

Consultation on strengthening environmental civil sanctions Blueprint for Water response – May 2023

Wildlife and Countryside Link is a coalition of 70 organisations working for the protection of nature. Together we have the support of over eight million people in the UK and directly protect over 750,000 hectares of land and 800 miles of coastline.

Blueprint for Water, part of Wildlife and Countryside Link, is a unique coalition of environmental, water efficiency, fisheries and recreational organisations that come together to form a powerful joint voice across a range of water-based issues.

This response is supported by the following Link members:

- Angling Trust
- Friends of the Earth England
- The Rivers Trust
- The Wildlife Trusts
- Waterwise
- WildFish
- ZSL

For further information, please contact Wildlife and Countryside Link:

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Blueprint for Water welcomes this opportunity to respond to the consultation on strengthening environment civil sanctions.

We welcomed the announcement in the Plan for Water that the cap will be lifted on the penalties that the Environment Agency can impose on water companies, and that this money will be ring-fenced for a Water Restoration Fund. As such, we welcome this proposal to strengthen environmental civil sanctions through lifting the cap on penalties that the Environment Agency can impose, and through introducing Variable Monetary Penalties into the EPR. However, further detail is required than is currently provided both on the proposed removal of the penalties cap, and for how the Water Restoration Fund will work alongside these proposals. The purpose of increased penalties must ultimately be to deter environmental harm, not to raise funding for river restoration that is dependent on harm being caused in the first place. We discuss this further in our response.

We are also concerned that removing the cap on penalties will not sufficiently act as a deterrent unless the regulators are empowered to impose them. Further action is needed to ensure that the regulators are adequately resourced to monitor and enforce environmental legislation, and to impose penalties greater than the current cap. Without this, the benefit of removing the cap on penalties will be undermined.

We would be pleased to discuss any of the points in our response further.

SECTION 2.1

Q1: Would you like your responses to be treated as confidential?

No.

Q2: What is your name?

Ellie Ward.

Q3: What is your email address?

eleonor@wcl.org.uk

Q4: Are you responding on behalf of an organisation or as an individual?

On behalf of an organisation,

Q5: If you are responding on behalf of an organisation, what type of organisation do you represent?

eNGO

Q6: What is the name of your organisation (if applicable)?

Blueprint for Water.

[Blueprint for Water](#) is a coalition of over 20 organisations working to restore the ecology of the UK's rivers, lakes, ponds and wetlands by seeking improvements to water policy at an England level. Blueprint is part of [Wildlife and Countryside Link](#), the largest environment and wildlife coalition in England, bringing together 70 organisations to use their strong joint voice for the protection of nature.

Q7: Do you give permission for your responses to be published as part of the consultation summary document?

Yes.

Q8: Where are you located? (Note that this consultation is for regulations that apply only in England).

Blueprint for Water is a national organisation based in England.

SECTION 2.2

Q1. To what extent do you agree or disagree that the cap on variable monetary penalties under the 2010 Order should be changed from the current cap of £250,000?

- a. Strongly agree**
- b. Agree**
- c. Neither agree nor disagree**
- d. Disagree**
- e. Strongly disagree**
- f. N/A**

Please provide details to explain your answer. If this question is not applicable to you, please write N/A.

We welcomed the announcement in the Plan for Water that the cap will be lifted for the penalties that the Environment Agency can impose on water companies, and that these funds will be ring-fenced for a Water Restoration Fund. As such, we strongly agree with the proposal that the cap on variable monetary penalties should be changed from the current cap of £250,000.

The consultation document suggests that these proposals will strengthen the abilities of the Environment Agency to hold polluters to account for environmental damage. This is welcome; it should not be profitable for companies to pollute, nor for the costs of non-compliance to be perceived by companies as a 'business as usual' expense, whereby it is cheaper to pay the penalty than to fix the problem.

However, we remain uncertain of several core aspects of the proposals, and would welcome further clarification in order to comment on these fully. For example, we remain unclear as to how the Water Restoration Fund announced in the Plan for Water will sit alongside these proposals, and how this fund will function. Will all of these increased penalties contribute towards the Restoration Fund, and if so, will funds be ring-fenced by catchment to ensure that money is being spent where the environmental damage has occurred?

The purpose of these increased penalties must ultimately be to act as a deterrent; to disincentivise environmental harm from happening at all, rather than to raise funding for river restoration that is dependent on harm being caused in the first place. It is therefore important that when penalties are issued, these are fully reflective of the environmental harm caused. Furthermore, increasing the cap on penalties will not address historical damage and deterioration of the environment; increased penalties will not therefore replace the need for government funding and private investment.

We are concerned that increased penalties will not successfully act as a deterrent unless the regulator is adequately resourced to impose them. The burden of proof for variable monetary penalties is currently the same as a criminal prosecution, and as such will require intensive investigative procedures. Yet the Environment Agency's ability to monitor and enforce regulation has been constrained by cuts to funds and resourcing – analysis in 2022 showed that the Agency's budget has been cut by 50% over the past

decade.¹ From 2013-2019, the number of water quality samples taken by the Agency fell 45%, and the number of sampling points by nearly 40%.² In 2022, Environment Agency staff were being instructed to ignore 'low-impact' pollution incidents due to capacity issues.³ Additionally, there has been significant public and political concern regarding the reliance placed on water companies to self-monitor performance, for example in relation to discharges from wastewater treatment works. In 2022, it was reported that self-monitoring by water companies was a hundred times less likely to detect breaches than testing by the Environment Agency.⁴

As such, unless these resourcing and capacity gaps are addressed, and the monitoring and enforcement regime is strengthened, there is significant risk that the overall purpose and benefit to removing the cap on penalties will be undermined.

Q2. Which option would you prefer to be taken on the variable monetary penalty cap?

- a. Remove cap entirely (no cap)**
- b. Raise the cap to £250 million**
- c. Raise the cap to £25 million**
- d. Leave the cap as it is at £250,000**
- e. Raise the cap to another amount**

If you responded that the cap should be raised to an alternative amount, please specify what you think this amount should be and why.

N/A

Q3. To what extent do you agree or disagree that variable monetary penalties should be introduced into the EPR?

- a. Strongly agree**
- b. Agree**
- c. Neither agree nor disagree**
- d. Disagree**
- e. Strongly disagree**
- f. N/A**

¹ August 2022. <https://www.independent.co.uk/climate-change/news/water-pollution-sewage-environment-agency-funding-b2154848.html>

² Unchecked. (2020). 'The UK's enforcement gap 2020'. <https://www.unchecked.uk/wp-content/uploads/2020/11/The-UKs-Enforcement-Gap-2020.pdf>

³ The Guardian. (2022). 'Environment Agency tells staff to ignore pollution complaints, says ex-employee'. <https://www.theguardian.com/environment/2022/aug/29/environment-agency-tells-staff-to-ignore-river-pollution-complaints-age-of-extinction>

⁴ Engineering and Technology. (2022). 'MPs demand action as data calls into question water company self-monitoring'. <https://eandt.theiet.org/content/articles/2022/09/mps-demand-action-as-data-calls-into-question-water-company-self-monitoring/>

Please provide details to explain your answer. If this question is not applicable to you, please write N/A.

We agree that variable monetary penalties should be introduced into the EPR. The majority of offences that the Environment Agency investigates and enforces are under the EPR; if variable monetary penalties are not introduced to the EPR, this would therefore limit the extent of potential benefits to removing the cap on penalties. For example, sewage discharges fall under the EPR; given both significant public and political interest in and expectations for the resolution of this water quality issue, it would be remiss for increased – and potentially unlimited – penalties to not apply to these offences.

However, penalties are arguably less conspicuous – and therefore less damaging to companies' reputation - than prosecution. It is therefore important that when penalties are issued, this process is fully transparent and that the public is made aware of company non-compliance, to ensure that companies are fully held to account. Full details of the breach, the harm caused, and the reasons for the penalty imposed should be made publicly accessible, in the same manner that criminal proceedings are public record. Public and political expectations of water companies have increased significantly in recent years, and as such any sanctions imposed by the regulator should be suitably communicated. For example, the 2021 'Troubled Waters' report showed that 87% of people believe more should be done to help freshwater ecosystems, and that 83% are concerned about the impact of sewage pollution.⁵

As discussed, the burden of proof for variable monetary penalties is currently the same as a criminal prosecution, and as such will require intensive investigative procedures. Given that the Environment Agency's capacity to monitor, investigate and enforce penalties is currently constrained by cuts to funding and resources, there is a risk that penalties imposed will remain low even if the cap is removed. Further detail is needed to set out the criteria and process for how a penalty will be calculated, to avoid this risk. This should include an assessment of the harm caused, the cost of restoration to the standard before the harm was caused, the further costs to support enhancement and achievement of Good Ecological Status (GES), plus administration costs.

⁵ RSPB et al. (2021). 'Troubled Waters'. [Trouble Waters Report \(rspb.org.uk\)](https://www.rspb.org.uk)