

**Environmental Health Services  
Enforcement Policy  
2008**

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# **ENVIRONMENTAL HEALTH SERVICES**

## **ENFORCEMENT POLICY**

### **INTRODUCTION**

On the 21<sup>st</sup> January 1999 Epsom & Ewell Borough Council signed up to the Enforcement Concordat as commended by the Cabinet Office and the Local Government Association which lays down the principles of good practice to ensure fair, practical and consistent enforcement.

The Environmental Health Service has produced this enforcement policy in accordance with these principles and with regard to the Regulators Compliance Code (Statutory Code of Practice for Regulators) December 2007.

### **SCOPE**

The Environmental Health Services (EHS) forms part of the Operations Directorate. Within EHS there are a variety of separate but inter-relating operational / functional areas. These are:

Food Safety  
Health & Safety  
Licensing  
Housing Grants – Disabled facilities  
Private sector Housing  
Public Health  
Pollution Control, including nuisance, noise and air quality  
Contaminated Land  
Pest Control  
Dog Control  
Cemeteries  
Smokefree

This document is the overarching enforcement policy for the entire Service. The enforcement policy lays out the procedure that businesses and others being regulated can expect our officers to follow when they carry out their enforcement functions. It lays out the process that we must adhere to in deciding what action to take when undertaking our statutory duties to ensure that we act in an equitable, practical and consistent manner.

Separate policies have been approved relating to the Licensing Act 2003, Gambling Act 2005 and for taxi and private hire vehicle licensing.

The aim of the enforcement policy is to ensure that duty holders (business owners and persons responsible for complying with legislative requirements) manage and control risks effectively thus preventing harm. In particular the aim of the policy is to:

- ensure that duty holders take action to deal immediately with serious risks
- promote and achieve sustained compliance with the law

- ensure that duty holders who breach legal requirements, and directors or managers who fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts in the circumstances set out later in this policy.

This policy is supplemented by service specific enforcement policies, where appropriate, relating to the areas of work listed above and by detailed procedures and work instructions. See Annexes for specific policies and procedures.

Enforcement decisions and actions will be made with due regard to the provisions of:

- the Human Rights Act
- the Crime and Disorder Act
- Regulation of Investigatory Powers Act 2000
- equal rights and anti-discrimination legislation

## **APPROVAL**

The Council's Social committee formally adopted the existing Enforcement Policy in July 2004, the Housing Enforcement Policy in November 2005 and the Smokefree enforcement policy in June 2007.

This document replaces the previous service enforcement policy and incorporates both the housing and smokefree policies. The first part of the policy sets out the general principles on which the enforcement function in various sections of Environmental Health Services is based. The subsequent annexes contain specific policy on particular areas of the service's activities. Any variation or amendment must be agreed by the Council and be properly documented and include the reason for the change and the date the amendment was agreed; except where the change is due to a change in legislation, organisational arrangements or there are factual or grammatical corrections, when the Service Manager in consultation with the Social Committee Chairman can agree amendments.

## **REVIEW**

This Enforcement Policy will be reviewed annually and in response to new legislation or guidance.

We will consult with stakeholders when developing and amending this Enforcement Policy by sending a copy to representative groups and publishing it on the Council's Web site.

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

As required by National Indicator 182 we undertake customer surveys to assess the views of regulated entities in respect of the services they provide – including regulatory work. This information will be used to improve our services.

## **ACCESS TO THE POLICY**

The Council will ensure this Enforcement Policy is open to the public and ensure that officers follow the Policy and associated procedures.

A copy of this Policy can be obtained by contacting the Council Contact Centre on 01372 732000 and it is available on the Council's website – [www.epsom-ewell.gov.uk](http://www.epsom-ewell.gov.uk)

## **THE PRINCIPLES OF GOOD ENFORCEMENT – POLICY AND PROCEDURES**

This document sets out what businesses and others being regulated can expect from officers undertaking enforcement activity within the Environmental Health Services. It commits the Council to good enforcement policies and procedures.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as residents and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. The Council is committed to promoting compliance and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. It is recognised that most businesses and individuals want to comply with the law therefore care will be taken to help them meet their regulatory requirements more easily and without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly.

Included in the term 'enforcement' are advisory visits and assisting with compliance as well as licensing and formal enforcement action.

## **POLICY**

Enforcement of legal requirements will be based upon the following principles:

- Measuring performance against agreed standards
- Openness in dealing with business and others
- Helpful, courteous and efficient enforcement officers
- Publicised complaints procedures
- Enforcement decisions taken in a proportionate manner
- High standards of consistency in enforcement action

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the [Regulator's Compliance Code](#). The Code is a central part of the Government's better regulation agenda. Its aim is to embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement among the regulators it applies to.

We will have regard to relevant provisions of the Criminal Procedure and Investigations Act 1996 and Code of Practice when conducting criminal investigations with a view to instituting legal proceedings.

In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented. We will draw up clear standards, in consultation with business and other relevant interested parties, setting out the level of service and performance provided by the Environmental Health Service.

The service will target our resources to achieve the regulatory outcomes of the protection of employees, the public, and the environment.

Where regulated entities that have consistently achieved good levels of compliance, positive feedback will be given to them and where applicable a change in their risk rating as a result of their performance

## **STANDARDS**

In consultation with business and other relevant interested parties, including technical experts where appropriate, the Council will draw up standards setting out the level of service and performance the public and business people can expect to receive. It will publish these standards and the annual performance against them. The Service Standards will be made available to businesses and others who are regulated and are available on the council website.

## **OPENNESS**

The Council will provide information and advice in plain language on the rules that apply and will disseminate this as widely as possible. The council has interpreting and translation services available for business or the public who do not have English as a first language. It will be open about how it sets about its work, including any charges that are set, consulting business, voluntary organisations, charities, consumers and workforce representatives. The Council will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties. Such information, advice and guidance will be provided in clear, concise and accessible language, using a range of appropriate formats and media.

Under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 the Council is required to provide information it has in its possession in connection with the functions and duties it performs in response to written requests from members of the public or from organisations, including the media. Requests for information can be requests for copies of reports, including inspection reports of businesses, and copies of correspondence received by the Council.

## **HELPFULNESS**

The Council believes that its role involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. It will provide a

courteous and efficient service and staff will identify themselves by name. It will provide a contact point and telephone number for further dealings with the Service and will encourage business to seek advice /information from officers. Applications for registrations, grants etc, will be dealt with efficiently and promptly. It will ensure that, wherever practicable, the enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

## **COMPLAINTS ABOUT SERVICE**

The Council will provide well-publicised, effective and timely complaints procedures easily accessible to business and residents. All complaints will be investigated in accordance with laid down procedures. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

## **PROPORTIONALITY**

The Council will minimise the costs of compliance for business and individuals by ensuring that any action required is proportionate to the risks involved or seriousness of any breach of legislative requirement. As far as the law allows, it will take account of the circumstances of the case and the attitude of the operator when determining action. It will have regard to various courses of remedial action and will consider what is 'reasonably practicable'.

The Council will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

## **CONSISTENCY**

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

The Council will endeavour to carry out its duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases, there will be arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Coordinators of Regulatory Services (LACORS) and the Health and Safety Executive (HSE) / Health and Safety Executive and Local Authorities Enforcement Liaison Committee (HELA).

## **SHARED ENFORCEMENT RESPONSIBILITIES**

The Council recognises there are many situations where there is a shared or complimentary enforcement role with other agencies. Some enforcement activities require an inter-agency or multi-agency approach where local authority powers alone are insufficient or required as matter of good practice or safety e.g. in seizing noise equipment when a police presence is necessary.

The Council aims to work in conjunction with other agencies such as the Health & Safety Executive (HSE), Police and the Office of Fair Trading, having regard to official guidance and our own internal procedures.

Where appropriate, written protocols will be drawn up where there is insufficient statutory indication or guidance, for example, the relationship with Surrey County Council Trading Standards Department over food complaints, sampling and food hygiene alerts.

With regards to premises licensed under the Licensing Act 2003, Protocols have been agreed with the Surrey Police Authority and Surrey Fire & Rescue Service with regards to the licensing and regulation of premises.

## **ENFORCEMENT AND THE NIGHT TIME ECONOMY**

The Council recognises that many businesses operate outside normal office hours and has made provision to make both proactive and reactive visits when required. Whilst in general Environmental Health Services will operate during normal office hours, there will be occasions when visits at night, during the evening or at weekends will be appropriate in order to protect the interests of employees and the public and to ensure parity of enforcement between different businesses. This relates particularly to inspections in relation to commercial operations and to investigations of domestic or commercial nuisance complaints.

Special provisions will be made in order to protect the large number of visitors from outside the Borough who attend the Epsom Derby Race Meeting and other large festivals.

The council operates an 'out of hours' noise service.

## **TRANSPARENCY**

Transparency means helping duty holders to understand what is expected of them and what they should expect from enforcing officers. Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety, environmental protection or to prevent evidence being destroyed).

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing, in most cases within 5 working days and, in all cases, within 10 working days. Where there is a legal requirement for written documentation in relation to action taken which is more stringent than this, the appropriate timescale will be adhered to.

Where there are rights of appeal against formal action, this will be drawn to the attention of the recipient and will be issued with the enforcement notice.

Officers will conduct themselves in accordance with this enforcement policy. Businesses and customers will be advised of what to expect when visited by an officer from the Service and what rights they have to make a complaint.

A copy of the Council's leaflet on 'What to expect when an officer calls' and guidance on how to make a complaint will be given on request.

## **Targeting**

Resources will be targeted on those whose activities give rise to the most serious risks or where hazards are least well controlled. The frequency and priority of inspections of premises for the purpose of enforcement of legislation will be based on a risk rating system, the Council's corporate objectives and national and local initiatives

Where there is a national scheme for risk assessment (e.g. food safety, health and safety) the Service will follow this as the most effective way to meet regulatory outcomes and achieve improvements whilst having regard to the Regulators Compliance Code.

We will also have regard to other risk assessment schemes produced by national organisations such as Local Authorities Coordinators of Regulatory Services (LACORS) and the Chartered Institute of Environmental Health (CIEH).

Where there are no national schemes risk will be assessed in a variety of ways such as through visits, inspections or desk based assessments. Greatest inspection effort will be focussed on those regulated entities where risk assessment shows that both:

- a compliance breach or breaches would pose a serious risk to a regulatory outcome; and
- there is a likelihood of non-compliance by regulated entities

In evaluating the likelihood of non-compliance, the Council will give consideration to all relevant factors, including:

- past compliance records and potential future risks;
- the existence of good systems for managing risks, in particular within regulated entities or sites
- evidence of recognised external accreditation; and
- management competence and willingness to comply

## **Securing compliance with the law**

Compliance will normally be sought through selecting the most appropriate mix of verbal advice, letters and reports and formal action. The Council's aim is to achieve co-operation and promote a positive culture to achieve compliance with legal requirements.

## **Authorisation of Officers**

Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Officers will also have sufficient training and understanding of this enforcement policy to ensure a consistent approach to their duties.

Authorisation will be in writing signed by the Director and ratified by committee decision. Officers are required to produce their authorisation and ID cards at the time of inspection/visits.

The designations of officers who may carry out enforcement action are:

Head of Regulatory Services (H of RS)  
Environmental Health Services Manager (EHSM)  
Environmental Health Team Leader (EHTL)  
Environmental Health Officers (EHO)  
Grants and Licensing Team Leader (GLTL)  
Licensing Officers (LO)  
Cemetery superintendent and registrar

These officers may all assist in the decision-making process regarding the proposed course of enforcement action.

All Simple Cautions and Prosecutions must be authorised by the Head of Regulatory Services, Environmental Health Services Manager, Environmental Health Team Leader or the Grants and Licensing Team Leader (as appropriate) and a qualified solicitor acting on behalf of the Head of Legal and Democratic Services.

### **Exercise of Powers of Entry**

In order to enforce the various statutory provisions relating to the different enforcement areas different provision is made through the legislation for powers of entry. Entry may be sought for the purposes of:

Inspection  
Sampling  
Collection of evidence  
Determination of nuisance  
Checking for compliance with a notice  
Seizure of articles or equipment  
Investigation of an accident  
Securing a safe site  
Interviewing witnesses  
Carrying out works in default

The powers of entry prescribed under the applicable legislation vary. Such powers may allow an authorised officer to request entry to a business address without notice. Alternatively, officers seeking access to primarily residential addresses may be required to give notice to an occupier or owner that they wish to gain entry for a specified purpose on a specified day. These powers will normally only be used where informal requests for access to premises have not resulted in access being provided. Failure to provide access as requested may result in an offence of obstruction being committed.

Formal requests for access under powers of entry requiring notice will be made in the prescribed form, stating the purpose for which entry is required and be signed by an authorised officer.

Obstruction of a duly authorised officer, other employee or contractor employed by the Council to carrying out their duties will be considered for prosecution.

Where entry has been refused, depending on the particular law being used, the Council will normally make an application for a Justice of the Peace to issue a warrant authorising entry by force, if needed. The Justice will be shown sworn information in writing that such entry is necessary and proportionate given the circumstances involved.

Application for a warrant to enter will be made when there are facts that in the reasonable belief of the Council indicate the commission of an offence and facts show at least one of the following applies:

- There has been a history of failures to provide access in response to informal and/or formal requests to do so
- The alleged offence involves a flagrant breach of the law such that the safety, health or well being of residents or others is put at risk
- The alleged offence involves a knowing or wilful failure to comply in full or in part with the requirements of a statutory notice, statutory instrument or other legal duty
- The alleged offence involves a failure to comply with a requirement after having been given reasonable opportunity to do so
- There is a history of similar offences involving risk to the safety, health or well being of residents or others or breach of legal duty

Execution of warrants for entry will be notified to the relevant police office and where appropriate the police may be asked to assist in the execution or prevent a breach of the peace.

If the premises subject to the warrant are unoccupied or the occupier is temporarily absent, the Council will leave the premises as effectively secured against trespassers as it was found and the officer will inform the owner/occupier occupier of the visit. If new locks have been fitted to secure the premises, information will be left on how to obtain the keys.

## **Enforcement options**

The Council will ensure that the sanctions and penalties policies are consistent with the principles set out in the [Macrory Review](#). This means that the policy will:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate;
- aim to deter future non-compliance

Depending on the options separately available in law to a particular offence, the options generally available to officers to secure compliance with the law, having considered all the relevant information, are:

- to take no action
- to take informal action
- to serve a statutory notice
- to issue a simple caution
- to issue a fixed penalty notice
- to prosecute
- to carry out works in default
- to conduct a seizure
- to take forfeiture proceedings
- to take out an injunction or an Antisocial Behaviour Order (ASBO)
- to endorse penalty points on licence holders (Private and Public Hire licensing only)
- to refer to Licensing Hearings Sub-Committee

### **No Action**

If on investigation it is found that there has been no breach of relevant legislation, the residents are not vulnerable and there is no risk to health, then no further action by the Council may be required. Notwithstanding this, the investigating officer will note their findings and the reason for decision in writing for future reference.

### **Informal action**

Informal action to secure compliance includes offering advice, giving verbal warnings, making written recommendations for action either by letter or in report form. It also includes obtaining a written undertaking to voluntarily cease an operation and/or dispose of or surrender goods to the Council. It may also take the form of referral to another agency for action. Informal action will be appropriate where:

- the breach of duty is not serious enough to warrant formal action
- previous history of the individual or business involved suggests that informal action will achieve compliance within a suitable time
- confidence in the individual or business is high
- the consequences of non-compliance will not pose a significant risk to those affected by work activities
- any combination of the above

A feature of reactive cases is that the offence is likely to have already been committed or is in the process of being committed. Officers will occasionally be required to make decisions whilst on site, for example the service of emergency prohibition notices or seizure of evidence. In these circumstances Officers will have regard to the same principals as above but the aim will be to control or abate the situation at hand particularly if there is an imminent risk to others, a serious public health issue or a public nuisance. Where appropriate, consideration will be given as to what further course of action may be appropriate in line with this policy. Through their professional training and qualifications, Officers are equipped to make these decisions

### **Statutory Notices**

Statutory notices will only be served when one of the following apply:

- there has been a failure to respond to an informal approach
- there is a significant contravention of a relevant statutory provision

- there is a lack of confidence in the individual or business to respond to an informal approach
- the consequences of non-compliance present a serious risk to residents or the public
- effective action needs to be taken as quickly as possible to remedy conditions that present a serious risk and are deteriorating
- there is a need to obtain information that the council is statutorily entitled to request
- any combination of the above

Qualified officers will only undertake signing of notices with experience in the relevant legislation and legal procedures, as authorised under the scheme of delegation.

Agreement to the service of an emergency or prohibition notice will be confirmed by a service manager.

Notices will be served in accordance with any relevant statutory guidance and codes of practice. Where possible the service of notices (by hand) will be made by any officer of the Council who is capable of explaining the meaning and legal status of the notice. Any notices sent by post will be by recorded delivery.

All notices will specify realistic time limits for compliance.

Failure to comply with a statutory notice will, in general, result in the institution of legal proceedings and/or the carrying out of works in default on the person responsible for compliance. Authorised officers will be in possession of sufficient evidence to enforce any statutory notice before it is served and be prepared to pursue non-compliance through prosecution or works in default.

The Council will be prepared to discuss the need for, and requirements of, statutory notices informally with the recipient and will be prepared to defend the notice at formal appeal hearings.

### **Simple Cautions**

Simple cautions will be issued in accordance with guidance laid down in Home Office Circular 016/2008 Simple Cautioning of Adult Offenders. The option of issuing a simple caution is available as an alternative to prosecution where the objective is to prevent further offending. The service will not normally offer conditional cautions. A caution will be considered if the offence is relatively minor, unlikely to recur and can be dealt with outside of the criminal justice system. The service will take the following factors into account when deciding on whether to offer a simple caution:

- the case must meet the public interest test
- the case must meet the evidential test
- the evidence available must comply with the crown prosecution service code on criteria for prosecution i.e. a conviction should be more likely than an acquittal before a court.
- the offender must admit to the offence.
- the offender must agree to the caution.

Simple cautions will not be offered for summary offences or where the offender is under the age of 18 and will not normally be considered if the suspect has been cautioned for a similar offence in the past 2 years.

In all instances the case officer will discuss the reasoning behind their recommendation to offer a simple caution with and obtain the agreement of, the EHSM, or in their absence, the H of RS before submitting the paperwork for signing.

## **Prosecution**

The decision to prosecute will have regard to the evidential and public interest tests set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. The Council has the discretion whether or not to prosecute for an offence and the decision to prosecute will be based on the circumstances of each individual case. The criteria for prosecution must be related to the risk or the seriousness of the offence rather than being a punitive response to minor technical transgressions. Not every breach of legislation will result in legal action. The service will have regard to codes of practice under the Criminal Procedure and Investigations Act 1996. The case officer will take the role of the investigator and their direct line manager will take the role of the officer in charge of the investigation. The disclosure officer will be an individual appointed on a case by case basis and the Council's legal services department will take the role of the prosecutor.

Circumstances that warrant prosecution will include at least one of the following:

- the alleged offence involves an obvious breach or reckless disregard of the law such that the safety, health or well being of individuals, groups or the environment is or has been put at risk
- death was a result of a breach of the legislation
- the alleged offence involves a knowing or wilful failure to comply in full or in part with the requirements of a statutory notice, statutory instrument or other legal duty
- the alleged offence involves a failure to comply in full or part with a statutory requirement after having been given reasonable opportunity to do so
- the business or person has a history of similar offences
- inspectors have been intentionally obstructed in the lawful course of their activities
- refusal to accept a simple caution
- refusal to have the matter dealt with by means of a fixed penalty notice

The enforcement officer must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. This is known as the **evidential test**.

Having satisfied the evidential test the following factors will be taken into consideration, forming the basis of the **public interest test**:

- the gravity of the alleged offence taken together with the seriousness of any actual or potential harm
- the previous history of the person or business concerned
- the ability of witnesses and their willingness to co-operate
- the willingness of the party concerned to prevent recurrence of the offence
- the probable public benefit of prosecution

- any explanation offered by the alleged offender
- the likelihood of the defendant being able to establish, where appropriate, a due diligence/best practicable means defence
- whether other action (simple cautioning, improvement notices) will be more appropriate or effective

### Further factors which may influence the decision to prosecute

Factors in favour of prosecution	Factors against prosecution
Significant sentence likely	Nominal penalty probable
Defendant a ringleader or organiser of offence	Offence committed as result of genuine mistake or misunderstanding (balanced against seriousness of the offence and consequences)
Evidence of premeditation	One-off minor occurrence due to misjudgement
Offence motivated by any form of discrimination	Defendant already subject of sentencing and further conviction unlikely to result in imposition of further penalty, unless the particular offence requires a prosecution
Victim of offence was vulnerable or in fear of offender	Prosecution likely to have a detrimental effect on the victim's physical or mental health
Marked difference in actual or mental ages of defendant and victim	Defendant is particularly elderly, mentally or physically vulnerable, unless the seriousness of the offence or likelihood of its being repeated is such that it cannot be ignored
	There has been undue delay between the offence taking place and the date of trial, subject to the seriousness and complexity of the offence, unless caused in part by the defendant or offence only recently came to light

Officers investigating offences will seek to ensure that their investigations and decision making is not unduly prolonged and that complainants, witnesses and other parties are kept informed of progress with the case. To this end we will refer all cases for prosecution to a qualified lawyer in Legal Services or the Head of Legal and Democratic Services within 6 weeks of the decision to prosecute being made.

Fully documented contemporaneous notes will be kept of all cases.

### Works in default

Where provided by the legislation, failure to comply with a notice may also result in the Council deciding to carry out works required by a notice and recovering the cost incurred.

Where it is legally possible, the Council will consider the need for work in default in each case where a statutory notice is not complied with. Such consideration may be in addition

to or instead of the prosecution policy set out above. There will be situations that arise when it is appropriate to carry out work in default because of the urgent nature of the required work or because work has still not been carried out after a previous prosecution.

Notification of the intention of the Council to carry out work in default will be given to all interested parties in accordance with the law wherever practicable. In certain circumstances, such as where the Council is seeking to abate a nuisance, it may be necessary to carry out works and notify the person(s) responsible retrospectively. Contractors engaged by the Council to carry out work in default will be appointed in accordance with Financial Regulations. The schedule of rates for the relevant works will apply when determining the reasonableness of any estimate from a contractor and administration fees will be added to determine the final cost on completion of the work in default.

### **Seizure**

The Council has the power through various pieces of legislation to seize faulty, dangerous, unwholesome or contaminated goods or food or equipment responsible for causing nuisance or harm to consumers, employees, other businesses or residents. Officers conducting a seizure will do so in accordance with Service procedures and the requirements of the relevant legislation.

### **Injunction**

An injunction from the High Court may be sought where there are sufficient grounds to believe that such action is warranted to prevent an occurrence, halt an existing occurrence or deal with dangerous circumstances. The decision to take an injunction will be made in conjunction with a lawyer from Legal Services or the Head of Legal and Democratic Services.

### **Antisocial Behaviour Order (ASBO)**

In certain circumstances it will be appropriate to apply for an ASBO against individuals who are causing antisocial behaviour of a type the Council has a responsibility for. ASBO's have certain advantages in the level of evidence required and will be considered where, for example, there is a level of witness intimidation. It is recognised that in many circumstances there will be other antisocial behaviour associated with the case. The service will therefore liaise with members of the Crime and Disorder Reduction Partnership in all cases where an ASBO is being considered.

### **Referral to Licensing Hearing Sub-Committee**

Should serious breaches of licensing conditions be breached, the Environmental Health Team Leader may seek a review of the Premises Licence under the Licensing Act 2003. The review will be considered by the Council's Licensing Hearings Sub-Committee, who may impose additional licence conditions in connection with supporting the Licensing Objectives or remove permitted activities; suspend or revoke the Licence in compliance with the Council's Statement of Licensing Policy.

Whilst the decisions will follow the broad framework outlined in this policy, Environmental Health Services Manager will refer cases to the Social Committee or Licensing Committee (as appropriate) where there are exceptional matters which require Councillor involvement either because of the sensitivity of the case or the impact of the proposed action. In any urgent cases, this will be achieved by reference to the Chairman of the relevant Committee.

### **Revocation of licenses**

In order to warrant revocation of a licence, the individual or organisation must be subject to one or more of the following criteria:

- Be engaged in fraudulent activity
- Be convicted of deliberately or persistently breaching terms, conditions or restrictions attached to a licence, including non-payment.
- Deliberately or persistently ignore written warnings or formal notices
- Endanger, to a serious degree, the health, safety or well-being of people, animals or the environment
- Obstruct an officer undertaking his/her duties

### **Implementation of the enforcement policy**

The Head of Regulatory Services and Environmental Health Services Manager will be responsible for ensuring that all enforcement officers are familiar with the requirements of and carry out their duties in accordance with this Enforcement Policy.

### **Monitoring and reporting arrangements**

Environmental Health Services will take steps to ensure that the Enforcement Policy is followed. This will be achieved the following ways:-

- the accountability of the Director of Operations to the relevant policy committee and Licensing Committee for the proper discharge of the powers and duties.
- Authorised officers have delegated authority to sign formal notices further to the council's constitution and agreed scheme of delegation.
- Environmental Health Team Meetings - these provide a general forum for discussion of approaches to different problems and the need for consistency.
- Licensing/Police Liaison Groups - the monthly meeting of the Grants and Licensing Team Leader and the Surrey Police Authority allow for ongoing monitoring of action taken and information exchange.
- case by case consideration of enforcement action – when considering the enforcement options of each case the case officer shall have regard to this enforcement policy.

### **Publicity**

The Council will, if the public interest determines and depending on the gravity, publish of the names of all the companies and individuals who have been convicted of breaking the

law. The Council will also make publicly available information on any convictions and on improvement and prohibition notices, which they have issued. The Council will inform members of the media about forthcoming court cases so that they have the option of being present and can report on the outcome of the case.

The Council will consider in all cases drawing media attention to factual information about charges which have been laid before the courts, but great care will be taken to avoid any publicity which could prejudice a fair trial. They will also consider publicising any conviction which could serve to draw attention to the need to comply with legislative requirements, or deter anyone tempted to disregard their legal duties.

### **Consultees on this policy:**

Principal Employers within the Borough  
Epsom & Ewell Business Partnership  
Surrey Fire & Rescue Service  
E&EBC Building Control Division  
E&EBC Planning Division  
E&EBC Community Safety  
E&EBC Operational Services  
E&EBC Legal and Democratic Services  
E&EBC Consultation and Communications

### **Related Documents**

**The Code for Crown Prosecutors**

**Criminal Procedure and Investigations Act 1996**

**Police & Criminal Evidence Act 1984 and associated Codes**

**The Enforcement Concordat and relevant codes of practice under the Regulatory Reform Act 2001**

**Statutory Code of Practice for Regulators Dec 2007**

*(<http://www.berr.gov.uk/files/file45019.pdf>)*

**Improving Compliance among Businesses (Macrory Review)**

*(<http://www.berr.gov.uk/bre/reviewing-regulation/compliance-businesses/page44102.html>)*

**Home Office Circular 016/2008 Simple Cautioning of Adult Offenders**

*<http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/6409b89613fc4d908025747f003f66a6?OpenDocument>*

In addition to carrying out the requirements of the Housing Act 2004, in private sector homes the Council has a duty to investigate complaints of statutory nuisance, and powers to address defective sanitary appliances and drainage and other related matters.

## **Housing Act 1985 and 2004**

### **Owner-Occupied Dwellings**

Other than in exceptional cases, the Council expects owner-occupiers, including long leaseholders, to remedy problems of disrepair or nuisance in their properties

### **Privately rented property**

Where there are potential risks to the health and safety of the occupants from deficiencies in the dwelling, or in a dwelling within a house in multiple occupation, the Council will use the Housing Health and Safety Rating System (HHSRS) to evaluate the risk basing its judgement on available guidance and Officer judgement. The decision on the most appropriate enforcement action will be based on the Department for Communities and Local Government (DCLG) Enforcement Guidance, the circumstances, views and attitude of landlord and tenant, and if necessary, the views of Social Services and the Council's housing service where particularly vulnerable tenants are involved.

### **Enforcement Action**

The Council will take enforcement action in all cases where a category 1 hazard exists. In the case of a Category 1 Fire Hazard the service will consult with Surrey Fire Service. The options available to the Council are:

- To serve an improvement notice
- To make a prohibition order
- To serve a hazard awareness notice
- Take emergency remedial action
- Make an emergency prohibition order
- Make a demolition order
- Declare a clearance area

The Council will not take enforcement action in all cases where a category 2 hazard exists. Instead a decision on the course of action will be taken with reference to the DCLG Enforcement Guidance and the attitudes of the landlord and occupant. In any event the Council will not make a demolition order or declare a clearance area in response to a category 2 hazard.

### **Improvement Notices**

In the majority of cases properties are in such a condition that they can be repaired or improved rather than demolished or closed and so improvement notices are will be a common type of enforcement for category 1 hazards. The object of the service of an improvement notice is to seek to eliminate the category 1 hazard in question.

An improvement notice will specify the following information:

- which category of hazard it relates to
- the nature of the hazard and the premises/ property on which it exists;

- the deficiency giving rise to the hazard;
- the premises and nature of remedial action required;
- the date by which remedial action is to be started, (not less than 28 days);
- the period in which the remedial action is to be completed;
- notes in respect of the right of appeal.

An improvement notice will be revoked when it is complied with and may be varied by agreement.

Except for emergency or urgent situations, the Council will serve a hazard awareness notice in the first instance to bring the landlord's attention to the existence of a particular hazard. Where there is a lack of progress towards remedying the deficiency within the established timeline, the Council will take further enforcement action which will normally be an improvement notice.

### **Suspension of an Improvement Notice (or a prohibition order see below)**

Normally an improvement notice would become operative 21 days after service and a prohibition order after 28 days. However both may be suspended. The notice may specify an event that triggers the end of the suspension, such as:

- non-compliance with an undertaking
- a change of occupancy

Suspension may also be appropriate where the hazard is not sufficiently minor to be addressed by a hazard awareness notice but the current occupiers are not members of a vulnerable age group. Consideration will also be given to the turnover of tenants at the property. Typically the activation of a suspended notice would be a change of occupancy, where an occupier is replaced by one who is of the vulnerable age group. The notice will require the owner or landlord to notify the Council of a change of occupancy to ensure that the notice can be reviewed.

Consideration will be given to any request by the tenant to suspend the notice or replace the action by the issue of a hazard awareness notice where the works are likely to affect that tenants' health. All suspended notices and orders will be reviewed every 12 months or earlier as deemed to be appropriate.

### **Prohibition Orders**

A prohibition order may prohibit the use of a part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people.

A prohibition order will specify the following:

- whether it relates to a category 1 or 2 hazard;
- the nature of the hazard and the premises on which it exists;
- the deficiency giving rise to the hazard;
- the premises and prohibitions which are imposed;
- any remedial action that would result in the order being revoked. (An order becomes operative 28 days after it is made);
- notes in respect of the right of appeal.

This action will only be used where one or more of the following circumstances apply.

- where the conditions present a serious threat to health or safety but where remedial action is considered unreasonable or impractical for cost or other reasons e.g. where the remedial works cannot be undertaken with the tenant in occupation;
- to specify the maximum number of persons who occupy a dwelling where it is too small for the household's needs;
- to control the number of persons who occupy a dwelling where there are insufficient facilities (e.g. personal washing facilities, sanitary facilities, or food preparation or cooking facilities).
- to prohibit the use of the dwelling by a specified group (until such time as improvements have been carried out), where a dwelling is hazardous to some people, but relatively safe for occupation by others: The specific group relates to the class of people for whom the risk arising from the hazard is greater than for any other group, for example, elderly people or those with young children;
- in a House in Multiple Occupation (HMO), to prohibit the use of specified dwelling units or of common parts.

Regard will be had to the following matters when considering serving a prohibition order:

- the risk of exclusion of vulnerable people from the accommodation;
- whether the building is listed;
- the position of the premises in relation to neighbouring buildings;
- irrespective of any proposals the owner may have, the potential alternative uses of the premises
- any conservation or renewal area and any general proposals for the area
- the effect of complete prohibition on the well being of the local community and the appearance of the locality
- the availability of local accommodation for re-housing any displaced occupants
- whether it is appropriate to offer financial advice or assistance
- 

A prohibition order will be revoked if the Council is satisfied that the hazard to which it relates no longer exists.

### **Hazard Awareness Notice (HAN)**

The most frequency use of a HAN will be as a precursor to other enforcement action as a way to request work be done without burdensome enforcement. If no action is forthcoming within the established timeframe the Council will consider another enforcement option.

A hazard awareness notice will specify:

- the nature of the hazard and the premises on which it exists;
- the deficiency giving rise to the hazard;
- the premises on which the deficiency exists;
- the reasons for deciding to serve the notice, including the reasons for deciding that serving the notice is the most appropriate course of action;
- the details of any remedial action, which the Council considers, would be practical and appropriate to take.

The advisory nature of the notice may result in monitoring of any premises to ascertain if works have been undertaken.

### **Emergency Remedial Action/ Emergency Prohibition Orders**

The Council has the discretion to take emergency enforcement action against hazards, which present an imminent risk of serious harm to occupiers of those or other residential premises. This action will only be taken in exceptional circumstances and will require the following:

- the existence of a category 1 hazard
- that the hazard presents an imminent risk of serious harm to the health and safety of the occupiers
- that no management order is in force in respect of the premises.

The Council can take remedial action to remove the hazard and recover reasonable expenses, or prohibit the use of all or part of the property. There are appeal provisions but any appeal will not prevent any remedial works being undertaken or prohibition order being made.

A notice will be served within seven days of remedial action being started. This will state:

- the nature of the hazard and the premises / property which it exists;
- the deficiency giving rise to the hazard
- the premises and nature of remedial action required;
- the power under which the remedial action has been (or is to be) taken;
- the date when the remedial action was (or is to be) started.
- notes in respect of right of appeal

### **Demolition**

Where a Demolition Order is used, the Council will assist in the re-housing of the occupants who are displaced. The Council will consider the following matters in reaching a decision on a making demolition order:

- the availability of local accommodation for re-housing occupants
- the demand for, and the sustainability of the current accommodation if the hazard were remedied;
- the prospective use of the cleared site;
- the local environment, the suitability of the area for continued residential use and the impact on the area of the cleared site.

A demolition order may be replaced with a prohibition order if proposals are submitted for the use of the premises for use other than human habitation.

### **Clearance Areas**

Clearance is unlikely to be the most viable option in most cases. However the following matters would be taken into account in reaching a decision on the most appropriate action.

- the likely long term demand for residential accommodation;
- the degree of concentration of dwellings containing serious intractable hazards;
- the density of buildings and street pattern around which they are arranged;
- the overall availability of housing accommodation in the wider neighbourhood in relation to housing needs and demands;
- the proportion of dwellings free of hazards and other, non residential, premises in sound condition which would also need to be cleared to arrive at a suitable site;

- whether it would be necessary to acquire land surrounding or adjoining the proposed clearance area; and whether added land can be acquired by agreement with the owners;
- the existence of any listed buildings;
- the results of statutory consultation;
- the arrangements necessary for re-housing the displaced occupants and the extent to which occupants are satisfied with those arrangements;
- the impact of clearance on, and the scope for relocating, commercial premises;
- the suitability of the proposed after-use(s) of the site having regard to its shape and size, the needs of the wider neighbourhood and the socio-economic benefits which the after-use(s) would bring, the degree of support by the local residents and the extent to which such use would attract private investment into the area.

### **Charge for Enforcement Action**

Where enforcement action involves the service of any of the following notices, a charge will be made for the cost of administration and other expenses involved. This fee will be at the prevailing rate adopted by the Council in its annual fees and charges report. A charge will be made for Improvement notices and Prohibition notices served under the Housing Act 2004.

The person upon whom the notice is served will be responsible for paying the expenses incurred by the Council in serving the Notice.

### **Encouraging House in Multiple Occupation (HMO) Licence Applications**

The Council will encourage landlords to apply for licences using a variety of methods.

We will:

- publicise the need to licence HMO's
- send letters and reminders to landlords and their agents
- provide electronic and paper application forms
- offer a service assisting applicants with completion of forms and measuring rooms where resources permit
- send letters warning of prosecution and application for a rent repayment order

### **HMO Licensing**

The Council may revoke a licence (i.e. bring it an end before it expires by passage of time) in the following circumstances:

- with the agreement of the licence holder;
- there has been serious or repeated breaches of a licence condition;
- the licence holder is no longer a fit and proper person to hold the licence;
- the management of the property is no longer being carried out by persons who are fit and proper persons to be involved in its management;
- in respect of a property subject to selective licensing, a HMO licence has been granted (allowing for the selective licence to be revoked);
- the property ceases to fall within the mandatory, discretionary or selective licensing regimes and the LHA considers, were a new application to be made for a licence, the structure of the property is such that a new licence would not be granted.

### **Rent Repayment Orders**

Where a landlord is convicted for failure to licence and the rent is paid as Housing Benefit, the Council will apply to the Residential Property Tribunal (RPT) for a Rent Repayment Order (RRO) and will advise the tenants to do the same.

The Council intends to use its powers under the Act to seek RROs for repayment of twelve months Housing Benefit or for the period since the landlord was required to licence the HMO, if less. We will provide other tenants with information on how to apply.

### **HMO Guidance**

The Council will determine the number of people an HMO is licensed for in accordance with compliance with the relevant HMO Code of Practice/Guidance for room sizes and kitchen and bathroom facilities and the minimum standard issued by the Government.

Applications will need to include dimensions of rooms and details of the kitchen and bathroom facilities to enable assessment of the number of occupiers permitted in the licence.

### **Management Arrangements**

We will expect the licensee to have satisfactory arrangements and funding in place for the management of the HMO.

Satisfactory arrangements for management will include:

- a system for tenants to report defects, including in emergencies
- arrangements to respond to those requests
- a process for dealing with anti-social behaviour occurring within the HMO by tenants or their visitors
- arrangements in place for periodic inspections to identify where repair or maintenance is needed.

The Council will additionally enforce the provisions of The Management of Houses in Multiple Occupation (England) Regulations 2006 by firstly bringing the deficiencies of the breach to the landlord's attention and following it up, if necessary, with formal action having regard to the considerations outlined in this policy.

### **Discretionary Licence Conditions**

In addition to the mandatory licensing conditions the Council will apply discretionary conditions to all licences.

These will include:

- the HMO will comply with the statutory Management Regulations within three months
- to provide copies of reports of fire detection, alarm system and emergency lighting to the council annually
- the name, address and telephone number for licensee or manager is to be displayed in the common parts of the HMO
- a copy of a valid gas safety certificate to be displayed in the common parts
- a copy of the licence to be displayed in the common parts
- that any anti-social behaviour arising in the HMO is dealt with under the terms of the tenancy agreement

- where anti-social behaviour occurs outside the HMO, the licensee or manager will report incidents to the council and the police and work with them to find the best solution

The Council will apply other conditions to individual licences with respect to the use, management and occupation of the HMO, where appropriate and may seek evidence of compliance with conditions at any time.

### **Temporary Exemption Notices**

The Council will not routinely grant more than one three month Temporary Exemption Notice (TEN).

A TEN will be served where an owner of a licensable HMO states in writing that he/she is taking steps to make an HMO non-licensable and states that the HMO will not be licensable within three months. The Council does not wish these notices to be used routinely, and therefore a second notice will only be acceptable in exceptional and unforeseen circumstances. Any exception to the policy will be agreed by the service manager.

### **Discretionary HMO Licensing**

The Council does not intend to set up any additional discretionary licensing schemes for HMOs, but will keep this under review. We are satisfied that there is no need at present to set up any additional licensing scheme, but we will review this policy annually.

### **Bed and Breakfast Hotels**

The Council will declare bed and breakfast hotels as HMOs if they are housing any people who use the hotel as their main residence for more than 30 days. We believe that where this accommodation is used as a main residence, the same standards as for other HMOs should be met.

### **Registered Social Landlords (RSLs)**

The largest portfolio of RSL properties in the borough is held by Rosebery Housing Association. The Environmental Health Service has built a strong relationship with this organisation and works to aid Rosebery in monitoring their property portfolio for housing defects. Currently Environmental Health and Rosebery Housing Association have agreed on processes for communication and customer focused support between the two services.

**INTRODUCTION**

This is a documented policy on food safety enforcement including prosecution. This policy will be reviewed periodically and in response to new legislation, LACORS, DEFRA, FSA and other guidance etc as necessary.

This policy directs that enforcement action is primarily based upon an assessment of risk to public health. This risk is the probability of harm to health occurring due to non-compliance with food safety law. Enforcement action will not, therefore, be the normal response to minor technical contravention of legislation.

The majority of enforcement powers involve the service of informal or statutory notices under the Food Safety Act 1990 (as amended) and any Orders or Regulations made thereunder or having effect by virtue of the European Communities Act 1972, e.g. the Food Hygiene (England) Regulations 2006.

There are also powers under Legislation other than the Food Safety Act e.g. Food and Environmental Protection Act 1985, The Health and Safety at Work etc Act 1974, The Environmental Protection Act 1990, Public Health Acts 1936 and 1961, Public Health Control of Diseases Act 1984 and Prevention of Damage by Pests Act 1949.

**Food Inspections**

The frequency of food hygiene inspections will be determined by the use of a risk factor, with premises graded according to their perceived risk as determined by the Food Law, Code of Practice.

In accordance with the Code of Practice the majority of inspections will be unannounced. In exceptional circumstances appointments may be made for example, inspections after initial registration, visits to large manufacturers or when a specific matter needs to be discussed with the proprietor. Home caterers will receive a 24 hour written notice of intent to inspect.

Officers will offer advice where appropriate or when it is requested to help ensure compliance with legislation and encourage food businesses to adopt good food hygiene and standards practices.

The Service resolves to comply with the Code of Practice issued under Section 40 of the Food Safety Act 1990, Regulation 24 of the Food Hygiene (England) Regulations 2006 and Regulation 6 of the Official Food and Feed Controls (England) Regulations 2006 and to support the guidance on enforcement matters issued by LACORS and the Food Standards Agency. Documented procedures within the Service Level Assurance Manual will aim to be in line with those organisations and such other groups that may issue guidance, including the Surrey Food Liaison Group.

## **AUTHORISATION**

This local authority will ensure that any authorised officer is competent to take action under the Food Safety Act 1990, is a fully qualified EHO and possess experience in a variety of food enforcement situations, which would allow him/her to undertake the duties for which they have been authorised.

## **ENFORCEMENT**

This Authority recognises and affirms the importance of achieving and maintaining consistency in their approach to making all decisions that concern food safety enforcement action.

To achieve and maintain consistency, the service will consider the Local Authorities Coordinators of Regulatory Services (LACORS) circulars and advice offered in relation to the Home Authority Principle when enforcing food safety.

Guidance on enforcement options is contained in Code of Practice made under Section 40 of the Food Safety Act 1990.

In accordance with Food Standards Agency (FSA) and LACORS guidance, where this Authority is considering taking enforcement action which is not consistent with current guidance or not subject to guidance the matter should be referred to the Surrey Food Liaison Group. Where agreement can not be reached via LACORS, referral of the matter to Legal Services should be considered.

Compliance will normally be achieved through a combination of written and oral advice, and only in the more serious instances should formal enforcement through improvement or prohibition notices be considered. Prosecutions should be reserved for the most serious offences which either result or could have resulted in serious risk to public health or which represent a blatant disregard by employers, employees or others of their responsibilities under food safety legislation.

In most cases there will be staged approach to achieving compliance.

### **Informal Action**

Informal action includes offering verbal or written advice, written warnings, requests for action and the issuing of leaflets, guidance notes and booklets. Written advice and warnings can be in the form of a hand-written 'Report of an Inspection' form, a letter or a letter and a schedule of works.

Written advice is appropriate when no regulations have been contravened and only recommendations of good hygiene practice have been identified.

A warning letter and schedule of works or contraventions identified on a 'Report of Inspection' form is appropriate in the following circumstances:

- non-compliance will not involve a significant risk to public health; or
- the issue is not serious enough to warrant formal action, e.g. the service of a statutory notice or prosecution; or
- from past history it can reasonably be assumed that informal action will achieve compliance; or

- confidence in management is satisfactory.

A warning letter and works schedule or a 'Report of Inspection' form will be addressed to the person(s) responsible for running the food business hereafter known as the Food Business operator (FBO), and will:

- contain all information necessary to understand any work required, why it is necessary and when it needs to be completed by;
- indicate the regulations contravened, measures necessary to comply and that other means of achieving the same effect may be chosen; and
- clearly indicate any recommendations of good hygiene practice to show that they are not a legal requirement.

Inspection reports will be issued following all programmed inspections even when conditions are satisfactory, with all legal requirements and recommendations clearly differentiated.

### **Statutory Notices**

#### **Improvement Notices**

Hygiene Improvement Notices under the Food Hygiene (England) Regulations 2006 will only be served by authorised officers when one or more of the following criteria apply: -

- there are significant contraventions of legislation;
- there is a lack of confidence in the FBO responding to an informal approach;
- there is a history of non-compliance with informal action;
- standards are generally poor with little management awareness;
- non-compliance could be potentially serious to public health; and
- although there is an intention to prosecute, effective action is needed to remedy conditions that are serious or deteriorating.

Hygiene Improvement Notices will be related to risk to health and not issued for minor technical contraventions.

Realistic time limits will be set and preferably agreed with the proprietor, with case officers discussing the specified works and fully considering different solutions. Extension of time limits will not normally be necessary, however, it may be granted on receipt of a written request before the notice expires.

#### **Remedial Action Notices / Detention Notices**

Remedial Action Notices under the Food Hygiene (England) Regulations 2006 are only applicable to approved establishments and will only be served by authorised officers if regulatory requirements in these premises are being breached or the inspection is being hampered. Circumstances might include:-

- failure of equipment or parts of premises to comply with regulatory requirements
- need to impose conditions or prohibit any process breaching regulatory requirements or hampering an inspection
- limiting the rate of operation of the business where this is detrimental to compliance.

Detention notices under the Food Hygiene (England) Regulations 2006 will only be served by authorised officers for the detention of food of animal origin in approved establishments so that it may be examined when it is suspected of being unsafe.

A notice of withdrawal will be issued as soon as the matters specified in the Notice are complied with.

### **Hygiene Emergency Prohibition Notices**

The use of Hygiene Emergency Prohibition Notices will be considered when an imminent risk of injury to health can be demonstrated (including evidence from relevant experts, such as a food examiner or analyst) and when one or more of the following circumstances apply:

- where the consequences of not taking immediate action to protect public health would be unacceptable;
- where the criteria specified in the Code of Practice, concerning the conditions when prohibition may be appropriate, are fulfilled;
- where there is no confidence in the integrity of an offer made by a proprietor to voluntarily close premises or cease the use of any equipment, process or treatment associated with the imminent risk; and
- where a FBO is unwilling to confirm in writing their offer of a voluntary prohibition or include an undertaking not to re-open without the officer's prior approval.

Hygiene Emergency Prohibition Notices will only be signed by authorised officers if they have personally witnessed the matters to which the Notice relates.

### **Voluntary Closure**

Where any premises, process, treatment or equipment involves an imminent risk of injury to health and consideration is being given to emergency prohibition action, the proprietor of the business may offer to close voluntarily.

In such cases, authorised officers will consider all the evidence, circumstances and official guidance very carefully including whether there is any risk of the premises being reopened without their knowledge and/or agreement. Where such consideration indicates voluntary closure could be accepted, officers will explain to the proprietor that in making the offer to close, they will be relinquishing their rights to compensation. Written confirmation of the proprietor's offer and an undertaking not to reopen without specific permission will be required. Frequent checks will subsequently be made on the premises to confirm that they have not reopened.

Voluntary closure by the FBO does not prejudice the right of the Council to commence legal proceedings for contraventions identified during the course of the inspection.

### **Suspension / Withdrawal of Approval or Conditional Approval**

In respect of approved establishments, all other appropriate enforcement options and measures to control hazards will be considered before procedures are initiated to suspend or withdraw approvals.

### **Seizure/Detention Powers**

Detention powers will be used if there is good reason to suspect that food does not satisfy food safety requirements and seizure powers used where there is clear evidence of such

a failure. Careful judgement and consideration of the need to seek expert advice will always be exercised before using these powers, and guidance specified in the Code of Practice will be adhered to.

### **Prosecutions and Cautions**

In addition to those general circumstances that are considered likely to warrant prosecution, listed in part one of this Policy, prosecution will take place where: -

- an alleged offence involves a failure to correct a serious potential risk to food safety, and a reasonable opportunity to comply with the requirements of an authorised officer has been given;
- foodstuffs are offered for sale or are sold past their use by date where the 20 day rule devised by LACORS has been exceeded, and taking into account any previous history of non-compliance in respect to similar food labelling offences ;
- there is evidence of the re-dating of use by dates.

Where there is a risk of injury to health, the Court may impose a hygiene prohibition order following certain prosecutions. In appropriate cases, officers will ensure that they carry out a second or subsequent inspection of the premises prior to a court hearing. If the proprietor is convicted, and it is believed there is still a risk of injury to health, the attention of the court will be drawn to the powers available to them to prohibit premises, equipment or persons.

### **Working with Other Agencies**

Occasionally, the Council works with other agencies such as  
The Food Standards Agency (FSA),  
Health and Safety Executive (HSE),  
Department of Food & Rural Affairs (Defra),  
Primary Care Trust,  
Health Protection Agency  
Surrey County Council Trading Standards Department.  
Surrey Police and Fire services.

Any food safety enforcement action resulting from a multi-agency approach will be in accordance with the procedures outlined in this enforcement policy.

### **Enforcement of the requirement for documented food safety management system**

Article 5 of regulation (EC) No 853/2004 of The European Parliament and of The Council of 29 April 2004 on the Hygiene of Foodstuffs, requires food business operators to put in place, implement and maintain a permanent procedure or procedures based on the HACCP principals and for those procedures to be documented and records kept commensurate with the nature and size of the business.

The Council recognise that in particular, the documenting of the system will not come as first nature to the smaller food business operators. To assist food business operators (FBOs) with compliance with this article, the service will promote the Food Standards Agency's "Safer Food Better Business" (SFBB) system as a way for businesses to comply with the law. Where there is an existing food safety management system in place, or where SFBB is not appropriate, the service will instead evaluate the existing arrangements for compliance with this article.

Where there is a need and where possible, the service will offer coaching sessions with individual businesses on the correct use of SFBB and will conduct specific evaluation visits to that business to assess with compliance.

Apart from specific evaluation visits, evaluation will mainly be done as part of routine food hygiene inspections.

Whilst securing compliance with Article 5 should always be an objective of inspection, officers will give priority to those businesses which present a significant risk to public health, i.e. those lacking management controls, with a score of 20 or more for this risk factor and those with a past history of non-compliance.

The enforcement of Article 5 will be performed using the same principles as this policy ie taking no action, informal action, the service of a statutory notice, the issuing of a simple caution or a prosecution as circumstances, guidance and judgement dictate.

# Health & Safety      Enforcement Policy      Annex 3

## **Introduction**

Epsom and Ewell Borough Council has a duty to enforce the Health and Safety at Work Act 1974 and associated Regulations within its district.

The purpose of this Annex is to inform interested parties how the Council enforces health and safety legislation. This Enforcement Policy Statement sets out the general principles and approach the Council and any Inspectors of Health and Safety appointed by the Council will follow.

## **The purpose of enforcement**

The term 'enforcement' has a wide meaning and applies to all dealings between the Council and those on whom the law places duties (e.g. employers, the self-employed, employees and others).

Sometimes the law is prescriptive – spelling out in detail what must be done. However, much of modern health and safety law is goal setting – setting out what must be achieved, but not how it must be done. Guidance on how to achieve these goals is often set out in Approved Codes of Practice (ACOP's) and there is a wide range of additional advisory material describing good practice. Following this guidance is not compulsory, but doing so is normally enough to comply with the law.

If someone is prosecuted for a breach of health and safety law and did not follow the relevant provisions of an ACOP, then the onus is on them to show that they complied with the law in another way. In considering whether the law has been complied with, inspectors will take relevant ACOP's and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them.

The purpose of enforcement is to:

- ensure that duty holders take action to deal immediately with serious risks;
- promote and achieve sustained compliance with the law;
- ensure that duty holders who breach health and safety requirements, and directors or managers who fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts;
- enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor to assist such claims.

In allocating resources, the Council has regard to the principles set out below, the objectives published in Health & Safety Commission (HSC) and the HSE/Local Authority Enforcement Liaison Committee's (HELA) strategic plans and the need to maintain a balance between enforcement and other activities, including inspection.

## **Principles of Enforcement**

The Council believes in firm but fair enforcement of health and safety law in line with the HSC Enforcement Policy Statement and the following five principles:

## **Proportionality**

Proportionality means relating enforcement action to the risks.

Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by the Council to achieve compliance or bring duty holders to account for non-compliance will be proportionate to any risks to health and safety, or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law.

In practice, applying the principle of proportionality means that the Council will take particular account of how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

Some health and safety duties are specific and absolute. Others require action as far as is reasonably practicable. The Council applies the principle of proportionality in relation to both kinds of duty. Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where duty holders must control risks so far as is reasonably practicable, the Council will consider protective measures taken by duty holders, taking account of the degree of risk on the one hand, and on the other the forfeited resources, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, the duty holder must take measures and incur costs to reduce the risk.

The Council will expect relevant good practice to be followed. Where in particular cases this is not clearly established, health and safety law effectively requires duty holders to evaluate the significance of the risks to determine what action needs to be taken. Ultimately, the courts determine what is reasonably practicable in particular cases.

Some irreducible risks may be so serious that they cannot be permitted irrespective of the consequences. Conversely some risks may be so small that spending more to reduce them would not be expected.

## **Targeting**

Targeting means making sure that contacts are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it – whether employers, manufacturers, suppliers, or others.

The Council operates systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a duty holder's operations. The duty holder's management competence is important, because a relatively low hazard site poorly managed can entail greater risk to workers or the public than a higher hazard site where proper and adequate risk control measures are in place. Certain very high hazard sites will receive regular inspections so that the Council can give public assurance that such risks are properly controlled.

Any enforcement action will be directed against duty holders responsible for a breach. This may be employers in relation to workers or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; designers or clients of projects; or employees themselves. Where several duty holders have responsibilities, the Council may

take action against more than one when it is appropriate to do so in accordance with this policy.

### **Consistency**

Duty holders managing similar risks expect a consistent approach from enforcing authorities in the advice tendered; the use of enforcement notices, approvals etc; decisions on whether to prosecute; and in the response to incidents.

The Council recognises that in practice consistency is not a simple matter. Inspectors are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the duty holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Decisions on enforcement action are discretionary, involving judgement by the enforcer. The Council has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

### **Transparency**

Transparency means helping duty holders to understand what is expected of them and what they should expect from the enforcing authorities. It also means making clear to duty holders not only what they have to do but also, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

This statement sets out the general policy framework within which the Council will operate. Duty holders, employees, their representatives and others also need to know what to expect when an inspector calls and what rights of complaint are open to them. As appropriate Inspectors will issue the leaflet 'What to expect when a health and safety inspector calls' to those they visit. This explains what employers and employees and their representatives can expect when a health and safety inspector calls at a workplace.

In particular when inspectors offer duty holders information, or advice, face to face or in writing, including any warning, inspectors will tell the duty holder what to do to comply with the law, and explain why. Inspectors will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice.

In the case of improvement notices the inspector will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why, and by when, and that in the inspector's opinion a breach of the law has been committed.

In the case of a prohibition notice the notice will explain why the prohibition is necessary.

### **Accountability**

Regulators are accountable to the public for their actions. This means that enforcing authorities must have policies and standards (such as the four enforcement principles above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

The Council aims to ensure a fair and consistent level of enforcement. Complaints about decisions by inspectors or if procedures have not been followed should be made to the inspectors' manager. If this does not resolve the issue the Council has a Complaints Procedure, a copy of this procedure can be obtained from the Council website or offices.

Duty holders will be informed in writing about the right of appeal to an Industrial Tribunal when an improvement or prohibition notice is served.

## **Enforcement Measures and Approaches**

### **Investigation**

The Council will use discretion in deciding whether incidents, cases of ill health or complaints should be investigated. Documented procedures are in place to guide Inspectors as to those incidents where intervention should be undertaken. These procedures take into account the HSC's Strategic Plan, and the Council's annual service plan.

In general to maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. HSC's Strategic Plan recognises that it is neither possible nor necessary for the purposes of the Act to investigate all issues of non-compliance with the law which are uncovered in the course of preventive inspection, or in the investigation of reported events.

The Council will always carry out a site investigation of a reportable work-related death, unless there are other specific reasons for not doing so, in which case those reasons will be recorded.

In conducting investigations the Council will take into account any potential complimentary or shared enforcement roles. Relevant information will also be passed on to other Regulators where it is appropriate to do so e.g. as part of the Lead Authority Partnership Scheme.

### **Enforcement Options**

The Council has a range of tools at its disposal in seeking to secure compliance with the law and to ensure an impartial and justified response to criminal offences. These are discussed in the sections below.

The decision on which enforcement option is chosen will involve consideration of a number of criteria as previously stated. It will also involve the application of the principles of the Enforcement Management Model (EMM) in all the regulatory actions when deciding on enforcement action; however, Inspectors will only formally apply the EMM and record the outcome in certain circumstances, e.g. following the investigation of fatalities and serious breaches of the legislation.

### **Informal Action**

As much as possible compliance will be achieved through informal written and verbal correspondence and advice; and only in the more serious instances will formal enforcement be utilised.

Informal actions include offering advice, verbal warnings and requests for action, on-site report forms, informal warning letters, and the issuing of leaflets, guidance notes and booklets. In general these are appropriate where the inspecting officer feels that a significant risk of injury does not exist; the incident does not constitute a repeat offence; and it is likely that informal action will secure compliance.

Verbal advice and on-site reports will be favoured where there are a few matters required to achieve compliance of limited severity. In other cases informal warning letters will be utilised. The Council will ensure that we clearly differentiate between legal requirements and recommendations in all verbal and written communications.

### **Improvement Notices**

An Improvement Notice may be issued where an inspector is of the opinion that a person is contravening a relevant statutory provision or has contravened one or more provisions in circumstances that make it likely that the contravention will continue or be repeated.

The Officer will discuss the improvement notice and, if possible, resolve points of difference, before serving it. The notice will say what needs to be done, why and by when. The time period within which to take remedial action will be at least 21 days to allow the duty holder time to appeal to an Industrial Tribunal, if they so wish.

### **Prohibition Notices / Deferred Prohibition Notices**

A Prohibition Notices/Deferred Prohibition Notice will be served where an activity involves, or will involve, a risk of serious personal injury. The notice will prohibit the activity immediately or after a specified time period, and will not allow it to be resumed until remedial action has been taken. The notice will explain why the action is necessary. The duty holder will be told in writing about the right of appeal an Industrial Tribunal.

### **Seizure/Rendering Harmless**

Seizure or other powers can be used to seize and / or render harmless any article, substance or equipment which is believed to be a cause of imminent danger or which could cause serious personal injury. Inspectors will follow all relevant guidance, exercising careful judgement and considering the need to seek expert advice before using these powers.

### **Simple Cautions and Prosecutions**

Simple cautions and prosecutions are important ways to bring duty holders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy, the Council will use one of these measures.

While the primary purpose of the Council is to ensure that duty holders manage and control risks effectively, thus preventing harm, prosecution is an essential part of enforcement.

Subject to the previous guidance, the Council will normally prosecute, or recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances apply:

- death was a result of a breach of the legislation;
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- there has been reckless disregard of health and safety requirements;
- there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- work has been carried out without or in serious non-compliance with an appropriate licence or safety case;
- a duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;

- there has been a failure to comply with an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a simple caution;
- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- Inspectors have been intentionally obstructed in the lawful course of their duties.
- where Inspectors are assaulted, the Council will seek police assistance, with a view to seeking the prosecution of offenders.

### **Prosecution of individuals**

Subject to the above, the Council will identify and prosecute or recommend prosecution of individuals if they consider that a prosecution is warranted. In particular, they will consider the management chain and the role played by individual directors and managers and will take action against them where the inspection or investigation reveals that the offence was committed with their consent or connivance or to have been attributable to neglect on their part and where it would be appropriate to do so in accordance with this policy. Where appropriate, the Council will seek disqualification of directors under the Company Directors Disqualification Act 1986.

### **Action by the courts**

Health and Safety law gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences. Higher courts may impose unlimited fines. A list of the sanctions presently available to the courts is included in this policy.

The Council will, when appropriate, draw to the court's attention all the factors which are relevant to the court's decision as to what sentence is appropriate on conviction. The Court of Appeal has given guidance on some of the factors which should inform the courts in health and safety cases (*R v F Howe and Son (Engineers) Ltd* [1999] 2 All ER, and subsequent judgements). The Council notes that the Lord Chancellor has said that someone injured by a breach of health and safety legislation is no less a victim than someone who is assaulted.

### **Representations to the courts**

In cases of sufficient seriousness, and when given the opportunity, the Council will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make, the Council will have regard to Court of Appeal guidance. The Court of Appeal has said 'In our judgement magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence'.

### **Death at work**

Where there has been a breach of the law leading to a work-related death, the Council will consider whether the circumstances of the case might justify a charge of manslaughter. In England and Wales, to ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, HSE, the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS) have jointly agreed and published 'Work-related deaths: A protocol for liaison'. Having regard to this protocol the Council has an internal procedure to guide Inspectors investigating work related deaths.

The police are responsible for deciding whether to pursue a manslaughter investigation and whether to refer a case to the CPS to consider possible manslaughter charges. The Council is responsible for investigating possible health and safety offences. If in the course of their health and safety investigation, the Council find evidence suggesting manslaughter, they will pass it on to the police. If the police or the CPS decide not to pursue a manslaughter case, the Council will normally bring a health and safety prosecution in accordance with this policy.

### **Penalties for Health and Safety Offences**

The Health and Safety at Work etc Act 1974 (the HSW Act), section 33 (as amended) sets out the offences and maximum penalties under health and safety legislation.

Failing to comply with an improvement or prohibition notice, or a court remedy order (issued under the HSW Act sections 21, 22 and 42 respectively):

Lower court maximum £20,000 and/or 6 months' imprisonment

Higher court maximum Unlimited fine and/or 2 years' imprisonment

Breach of sections 2-6 of the HSW Act, which set out the general duties of employers, self-employed persons, manufacturers and suppliers to safeguard the health and safety of workers and members of the public who may be affected by work activities:

Lower court maximum £20,000

Higher court maximum Unlimited fine

Other breaches of the HSW Act and breaches of 'relevant statutory provisions' under the Act, which include all health and safety regulations. These impose both general and more specific requirements, such as requirements to carry out a suitable and sufficient risk assessment or to provide suitable personal protective equipment:

Lower court maximum £5,000

Higher court maximum Unlimited fine

On conviction of directors for indictable offences in connection with the management of a company (all of the above, by virtue of the HSW Act sections 36 and 37), the courts may also make a disqualification order (Company Directors Disqualification Act 1986, sections 1 and 2). The courts have exercised this power following health and safety convictions. Health and safety inspectors draw these powers to the court's attention whenever appropriate.

Lower court maximum 5 years' disqualification

Higher court maximum 15 years' disqualification

### Further information

More information about the way health and safety legislation is enforced and about health and safety legislation generally can be found in these free leaflets:

- Successful health and safety management HSG65 (Second edition) HSE Books 1997 ISBN 0 7176 1276 7
- What to expect when a health and safety inspector calls: A brief guide for businesses, employees and their representatives HSC14 HSE Books 1998
- Work-related deaths: A protocol for liaison MISC114 HSE Books 1998

While every effort has been made to ensure the accuracy of the references listed in this publication, their future availability cannot be guaranteed.

# Smoke free Premises and Vehicles Enforcement Policy 2007

## Annex 4

### **Scope**

The Council is responsible for enforcement of the provisions of the Smoke-free Regulations across all sectors including, public buildings and vehicles, which relates to approximately 1,820 premises.

The Health Act 2006 and regulations made thereunder, chiefly the Smoke-free (Premises and Enforcement) Regulations 2006, set out the requirements of smoke free legislation and define the premises, vehicles and other places to which the regulations and any exemptions apply.

Enforcement action can be taken against both persons in control of smoke free premises, and individuals (including the public) for offences committed under the legislation.

For the purpose of this part of the Enforcement Policy premises includes vehicles, public places and other areas to which smoke free regulations apply.

### **Objective**

It is the Council's policy to protect the health of both the public and employees, by ensuring compliance with these regulations and preventing exposure to second-hand smoke in any premises to which the smoke free regulations apply.

Enforcement will be informed by the principles of proportionality in applying the law and securing compliance, consistency of approach, targeting of enforcement action and transparency about how we operate and what those regulated can expect.

In carrying out these functions full regard will be given to relevant guidance and advice, in particular that issued by LACORS (Local Authorities Co-ordinators of Regulatory Services), CIEH (Chartered Institute of Environmental Health) and Department of Health.

All authorised officers will have regard to the Environmental Health Service Enforcement Policy and this policy when making enforcement decisions. Any departure from the policy must be exceptional and capable of justification and be approved by the Environmental Health Services Manager.

### **Transparency**

Transparency means helping duty holders to understand what is expected of them and what they should expect from Council officers. It also means making clear to duty holders not only what they have to do, but where this is relevant, what they don't. In this regard we will always distinguish between statutory requirements and advice or guidance about what is desirable but not compulsory.

### **Targeting**

Targeting means making sure that inspections are targeted at premises which give rise to the most serious risks or where smoking is least well controlled.

Inspections carried out by authorised officers will either be proactive, e.g. to advise businesses and to confirm compliance with the legislation, or reactive, i.e. in response to a complaint. In some cases inspections will be incorporated as part of other routine work, such as health and safety, food safety and licensing.

One or more of the following criteria may be used to target inspections.

- premises open to substantive numbers of people.
- premises where there is an absence of pre-existing self imposed smoking controls (i.e. there would initially be limited value in prioritising places such as cinemas, offices and shopping centres, which already have no-smoking policies).
- premises where there is a low confidence in management and/or a history of non-compliance or complaints.
- where information is received from other regulatory agencies or the National Smokefree Compliance Line.

Examples of the different approaches to inspections that may be used are set out below.

**Official** - Officers will announce themselves upon arrival and show appropriate identification to person in charge of premises, prior to assessing compliance with the provisions.

**Covert** – Officers will assess compliance by observation within the premises, and subsequently announce themselves and show appropriate identification to person in charge of premises, at the end of the period of surveillance.

**Covert and leave** – Officers will assess compliance by observation and then leaves without announcing themselves. Officers returns at an appropriate time to discuss their findings with the person in charge of the premises.

### **Enforcement Options**

Under the regulations it is an offence, subject to exemptions to:

- fail to display the specified no smoking signage
- smoke in a smoke free premises
- fail to prevent smoking where the regulations apply, and
- to obstruct an authorised officer.
- there are a number of enforcement options available:
  - informal approach
  - fixed penalty notice
  - prosecution

### **Informal approach**

Initially an educational, advisory approach will be taken, this includes advice, verbal warnings and requests for action, the use of informal letters, emails or report forms and issuing leaflets and guidance.

It is the intention that enforcement action only be taken forward when the seriousness of the situation warrants it. The approach will be non-confrontational, focused on raising awareness and understanding to ensure compliance.

Informal action would be appropriate in the following circumstances:

- where non-compliance is not serious enough to warrant formal action, for example, the first occasion in which the required signage is not displayed.
- where there is insufficient evidence to justify formal action, for example where a complaint is received regarding smoking in premises but an officer does not witness any contraventions
- where contraventions are found when a business requests an initial inspection to seek advice on compliance

### **Fixed Penalty Notices (FPNs)**

An authorised officer, who has reason to believe that a person has committed an offence in relation to smoking in smoke free premises or not displaying the required signage, can issue an FPN. There is no FPN available for failing to control smoking.

FPNs offer a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a fixed penalty charge within the time period specified in the notice.

If the penalty is paid in accordance with the penalty notice then no proceedings for the offence can be brought.

In relation to the offence of failing to display the required signage a FPN will generally be issued where there is a history of non-compliance or where guidance and a previous warning has been given.

In relation to the offence of smoking in a smoke free premises a FPN will generally be issued to a person smoking where the premises concerned have demonstrated that they have taken all reasonable precautions to prevent smoking, including displaying the required signage. Notwithstanding the above where an individual persists in smoking, having received a verbal or written warning from an authorised officer, and then a FPN may be issued without consideration as to the precautions taken by the premises to prevent smoking.

### **Prosecution**

Enforcement action will be considered where it is evident that serious efforts are not being made to comply, or the attitude is un-cooperative or antagonistic. Additionally where there are repeated offences or where in the officer's opinion issue of a FPN is unlikely to result in remedy of the defect, then prosecution will be considered where it is in the public interest to proceed.

Prosecutions will be used:

- in cases of non-payment following a fixed penalty notice.
- where smoking is taking place in smoke free premises and all reasonable precautions have not been taken to prevent smoking, by the person in control of the premises, then proceedings against the person in control of the premises will be considered.
- prosecution will also be considered where an authorised officer is obstructed in performance of smoke free duties.

**Enforcement in premises where the Council has an interest**

In premises in which the Council has ownership or management interest breaches of smoke free requirements will be brought to the attention to the relevant Director without undue delay.

Notwithstanding the above, all premises where the council has an interest will be treated in exactly the same way as other premises and we will ensure that the attention received is in accordance with the criteria applied to all other premises.

Employees of the Council committing offences will be regarded in the same manner as other persons found committing offences. In addition, where these offences are committed within council premises or vehicles, action may also be taken under the Council's disciplinary procedures in accordance with its smoking policy.

**Making information about smoke free compliance available to the public**

Where it is in the public interest, the Council may from time to time make available or publish information in relation to smoke free regulation, including details of non-compliant premises, fixed penalty notices served and prosecutions taken.