

Previous years' non-compliance with the Packaging Regulations

If you think your company may have been obligated in previous years, but has not been registered, you could be subject to investigation and enforcement action by the Environment Agency, (EA).

Fortunately, regulations introduced in 2010, for England and Wales, gave the EA powers to apply Civil Sanctions, for packaging offences, without having to resort to prosecution. The EA have stated that, when considering non-registration Packaging Regulations offences, they expect Enforcement Undertakings (EU) to be the most commonly used Civil Sanction.

This means that, for most companies facing potential investigation for non-registration, (where at least one offence was committed after April 2010, or July 2010 for companies based in Wales), it is likely they will be able to avoid the possibility of prosecution, by offering an EU to cover the entirety of their offending.

Enforcement Undertakings - Key Commitments

EUs are an opportunity for a business to make an offer to make amends for non-compliance and correct any harm caused. An EU must contain a commitment to undertake the following actions:

- Cease offending – join a compliance scheme, or register directly with the EA;
- Ensure the offence(s) will not occur again, (e.g. training, implementation of procedures, management/director commitment etc.);
- Restoration of the environment to the state it would have been in before the offence, or to ensure equivalent environmental benefit elsewhere.

For packaging offences, which are predominantly financial in nature, (i.e. the avoidance of registration fees and PRN costs), it is expected that EUs include actions that remove the financial gain arising from the offending.

In practice this means calculating the costs which should have been paid during the period of non-compliance. A 'penalty element' is then added, (typically 10% of the total avoided costs for self-reported EUs and 30% for cases where the EA has commenced an investigation). The whole sum is then donated to an environmental project, which is nominated by the offender.

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The charity, or project, nominated must be clearly connected to environmental improvement, preferably related to the legislation that was breached. Donations cannot be made to an organisation which has any personal or managerial links with the donor.

What are the advantages of an EU?

An Enforcement Undertaking enables an offender to:

- Address the offending in a constructive way;
- Avoid the stigma and reputational damage of a criminal conviction;
- Avoid the legal costs of a court case.

If the offer is accepted by the EA, Enforcement Undertakings become legally binding and once they are completed there is no further criminal or civil action.

How we can help

Synergy has experience in preparing and submitting Enforcement Undertakings on behalf of members, guiding them through the whole process from start-to-finish.

Specifically we can:

- Calculate the costs avoided by non-compliance for all the relevant years;
- Complete, check and submit the Enforcement Undertaking offer form on your behalf;
- Undertake any subsequent negotiation on amounts payable with the EA;
- Suggest suitable environmental projects to receive your donation;
- Ensure you have the necessary requirements in place to demonstrate on-going compliance with the Packaging Regulations.

If you would like more details about how Synergy can help with your EU submission, or any other aspect of your compliance with the Packaging Regulations, please get in touch.