



Department
for Environment,
Food & Rural Affairs

Consultation on strengthening penalties for water company offences

October 2025

We are responsible for improving and protecting the environment. We aim to grow a green economy and sustain thriving rural communities. We also support our world-leading food, farming and fishing industries.

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Contents

Consultation on strengthening penalties for water company offences	1
Executive summary.....	4
Part 1: Introduction.....	5
About this consultation	5
Context	5
Our proposals.....	7
Responding to the consultation	8
Using and sharing your information	8
Next steps	9
Part 2: Policy proposals and consultation questions	10
About you	10
Civil standard VMPs	11
Automatic penalties.....	15
Impacts on water companies	29

Executive summary

This consultation invites views on the introduction of new penalties for offences committed by water companies. The consultation sets out our proposals for:

- variable monetary penalties (VMPs) imposed to the civil standard of proof (civil standard VMPs)
- automatic penalties, where the Environment Agency (EA) will be placed under a duty to impose fixed monetary penalties to the civil standard of proof in specific circumstances

The powers will apply to the EA's regulation of water companies in England, ensuring minor to moderate water company offences can be enforced quickly, cost effectively, and proportionately.

The new penalties will sit alongside and complement the existing enforcement options, including prosecution and unlimited VMPs to the criminal standard of proof that will continue to be used to enforce more serious offences.

This consultation seeks views on:

- offences and circumstances where new penalties can be imposed
- permit conditions that would be introduced to enable or support penalties
- the maximum penalty value of civil standard VMPs
- the value of an automatic penalty
- procedural requirements, including representations and appeals
- potential business impacts

Defra will use the feedback provided to inform the implementation of these new penalties in secondary legislation.

Part 1: Introduction

About this consultation

The Water (Special Measures) Act (WSMA) 2025 introduced new powers for the Environment Agency (EA) to impose civil penalties against offences committed by water companies.

This consultation seeks views on policy proposals to implement these powers, which will be done through secondary legislation.

- Part 1 sets out the background to the consultation.
- Part 2 sets out the policy proposals and seeks your feedback.

This consultation applies to the implementation of these powers in England, for offences committed by water companies. The WSMA defined a water company as a water or sewerage undertaker, or a water supply or sewerage licensee (during operations relating to its licence). Other sectors will not be impacted by the proposals.

Context

Within England, the EA is broadly responsible for regulating water companies' compliance with environmental requirements. The EA investigates where there appears to have been breaches of environmental regulations and can take enforcement action, in line with its [enforcement and sanctions policy](#). The burden of proof is on the EA to show that an offence has been committed when taking enforcement action.

The EA bring criminal prosecutions for the most serious cases. For criminal proceedings the EA is required to prove that offences have been committed 'beyond a reasonable doubt' – the criminal standard of proof. If a prosecution results in a conviction, a court will follow the [Sentencing Council's guideline for the sentencing of environmental offences](#), including for setting a suitable fine.

The EA also has the option to use civil sanctions, which are enforcement measures imposed by the regulator rather than the courts. These provide a more flexible, reactive and proportionate alternative for less serious offences. Civil sanctions are underpinned by the [Macrory principles](#), which set out how civil sanctions should drive improved compliance. Civil sanctions should:

- change the behaviour of the offender
- eliminate any financial gain or benefit from non-compliance.
- be responsive and consider what is appropriate for the particular offender and regulatory issue
- be proportionate to the nature of the offence and the harm caused
- restore the harm caused by regulatory non-compliance
- deter future non-compliance

A range of civil sanctions have been introduced across sectors via the Regulatory Enforcement and Sanctions (RES) Act 2008. The EA was granted powers to use these civil sanctions for the water sector through the Environmental Civil Sanctions (England) Order 2010 (the 2010 Order) and the Environmental Permitting (England and Wales) Regulations (EPR) 2016.

Civil sanctions have become an important part of the EA's enforcement toolkit. Civil sanctions available to the EA include:

- **Compliance notice:** requires the recipient to take specific steps to come back into compliance within the period specified by the regulator, enforceable by a non-compliance penalty.
- **Restoration notice:** requires the recipient to restore harm caused by an offence within the period specified by the regulator, enforceable by a non-compliance penalty.
- **Stop notice:** prohibits the recipient from continuing a specific activity or prevents an activity from starting or resuming until certain steps are taken to ensure compliance. Failure to comply is a criminal offence.
- **Enforcement undertaking:** a voluntary offer made by the offender to put right the effects of their offending, its impact on third parties, and prevent reoccurrence. Where it is not possible to restore harm caused by the offence, then the offer must include some form of environmental benefit or improvement, or compensation for damage. Once accepted, the offer becomes a legally binding agreement.
- **Fixed monetary penalty (FMP):** a financial penalty of a fixed amount set in legislation. Currently FMPs must be imposed to the criminal standard of proof.
- **Variable monetary penalty (VMP):** a financial penalty of a discretionary amount set by the EA. Currently VMPs must be imposed to the criminal standard of proof. In 2023, regulations were amended to remove the cap on the maximum penalty that could be imposed, allowing the EA to impose unlimited criminal standard VMPs for offences committed on or after 1 December 2023, supporting their use as an alternative to prosecution for serious offences.

Our proposals

Minor and moderate offences make up the majority of water company non-compliance with environmental requirements.

However, currently to impose a monetary civil penalty (a financial penalty imposed by the EA, rather than the courts) the EA must be satisfied 'beyond reasonable doubt' (the criminal standard of proof) that an offence has been committed. This criminal standard of proof is appropriate for serious offences, but the high investigatory burden may not be proportionate for minor to moderate offending.

The EA can issue FMPs for some water sector offences. However, FMPs are not currently available for relevant EPR 2016 offences (the regime under which the majority of EA investigations take place) and the amount that can be imposed on water companies is small (£300). This means it is generally disproportionately costly for the EA to investigate to the criminal standard and impose monetary penalties of an appropriate value for frequent, minor to moderate offending.

The WSMA addressed these issues by introducing:

- powers for the EA to impose penalties (VMPs and FMPs) to the civil standard of proof ('on the balance of probabilities'): this means the EA will be able to impose penalties when satisfied that it is more likely than not that an offence has been committed. This will enable minor to moderate offences to be enforced more quickly, cost effectively and proportionately
- automatic penalties, where the EA must impose FMPs in specific circumstances: this will streamline the penalty process for offences that can be identified and evidenced quickly

These new penalties will sit alongside and complement existing enforcement options including prosecution and unlimited criminal standard VMPs and will enable the EA to take quicker enforcement, driving improved performance in the water sector.

We expect water companies to improve performance in response to new penalties, with offending decreasing over time. The EA will continue to monitor water company performance in areas where new penalties are proposed.

Secondary legislation is needed to implement the new penalty regimes. This consultation sets out policy proposals and seeks views on:

- offences and circumstances where new penalties can be imposed
- permit conditions that would be introduced to enable or support penalties
- the maximum penalty value of civil standard VMPs
- the value of an automatic penalty
- procedural requirements, including representations and appeals
- potential business impacts

Specific questions outlined in **Part 2** provide the opportunity to shape the proposed approach.

Responding to the consultation

This is a public consultation, and we welcome all views, particularly those from:

- customers
- water supply and sewerage undertakers and licensees operating primarily in England
- industry bodies
- elected representatives
- regulatory bodies
- Non-Governmental Organisations (NGOs)
- any other party likely to be affected by the proposed changes

This consultation will run for 6 weeks. This consultation opens on 22 October 2025 and closes on 3 December 2025.

You can respond to the consultation questions using the online tool which can be found on Citizen Space. We encourage responses via this method.

Responses may also be sent to Defra by email or post. If responding by email or post, state:

- your name
- your email address
- your organisation
- the consultation title

If you respond after the consultation closes, your response will not be accepted or analysed. If sending a response by post, allow sufficient time to ensure it arrives before the consultation closes.

Enquiries and responses should be either:

- Emailed to: water-industry-civil-penalties@defra.gov.uk
- Posted to:

Consultation on strengthening civil penalties for water company offences
Department for Environment, Food and Rural Affairs
Seacole Building Ground Floor
Marsham Street
London
SW1P 4DF

Using and sharing your information

How we use your personal data is set out in the consultation and call for evidence exercise privacy notice which can be found here

<https://www.gov.uk/government/publications/defra-consultations-and-call-for-evidence-exercises-privacy-notice>.

Other Information

This consultation is being conducted in line with the Cabinet Office “Consultation Principles” and be found at: [Microsoft Word - Consultation Principles \(1\).docx \(publishing.service.gov.uk\)](#).

We are keen to see these powers implemented as soon as practicable, and a consultation period of 6 weeks applies.

Next steps

A summary of responses to this consultation will be published on the UK government website on the [Defra homepage](#).

The proposals in this consultation will then require parliamentary approval through the secondary legislation process to be brought into effect as law.

The EA will also consult on its [Enforcement and Sanctions Policy](#) that sets out how they will use the new penalty powers.

Part 2: Policy proposals and consultation questions

About you

Question 1: Would you like your response to be confidential? (required)

- Yes
- No

If you answered 'Yes', please give your reason(s)

Question 2: Provide your full name. If you are representing an organisation or group, you will be asked its name later (required)

Question 3: Provide your email address (required)

Question 4: In what capacity are you completing this consultation? (required)

- as a customer or individual
- as a representative of a water only company
- as a representative of a water and sewerage company
- as a representative of a new appointments and variations company
- as a representative of a water supply and/or sewage licensee
- as an elected representative
- as a representative of a non-governmental organisation (NGO) or other non-profit public interest group
- as an academic or researcher
- other (please specify):

Question 5: If responding on behalf of an organisation, what is the name of your organisation? (required)

Question 6: Where are you, or the organisation you are representing, located? (this consultation is for proposals that apply in England) (required)

- England
- Scotland
- Wales
- Northern Ireland
- Outside the UK, within the EU
- Outside the UK, outside the EU

Civil standard VMPs

Currently, the EA can impose unlimited Variable Monetary Penalties (VMPs) when they can demonstrate ‘beyond reasonable doubt’ (the criminal standard of proof) that an offence has been committed; this is the same standard of proof relied on for criminal prosecutions.

Whilst this is appropriate for serious offences (such as those that have a major impact on the environment), the high investigatory burden is not proportionate for minor to moderate offences.

To allow minor to moderate offences to be enforced more quickly, cost effectively and proportionately, we propose using the powers introduced by section 7 WSMA 2025 to enable the EA to impose VMPs where they are satisfied ‘on the balance of probabilities’ (the civil standard of proof) that an offence has been committed.

This section sets out our proposals for civil standard VMPs, including:

- offences where civil standard VMPs could be used
- parameters for when the EA can use the civil and criminal standards of proof, including setting a maximum penalty size for civil standard VMPs
- the procedure that the EA must follow when imposing penalties

Offences enforceable by civil standard VMPs

We propose the EA should be able to impose civil standard VMPs for the following offences.

EPR 2016 offences:

- Regulation 38(1)(a) and (b) – Operating without or other than in accordance with a permit.
- Regulation 38(2) – Failure to comply with or contravening a permit condition.
- Regulation 38(3) – Failure to comply with the requirements of a notice.
- Regulation 38(4)(a) – Failure to comply with a notice (under regulation 61(1)) requiring the provision of information, without reasonable excuse.
- Regulation 38(5)(a) – Failure to keep required records and make them available to the EA on request.

WRA 1991 offences¹:

- Sections 24(4) and 25(2) – Unlicensed abstraction or impounding or failure to comply with condition of an abstraction or impounding licence.
- Section 25C(1) – Failure to comply with an abstraction or impounding enforcement notice served under Section 25A.
- Section 80 – Contravention of a drought order or permit.
- Section 201(3) – Failure to comply with the requirements of a Section 201 notice.

This will allow the EA to take proportionate enforcement action more quickly and outside of the courts for a range of water company environmental permit and licence breaches and other water discharge, groundwater, abstraction, impounding and drought offences.

For all proposed offences, civil standard VMPs would be available alongside the EA's other enforcement tools and the EA will have discretion on which enforcement tool, if any, is most appropriate, depending on the specifics of the case.

The most serious cases will continue to be enforced through criminal prosecution or unlimited criminal standard VMPs, where the standard of proof remains 'beyond reasonable doubt'.

Following the government's response to this consultation, the EA will also consult on updates to its [Enforcement and Sanctions Policy](#), which will set out how the EA will make enforcement decisions relating to the new penalties. The EA must also adhere to the [Regulators' Code](#), which contains important safeguards to ensure that the enforcement action taken by regulators is proportionate.

Strengthened Environment Agency powers to enforce dry day spills

Current permit conditions and legislative requirements on water companies are clear that storm overflows must not spill on dry days. Water companies must investigate and implement measures to address dry day spills and ensure compliance with their permits. If companies breach their permits, they can face enforcement action up to and including prosecution.

Our proposals give the Environment Agency more powers to take action against unlawful dry day spills. Powers to impose penalties to the civil standard of proof make it quicker for the Environment Agency to investigate and punish companies. The Environment Agency will be able to impose these new penalties up to £500,000,

¹ Defra previously consulted on moving the regulation of abstraction and impounding licensing into the EPR 2016, and we are currently considering next steps. References to offences or enforcement of offences under WRA 1991 in this consultation are intended to cover these offences (or similar), or enforcement powers, if moved into other legislation in the future.

on top of their existing powers to impose unlimited penalties to the criminal standard of proof.

This builds on existing action to identify and address dry day spills. Event Duration Monitors at storm overflows provide the EA with the data it needs to identify potential permit breaches. Companies are also now required to publish annual Pollution Incident Reduction Plans setting out the action they are taking across their networks to eliminate dry day spills and progress since their last report.

Swifter penalties will drive improved compliance with permit and legislative requirements. Alongside this, we are considering the Independent Water Commission's recommendations on drainage and wastewater management including how the legislative framework can deliver better outcomes. The government will set out further information on reforms in a white paper for consultation in autumn.

Question 7: Do you support the offences proposed to be enforceable by civil standard VMPs? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Setting a cap for civil standard VMPs

The EA has existing powers to impose unlimited criminal standard VMPs, which enable substantial penalties to be imposed for serious offending. There are no plans to add an upper limit to criminal standard VMPs.

For new civil standard VMPs, the WSMA requires secondary legislation to set a maximum penalty that can be imposed under the civil standard of proof (a cap). We propose that: above this cap, the EA can impose criminal standard VMPs; below this cap, the EA can impose civil standard VMPs.

This will clearly distinguish when the different standards of proof can be used and ensure civil standard VMPs are available to enforce minor to moderate offending, while unlimited criminal standard VMPs remain available for more serious offending.

The EA will consult on updates to its [Enforcement and Sanctions Policy](#) which will set out further information on how civil standard VMPs will be calculated. We expect this to follow a similar approach to the current policy on criminal standard VMPs.

This approach is based on the steps in the [Sentencing Council's guidelines for the sentencing of environmental offences](#) and considers the size of the business, the

level of harm and culpability (blame) associated with the offence, and any other aggravating or mitigating factors.

We have considered the Sentencing Council Guidelines factors when proposing cap values including:

- considering the size of water companies (many water companies are very large organisations with turnover greatly exceeding £50 million)
- the seriousness of the offending

We welcome responses on the proposed values.

Option 1: Set the cap at £350,000: civil standard VMPs will be imposed up to £350,000 and criminal standard VMPs will be imposed above this

A penalty of £350,000 reflects the upper range of the Sentencing Council Guidelines for a negligent, category 2 offence committed by a large organisation (a turnover or equivalent that exceeds £50 million). This has been proposed because we consider civil standard VMPs would be suitable for offending up to and resulting in this level of seriousness.

Option 2: Set the cap at £500,000: civil standard VMPs will be imposed up to £500,000 and criminal standard VMPs will be imposed above this

As most water and sewerage undertakers in England are very large organisations, a cap of £500,000 would reflect the Sentencing Council recommendation to move outside the suggested range for very large organisations (set out in option 1) to ensure a proportionate penalty.

Question 8: What is your preferred cap amount? (required)

- set the cap at £350,000
- set the cap at £500,000
- set the cap at another amount
- do not know

If you selected 'Set the cap at another amount', specify what you think this amount should be and why, referring to the Sentencing Council Guidelines where possible.

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Procedures and safeguards for civil standard VMPs

It is essential that there is a fair and proportionate process that must be followed when penalties are imposed. Secondary legislation will set out the procedure the EA must follow to impose a civil standard VMP, including a company's right to representations and appeals.

These procedures must be consistent with the RES Act 2008 requirements and will include:

- the EA serving a notice of intent before imposing a penalty, including the grounds for imposing the penalty and the amount to be paid
- the right for a company to make representations and objections to the notice of intent for 28 days
- the EA serving a final notice, including the grounds for imposing the penalty, the amount to be paid and the recipient's right to appeal
- the right for a company to appeal against a final penalty notice to the First-tier Tribunal on the grounds that the decision was based on an error of fact; was wrong in law; the amount of the penalty is unreasonable, or the decision was unreasonable for any other reason

The EA will also consult on updates to its [Enforcement and Sanctions Policy](#), outlining the criteria and methodology for imposing penalties.

Automatic penalties

The current process for the EA to impose fixed monetary penalties (FMPs) for minor to moderate offending is resource intensive, taking up time that could be being used for other investigations or enforcement action.

In addition to the high, criminal standard of proof, the FMP amount the EA can currently impose for certain water industry offences is set at just £300.

This means it is generally not cost effective for the EA to investigate to the criminal standard and impose monetary penalties of an appropriate value for frequent, minor to moderate offending, creating a gap in enforcement capabilities.

The WSMA addressed this by introducing automatic penalties, where environmental regulators are placed under a duty to impose FMPs in specific circumstances to be specified in secondary legislation.

Our intention is for automatic penalties to also rely on the civil standard of proof. This will enable the EA to impose FMPs more quickly, without having to direct significant resources to disproportionately lengthy investigations.

This section seeks your views on proposals to implement automatic penalties.

Introducing civil standard FMPs

Automatic penalties are FMPs that the EA must impose in response to specific breaches. Our intention is for the penalties to rely on the civil standard of proof. The EA must therefore be able to impose civil standard FMPs.

Whilst the EA currently has powers to impose criminal standard FMPs for abstraction offences (under WRA 1991), it does not have the power to issue FMPs for EPR 2016

offences. Additionally, the EA does not currently have any civil standard FMP powers.

To address this, we propose:

- introducing civil standard FMP powers for permit and licence breaches (regulation 38(2) offence under EPR 2016 and Section 24 offence under WRA 1991), for the purposes of enabling the EA to impose automatic penalties
- for Section 24 WRA 1991 offences, replacing existing criminal standard FMP powers where civil standard FMP powers would be available instead

Question 9: Do you agree with the proposal to introduce civil standard FMP powers for permit and licence breaches? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Question 10: For the Section 24 WRA 1991 offence, do you agree with the proposal to replace the existing criminal standard FMP powers, where civil standard FMP powers would apply? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Circumstances where the EA would impose automatic penalties

The WSMA automatic penalty provisions place a duty on the EA to impose an FMP in certain circumstances, to be specified in secondary legislation. There are 2 exceptions to this duty which allow the EA to:

- take stronger enforcement action if appropriate
- account for any exceptional circumstances at the time of the offence that mitigate the culpability of the water company

We propose that automatic penalties are used in circumstances that are straightforward and easy to prove. This will ensure penalties can be quickly imposed

and without disproportionately lengthy investigations. Some changes to water company permits and/or licence conditions are needed to enable this.

These include:

- introducing specific, clear-cut conditions which, if breached, would result in an automatic penalty
- standardising conditions across relevant permits or licences in areas that relate to automatic penalties that support the EA in quickly identifying an offence

These changes would be made by the secondary legislation (called 'deemed conditions'), rather than by reviewing individual permits and/or licences. We propose that the following specified circumstances would trigger an automatic penalty:

EPR 2016 (regulation 38(2) offence):

- failure to report a significant pollution incident within 4 hours.
- failure to maintain Event Duration Monitor (EDM) operation at or above 90% of a reporting year.
- failure to report EDM operation data to the Environment Agency monthly.
- if an emergency overflow discharges more than 3 times in a year.

WRA 1991 (section 24 offence):

- failure to return abstraction data to the EA within 28 days of being requested.
- failure to provide records requested by the EA related to maintenance and accuracy of monitoring devices within 28 days.
- failure to have an accurate and reliable monitoring device in place to measure the quantity of water abstracted.

Failure to report a significant pollution incident within 4 hours of detection

Quick reporting of pollution incidents enables water companies, the EA and responders to act rapidly to reduce environmental harm and implement preventative measures to avoid recurrence. Timely reporting also allows the EA to pursue enforcement action, where appropriate.

Current permit conditions require water companies to report significant pollution incidents (category 1 and 2, the most harmful to the environment) as soon as reasonably practicable following detection. We propose that an automatic penalty is triggered where a company fails to report a significant pollution incident within 4 hours of detection.

This 4-hour reporting window before an automatic penalty is triggered is intended as a backstop; companies must continue to report pollution incidents as soon as possible. For example, if an incident can be reported to the EA within an hour, companies must not wait 4 hours before reporting. The EA will be able to take

enforcement action if a company reports a significant pollution incident that could have been reported sooner.

We consider requiring companies to report significant pollution incidents within 4 hours of detection feasible, given advances in technology and the rollout of automated monitoring systems. A 4-hour reporting window is already an established expectation in the sector, forming part of the EA's regular discussions with companies on their environmental performance.

Currently, only significant pollution incidents (category 1 and 2) must be reported as soon as reasonably practicable. To ensure all incidents are accurately reported, we propose expanding this requirement to apply to all pollution incidents. This will discourage misreporting and improve transparency, providing the EA with a fuller picture of pollution incidents to support earlier intervention.

There will be variability in the time taken for non-significant pollution incidents to be reported. For example, if an incident has no or low environmental impact, it may only be able to be detected retrospectively when assessing monitoring data. We therefore propose enforcement of reporting requirements for non-significant pollution incidents be at the EA's discretion. This will allow the EA to take appropriate enforcement action based on the specifics of each case.

We propose that secondary legislation is used to:

- introduce a requirement into all relevant permits that significant pollution incidents must be reported within 4 hours following detection, with water companies receiving an automatic penalty if they fail to do so
- expand the existing permit condition so that all pollution incidents must be reported as soon as reasonably practicable following detection

Question 11: Do you agree that 4-hours is an appropriate backstop for the reporting of significant pollution incidents? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Question 12: Do you support the proposal for an automatic penalty to be triggered for failing to report a significant pollution incident within 4 hours? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Question 13: Do you support the proposal to require all pollution incidents to be reported as soon as reasonably practicable? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Failure to maintain Event Duration Monitoring (EDM) operation at or above 90% of a reporting year

EDM devices provide critical information on the frequency and duration of discharges from storm and emergency overflows. Near-real-time data from EDMs enables regulators, water companies, and the public to understand when discharges occur and how long they last.

Ofwat is responsible for monitoring compliance with Section 141DA of the Water Industry Act 1991 relating to the publication of near-real time data by sewerage companies. The EA regulates EDM installation, operation and reporting requirements included within permit conditions for storm and emergency overflows.

Current permit conditions require EDM devices to be maintained, repaired or replaced as soon as reasonably practicable, to ensure that EDM monitors are consistently recording reliable data. To underpin this, we propose introducing a requirement for EDM devices at storm and emergency overflows to be operational (the 'uptime') for at least 90% of the calendar year. An automatic penalty will be triggered if a device operates for less time than this. This is consistent with the EA's current assessment of EDM operation in its [Environmental Performance Assessment \(EPA\) report](#) and their intention to include this as a future metric of performance.

Whilst a company would be penalised if an EDM's uptime is less than 90%, this is not a target for compliance. Water companies should be aiming for 100% operational uptime for each EDM device. This is required for compliance with the duty to publish storm overflow discharge data in near-real time and made clear by Ofwat's final determinations, which set company performance commitment levels assuming 100% EDM uptime.

To support this automatic penalty, we also propose standardising permit condition requirements related to EDMs across all storm overflow permits. As part of this, we

propose requiring EDM devices to monitor at least every 2 minutes, overriding any remaining permit conditions that allow longer monitoring intervals. This standardised monitoring frequency would ensure that all EDM devices provide the same accuracy in measuring discharges, strengthening regulatory decisions and enforcement. We welcome views from water companies on any concerns or implications of this change.

We propose that secondary legislation is used to:

- require EDM devices at storm and emergency overflows to be operational for at least 90% of a calendar year, with an automatic penalty if a device does not meet this uptime requirement
- standardise permit condition requirements for all storm overflows to require EDMs to be installed, maintained, repaired and replaced as needed, to ensure discharges are monitored effectively and measurements are accurate. The frequency of monitoring will also be standardised to 2 minutes

Question 14: Do you support the proposal for an automatic penalty to be triggered if an EDM device at a storm or emergency overflow fails to be operational for at least 90% of a calendar year? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Question 15: Do you agree with standardising EDM requirements in storm overflow permits, including setting the frequency of monitoring as 2 minutes? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Failure to report EDM data to the Environment Agency monthly

Current permit conditions require water companies to report EDM data on the frequency and duration of spills to the EA annually. This is in addition to the

requirement on companies to publish information from EDMs in near real time (within an hour of a discharge) and allows thorough independent scrutiny.

To strengthen this, we propose introducing a new requirement for water companies to report EDM data from a storm or emergency overflow to the EA monthly, with an automatic penalty if companies fail to do so. This more frequent reporting of data would allow quicker identification of any performance issues and earlier regulatory intervention.

The data that must be reported monthly will be limited to specific elements of the full annual reporting requirements and companies will be required to ensure data is validated before submitting. We also propose water companies should be required to retain all EDM raw data and reporting records for at least 10 years from the date the records were made. This will ensure that record keeping aligns with government's targets introduced in the [Storm Overflow Discharge Reduction Plan](#) which assesses storm overflow discharges over a 10-year period.

We propose that secondary legislation is used to:

- require water companies to report EDM data from each storm or emergency overflow to the EA on a monthly basis, with an automatic penalty if a company fails to do so
- standardise storm and emergency overflow permit requirements for EDM data. This includes specifying the types, format and verification of information that companies must report to the EA, as well as requiring the retention of EDM records and data for a minimum of 10 years

Question 16: Do you support the proposal for an automatic penalty to be triggered if companies fail to report EDM data to the EA monthly? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

If an emergency overflow discharges more than 3 times in a year

An emergency overflow should only discharge in limited emergency scenarios at sewage pumping stations, such as electrical power failure, mechanical breakdown of pumps, or due to rising main failure or a blockage of the downstream sewer.

The persistent use of an emergency overflow can indicate underlying performance issues, such as poor maintenance, which need to be addressed. We propose introducing an automatic penalty if an emergency overflow discharges more than 3 times in a year. This penalty is intended to account for discharges that may be

permitted in truly exceptional circumstances whilst penalising persistent discharges from emergency overflows.

This penalty will not prevent the regulators from investigating and enforcing against any non-compliant or illegal discharges from emergency overflows, even where there have been fewer than three discharges in a given year. The EA is also trialling a performance indicator in Drainage and Wastewater Management Plans if emergency overflows discharge more than once.

We propose that secondary legislation is used to:

- require that emergency overflows must not discharge more than 3 times a year, with an automatic penalty if a company breaches this requirement.

Question 17: Do you support the proposal for an automatic penalty to be triggered if an emergency overflow discharges more than 3 times a year? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Failure to return abstraction data requested by the EA within 28 days

Abstracting water can change surface water flows and lower groundwater levels. To prevent environmental harm, water companies must operate within strict environmental limits. Requiring water companies to report abstraction data in a timely manner can ensure water companies operate within these limits or allow the EA to take earlier intervention where necessary.

Current abstraction licences issued by the EA require water companies to submit data on the quantities of water abstracted when requested. However, requirements, such as the frequency, form and specifics of what data should be reported, vary across licences.

We propose addressing this by standardising abstraction reporting requirements and introducing an automatic penalty if a company fails to provide abstraction data requested by the EA within 28 days. This will support the EA in ensuring water companies are abstracting within the limits in their licence, preventing over-abstraction.

We propose that secondary legislation is used to:

- standardise reporting requirements for abstraction including data verification and retention requirements

- require abstraction data to be provided to the EA within 28 days of being requested, with an automatic penalty if a company fails to do so

Question 18: Do you support the proposal for an automatic penalty to be triggered for failing to return abstraction data to the EA within 28 days of being requested? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Failure to have an accurate and reliable monitoring device in place to measure the quantity of water abstracted

Accurate and reliable monitoring devices are essential for water companies and the EA to be confident that water abstraction is occurring within licensed limits, preventing over-abstraction and environmental harm. The EA's guidance ([water abstraction: how to make sure your meter is accurate](#)) provides further information on ensuring monitoring devices are accurate.

Although current licence conditions require water companies to install, maintain and ensure the accuracy of monitoring devices that record the quantity of water abstracted, specific requirements vary across licences.

We propose standardising abstraction monitoring device requirements across licences and introducing an automatic penalty if a company does not have an accurate and reliable monitoring device in place. This proposal is intended to support the EA to have confidence that data being reported reflects the actual level of abstraction taking place.

We propose that secondary legislation is used to:

- require water companies to install, maintain and ensure the accuracy of monitoring devices that record the quantity of water abstracted, with an automatic penalty if a company fails to do so

Question 19: Do you support the proposal for an automatic penalty to be triggered for failure to have an accurate and reliable monitoring device in place to measure the quantity of water abstracted? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Failure to provide records requested by the EA related to maintenance and accuracy of monitoring devices within 28 days

It is essential that the EA receives timely records on the maintenance and accuracy of monitoring devices from water companies. These records include the date the check was carried out, the method used and results, including any manufacturer or laboratory certificates.

To underpin this, we propose introducing an automatic penalty where companies fail to provide records of the installation, repair, replacement, calibration and verification of a monitoring device to the EA within 28 days of being requested. This will enable the EA to be assured that monitoring devices are being properly maintained and performing as required.

We propose that secondary legislation is used to:

- require water companies to maintain records on the installation, repair, replacement, calibration and verification of abstraction monitoring devices
- require water companies to send copies of these records to the EA within 28 days of being requested, with an automatic penalty if a company fails to do so

Question 20: Do you support the proposal for an automatic penalty to be triggered for failing to provide records related to maintenance and accuracy of monitoring devices to the EA within 28 days of being requested? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Procedures and safeguards for civil standard FMPs and automatic penalties

Secondary legislation will set out the procedure the EA must follow to impose civil standard FMPs and automatic penalties, including a company's right to representations and appeals. These procedures will be consistent with RES Act 2008 requirements.

Issuing penalties

Before imposing a penalty, the EA will issue a notice of intent to the company. This serves as a formal notification that the EA intend to impose a penalty and will include matters such as:

- the grounds for proposing to impose the penalty
- the amounts to be paid
- to encourage prompt payments where a company accepts liability, we propose offering companies opportunity to make a payment to discharge liability following the initial notice (see proposed values in the 'Setting the value of civil standard FMPs and automatic penalties' section).
- the circumstances in which the EA may not impose the penalty
- the right to make representations and objections

Upon receiving the notice of intent, companies will have 28 days to:

- make representations (such as comments or additional information) to the EA. The EA will review the proposed penalty based on their evaluation of any representations they receive and may reassess the penalty as necessary
- make a payment to discharge liability

If the company does not discharge liability within 28 days and the EA proceeds to impose the penalty following representations, the EA will issue a final notice confirming the penalty and setting out appeal rights.

At this final notice stage, the penalty payable will be twice the amount that would have been payable to discharge liability at the initial notice stage.

Question 21: Do you support the procedure proposed above, including the ability to make a payment to discharge liability following the notice of intent? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

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Appeals

The grounds of appeal set out in the RES Act 2008 for the imposition of FMPs to a First-tier Tribunal will be maintained. These are that the decision of the regulator was based on an error of fact, was wrong in law or was unreasonable. There will be no removal of these appeal routes.

The EA may choose not to impose an automatic penalty if there are exceptional circumstances that mitigate the culpability (blame) of the company, or if alternative enforcement action is being considered or in progress. The WSMA allows companies to be prevented from appealing the EA's decision on if there are exceptional circumstances. We consider this is proportionate, to prevent this appeal route being used as a loophole to avoid or delay the payment of an automatic penalty.

Question 22: Do you support the proposal to prevent companies from appealing the regulator's decision on whether there are exceptional circumstances in place? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Setting the value of civil standard FMPs and automatic penalties

Civil standard FMPs and automatic penalties will be the same value, to be set in secondary legislation.

Varying penalty value based on company turnover

Given the differences in size of water companies across the sector, we propose varying penalty values based on company turnover.² This aligns with the approach taken by the [Sentencing Council Guidelines](#) and ensures penalties are proportionate and act as a deterrent to future non-compliance.

For micro to large companies, we propose following the same classifications of company size used by the Sentencing Council. We also propose introducing an additional turnover classification for very large organisations (VLOs) for the purpose of this penalty regime, to ensure consistent application of penalties against companies with a turnover significantly above that of large organisations.

We have proposed an upper turnover limit to the Sentencing Council definition of large organisations to account for this.

We propose water companies are classified as:

- Very large organisation: A turnover over £250 million

² Where 'turnover' reflects the applicable turnover in the previous reporting year from regulated activities necessary to fulfil the function and duties of a water and sewerage undertaker, or water undertaker, under the Water Industry Act 1991.

- Large organisation: A turnover over £50 million and up to £250 million
- Medium organisation: A turnover over £10 million and up to £50 million
- Small organisation: A turnover over £2 million and up to £10 million
- Micro organisation: A turnover £2 million or less

Under these proposals, all water and sewerage companies in England would currently be classified as VLOs and be subject to the highest penalty proposed.

Question 23: Do you support the proposal for penalties to vary based on water company turnover? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Question 24: Do you support the turnover bandings proposed for classifying water companies? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Penalty values

We are seeking views on 3 options for penalty values.

The penalty value would be consistent across all the proposed offences. These proposals consider the seriousness of the offences, the [Sentencing Council Guidelines](#), and the effectiveness of penalties as a deterrent to improve compliance.

As set out in the section 'Issuing penalties', we propose that companies can make a payment to discharge liability after the initial notice.

If a company discharges liability, we propose the following values apply:

Table 1 Proposed values if a company discharges liability

Company size	Definition	Option 1	Option 2	Option 3
Very large organisation	A turnover over £250 million	£10,000	£7,500	£5,000
Large organisation	A turnover over £50 million and up to £250 million	£7,000	£5,250	£3,500
Medium organisation	A turnover over £10 million and up to £50 million	£2,500	£1,875	£1,250
Small organisation	A turnover over £2 million and up to £10 million	£500	£375	£250
Micro organisation	A turnover £2 million or less	£200	£150	£100

We propose that if a company does not discharge liability after the initial notice the following penalty values apply:

Table 2 Proposed penalty values if a company does not discharge liability after the initial notice

Company size	Definition	Option 1	Option 2	Option 3
Very large organisation	A turnover over £250 million	£20,000	£15,000	£10,000
Large organisation	A turnover over £50 million and up to £250 million	£14,000	£10,500	£7,000
Medium organisation	A turnover over £10 million and up to £50 million	£5,000	£3,750	£2,500
Small organisation	A turnover over £2 million and up to £10 million	£1,000	£750	£500
Micro organisation	A turnover £2 million or less	£400	£300	£200

Question 25: What penalty values would you prefer to be set? (required)

- **Option 1:** A payment of £10,000 for VLOs if liability is discharged after the initial notice, with a £20,000 penalty in other instances
- **Option 2:** A payment of £7,500 for VLOs if liability is discharged after the initial notice, with a £15,000 penalty in other instances
- **Option 3:** A payment of £5,000 for VLOs if liability is discharged after the initial notice, with a £10,000 penalty in other instances
- Set the penalty values at another amount
- Do not know

If you selected 'set the penalty values at another amount', please specify.

Further questions on the impacts of the penalty proposals are included in the section 'Impacts on water companies'.

Impacts on water companies

The following section considers both civil standard VMPs and automatic penalties.

We would like to better understand the impacts associated with the proposed new penalties for water company offences. A summary of the indicative estimates and impacts has been published alongside this consultation document (Annex A). We particularly welcome views on this analysis from companies who will be impacted by new penalties, and any further evidence that can be provided to strengthen it.

Costs to businesses associated with non-compliance

The introduction of the new civil penalties will have a direct financial impact on companies who are not complying with their legal obligations.

Where increased costs are a result of penalties being issued by the EA, we expect the cost of these penalties to be borne by the companies and not customers.

Question 26: Do you have any comments or feedback on the modelled potential cost of penalties? (not required)

- Yes
- No
- Do not know

If you selected 'Yes', please provide your evidence.

Question 27: Do you have any further evidence to indicate the likely number of breaches and cost of the proposed new penalties that you would like to share? (not required)

- Yes
- No
- Do not know

If you selected 'Yes', please provide your evidence.

Indirect impacts and costs

It is important that the new penalties are proportionate and drive improved performance in the water sector without inhibiting the private sector investment necessary to upgrade our water infrastructure.

We are interested to hear views on whether this balance has been achieved in our proposals, and any impacts on private sector investment and investor confidence.

Question 28: Do you have any comments or feedback on the modelled potential impacts to investor returns? (not required)

- Yes
- No
- Do not know

If you selected 'Yes', please provide your evidence.

Question 29: Do you have any further evidence that is helpful in considering impacts of new penalties on private sector investment in the water sector? (not required)

- Yes
- No
- Do not know

If you selected 'Yes', please provide your evidence.

Familiarisation costs

Companies will face familiarisation costs for the new civil penalties, measured by the time a company would spend familiarising themselves with the regulatory changes.

This could be calculated, for example, using estimates of the number of hours that would be required for people from different professions to be familiar with the new penalties.

Question 30: Do you have any further evidence that can be used to estimate the likely familiarisation costs? (not required)

- Yes
- No
- Do not know

If you selected Yes', please provide your evidence.

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