms of the enforcement undertaking, and
- (b) indicate to P any action which the Secretary of State proposes to take in relation to the suspected offence to which the enforcement undertaking relates.

Circumstances where a person is to be regarded as not having complied with an enforcement undertaking

16.—(1) Where P has given inaccurate, misleading or incomplete information to the Secretary of State in relation to an enforcement undertaking, the undertaking must be regarded as not having been complied with.

(2) If a certificate of compliance has been issued to P on the basis of inaccurate, misleading or incomplete information given by P in relation to an enforcement undertaking, the Secretary of State may, by notice in writing to P, revoke the certificate of compliance.

(3) Where the Secretary of State sends a notice of revocation of the certificate of compliance to P under paragraph (2)—

- (a) the enforcement undertaking to which the certificate relates must be regarded as not having been complied with, and
- (b) the Secretary of State must, within the period of 28 days beginning with the day on which the Secretary of State sent the notice of revocation to P, indicate to P any action which the Secretary of State proposes to take in relation to the suspected offence.

Partial compliance with an enforcement undertaking

17. Where P has complied partly but not fully with an enforcement undertaking, P's part-compliance must be taken into account by the Secretary of State or, as the case may be, by a court or tribunal, when considering the imposition of any criminal or other sanction on P in relation to the suspected offence to which the enforcement undertaking relates.