



Scottish Environment
Protection Agency

Buidheann Dion
Àrainneachd na h-Alba

Enforcement report **2016-2017**



SEPA Enforcement Report

2016-2017¹

Foreword

The Scottish Environment Protection Agency's (SEPA) Enforcement report, which is published annually, provides an overview of enforcement action taken by us. The report summarises how we have deployed the enforcement tools available to us to deal with those who have failed to comply with the environmental legislation: legislation that exists to protect Scotland's environment, local communities and our economy.

Through new legislation in 2015 and 2016, SEPA was provided with a range of new enforcement measures including fixed monetary penalties, variable monetary penalties and enforcement undertakings. In June 2016 those new measures became available for us to use when our new [enforcement policy](#) and enforcement guidance was issued. We have committed to implementing our new measures in a phased way and this report details how we used them in 2016–2017.

With the changes to our enforcement policy and the new enforcement measures available to us, we have taken this as an opportunity to review and refresh the content of our enforcement report. For the first time, this report includes information relating to compliance and environmental events. Both compliance and environmental events are essential datasets in informing our decision-making around regulated sites and our approach to enforcement. In order to fulfil our statutory purpose of improving and protecting the environment, we regulate in accordance with our six organisational characteristics, one of which requires us to produce information such as compliance, enforcement and environmental events data. This data allows us to make the right regulatory decisions and take the appropriate actions to achieve our statutory purpose, as outlined in our [One Planet Prosperity: Our Regulatory Strategy](#).

In accordance with another of our organisational characteristics, we have always, and will continue to, interact and support those we regulate to enable them to meet their legal and environmental obligations, achieve compliance quickly and help them to move 'beyond compliance'.



Chief Executive



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Alternative languages and formats

We will make this document available in alternative languages and formats on request. To arrange this, please either contact SEPA by telephone on 01786 457 700 and ask for our Equality specialist or by email to equalities@sepa.org.uk

¹ This report covers the period from 1 April 2016 until 31 March 2017. References in this paper are to financial years running from 1 April to 31 March unless otherwise stated

1. Introduction

We issue a range of environmental licences for activities that could lead to pollution. Compliance with the conditions within these licences is essential for ensuring our environment and human health are protected. Where there is non-compliance with licence conditions, or in response to an environmental event, we may use one or more of our enforcement tools to bring about the corrective actions required to return the site to compliance. This may range from issuing advice and guidance to a more formal level of enforcement action.

We may also take action against those who have failed to comply with environmental legislation by not obtaining the necessary authorisation(s) from us, and against those who have carried out illegal activities for which a licence would not be available.

During 2016-2017, our [enforcement policy](#) and [guidance](#) changed. On 1 June 2016, we published those documents on our website. The Regulatory Reform (Scotland) Act 2014 and Environmental Regulation (Enforcement Measures) (Scotland) Order 2015² provided SEPA with a range of new enforcement measures. These new enforcement measures supplement the enforcement tools already available to us and provide significant opportunity to help tackle non-compliance.

The 2015-2016 enforcement report was the last to report solely on:

- statutory notices
- final warning letters;
- reports to the Procurator Fiscal;
- civil sanctions (penalties).

The new enforcement measures now available to us in law are set out below:

- fixed monetary penalties (FMP);
 - enforcement undertakings (EU);
 - variable monetary penalties (VMP);
 - VMP undertakings.
- (These are known together as 'enforcement measures').

² The Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 came into force on 12 November 2015



We are phasing in the implementation of these new enforcement measures, and this report will focus on those measures that have been used during 2016-2017. You will find further details of how we have used enforcement action in [Section 4](#) of this report.

SEPA is moving to a sector plan approach and where initial sectors have been identified, sector plans will be developed in 2017-2018. Sector plans will set out how we intend to work with regulated businesses to ensure that they comply with environmental regulations. They will also identify ways that we could help businesses reduce water use, carbon-based energy use, materials use and all forms of waste and pollution to beyond compliance standards in ways that improve their profitability and long-term viability.

Sector plans will map out existing levels of compliance of businesses within a sector and highlight issues that are common across a sector. A sector plan will also identify all the levers that

influence a particular sector to help improve compliance. Where there are particular compliance issues within a sector, it is intended that the implementation of the sector plan will include consideration of the types of enforcement action that may be appropriate for that sector.

Given the changes mentioned above, during this transitional phase we have decided to present this report in a different format from previous years. Our statutory purpose is to protect and improve the environment in ways that, as far as possible, create health and well-being benefits and sustainable economic growth. This year we have looked at enforcement in the context of the various tools we deploy to achieve positive outcomes for the environment. The report initially looks at the action we take upon notification of an environmental event, moves on to look at our compliance activities, and finally considers more formal enforcement action that we have taken.

Our statutory purpose is to protect and improve the environment in ways that, as far as possible, create health and well-being benefits and sustainable economic growth.



2. Environmental events

Environmental events are incidents that have occurred and resulted, or could potentially result, in environmental damage. These incidents are notified to SEPA through various routes including notifications from the general public, our staff out in the field, other agency staff or self-notifications from operators regarding their regulated sites.

When an event is notified to SEPA our priorities are to:

- establish the scale and nature of any risk to the environment or human health;
- seek to immediately address any on-going pollution;
- determine who is responsible and why the problem has arisen;
- work with the responsible person, seeking to ensure any necessary measures are taken to rectify the problem and prevent recurrence;
- consider any further appropriate enforcement action.

We use four categories for ranking the severity of events and their actual and potential impact on the environment. The four categories are:

- Category 1: major incidents
- Category 2: significant incidents
- Category 3: minor incidents
- Category 4: other incidents (i.e. unsubstantiated reports or no impact)

This report will focus on Category 1, 2 and 3 events only, as these are more likely to have an impact on the environment and have been substantiated.

Environmental events occur from both licensed and unlicensed activities. In 2016–2017, we responded to 2,531 environmental incidents. The breakdown of these is:



Of these events:

- 18 events categorised as a Category 1 and 2 event were from a licenced activity;
- 174 events categorised as a Category 1 or 2 event were from an unlicensed activity;
- 376 events were from a licensed activity;
- 2,155 events were from unlicensed activities.

In many cases, environmental events take place as a result of accidents, incidents or a genuine lack of understanding of regulatory requirements. In the first instance, we will always seek to work with those who are responsible for an environmental event through the provision of advice and guidance, to address the problem and prevent it happening again.

Figure 1: Number of environmental incidents responded to in 2016-2017

Case study 1

SEPA received a report of an incident associated with a waste transfer station, licensed under the Waste Management Licence Regime, which was causing concern to local residents. This was the latest in a series of similar relatively low level incidents that had taken place intermittently over a two to three year period. Past investigations and site visits by our officers had identified a number of minor failings in infrastructure and operations at the facility that were the causes of the events being reported by residents. In every case the site management had acted responsibly and taken steps to rectify the problems.

However, given the on-going nature of these events, we arranged for a site meeting involving company directors and operational management. Following discussion of the issues, all parties agreed to the presence at this meeting of a representative of the local residents who had reported environmental events associated with the plant during the preceding two to three years. This allowed all parties to discuss the issues in a constructive fashion and developed a mutual understanding of the problems, the relative success of what had been done to attempt to address them and, a shared commitment to a resolution that would improve the situation in the long term.

As a result, the company agreed to significant investment in new plant and management practices designed to deliver a complete resolution to the on-going problems at the site. They also provided the local residents with a contact number so they can call them directly with any future concerns that they may have. This has resulted in a significant reduction in problems associated with the facility and a positive improvement in its overall environmental performance.



Event investigations are often a fast moving and dynamic challenge, and the interventions used and outcomes sought will be entirely defined by the circumstances of the case.

[Section 4](#) on enforcement describes other tools that we will use following some environmental events.



3. Compliance assessment scheme

We issue environmental licences that are designed to control activities that could lead to pollution or environmental damage. We also check whether licence holders are meeting the terms of their licences – this is our compliance activity – and our [Compliance assessment scheme](#) (CAS) is the framework we use to assess and categorise³ the compliance of a licence holder. The majority of activities we licence are assessed but some are not⁴. Details of the regimes which are included in CAS can be found in [Table 1](#). CAS runs on a calendar year basis

3.1. How do we assess compliance?

We assess compliance through a combination of inspections, sampling, site data returns and desk based assessments. We use a risk based system to determine the frequency of inspections for the sites we regulate. For example, the highest risk sites and failing sites will receive a number of inspections per year, where the lowest risk sites will receive an inspection once every five years. Where non-compliance(s) has been identified, we may increase these inspection frequencies as well as take other action (see Sections 4 and 5) until the site has returned to compliance.

The results of our compliance activity and any environmental events (see [Section 2](#)) occurring at the site are used to calculate the annual compliance result, which is published in CAS.

As CAS is a risk based system, the number of sites that are inspected, and subsequently reported on, fluctuates from year to year. As a consequence, the annual rate of compliance is calculated based on the number of licences which have had an assessment recorded during the year.

3.2. Compliance assessment scheme 2016 results⁵

In 2016, we carried out assessments on 5,309 licences. 4,869 licences assessed were assessed as compliant, and the remaining 440 licences were assessed as non-compliant. At the end of 2016, 91.7% of licences we assessed were compliant with their licence conditions (see Figure 2).

³ CAS assigns licences to one of six categories: Excellent, Good, Broadly Compliant (which are considered compliant), At Risk, Poor and Very Poor (which are considered non-compliant).

⁴ The following regimes are not assessed as part of CAS: Engineering works authorised under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR); the Carbon Reduction Commitment Energy Efficiency Scheme Order 2013 (CRC); the Energy Savings Opportunity Scheme Regulations 2014 (ESOS); the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (ETS); Producer Responsibility regime (includes producer responsibility obligations under e.g. the Waste Electrical and Electronic Equipment Regulations 2013 and the Producer Responsibility (Packaging Waste) Regulations 2007); and Transfrontier Shipment of Waste Regulations 2007 (TFS).

⁵ The Compliance year runs from 1 January to 31 December

3.3. Compliance 2009-2016

We introduced our Compliance assessment scheme (CAS) in 2009, initially for licences regulated under the Pollution Prevention and Control (PPC) Regime. Following this, other regulatory regimes were phased in. Table 1 below shows the year each regime was introduced to CAS.

Table 1: Year each regime was phased into CAS

Year	Regime
2009	PPC (Pollution Prevention and Control (Scotland) Regulations 2012)
2010	CAR PS (point source discharges authorised under CAR) & WML Waste management licences granted under the Environmental Protection Act 1990)
2012	RSA (The Radioactive Substances Act 1993)
2014	CAR WR (Water resources namely impounding works and abstractions authorised under CAR)

Each year, we publish a summary of the assessments carried out on our website. Figure 2 shows the rate of compliance achieved each year since 2009 and the average rate achieved in this period. With the phasing in of each regulatory regime, the most accurate comparison of the level of compliance achieved is from 2014 to 2016. Figure 2 shows that the highest level of compliance with licence conditions was achieved in 2016. As there is a direct correlation between the rate of compliance and enforcement action, as compliance improves, it is to be expected that the level of enforcement action will reduce.

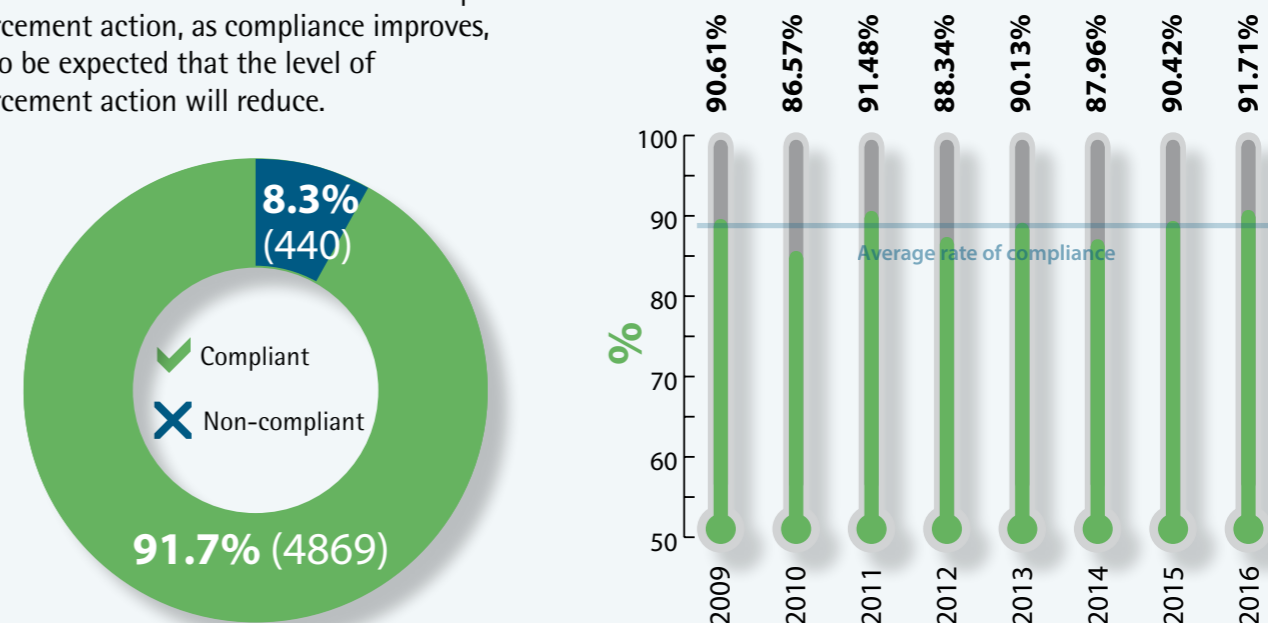


Figure 2 : Licence compliance in 2016 and comparison from 2009-2016

In 2016, we delivered an increase in the rate of compliance for the second consecutive year. We have achieved this by placing a significant emphasis on targeting our effort in addressing non-compliance. Our effort ranges from providing advice and guidance to help improve compliance, to taking formal enforcement action, such as issuing enforcement notices and final warning letters. We believe regulation is about changing behaviour, to help achieve positive outcomes for the environment, society and the economy. As we know that one approach does not fit all circumstances, the form of action we take to secure compliance will differ depending on the particular nature of the non-compliance, the harm caused and the history of the responsible person in question. We recognise that most of those we regulate respond to our advice and guidance, and many businesses are recognising the benefit of demonstrating good environmental compliance. As such, there will be many occasions where providing advice and guidance is the appropriate level of action we need to take to secure compliance and change behaviour.

Case study 2

A food production site authorised by SEPA under PPC had a succession of pollution incidents that, combined with poor site management, contributed to a 'Very Poor' CAS score in 2014. The first step towards bringing the site into compliance was a SEPA review to tighten controls in the environmental permit for the site.

In 2015, there were three different unauthorised releases to the surface water drainage system and it became apparent that staff training was a major issue. The operator employed new management that same year and, in our engagement with the operator, we made it clear that it required a site improvement plan to be produced and delivered, including the need to better train staff. Some improvements were delivered by the company by year end, resulting in a CAS rating of 'Poor' for 2015.

During 2016, the operator made significant progress in delivering the site improvement plan including significant investment in site infrastructure. Overall, the management of the process and site has improved dramatically and further works have been delivered in 2017.

Our action in making clear requirements for delivery of a site improvement plan and working with the new management team to provide advice and guidance has helped to improve environmental performance of the site from 'Very Poor' to 'Good' in 2016.



3.4. Decreasing non-compliance

In our Annual Operating Plan 2016 – 2017, we committed to reduce the number of licences classed as very poor at the end of March 2016: there were 74 licences classed as very poor at the end of March 2016.

Through various interventions, 49 of these licences had improved their compliance rating at the end of March 2017.

66% of licences classed as **VERY POOR** in March 2016 improved their compliance rating by **March 2017**

3.5. Persistently failing sites

At the end of March 2016, there were 236 licences which had been assessed as non-compliant for two or more years. Our target⁶ was to reduce these. By the end of March 2017, of the 236 licences, 110 had returned to compliance, two were revoked and one was surrendered.

46.6% of persistently failing sites* returned to compliance by **March 2017**

* persistently failing sites are those that are assessed as non-compliant with their licence for two or more years.

Case study 3: waste transfer station

An inner city waste transfer station with a waste management licence was the destination of the majority of household waste collections in and around the city. It was the subject of numerous odour complaints as a result of inadequate site infrastructure, inappropriate waste handling and storage and poor site management. This led to the site being assessed as 'Very Poor' in CAS during both 2015 and 2016.

Significant efforts were made by SEPA to engage with the operator regarding the growing problem of site compliance and escalating enforcement, including communication with the operator at the highest level. However, the operator failed to fully comply with several enforcement notices and ultimately SEPA suspended the licence in February 2017.

SEPA's persistence in seeking compliance, and the operator's inability to comply with our requirements, led to the operator ceasing to use the site as a waste transfer station at least two years earlier than planned. As a consequence the impact on residents has ceased.

Case study 4

In 2006, we granted a waste management licence for the storage and treatment of end-of-life vehicles at a site.

Unsatisfactory management of the activities on site led to SEPA serving an enforcement notice in December 2014, resulting in a CAS rating of 'Poor' for the site that year. A 'Poor' CAS rating was given in 2015 and 2016 as a result of further non-compliances, which included the inappropriate storage of untreated vehicles and oily parts and a failure to treat vehicles to the required standards.

As a result a further enforcement notice was issued in 2016. This notice required the operator to take specific steps to comply with the environmental licence. A follow up inspection in July 2016 showed improvements had been made, including the provision of an additional storage area for vehicles to improve the overall operation of the site. This resulted in a CAS rating of 'Broadly Compliant' for 2016.



⁶ SEPA's Annual Operating Plan, page13

4. Enforcement action

The intent behind enforcement action we take is to:

- secure compliance and change behaviour;
- stop or reduce the risk of harm arising from the non-compliance to an acceptable level;
- ensure restoration and remediation of the environment.

The factors we take into account when making decisions on what enforcement action we will take are: intent; foreseeability; impact; financial implications; deterrent effect; previous history.

The level of enforcement action taken to address non-compliance will range from providing advice and guidance, through to referring a case to the Crown Office and Procurator Fiscal Service Scotland (COPFS).

Our approach to enforcement is underpinned by the five principles of Better Regulation: being proportionality, accountability, transparency, consistency and targeting, plus a sixth principle of taking a timely approach. In light of this, for many non-compliances, advice and guidance may be the only action that we take. Advice and guidance may be offered in combination with any other action we take at every stage to achieve the desired outcome(s). Further information on enforcement decision making is available in [SEPA's Enforcement guidance](#).

4.1. Enforcement measures

SEPA gave a number of assurances around the use of our new enforcement measures during the passage of the 2014 Act and the 2015 Order through the Scottish Parliament, including assurances that their use would be phased in. As such, during 2016–2017 our enforcement measures have been used in the following way:

- Fixed monetary penalties: have only been used as part of a small number of targeted campaigns, giving us the opportunity to gain experience in their use, and learn from such experience, prior to them being made more widely available.
- Variable monetary penalties: have not yet been used. During 2016 we [consulted on our proposals](#) for the manner of determining the amount of a VMP and further work is underway to prepare for their use.
- Enforcement undertakings: forms are available on our website for offers of such undertakings to be made.

Our [Communicating penalties](#) and undertakings policy sets out what we will publish in relation to each of these new measures, and where it will be published.

The [Lord Advocate's Guidelines to SEPA](#) on the use of enforcement measures under the 2014 Act were issued in May 2016. When we consider using an enforcement measure we must comply with the guidelines. They provide a framework for us to decide whether we may use an enforcement measure or whether the case should instead be referred to COPFS for consideration of prosecution.

Further detail of the penalties issued and undertakings accepted by us can be found on our [website](#).

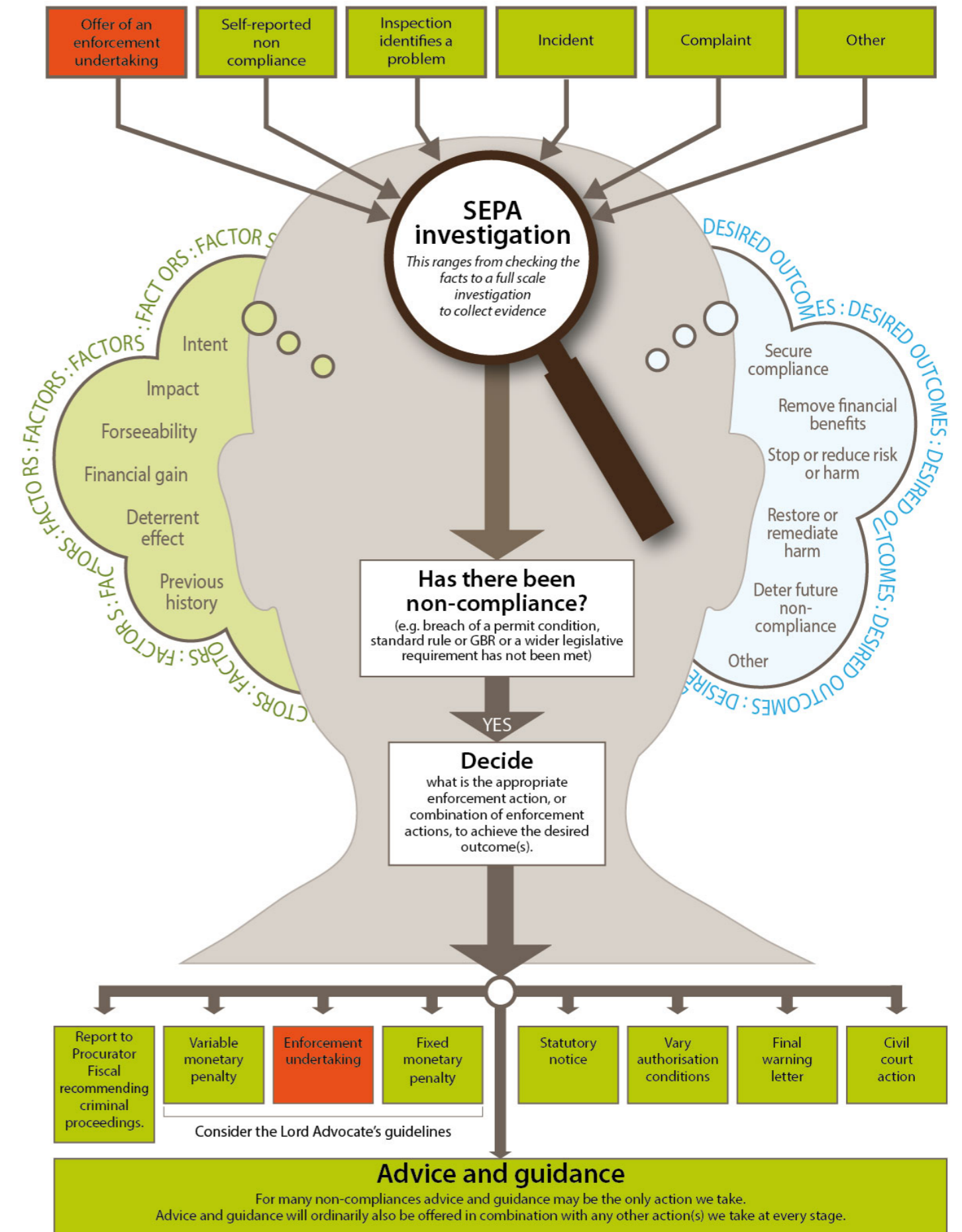


Figure 3: Enforcement decision making diagram

4.1.1. Enforcement undertakings (EU)

An enforcement undertaking is an offer, made voluntarily by a responsible person, to make amends for non-compliance and its effects and to prevent recurrence, which we may either accept or reject. An enforcement undertaking may be offered proactively by the responsible person, before we are aware of the non-compliance. Or it may be offered reactively after we have investigated the non-compliance.

We will expect an offer to include appropriate beneficial action and actions to demonstrate preventative longer term benefits for the environment or the local community.

Forms for offering enforcement undertakings were made available for use from 1 June 2016. No enforcement undertakings were accepted during 2016–2017. However, five offers were made during this time that were either rejected or remained under consideration at the end of year. We do not publish details of offers that we reject. Further information on when an enforcement undertaking may be offered and more general information can be found in Section 4.2 in our [Enforcement guidance](#).



4.1.2. Fixed monetary penalties (FMP)

A FMP is a financial penalty that we may impose for certain offences set out in the 2015 Order. The circumstances in which a FMP would be appropriate are where⁷:

- Environmental harm has not been caused/ minimal harm has been caused with no lasting environmental impacts or impacts on communities (including recreational users and other businesses).
- Little financial benefit, if any, has arisen.
- No environmental harm has been caused but the regulatory system has been undermined, such as a failure to register with SEPA or a failure to submit monitoring data.

There are three levels of penalty prescribed in the 2015 Order. The levels are: £300, £600 and £1,000 and the offence determines the level of the penalty.

- In 2016–2017, we issued four FMPs, amounting to a total of £1,200.
- All four of these FMPs were issued to persons operating without a waste carriers licence. Each penalty issued was for £300.

In 2016–2017 we commenced a limited series of targeted campaigns aimed at specific compliance issues where an FMP was considered to be the ultimate appropriate enforcement action. The campaigns used various forms of communication to give advance notice of our intention to use FMPs should non-compliance be established. In many cases, this advance communication was successful in bringing about compliance without the need for service of an FMP.

⁷ Source: Guidance on the use of enforcement action June 2016

Case study 5

As a result of changes to duty of care legislation under the Waste (Scotland) Regulations 2012, there is now a requirement on waste producers to segregate waste for recycling. In conjunction with our partner organisations, and to help us reach the businesses affected, 130,000 leaflets were distributed in November 2015 to raise awareness of the new requirements. The leaflets were also distributed to local authority waste enforcement & environmental health officers, who are in regular contact with food businesses.



Despite the efforts to raise awareness of this new requirement it was reported to SEPA that there was non-compliance. We brought together a package of interventions including the use of fixed monetary penalties (FMPs). Persistently non-compliant waste producers were identified to us by waste service providers or local authority enforcement functions. The campaign involved conducting an initial advisory inspection, followed up with a second compliance inspection six weeks later.

We identified 73 businesses across Scotland that were non-compliant after the advisory inspection. As a result of our inspection and enforcement process, 66 businesses had changed behaviour and were confirmed as compliant during the second inspection. For businesses who remained non-compliant after a second inspection SEPA would then decide whether to serve FMPs. Current information on the penalties imposed as part of the campaign is published on our [website](#), in line with [SEPA's Enforcement guidance](#).

4.2. Other formal enforcement action

The Annex to this report provides a detailed breakdown of the enforcement action we undertook in 2016–2017 with comparisons with other years. In 2016–2017:

120
statutory notices
were served (does not
include information notices)



113
final warning
letters issued



12
cases referred to the
Procurator Fiscal



4.2.1. Statutory notices

A statutory notice is a formal notice⁸ served by us, as a result of non-compliance, negative environmental impacts or a risk of either of these. The statutory notice will generally set out the steps required to bring the recipient of the notice back into compliance, or the steps required to address negative environmental impacts. In most cases, a failure to comply with a statutory notice is an offence.

In 2016–2017, we issued 120 statutory notices. The notices were issued as follows:

- 58 were issued under Environment Protection Act 1990 in relation to waste management;
- 16 were water related and issued under the CAR;
- 3 were issued under the Pollution Prevention and Control (PPC) regime;
- 17 were issued in relation to the carbon reduction commitment (CRC);
- 22 were issued in relation to the Energy Savings Opportunities scheme (EOS);
- 1 was served relating to the Radioactive Substances Act (RSA);
- 3 were issued for non-payment of licence subsistence fees⁹.

Of these 120 notices, 63 were issued in relation to breaches of environmental licences that we have issued.

4.2.2. Final warning letters

A final warning letter is a written warning about non-compliance. It provides the responsible person with a final opportunity to change their behaviour and come into compliance before we take further enforcement action.

In 2016–2017, we issued 113 final warning letters. We do not publish the specific details of each final warning letter issued. The notices were issued as follows:

- 52 were under the waste regime;
- 29 were under the water regime;
- 6 were under the Pollution Prevention and Control regime;
- 6 were under the Emissions Trading Scheme;
- 4 were under the Radioactive Substances regime;
- 15 were under the Energy Savings Opportunities Scheme;
- 1 was for non-payment of subsistence fees¹⁰.

Of the 113 final warning letters issued, 36 were issued as a consequence of non-compliance with environment licences conditions.

⁸ Statutory notices are provided for in legislation under various regimes and include: enforcement notice; suspension notice; revocation notice; removal of waste notice; works notice; prohibition notice.

⁹ For definitions see footnotes 4, 6, 8 & 9

¹⁰ For definitions see footnotes 4, 6, 8 & 9



4.2.3. Prosecution: Reports to the Crown Office and Procurator Fiscal Service (COPFS)

We have the ability to refer offences to the Crown Office and Procurator Fiscal Service (COPFS) whose role includes assessing if there is sufficient evidence, and if it is in the public interest to pursue criminal proceedings. Whilst we have the ability to refer all offences to COPFS, this option will generally be reserved for offences that are most serious or where there is evidence of wider criminality.

Once we have referred a case, the decision whether or not to take court proceedings or to deal with the case by way of a fiscal warning letter or fiscal fine is a matter for COPFS alone.

During 2016–2017, we referred 12 cases to COPFS for consideration. Of these referrals:

- five (42%) were under the waste regime;
- four (33%) were under the water regime;
- one (8%) was under the water regime and the Regulatory Reform (Scotland) Act 2014;
- one (8%) was under Section 110 of the Environment Act 1995;
- one (8%) was under the PPC and waste regime.

Details of case outcomes are published in the [media section](#) of our website.

4.2.4. Proceeds of crime

Following a conviction a Court may make a Confiscation Order under the Proceeds of Crime Act 2002, requiring an accused to pay a sum of money reflecting the financial benefit obtained from either particular criminal conduct, or, in appropriate cases from a criminal lifestyle. During 2016–2017 two Confiscation Orders were made by the Courts in respect of convictions for SEPA instigated cases.

- one individual received a Confiscation Order for £16,546.50;
- one individual received a Confiscation Order for £11,100.

4.2.5. Civil sanctions (penalties)

The Greenhouse Gas Emissions Trading Scheme Regulations 2005 and 2012, the CRC Energy Efficiency Scheme Orders 2010 and 2013, and the Energy Savings Opportunity Scheme Regulations 2014 all provide for civil penalties for certain breaches under these schemes. The maximum potential penalty for each type of non-compliance is set out in the relevant legislation.

During 2016–2017, we imposed 13 civil penalties, amounting to a total of £189,889.42. They were all imposed under the Greenhouse Gas Emissions Trading Scheme Regulations 2012.

- One civil penalty was imposed on an operator who had carried out a regulated activity at their installation without a permit.
- Four civil penalties were imposed on operators who failed to surrender sufficient allowances to cover the annual reportable emissions from their installation in a scheme year by the relevant deadline.
- Eight civil penalties were imposed on operators who breached the emissions target for their installation. Under Schedule 5 paragraph 5 of the Regulations, an operator of an installation participating in the small emitters and hospital opt-out scheme (an excluded installation) is required not to exceed an annual emissions target. If an operator of an excluded installation exceeds their emissions target they are liable to a civil penalty (Regulation 55). The amount of the civil penalty is calculated in accordance with the formula in Regulation 55 and reflects the cost that the operator would have incurred if it had been required to surrender allowances equal to the difference between the emissions of the installation and its target, if it participated in the full EU ETS. It is therefore an 'equivalent measure', as required by the Directive. It does not contain any further punitive element.

Further details of the all the civil penalties issued can be viewed in [Section 7 of the Annex to this Report](#).

4.2.6. Imposition of a licence

Under CAR, where activities are being undertaken without the required authorisation, we have the ability to impose such an authorisation, which amongst other things, will then give SEPA additional control over the regulation of the activity.

Case study 6

We investigated multiple environmental events relating to significant siltation of watercourses over a significant period of time. The events were associated with the construction work for a large-scale infrastructure project.

In October 2016, as part of the enforcement action we took, through innovative use of the CAR licensing regime, we imposed the first SEPA site construction licence on the three main contractors. This clearly places responsibility for ongoing environmental compliance jointly on those contractors and provides SEPA with greater control and a wider range of flexible enforcement options going forward, should this be necessary.



5. Summary

We carefully consider the use of our range of enforcement tools and take the appropriate actions to achieve our statutory purpose, as outlined in One Planet Prosperity: Our Regulatory Strategy.

The effective use of our regulatory tools highlighted in this report demonstrates the wide range of action we have taken over the course of 2016–2017 to secure improved behaviours towards environmental compliance.

Looking ahead into 2017–2018 we will continue to demonstrate effective use of our regulatory tools to achieve environmental compliance and improvement across Scotland. There will be increasing phased use of our new enforcement measures including the agreement of enforcement undertakings, which not only address poor environmental practice but also commit to going beyond compliance in terms of benefit to the environment or local community.



Annex

Detailed consideration of formal enforcement activity statistics

1. Comparison of formal enforcement action

SEPA's formal enforcement actions taken since 2012-2013 to 2016-2017 are set out below.

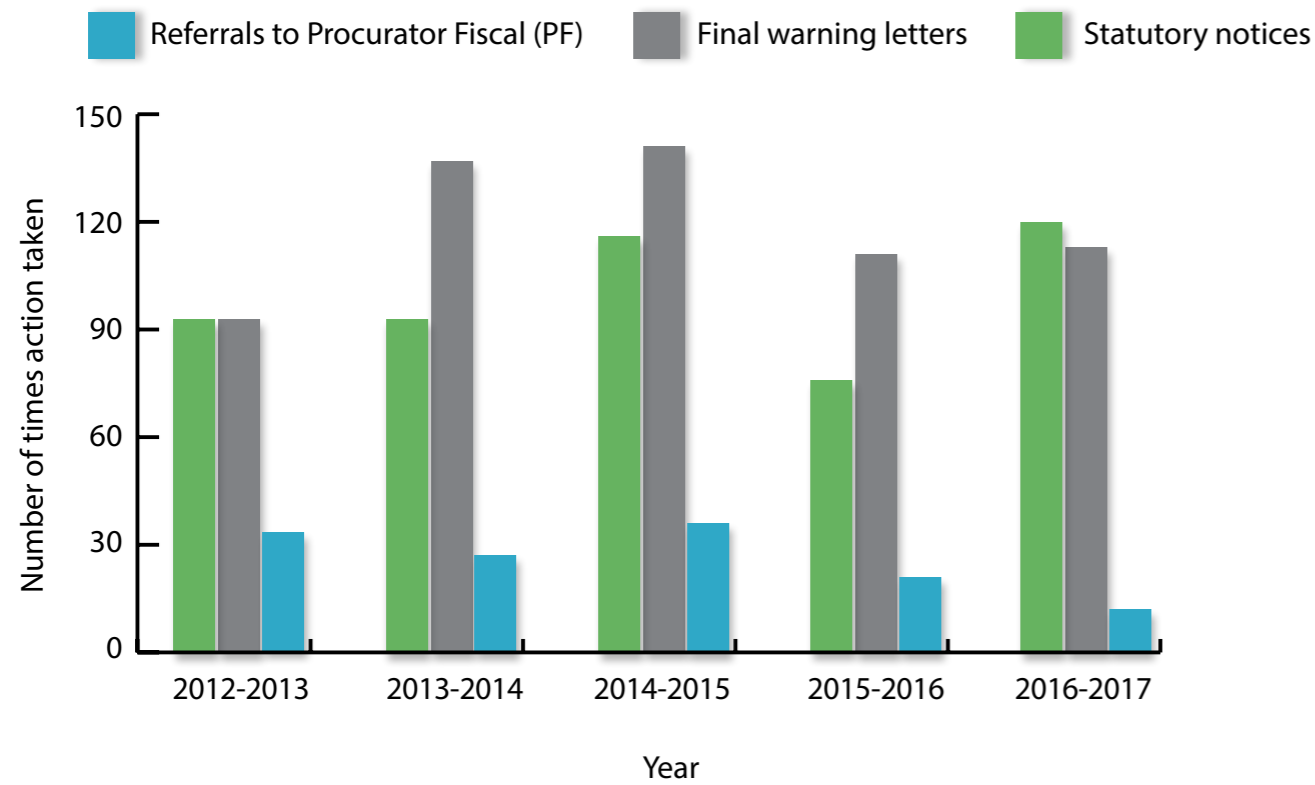


Figure 1: Enforcement action taken by SEPA from 2012-2013 to 2016-2017

2. Statutory notices

Information on the statutory notices served by SEPA since 2012-2013 to 2016-2017 is set out below.

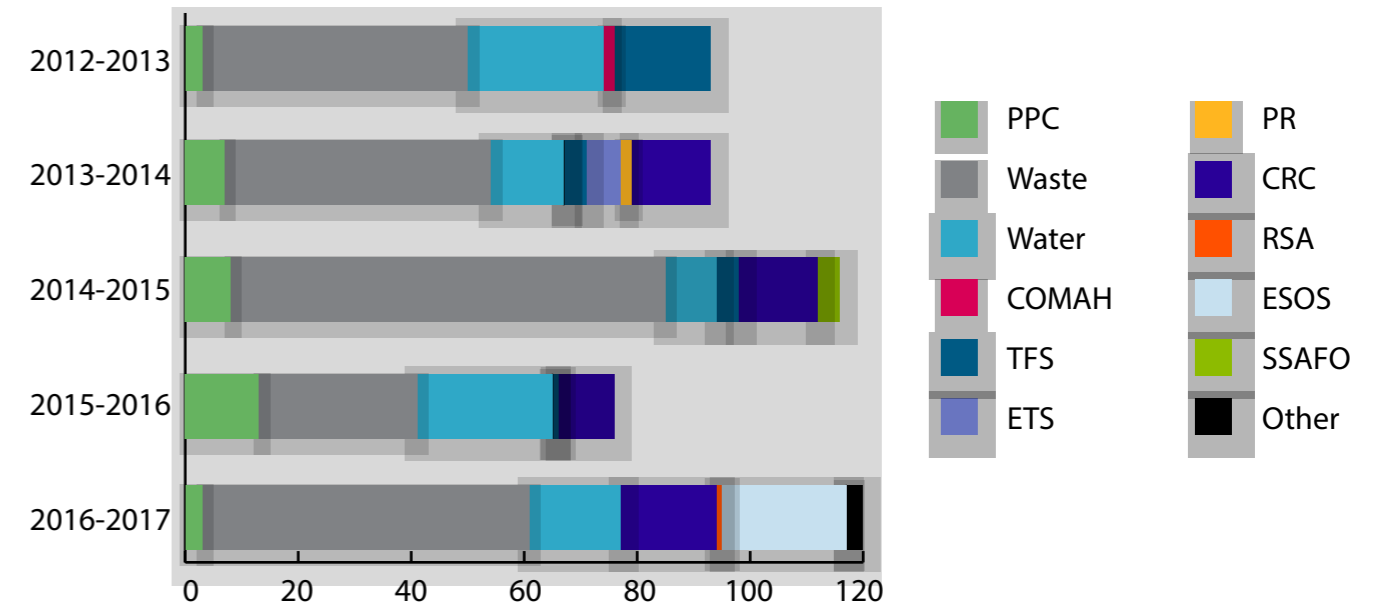


Figure 2a: Statutory notices served by SEPA under each regime, 2012-2013 to 2016-2017

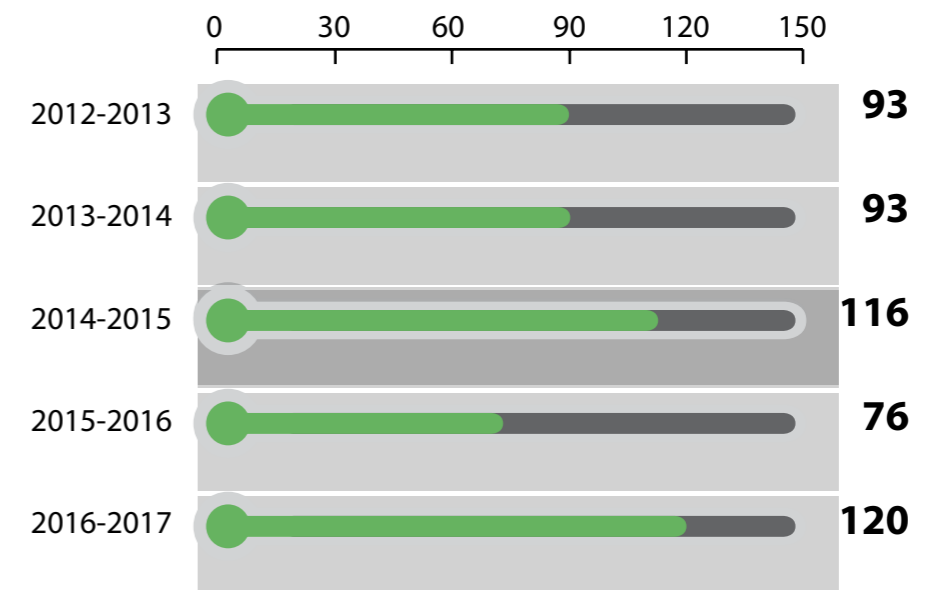


Figure 2b: Total statutory notices served per year by SEPA, 2012-2013 to 2016-2017

3. Final warning letters

Information on the final warning letters issued by SEPA since 2012-2013 to 2016-2017 is set out below.

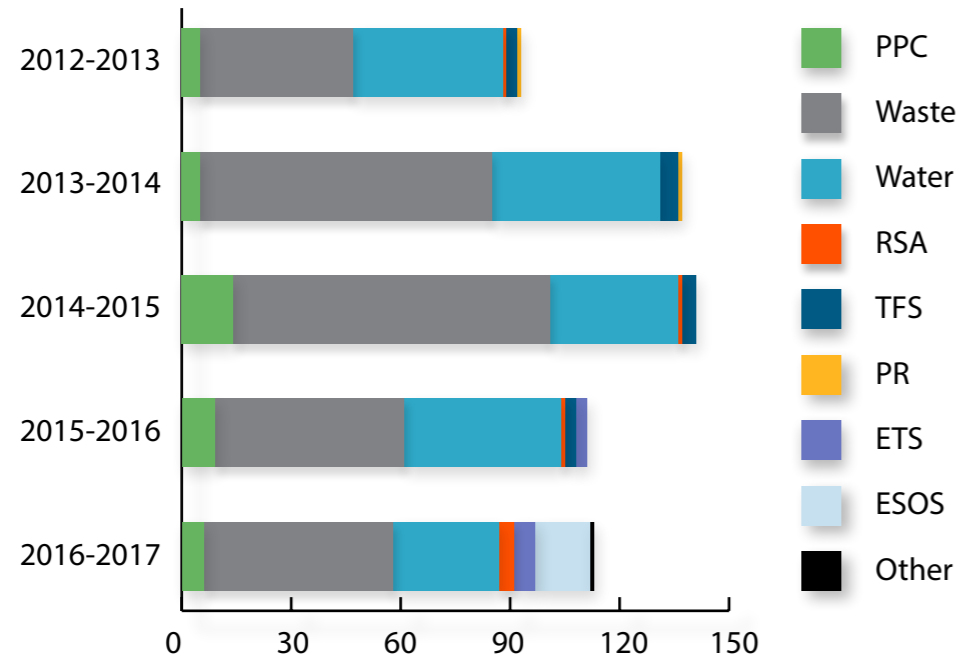


Figure 3a: Final warning letters issued by SEPA under each regime, 2012-2013 to 2016-2017

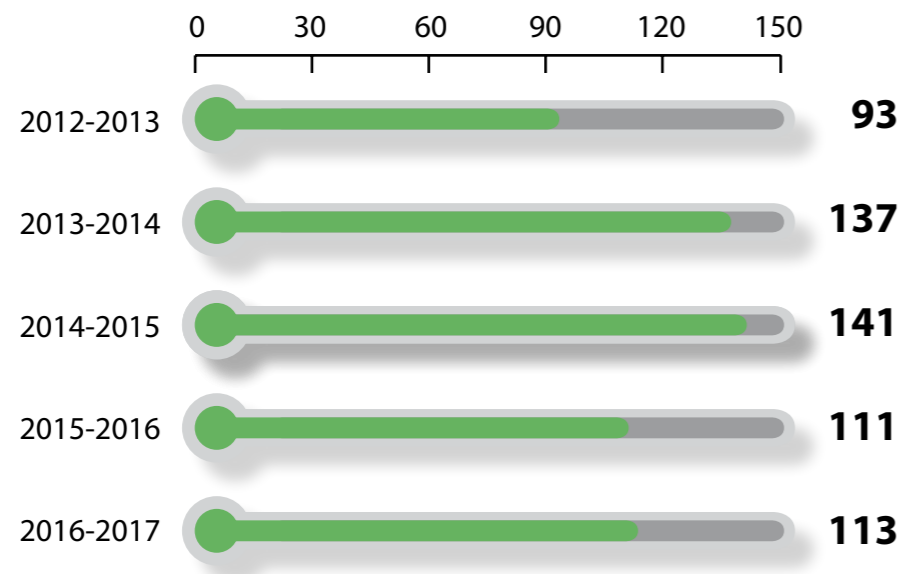


Figure 3b: Total final warning letters issued by SEPA per year, 2012-2013 to 2016-2017

4. Referrals to the Procurator Fiscal

Information on the SEPA cases referred to the Procurator Fiscal since 2012-2013 to 2016-2017 is set out below.

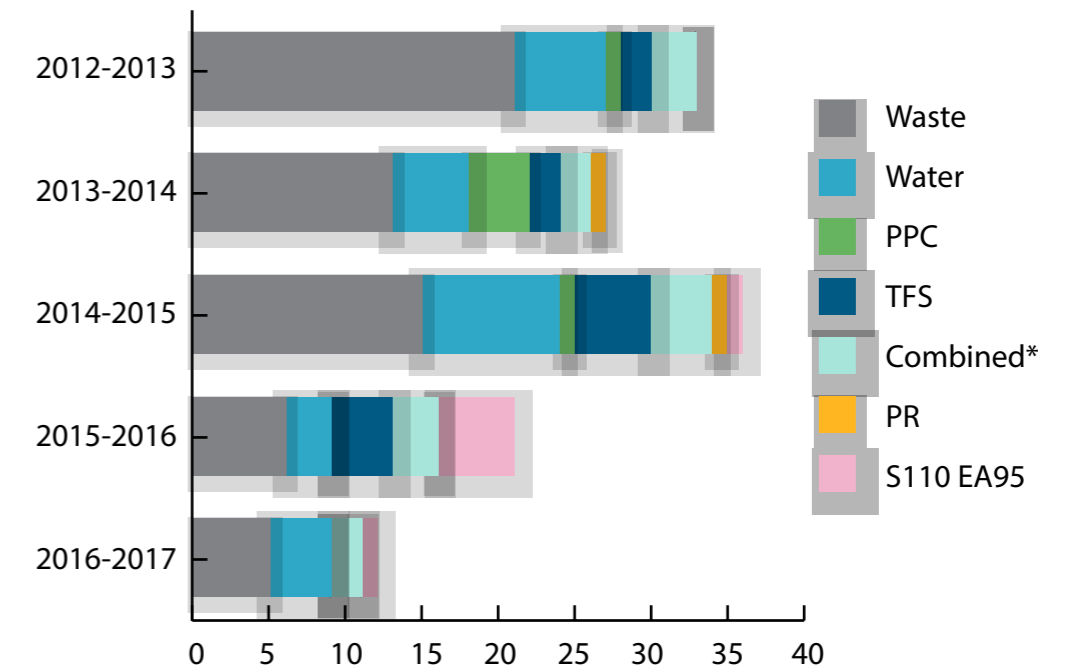


Figure 4a: SEPA cases referred to the Procurator Fiscal by regime, 2012-2013 to 2016-2017

Table 2: * Combined information

Year	Regime
2012-2013	One combined CAR and COMAH case, one combined PPC and waste case, and one combined water and waste case.
2013-2014	One combined PPC and water case and one combined waste and water case.
2014-2015	Four combined offences (one case submitted under PPC and water, one case submitted under waste and Section 110 Environment Act 1995, and two cases submitted under PPC and waste).
2015-16	One combined PPC and waste case.
2016-17	One combined PPC and waste case, and one CAR and Regulatory Reform (Scotland) Act 2014 case.

5. Convictions secured

5.1 Total convictions and sentencing in 2016-2017

The number of cases instigated by us, which resulted in a conviction in 2016-2017¹¹, was 16. Of these 16 cases resulting in convictions:

- 12 cases resulted in a fine alone, fines totalled £92,025;
- one case resulted in a fine of £550 and an admonishment¹²;
- one case resulted in 200 hours community payback order and a confiscation order of £16,546.50;
- one case resulted in two community payback orders of 150 hours totalling 300 hours;
- one admonishment.

¹¹ Due to the time taken for cases to come to court it is unlikely that the convictions secured in a particular year would relate to cases referred by SEPA within in the same year. Figures for cases reported and cases resulting in convictions are therefore not directly comparable.

¹² An admonishment means the accused has been convicted, but no sentence imposed.

5.2 Convictions secured in 2016-2017 by regime

Of the 16 cases resulting in convictions secured in 2016-2017:

- six (38%) were under the waste regime;
- five (31%) were under the water regime;
- one (6%) was under the PPC regime;
- two (13%) were under Section 110 Environment Act 1995;
- one (6%) was under the TFS regime;
- one (6%) was under Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010¹³.

Information on the convictions secured since 2012-2013 to 2016-2017 is set out below.

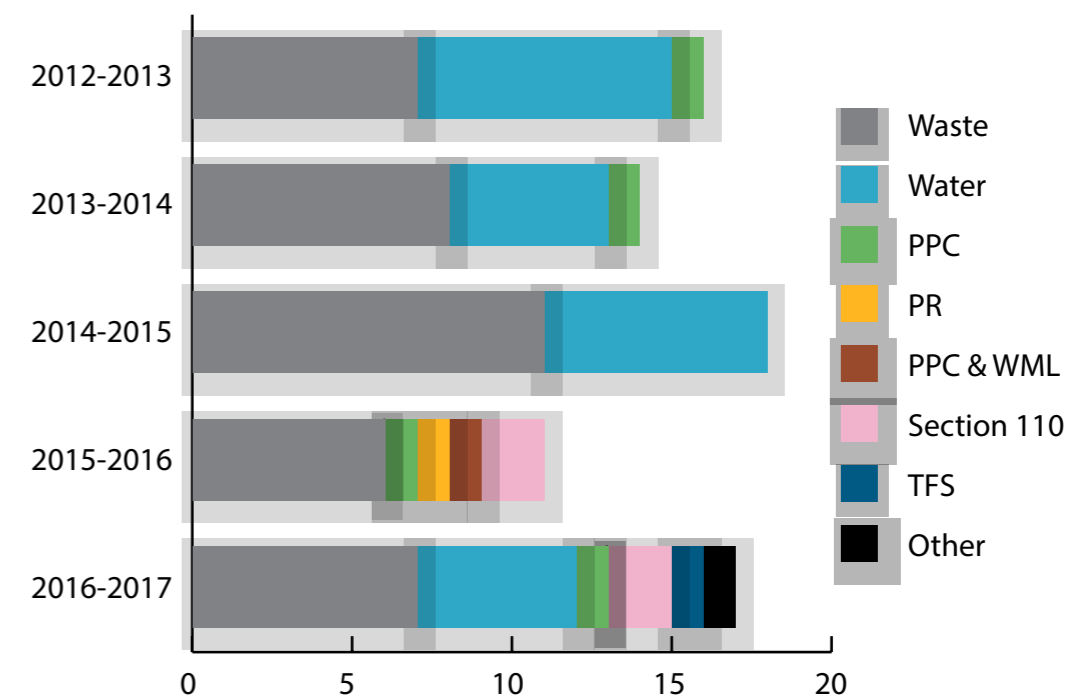


Figure 5a: Convictions secured under each regime from 2012-2013 to 2016-2017

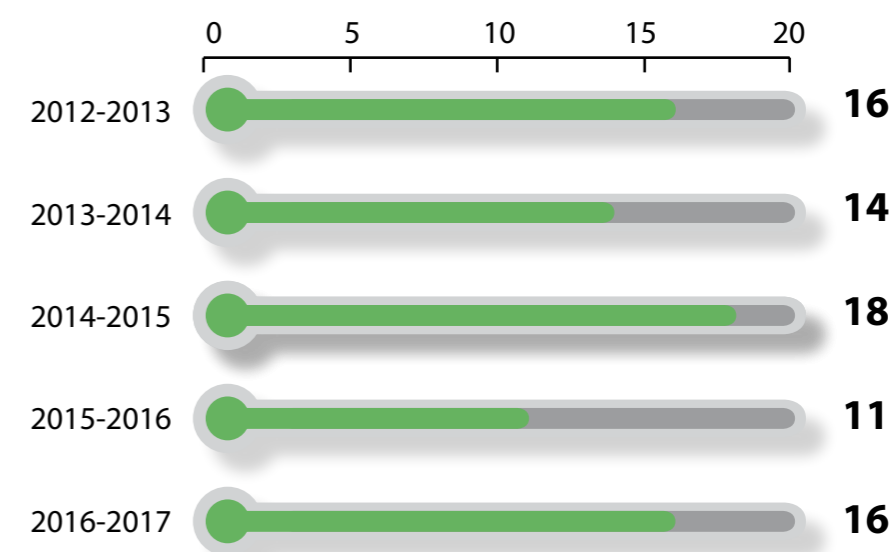


Figure 5b: Total convictions secured cases per year, 2012-2013 to 2016-2017

¹³ It was reported by SEPA under Section 110 EA 1995, but was prosecuted under Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 and is shown as 'other' in Figures 9, 10 and 11 and Table 2.

6. Fine levels

6.1 Total fine levels

Of the 16 cases that resulted in convictions in 2016-2017, 13 fines were imposed, totalling £92,575. Figure 6a shows the total fines imposed since 2012-2013. Over the last five years, the highest total fines were in 2014-2015, and the lowest were in 2015-2016.

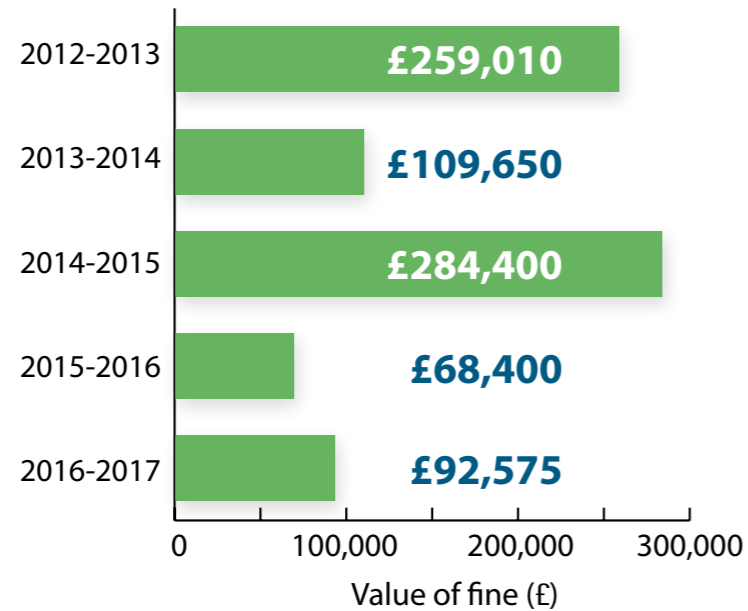


Figure 6a: Total fines arising from SEPA-instigated cases, 2012-2013 to 2016-2017

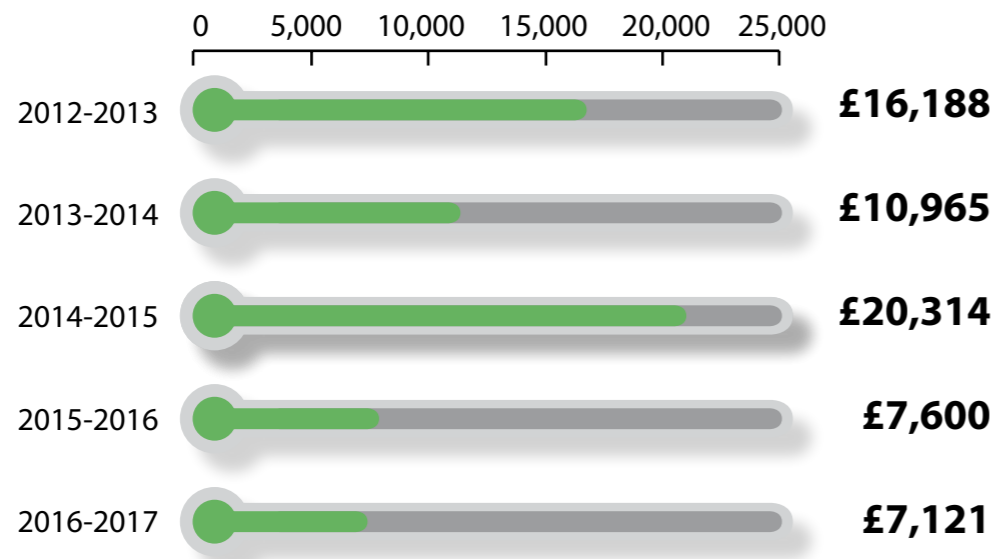


Figure 6b: Average fine level (as imposed by the criminal courts) per year, 2012-2013 to 2016-2017

6.2 Average fine levels imposed

The average fines imposed by the criminal courts in SEPA instigated cases annually since 2012-2013 are shown in Figure 6b.

The average fine awarded against bodies corporate, opposed to individuals or partnerships, in 2016-2017 was £9,788.

Unlike previous years, we are not including comparisons with average fine levels from England: as noted in our Enforcement Report for 2015-2016, the introduction of sentencing guidelines on environmental offences for courts in England & Wales in 2014 has seen significant changes to sentencing in that jurisdiction.

In Scotland there are no sentencing guidelines for environmental offences at present. However, the Scottish Sentencing Council has committed to undertaking preparatory work to develop sentencing guidelines for environmental and wildlife offences during 2015-2018.

<https://www.scottishsentencingcouncil.org.uk/media/1494/business-plan-2015-18-for-sg.pdf>

6.3 Range of fines

The fines in the 13 SEPA referred cases in which fines were imposed in 2016-2017 are shown in Figure 6c. For cases where more than one individual fine was imposed in that year, the fines are reported in the figure as aggregated fines imposed in that year for each case reported.

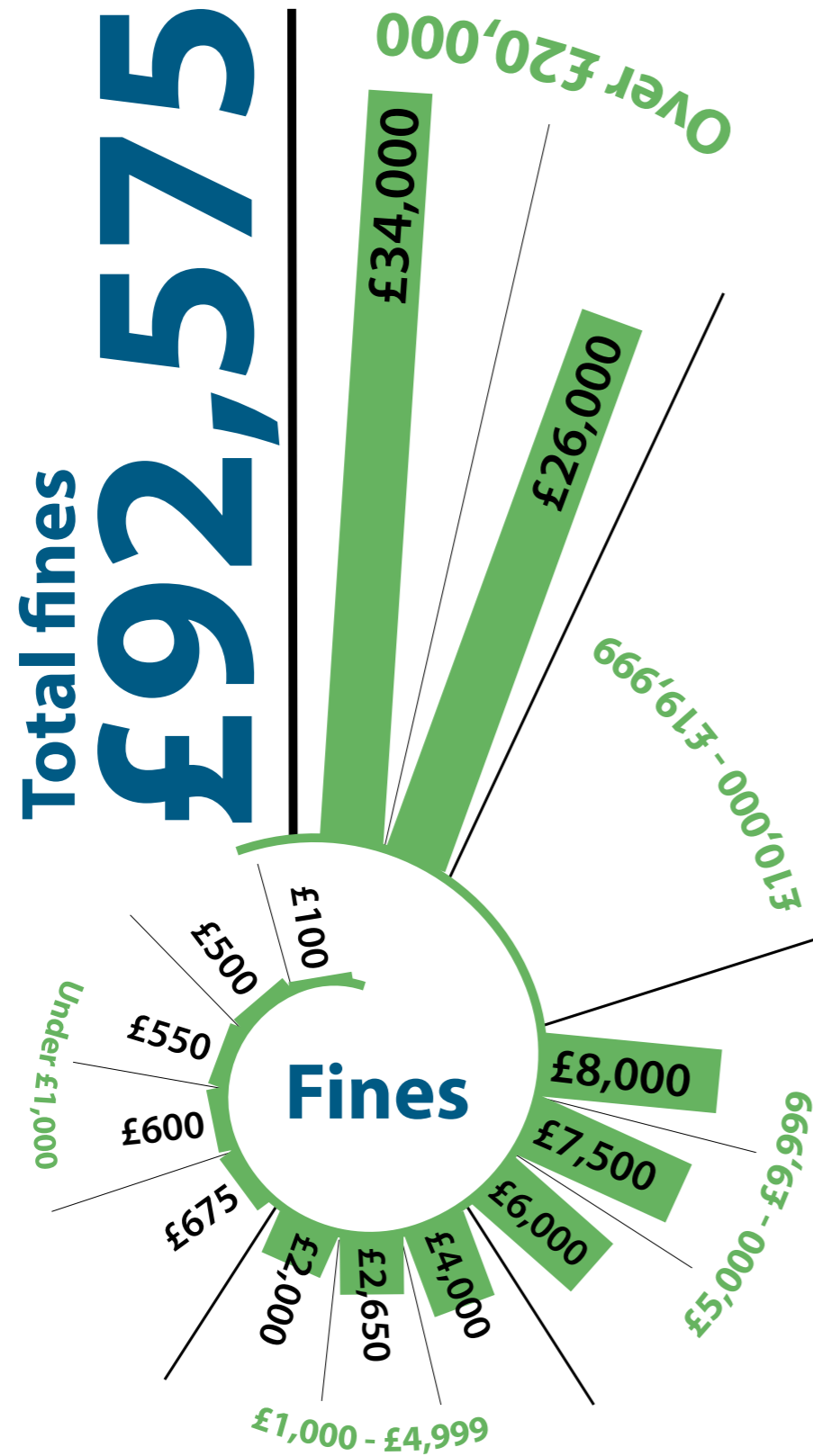


Figure 6c: Range of fines imposed in 2016-2017

6.4 Fine levels by regime

The total fines in respect of the 13 SEPA referred cases in which fines were imposed in 2016-2017 are broken down by regime as follows:

- five cases under the water regime totalling £28,150;
- four cases under the waste regime totalling £37,150;
- one case under Section 110 Environment Act 1995 of £100;
- one case under PPC of £26,000; one case under TFS of £675;
- one case under 'other' of £500.

Information on the fines imposed since 2012-2013 to 2016-2017 is set out below.

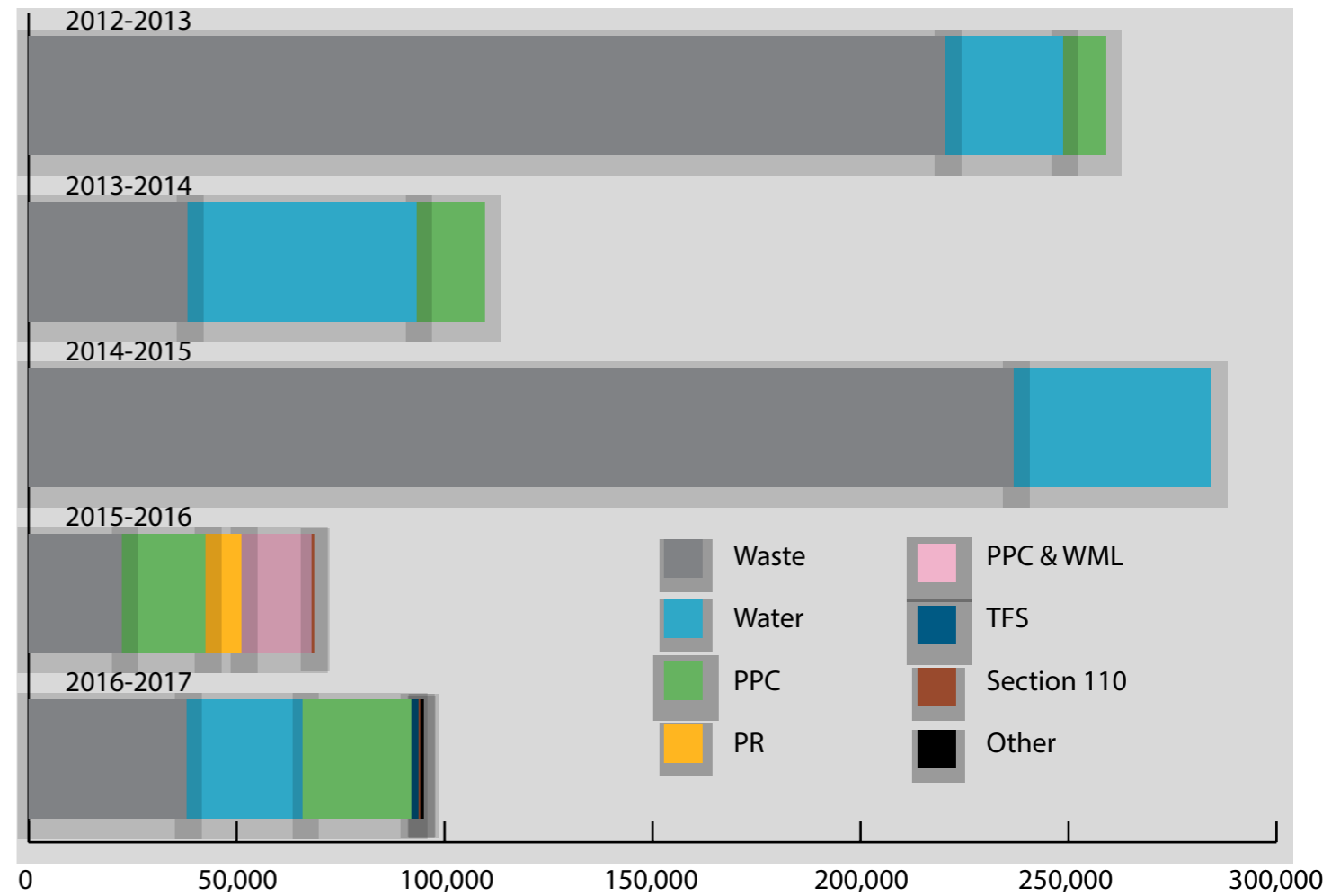


Figure 6d: Comparison of fines by regime, 2012-2013 to 2016-2017

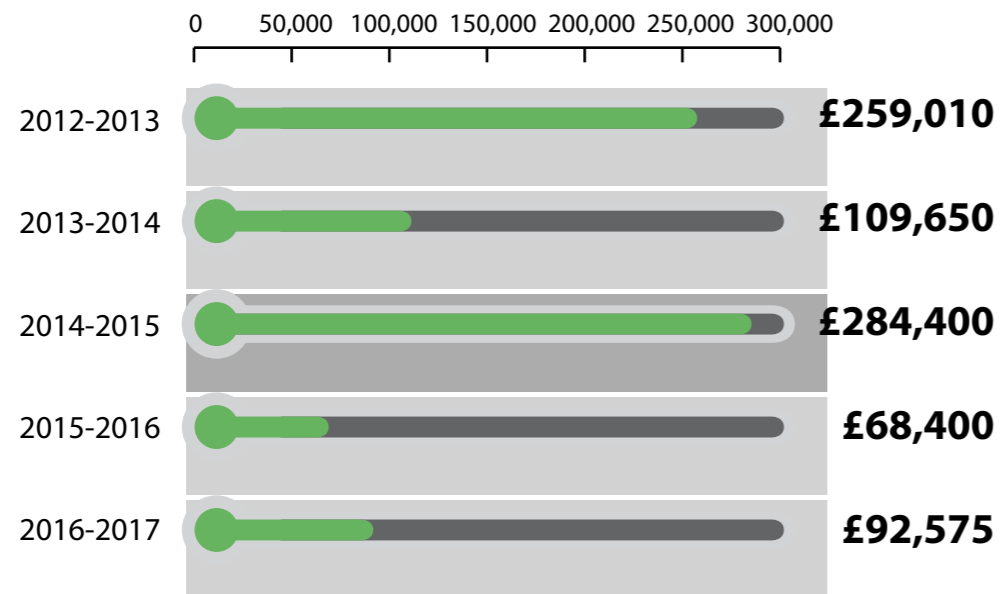


Figure 6e: Total fines imposed per year, 2012-2013 to 2016-2017

The breakdown of average fines¹⁴ in 2016-2017 were as follows:

- £9,288 for the waste regime (four fines);
- £26,000 for the PPC regime (one fine);
- £5,630 for the water regime (five fines);
- £100 for offences under Section 110 of the Environment Act 1995 (one fine);
- £675 for offences under TFS (one fine);
- £500 for offences under Section 38 Criminal Justice and Licensing (Scotland) Act 2010.

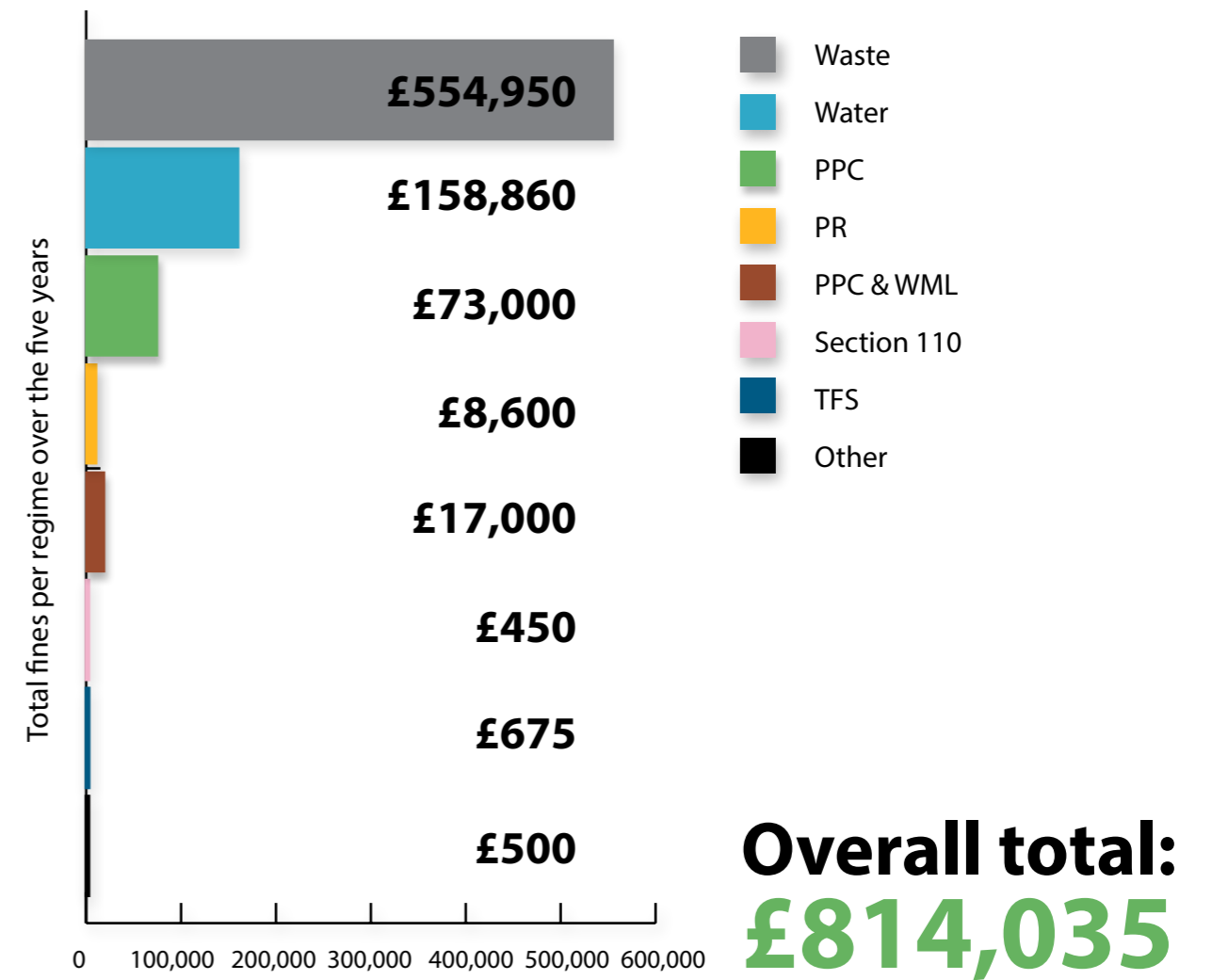


Figure 6f: Overall total of fines imposed by each regime from 2012-2013 to 2016-2017

¹⁴ Calculated using the total number of cases in which fines were imposed, and the total fines imposed in those cases.

6.5 Status of cases reported by SEPA to the Procurator Fiscal (PF) in the previous three years

In the three financial years prior to 2016–2017 (2013–2014, 2014–2015 and 2015–2016), we reported 84 cases to the Procurator Fiscal. Two cases were rolled together in the court system so of these 83 cases:

- 34 (40%) of these cases remain in the court system;
- one (1%) resulted in a non-court disposal (PF fine or PF warning letter);
- 13 (16%) resulted in the PF deciding not to raise proceedings;
- one (1%) resulted in proceedings being raised and then discontinued;
- 33 (40%) resulted in convictions with 30 guilty pleas and three being found guilty;
- one (1%) resulted in a not guilty plea being accepted by the Crown.

From the 33 convictions, overall fines totalled

£390,025¹⁵

Case outcomes as follows:

23 cases resulted in fines only (totalling £173,875)



1 case



resulted in two individuals being sentenced to community payback orders (150 hours each, a total of 300 hours)

1 individual sentenced to a community payback order (180 hours)



1 case



was deferred for sentencing at a later date

1 individual



was sentenced to a community payback order (200 hours), 18-month supervision order and a confiscation order for £16,546.50 under the Proceeds of Crime (Scotland) Act 2002)

1 case

resulted in an admonishment (accused was convicted but no fine or other sentence was imposed by the courts)



1 individual

was sentenced to an 8-month restriction of liberty order (restriction of liberty between 10pm and 5am)



1 case

resulted in a fine of £550 and an admonishment



1 company

was fined £8,600 and received a confiscation order for £28,538 under the Proceeds of Crime (Scotland) Act 2002.



1 company

was fined £12,000 and received a confiscation order for £345,558.43 under the Proceeds of Crime (Scotland) Act 2002.



1 case

resulted in a fine and prison sentence (£195,000 and 23-month prison sentence for Director of the company)



¹⁵ The overall fine total for the three year period is £390,025. This figure is acquired by calculating all the fine totals from the cases which were reported to the PF in 2013-2014, 2014-2015 and 2015-2016 and were concluded up to 31 March 2017. This figure cannot be compared to the cumulative totals for the outcomes in 2013-2014, 2014-2015 and 2015-2016.

7. Civil penalties

All penalties were imposed under the Greenhouse Gas Emissions Trading Scheme Regulations 2012.

For more detailed information, see [Section 4.2.5](#) of the main report.

Table 3: Civil penalties imposed in 2016–2017

	Grounds	Penalty
1	ETS Opt out scheme target breach 2015	£12,800.84
2	ETS Opt out scheme target breach 2015	£29,373.10
3	ETS Opt out scheme target breach 2015	£1,950.24
4	ETS Opt out scheme target breach 2015	£7,667.12
5	ETS Opt out scheme target breach 2015	£2,643.34
6	ETS Opt out scheme target breach 2015	£9,794.22
7	ETS Opt out scheme target breach 2015	£1,591.74
8	ETS Opt out scheme target breach 2015	£14,411.70
9	Failure to surrender allowances equal to their reportable emissions in the 2013 scheme year	£4,690.00
10	Failure to surrender allowances equal to their reportable emissions in the 2013 scheme year	£728.00
11	Failure to surrender sufficient allowances equal to their reportable emissions in the 2014 scheme year	£40,501.00
12	Failure to surrender sufficient allowances equal to their reportable emissions in the 2012 scheme year	£56,884.02
13	Operating without a permit between 1/1/13 - 9/3/15	£6,854.10
		£189,889.42

8. Enforcement measures used

For more information on enforcement measures used in 2016–2017 see [Section 4.1](#) of the main report.

⁶ ¹⁷ **Table 4: Table of penalties imposed 2016-2017** ¹⁶ ¹⁷

Type of penalty	Date of penalty	Details of offence/breach	Penalty amount
Fixed monetary penalty	30 August 2016	Failure to be registered when transporting controlled waste	£300.00
Fixed monetary penalty	12 February 2017	Failure to be registered when transporting controlled waste	£300.00
Fixed monetary penalty	13 February 2017	Failure to be registered when transporting controlled waste	£300.00
Fixed monetary penalty	21 February 2017	Failure to be registered when transporting controlled waste	£300.00
			£1,200.00

¹⁶ No table of undertaking provided in this report as none accepted in 2016–2017.

¹⁷ Information taken from SEPA's website (names withheld) <https://www.sepa.org.uk/regulations/enforcement/penalties-imposed-and-undertakings-accepted/>