**Guidance on the Submission of Appeals by Economic Operators**

**The Restriction of the Use of Certain Hazardous Substances in**

**Electrical and Electronic Equipment Regulations 2012**

**(Statutory Instrument 2012 No. 3032)**

**Appeals & Structure of Sanctions/Notices**

As part of the new Regulators’ Compliance Code, any enforcement body has the responsibility to make regulated entities aware of their right to appeal to a sanction or notice. Therefore, where applicable, the paragraphs have been written to support officers in their construction of notices and sanctions. The paragraphs included in this guidance should be copied and pasted into the notice or sanction sent to the company. They are divided into the individual legislation enforced by the NMO and will need to be edited as directed by the guidance contained within this document.

It is recommended that the right to appeal is included in all legislative outcomes such as prosecution, notices or civil sanctions, but is not included in Warning Letters. This is due to their not being prescribed within the Regulations.

There are four types of appeal available to businesses. They are;

* Criminal appeal – the appealing of a decision made by a court
* Statutory right of appeal contained in the legislation – these are prescribed within the specific Regulations and are the main point of focus for this guidance
* Regulators code appeal processes – the new Code states businesses should have the right to appeal and be made aware of this, so this type of appeal focuses more on best practice and enhancing the engagement
* Internal appeal/discussions – this should be used as the first type point of call in the appeal process to allow complete transparency from the NMO of their processes and the evidence available proving or disproving the offence

When variable monetary penalties, cautions or prosecutions are issued, the last of these appeals should be considered and a meeting offered to the business in question to explain the evidence and discuss the reasoning used in the decision process when considering this evidence. An open, transparent process can aid understanding and often negate the need for any of the further official appeals to be used.

It should also be stated that this guidance relates to appeals against the decisions made by the NMO. It does not refer to appeals regarding processes or individual officers as these are classified as ‘complaints’. Furthermore, appeals against prosecutions can not come until a decision is made by a magistrates’ court – before this point the company’s rights exist by making their defence in court.

**RoHS**

The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 specify that, if a Compliance or Enforcement Notice is being issued, the Notice must tell the economic operator their right to appeal against the Notice and any time limits for this exercise. Appeals can be made by the economic operator themselves or any person having an interest in the product on which the Notice is served.

The application of an appeal must be lodged within 21 days of the Notice being served. More information is available in Schedule 3, Regulation 7 of the legislation.

Appeals should be made to the court in which proceedings have been brought, or to any other magistrates’ court in England, Wales or Northern Ireland. In Scotland the relevant party for the appeal is the sheriff for a sheriff court district in which a Compliance, Enforcement or Recall Notice has been served on an economic operator.

It is recommended the paragraph within the letter reads as such:

*“COMPANY has the right to appeal the decision to issue a NOTICE in accordance with Schedule 3, Regulation 7 of the above legislation. This states that economic operators or any person having an interest in the product on which the Notice is served may appeal the decision within 21 days of the Notice being served.*

*Appeals may be lodged within any magistrates’ court in England, Wales or Northern Ireland. Businesses based in Scotland must make the appeal to the sheriff for the sheriff court district in which the Notice has been served upon the operator.”*