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for Environment
Food & Rural Affairs

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Anthony Tohill
Mid-Ulster Council
By email only

Date: 18 Sept 2019

Dear Anthony Tohill

Appointment of Enforcement Authorities for the Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018

The Secretary of State for Environment Food and Rural Affairs is required to ensure the provisions within the Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018 and the associated EU Regulations are enforced. Under these Regulations enforcement authorities defined as Food Authorities under the Food Safety Act 1990 (England, Scotland, Wales) and district councils within the meaning of the Interpretation Act 1954 (Northern Ireland) are eligible for appointment.

On the authority of the Secretary of State, I am therefore writing to appoint your local authority as an enforcement authority for this scheme. You must now appoint authorised officers who will carry out the enforcement functions which have been appointed to you.

The Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018

On 1 January 2019 the Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018 came into force. These Regulations introduce new powers and penalties for geographical indication (GI) products protected by EU Regulation 1151/2012, which defines the quality schemes for agricultural products and foodstuffs, commonly referred to as the Protected Food Names Scheme.

The responsibilities outlined in this letter apply to the UK's delivery of the current EU Protected Food Names Scheme whilst the UK is a Member State. The same scheme rules and responsibilities will continue to apply to a new UK GI scheme after EU Exit for those agri-food products registered as UK GIs.

The new regulations bring a number of changes which will affect the way local authorities with trading standards responsibility carry out their ongoing role in supporting the successful operation of this scheme. As the enforcement authority, local authorities ensure products at point of sale meet the scheme requirements (normally through their trading standards function). Trading standards functions may also, at their discretion, provide verification services to producers of products registered under the scheme. The changes we have introduced include the introduction of a bespoke civil sanctions enforcement regime and the formalisation of reporting requirements for both enforcement and scheme control activities.

Scheme Enforcement

In response to trading standards officers reporting difficulty in carrying out enforcement action under the legislation available to them, such as the Fraud Act 2006 and the Food Safety Act 1990, we consulted on and established a dedicated civil sanctions enforcement regime. This consultation took place in October 2018 and the responses we received informed the policy in the Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018.

The enforcement regime set out in the Regulations identifies specific infringements related to the misuse of a protected food name and allows for a 'compliance notice' to be served where issues are not resolved after advice from an enforcement officer. In the event of failure to comply with a compliance notice, a 'non-compliance penalty notice' of up to £40,000 can be issued. Non-compliance penalties can also be issued upon failure to comply with the requirement of an authorised enforcement officer, for example failing to provide records when requested, or when an officer is obstructed in the line of their duties.

The enforcement authority may also impose an 'enforcement costs recovery notice' to obtain a sum equal to or less than the costs incurred by the enforcement authority up to the time the non-compliance penalty notice was issued.

Reporting Requirements

The new regulations also formalise the arrangements for reporting verification outcomes and formal enforcement activity to Defra. Where a trading standards function has provided this service they will need to be aware of their new reporting responsibilities.

Guidance

These regulations are in line with current UK Government practice of using a purely civil sanctions regime for enforcement such as this. To support the effective use of these new regulations, we have written supporting guidance, entitled "Protected Food Name Scheme: Guidance for Verification and Enforcement". A copy of this guidance is enclosed with this letter.

If you have any questions about the responsibilities outlined above please direct them to the lead official for the scheme, Chris Blake, who can be contacted on 02080266605 or at chris.blake@defra.gov.uk.

Yours sincerely,

Ananda Guha
Deputy Director
Agri-Food Chain Directorate



Department
for Environment
Food & Rural Affairs

Protected Food Name Scheme

Guidance for Verification and Enforcement

August 2019



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Any enquiries regarding this publication should be sent to us at

protectedfoodnames@defra.gsi.gov.uk

www.gov.uk/defra

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Introduction

Protected Food Names (PFNs) enjoy protection from misuse and imitation of their names, associated symbols and abbreviations linked to their designation as geographical indications. This protection is set out in EU legislation (Regulation (EU) No.1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs¹. However, the EU legislation does not provide enforcement powers – those are a matter for national regulation.

The creation of bespoke enforcement legislation ensures robust protection against the misuse of protected food names. The Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018² allows authorised officers to impose civil sanctions, in the form of a compliance notice, a non-compliance penalty notice and a costs recovery notice, on anyone misusing or intending to misuse a Protected Food Name. These civil sanctions may be used on any product registered under Regulation (EU) No 1151/2012. A comprehensive list of protected products can be found on the EU's database, DOOR³.

The scope of this guide reflects Regulation (EU) No 1151/2012 of the European Parliament and the Council on quality schemes for agricultural products and foodstuffs and the Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018. This guidance will be reviewed once EU regulations cease to apply in the UK, where appropriate.

This document has been prepared as a guide for enforcement authorities to help them understand how to implement this new legislation.

This guidance will also be relevant to control bodies to help them fulfil the requirement to report inspections to Defra.

Verification

Verification is the means of checking, by examination and the consideration of objective evidence, whether specified requirements, set out in the product specification, have been fulfilled.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R1151>

² <https://www.legislation.gov.uk/uksi/2018/1275/made>

³ <http://ec.europa.eu/agriculture/quality/door/list.html>

The applicant group must nominate a control body during the application process who will be responsible for verifying that producers of that product are compliant with the product specification. A producer may choose to have their product verified by a control body not nominated on the specification. There are a number of reasons for choosing a different control body, for example, a producer may already have a relationship with a different control body. Producers of a newly registered PFN and new producers of existing PFNs are required to have an initial verification prior to marketing the product, undertaken by an authorised control body. Subsequent verification audits are then required to take place regularly to ensure each producer remains compliant with the specification. The frequency of which will be based on a risk assessment of the product. In the case of local authority control bodies they are not restricted to the area in which they are located for the purpose of these inspections.

As part of the registration process, new applicants should contact the control body to ensure the specification is testable and reflects the production process the applicant is using.

Reporting of Verification Results

The relevant control body is required to send documentation, such as inspection reports, to Defra immediately if it is found that a producer is not adhering to the product specification, regardless of the severity of the non-compliance. Defra requires this information to monitor the effectiveness of the official controls and to ensure corrective action has been taken where necessary.

The control body is required to notify Defra of any other result within 28 days of the inspection.

We will use this information to develop our understanding of PFN production. We will also use this information to fulfil reporting obligations on scheme compliance. Verification results should be emailed to protectedfoodnames@defra.gov.uk. There is no specific format for the reporting of verification findings, but the following information should be reported:

- Name of organisation/individual inspected
- Product inspected
- Date of Inspection
- Outcome

In cases of non-compliance the report should also include the following:

- Reason for non-compliance
- Date of expected resolution

Enforcement Authorities

Enforcement of the Protected Food Name scheme is delegated to enforcement authorities who must appoint authorised officers to enforce the Regulations. Enforcement authorities can only operate in the area in which they are situated when carrying out enforcement activities except if given consent to act in another area by the authority which operates there.

It is the responsibility of the enforcement authority to determine the appropriate means of enforcing the Regulations, and may use the powers afforded in these regulations or, if deemed appropriate, by exercising their powers in other legislation, such as, the Food Safety Act 1990⁴ Food Safety (Northern Ireland) Order 1991⁵, the Fraud Act 2006⁶ and the Consumer Protection from Unfair Trading Regulations 2008⁷. Enforcement authorities should also be mindful of the requirements of the Regulatory Enforcement and Sanctions Act 2008⁸ in respect of primary authority relationships and should ensure that these requirements are complied with, where applicable.

The regulations stated above are not exhaustive and there may be other relevant regulations that may also be appropriate.

Powers of Authorised Officers

These Regulations introduce a number of powers which will enable enforcement officers to take robust action to ensure products under the scheme are fully protected. These powers include:

- Powers of entry
- Powers to issue compliance notices
- Powers to issue non-compliance penalties
- Powers to issue cost recovery notices

⁴ <https://www.legislation.gov.uk/ukpga/1990/16/contents>

⁵ <http://www.legislation.gov.uk/nisi/1991/762/contents/made>

⁶ <https://www.legislation.gov.uk/ukpga/2006/35/contents>

⁷ <http://www.legislation.gov.uk/uksi/2008/1277/contents/made>

⁸ <https://www.legislation.gov.uk/ukpga/2008/13/contents>

Powers of Authorised Officers on Entry

The powers of entry afforded to the authorised officer are set out in regulation 10 of the Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018.

The powers of authorised officers on entry are set out in regulation 11 of the Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018.

Reasons for Issuing a Compliance Notice

An authorised officer may impose a compliance notice in the first instance for the following grounds:

- A person has marketed, is marketing or is intending to market a product as a PDO⁹, PGI¹⁰ or TSG¹¹ where the logo is not in the same field of vision as the name;
- A person has marketed, is marketing or is intending to market a product as a PDO or PGI but is not a verified producer;
- A person has misused, imitated or evoked, is misusing, imitating or evoking, or is intending to misuse, imitate or evoke a PDO or PGI;
- A person has used, is using or is intending to use a false or misleading indication as to the provenance, origin, nature or essential qualities of a product;
- A person has used, is using or is intending to use any other practice that is liable to mislead the consumer as to the true origin of the product;
- A person has misused, imitated or evoked, is misusing, imitating or evoking, or is intending to misuse, imitate or evoke a TSG;
- A person has used, is using or is intending to use a sales description that causes confusion with a TSG;
- A person has marketed, is marketing or is intending to market a product as an optional quality term e.g. 'mountain product' without complying with the conditions;
- A person has used, is using or is intending to use an indication, abbreviation or symbol which does not conform the rules of doing so;

⁹ Protected Designation of Origin

¹⁰ Protected Geographical Indication

¹¹ Traditional Speciality Guaranteed

- A person has marketed, is marketing or is intending to market a product under a registered PDO, PGI or TSG which has not been labelled using the correct symbol, indication or abbreviation.

What misuse could look like

The following examples may be commonly encountered and would be considered misuse of a PFN under the Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018. Each example states which regulation may have been breached in each scenario but some examples could be interpreted as a breach of a number of the regulations.

Please note: These are possible examples and breaches that you might encounter but this is not an exhaustive list.

A compliance notice could be issued for the following:

- Failure to use the appropriate symbol or failure to display logo in the correct way – it must be the relevant symbol within the same field of vision as the name. This could be in breach of Regulation 12(1)(a).
- Use of name and/or symbol on a product from a producer with lapsed verification (e.g. a producer continuing to use the name Stilton Blue Cheese with correct symbol but having not renewed their verification). This is in breach of Regulation 12(1)(b).
- Use of name and/or symbol by unverified producer (e.g. a producer selling Carmarthen Ham without verification to do so). This is in breach of Regulation 12(1)(b).
- Miss-selling a non-PFN product as a PFN (e.g. a restaurant that advertises selling Conwy Mussels but the product the customer receives is a different, non-compliant product). This could be in breach of Regulation 12(1)(b).
- Use of symbol without the correct product name (e.g. Producer verified for Vale of Evesham Asparagus using the PGI symbol alongside 'Evesham Valley Asparagus' or 'Malvern Hills Hand Harvested Asparagus', which are not the names registered for the PGI, even if they give the correct indication). This could be in breach of Regulation 12(1)(c).
- Using "type" or "style" on products that evoke registered products (e.g. Parma Style Ham, Greek style Feta). This could be in breach of Regulation 12(1)(c).
- Use of name and/or symbol on a counterfeit product (e.g. labelling the product as Cornish Clotted Cream with relevant logo when the product is not, for example, made in Cornwall). This could be in breach of Regulation 12(1)(d).

- Using the reputation of a PFN, including its name and/or symbol, to allude to a product as a whole being protected when only an ingredient is protected, including when the ingredient has been used in an insufficient quantity to qualify¹² (e.g. West Country Beef Pie (PGI) instead of West Country Beef (PGI) Pie). This could be in breach of Regulation 12(1)(d).

For further information on labelling PFNs as ingredients, please see the Commission Communication – Guidelines on the labelling of foodstuffs using protected designations of origin (PDOs) and protected geographical indications (PGIs) as ingredients¹³.

- Use of protected name on unrelated product where it is clear that the product is not present (e.g. Welsh lamb flavoured crisps that have not used Welsh Lamb as an ingredient). This could be in breach of Regulation 12(1)(e).
- Use of symbol on non-PFN product (e.g. using the symbol on cheddar cheese). This could be in breach of Regulation 12(1)(i).

Typically, infringements of the regulations will often be reported at point of sale. In some cases the seller might provide evidence that the product has been acquired from a verified source. In cases where a product is honestly thought to be legitimate by the seller, investigations could include tracing the product through the supply chain to identify where the original breach of the regulations occurred.

If there are any cases where the infringement is unclear, please contact protectedfoodnames@defra.gov.uk for further assistance.

Non-Compliance Penalty Notice

In the event of failure to comply with a compliance notice, a non-compliance penalty notice of up to £40,000 can be issued. Non-compliance penalties can also be issued if an authorised officer is obstructed in the line of their duties or if a person fails to comply with a requirement from an authorised officer.

Enforcement Costs Recovery Notice

The enforcement authority may also impose an enforcement costs recovery notice to obtain a sum equal to or less than the costs incurred up to the time the non-compliance penalty notice is issued. They are also required to provide a detailed breakdown of the

¹² Provisions for what is considered to be a 'sufficient quantity to qualify' may be included on the product specification.

¹³ [https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:52010XC1216\(01\)](https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:52010XC1216(01))

costs if requested to do so. A request for a breakdown of the costs must be made within 14 days of the date of the notice.

A detailed breakdown of the costs does not need to be provided if the person in question has indicated they do not require this or if the request was made more than 14 days after the notice was issued.

Details to include on a Notice

The details which must be included on a compliance notice are set out in regulation 12 (2) of the Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018.

The details which must be included on a non-compliance penalty notice are set out in regulation 13 (3) of the Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018.

The details which must be included on an enforcement costs recovery notice are set out in regulation 14 (4) of the Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018.

Penalties

The goal is to prevent any infringements and ensure that legitimate PFN holders of respective products are protected. The enforcement authority has the power to impose a penalty of up to £40,000. It should assess each case individually to determine the appropriate level of penalty taking into consideration the principles below and its local authority enforcement policy. The maximum penalty should be reserved for the worst cases.

The following principles should be taken into account when determining an appropriate level of penalty:

- **Financial benefit the individual/business may have obtained as a result of the infringement.** The penalty should take into account any financial benefit which has been obtained by the individual or business as a result of the infringement, but should not be used as a means of negating the financial benefit which has been obtained.
- **Severity of the infringement.** The more serious the infringement, the higher the penalty should be.
- **Harm caused by non-compliance.** The extent to which consumers, legitimate PFN holders, other businesses or other related persons were impacted as a result of the non-compliance.

- **Culpability and track record of the individual/business.** A higher penalty maybe appropriate in cases where there has been a history of failing to comply with obligations and/or actions that were deliberate and/or were known, or ought to have been known.
- **Punishment of the individual/business.** It is important that it is set at a proportionate level to demonstrate the consequences of not complying with responsibilities.
- **Deter the individual/business from repeating.** The goal is to prevent any further infringements and ensure that the product is fully protected. The level of the penalty should therefore be set at a high enough level to deter any repetition or continuation of the infringement and could act as a deterrent for others.

A guideline matrix has been provided in Annex A to help you determine an appropriate level of penalty.

Appealing a Compliance Notice, Non-Compliance Penalty or a Cost Recovery Notice

These regulations apply across the UK. As a result there are different routes to appeal issued civil sanctions.

England and Wales

Where a compliance notice, a non-compliance penalty notice and/or an enforcement costs recovery notice has been issued, the person on whom it has been served may appeal to the First-tier Tribunal (FTT). A compliance notice will not be suspended pending appeal unless stated otherwise by the FTT. A non-compliance penalty notice and an enforcement costs recovery notice will be suspended pending the determination or withdrawal of the appeal. The FTT may cancel or uphold the decision to issue the notice made by the enforcement officer.

Scotland

Where a compliance notice, a non-compliance penalty notice and/or a costs recovery notice has been issued, the person on whom it has been served may appeal to the sheriff. A compliance notice will not be suspended pending appeal unless stated otherwise by the sheriff. A non-compliance penalty notice and an enforcement costs recovery notice will be suspended pending the determination or withdrawal of the appeal. The sheriff may cancel or uphold the decision to issue the notice or make modifications to it.

Northern Ireland

Where a compliance notice, a non-compliance penalty notice and/or a costs recovery notice has been issued, the person on whom it has been served may appeal to the Magistrates' Court. A compliance notice will not be suspended pending appeal unless stated otherwise by the Magistrates' Court. A non-compliance penalty notice and an enforcement costs recovery notice will be suspended pending the determination or withdrawal of the appeal. The Magistrate may cancel or uphold the decision to issue the notice or make modifications to it.

Reporting of Enforcement Activity

Enforcement authorities are required to notify Defra within 28 days of an enforcement action relating to the misuse of a protected food name. Enforcement authorities should also be mindful of the requirements of the Regulatory Enforcement and Sanctions Act 2008¹⁴ in respect of primary authority relationships and should ensure that these requirements are complied with, where applicable. For further information on primary authority relationships, please see the Primary Authority Statutory Guidance¹⁵.

The notification must refer to the outcome and should be made when the enforcement authority:

- Exercises power of entry
- Issues a compliance notice
- Issues a non-compliance notice
- Issues a costs recovery notice

Defra would welcome, on a periodic basis, any information regarding informal enforcement action that has been taken that has resulted in compliance. Although this is not required by the regulation, this will help us develop a broader picture of activity related to compliance within the scheme.

We will use this information to identify trends in the data to see how effective the regulations are. This will help us to develop a picture of any emergent issues that may

¹⁴ <https://www.legislation.gov.uk/ukpga/2008/13/contents>

¹⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707382/primary-authority-statutory-guidance-2017.pdf

need to be addressed. We will also use this information to fulfil reporting obligations on scheme compliance.

Enforcement outcomes should be emailed to protectedfoodnames@defra.gov.uk. There is no specific format for the reporting of this, but the following information should be reported:

- Date of Incident
- Name of organisation/individual
- Product name
- Brief summary of issue
- Action taken
- Outcome
- Date of outcome

Further Information

If you have any questions regarding this issue, please contact:

protectedfoodnames@defra.gov.uk

Annex A

This matrix has been developed to help determine an appropriate level of penalty.

Table 1 can be used to consider the different elements that must be taken into account when determining a penalty. For each row, allocate an appropriate score to the related infringement and add the scores to get a total.

Table 2 can be used as an indication of a range of monetary values with relation to each score.

Row 1: The score allocated should reflect the level of financial benefit the individual/business has received as a result of the infringement.

Row 2: The score allocated should reflect the extent to which stakeholders were impacted by the infringement.

Row 3: The score allocated should reflect any previous enforcement issues related to the PFN scheme that the individual/business may have had.

Row 4: The score allocated should reflect the risk that the individual/business may continue or repeat the same or a different infringement.

Row 5: The score allocated should reflect the extent to which the product has been materially affected by the infringement.

Table 1

SCORE	10	20	30	40
1. Remove the financial benefit	Little or no income gained from the infringement	Low income gained from the infringement	Moderate income gained from the infringement	High income gained from the infringement
2. Harm caused	Little to no impact on consumers, businesses, other PFN holders or other related person(s)	Low impact on consumers, businesses, other PFN holders or other related person(s)	Moderate impact on consumers, businesses, other PFN holders or other related person(s)	High impact in consumers, businesses, other PFN holders or other related person(s)
3. Enforcement history	No previous enforcement issues	1-2 warnings or Compliance Notices issued	3+ previous warnings or compliances notices issued OR 1 non-compliance penalty notice previously issued	Serial offender – 2+ non-compliance penalty notices previously issued
4. Deterrence/ Prevention	Certain likelihood that the penalty will deter the individual/ business	High likelihood that the penalty will deter the individual/ business	Medium likelihood that the penalty will deter the individual/ business	Low likelihood that the penalty will deter the individual/business
5. Severity of the infringement	Minor issues - does not materially affect the product or the way it is represented	Moderate issues – does not materially affect the product but the product is misrepresented	Major issues – materially affects the product and it is being misrepresented	Critical issues – there are a number of infringements that materially affect the product and it is being misrepresented

Table 2

Matrix Score	Level of Penalty
40 – 80	£0 – £500
90 – 120	£501 - £5000
130 – 160	£5001 - £20,000
170 – 200	£20,001 - £40,000

Please note: This matrix is provided only as a guideline to determine an appropriate level of penalty and must not be considered regulatory. Consideration must be given by enforcement officers on the facts of each individual case.

Annex B

These templates are provided as a guideline for enforcement authorities to illustrate the information that is required by the regulations.

The format provided in this annex is not obligatory and the enforcement authority may wish to produce an alternative format.

Compliance Notice

Name of Enforcement Authority	
Address of Enforcement Authority	
Name of business/individual	
Address of business/individual	
Reason(s) for serving the notice	
Steps to comply	
Timeframe (the period in which to complete the steps to comply with the notice must be no less than 28 days)	

Your rights of appeal

You may appeal this notice within 28 days, beginning on the date on which this notice is served.

You may appeal to the First-tier Tribunal in England and Wales; the sheriff in Scotland; or the Magistrates' Court in Northern Ireland.

This notice will not be suspended pending the determination or withdrawal of an appeal unless directed otherwise by the First-tier Tribunal, the sheriff or the Magistrates' Court.

Following an appeal the First-tier Tribunal, the sheriff or the Magistrates' Court may either cancel or affirm this notice. If the notice is affirmed, it may be affirmed in its original form or with such modifications as the First-tier Tribunal, the sheriff or the Magistrates' Court thinks fit.

Failure to comply with this notice may result in a non-compliant penalty notice being served.

Non-Compliance Penalty Notice

Name of the Enforcement Authority	
Address of the Enforcement Authority	
Name of the business/individual	
Address of the business/individual	
Reason(s) for serving the notice	
Penalty Amount	
Period in which to pay (the period in which to pay in accordance with this notice must be no less than 28 days)	
Discounted penalty amount if paid within [xxx]	

Your rights of appeal

You may appeal this notice within 28 days, beginning on the date on which this notice is served.

You may appeal to the First-tier Tribunal in England and Wales; the sheriff in Scotland; or the Magistrates' Court in Northern Ireland.

The effect of this notice will be suspended pending the determination or withdrawal of the appeal.

Following an appeal the First-tier Tribunal, the sheriff or the Magistrates' Court may either cancel or affirm this notice. If the notice is affirmed, it may be affirmed in its original form or with such modifications as the First-tier Tribunal, the sheriff or the Magistrates' Court thinks fit.

Failure to comply with this notice may result in the enforcement authority recovering any unpaid sum as a civil debt or on the order of the court.

Enforcement Costs Recovery Notice

Name of the Enforcement Authority	
Address of the Enforcement Authority	
Name of the individual/business	
Address of the individual/business	
(Total amount to pay)	

Your rights of appeal

You may appeal this notice within 28 days, beginning on the date on which this notice is served.

You may appeal to the First-tier Tribunal in England and Wales; the sheriff in Scotland; or the Magistrates' Court in Northern Ireland.

The effect of this notice will be suspended pending the determination or withdrawal of the appeal.

Following an appeal the First-tier Tribunal, the sheriff or the Magistrates' Court may either cancel or affirm this notice. If the notice is affirmed, it may be affirmed in its original form or with such modifications as the First-tier Tribunal, the sheriff or the Magistrates' Court thinks fit.

Failure to comply with this notice may result in the enforcement authority recovering any unpaid sum as a civil debt or on the order of the court.