

12. NON-COMPLIANCE

12.1 What is non-compliance?

'Non-compliance' refers to a failure to comply with:

- a condition of a licence granted under ASPA; or
- a provision of ASPA.

12.2 Reporting non-compliance

12.2.1 During direct inspection by your assigned inspector

The inspector may witness a procedure(s) which is non-compliant with licence authorities, or they may identify non-compliance through examination of records, cage labelling or other data available during routine inspections. Inspectors may also see evidence which suggests that you may be at risk of non-compliance. In such cases they may give verbal or written advice with a view to helping you to ensure continued compliance (see **Section 12.9**).

12.2.2 Reported by the personal or project licensee or via the establishment

Incidents of non-compliance, especially those impacting on animal welfare, may be reported promptly by telephone to the inspector assigned to your establishment. If the inspector is not available, a report to our central email address ASPA.London@homeoffice.gsi.gov.uk must be made without delay.

12.2.3 Other sources of information available to us

Information may come to our notice from a wide range of sources such as intelligence gathered by any inspector in the course of their duties, information published in the literature or via other media formats or information provided directly to us by stakeholders.

12.3 Offences

Whilst non-compliance covers a wide range of issues as noted above, the following are also criminal offences under **ASPA sections 22 and 23**:

- a) operating a user, breeding or supplying establishment without a section 2C establishment licence (**ASPA s2B**);
- b) applying regulated procedures to protected animals without a personal licence (**ASPA s3**)⁴;
- c) applying regulated procedures to protected animals that are not authorised in a project licence (**ASPA s3**)⁴;
- d) applying regulated procedures to protected animals at a place which is not specified in the relevant project licence (**ASPA s3**)⁴;
- e) failing to provide information required to assist the retrospective assessment of a project (**ASPA s5F(4)**);
- f) failing to comply with the ASPA provisions relating to:
 - re-use (**ASPA s14**);

⁴ You will not be guilty of this offence if you can show that you reasonably believed, after making due enquiry, that you had the necessary authority.

- the action to be taken at the end of a series of regulated procedures (**ASPA s15**);
 - methods of killing (**ASPA s15A**)⁵;
 - the prohibition of public exhibitions (**ASPA s16**);
 - the use of neuromuscular blocking agents (**ASPA s17**)⁴;
 - setting free and re-homing (**ASPA s17A**);
- g) failing to comply with a requirement imposed by an inspector under **ASPA s18(3)** to kill an animal immediately to alleviate excessive suffering;
- h) providing false or misleading information or recklessly providing such information to obtain, or assisting another person to obtain, a licence (**ASPA s23**).

In addition:

- i) a project licence holder is guilty of an offence who procures or knowingly permits a person under his control to carry out a regulated procedure otherwise than as part of the programme specified in the licence; or otherwise than in accordance with that person's personal licence.

12.4 What can I do to avoid non-compliance?

A common cause of non-compliance is the inclusion of over-prescriptive detail in project licences, for example stating unnecessarily precise volumes for fluid administration, or a specific age or weight range in which procedures will be performed.

In addition, many breaches of licence conditions, or ASPA, occur because the details of the authorities granted in the relevant personal and project licences have not been adequately checked. Failure to check licence authorities will not be accepted as a mitigating circumstance. Make sure you check your licence(s) carefully and understand what you are authorised to do. If in doubt, after seeking local guidance at your place of work, ask your inspector.

Do not start new work until you have received and personally checked your licence(s) and conditions.

Do not assume, or accept the word of others, that authorities have been granted. You must check for yourself.

Check the detail of your licence(s) and remind yourself of the requirements of ASPA regularly, and particularly before starting any new procedure.

Ensure that your licence(s) are available to anyone with relevant responsibilities under ASPA.

Take particular care if you work under more than one project licence to ensure that the necessary authorities exist in the *relevant* project licence.

The standard conditions of issue require establishment licence holders to take all reasonable steps to prevent the performance of unauthorised procedures in their establishment. Establishment licence holders should therefore also be mindful of the common causes of non-compliance and the measures that can be taken to prevent them.

⁵ If you fail to comply with ASPA section 15A relating to methods of killing you will not be guilty of an offence if you can show that you did not know and had no reason to believe that the animal was a relevant protected animal (within the meaning of section 15A).

12.5 Compliance advice

Should you require it, your inspector will advise on a case-by-case basis how to ensure compliance with licence conditions and the requirements of ASPA. They will also advise on how to avoid non-compliance on a case-by-case basis.

12.6 How we will deal with non-compliance

It is a requirement of **ASPA section 18(2A)(c)** that inspectors report to the Secretary of State on compliance with the provisions of the Act and with the conditions of licences. Where there is non-compliance, under **ASPA section 18(2A)(d)**, the inspector must advise on the action to be taken by the Secretary of State.

Inspectors will normally provide initial details of a non-compliance case to the ASRU Licensing Team within *five working days* of its discovery or notification. The ASRU Licensing Team will write to those who appear to be involved, notifying them of the ongoing investigation.

Assuming the non-compliance case does not obviously merit referral for prosecution (see **Section 12.7**), inspectors will investigate the circumstances of the case to establish what happened and why, who was involved, and what needs to be done to prevent it happening again (both within the establishment involved and, if appropriate, in other establishments). They will normally submit their full investigation report and recommendation to the ASRU Licensing Team within *30 working days* of its discovery or notification.

At this point, those involved in the case, either directly or as the relevant project licence holder or establishment licence holder, will be informed in writing by the ASRU Licensing Team about the nature of the non-compliance reported by the inspector. They will also be invited to provide, *within 28 calendar days*, any information they wish to be considered before a decision is taken regarding the appropriate sanction.

The ASRU Licensing Team will then consider the inspector's full report and recommendations, together with any information which may have been provided by those involved in the case. They will normally notify those involved, *within a further 15 working days*, of the sanction the Secretary of State proposes to apply. If this includes variation or revocation of licence authorities, the right to appeal under **ASPA section 12** will be explained.

The number of non-compliances, and a summary of each case, is published each year in an anonymised form in the ASRU Annual Report.

12.7 Cases referred for possible prosecution

At an early stage in the investigation of suspected non-compliance, inspectors will take a view on whether an offence has been committed that is sufficiently serious to justify referral for prosecution. In such cases, the inspector will normally suspend investigations pending referral of the matter to the prosecuting authorities. The inspector will also caution the person(s) involved.

Prosecution is reserved for the most serious cases meriting referral to the prosecuting authorities. In England and Wales, this is the Crown Prosecution Service and, in Scotland, the Procurator Fiscal.

Examples may include:

- abuse of animals;
- severe and sustained neglect of animal care or welfare.

12.8 Criminal sanctions

The criminal sanctions applicable to the offences listed above are set out in **ASPA sections 22 and 23**. Any breach of ASPA sections 22 and 23 which is punishable by a criminal sanction, but is not accepted by the prosecuting authorities for prosecution, will nevertheless require immediate resolution and is likely to result in suspension or revocation of the relevant licence(s).

12.9 Other sanctions

Most non-compliance cases do not merit referral for prosecution. In these cases, inspectors will investigate the circumstances of the non-compliance to establish what happened and why, who was involved, and what needs to be done to prevent it happening again (either within the establishment involved or, if necessary, in other establishments).

A range of other sanctions is available to the Secretary of State, including measures aimed at deterring or otherwise preventing a recurrence of non-compliance. These include:

- issuing a formal, written reprimand;
- issuing a compliance notice;
- requiring additional formal training or re-training;
- applying additional, special conditions to licences; and
- revoking, suspending or varying (amending) licences.

12.10 Written reprimands and compliance notices

If you have breached a condition of a licence you hold, or a provision of ASPA, we may issue you with a written reprimand or, if we require you to take action to prevent further non-compliance within a specified period, we will issue you with a 'compliance notice'. A written reprimand or a compliance notice will specify the licence condition(s) or ASPA provision(s) with which you have failed to comply.

In addition, a compliance notice specifies:

- a) the action you must take to ensure that the failure is not continued or repeated;
- b) any action you must take to eliminate or reduce any consequences of the failure.

It requires you to take that action within a specified time and explains what will happen if you fail to comply with the notice, including possible revocation of your licence.

12.11 Revoking, suspending or varying (amending) licences

If you have not complied with a condition of a licence you hold, or a provision of ASPA and the circumstances justify it, we may suspend, revoke or vary (amend) your licence either for a specified period or until further notice.

We may also suspend a project licence if there is an urgent need to safeguard the welfare of one or several protected animals. If this happens, all procedures authorised by that licence must stop immediately. We may require you to take action to safeguard the welfare of those animals or, if you are not willing or able to take that action, we may take action. For example, we may appoint another individual to be responsible for the welfare of those animals.

12.12 Suspension of licences on welfare grounds (ASPA section 13)

If there is an urgent need to safeguard the welfare of one or several protected animals, and you are not willing or able to take that action, we may take action (whether or not a compliance notice has already been issued). For example, we may suspend a licence for up to a maximum period of three months and may appoint another individual to be responsible for the welfare of those animals. If this happens, we may inform you that all work requiring the authorisation of that licence(s) must stop immediately.

12.13 Right of appeal

Under **ASPA section 12**, you have the right to make representations (appeal) to us if we intend to vary or revoke your licence other than at your request. If we notify you of such an intention, we will explain your right to make representations and how to do it.

12.14 Severity of non-compliance

We classify non-compliance cases according to their severity. It is a general principle that the severity of the sanctions imposed will escalate in line with the severity of the non-compliance. However, in determining the relevant sanction, each case is considered on its own merits including taking account of both aggravating and mitigating circumstances.

The treatment of non-compliance will depend on how it came about, its scale and any consequential animal suffering. Deliberate or reckless non-compliance, causing unnecessary animal suffering, or attempting to conceal the facts, will significantly increase the perceived gravity of non-compliance and hence the severity of the sanctions imposed. Repeated failures will generally be viewed more seriously than single incidents.