

Environmental Health Services Enforcement Policy 2004

committee reported

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Environmental Health Services

ENFORCEMENT POLICY

1 INTRODUCTION

On 21 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. Best Value Performance Indicator 166 – Checklist for Enforcement Best Practice for Environmental Health and Trading Standards places a requirement on local authorities to have an enforcement policy approved by its members. Environmental Health Services has produced this enforcement policy in accordance with these principles.

2 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 Noise and air quality
- Contaminated Land
- Pest Control
- Dog Control
- Cemeteries

This document is the overarching enforcement policy for the entire Division. It outlines the approach to enforcement and lays down the principles that will be followed in deciding upon, and taking action.

It is intended that this Policy will be supplemented by more specific enforcement procedure documents, where appropriate, relating to the areas of work listed above and by detailed procedures and work instructions. See Annex.

3 APPROVAL

The Council's Social Commission on 28 June 2001 formally endorsed the existing enforcement policy. This is the second review undertaken since the original approval.

4 REVIEW

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

5 ACCESS TO THE POLICY

In accordance with Best Value Performance Indicator 166 - Checklist of Enforcement Best Practice for Environmental Health and Trading Standards 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

6 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. Additional enforcement protocols and procedures relating to the specialist operational/ functional areas within the Division supplement this document and reinforce these objectives.

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 want to comply with the law therefore care will be taken to help businesses and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice and safety.

This Council has adopted the central and local government Concordat on Good Enforcement. Included in the term 'enforcement' are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the concordat it commits the Council to the concordat policies and procedures, which contribute to best value, and to providing information to show that they are being observed.

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

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 standards will be made available to businesses and others who are regulated and are available on the 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. It will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

HELPFULNESS

The Council believes that prevention is better than cure and that its role therefore 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 Division 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 by ensuring that any action required is proportionate to the risks involved or seriousness of any breach. 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'.

It 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

The Council will 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 Co-ordinating Body on Food and Trading Standards (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 advised.

The Council aims to work in conjunction with other agencies such as the HSE, Police and the Office of Fair Trading e.t.c., 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 hazard warnings.

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 24 HOUR 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.

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

PROCEDURES

TRANSPARENCY

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 or 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. Usually a formal notice will be served, which depending upon circumstances, may be verified by a court order.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (this advice 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 Division and what rights they have to make a complaint.

A copy of the Council's leaflet 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 food safety, health and safety and trading standards legislation will be based on a risk rating system, the Council's corporate objectives and national and local initiatives. Risk rating will be determined in accordance with advice and guidance issued by the Government and advisory bodies. This may result in particular types of business or particular sectors of the community being targeted from time to time as the focus of available resources.

7 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 Councils aim is to achieve co-operation and promote a positive culture to achieve compliance with legal requirements.

Authorisation of Officers

All officers undertaking enforcement action will be authorised and have the necessary training and competency to enable them to exercise the powers available to them. 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

- Environmental Health Services Manager
- Environmental Health Officers (EHO)
- Licensing and Grants Team Leader
- Licensing Officers (LO)
- Cemetery superintendent and registrar

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

Prosecutions must be authorised by the Head of Regulatory Services or Environmental Health Services Manager and a qualified solicitor acting on behalf of the Chief Solicitor.

All Formal Cautions must be authorised by the Head of Regulatory 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 he/she wishes to gain entry for a specified purpose on a specified day. There are differing minimum periods of notice for different powers of entry. 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.

Certain powers of entry also provide for a Justice of the Peace to issue a warrant authorising entry by force, if needed. The Justice must be shown sworn information in writing, that such entry is necessary either for the purpose of determining if the Council

under the law should exercise any powers, or for the purpose of ascertaining if an offence has been committed.

The Justice can only grant the warrant if they are satisfied that admission to the premises has been refused after giving the appropriate notice before entry **or** they are satisfied that application for admission would defeat the purpose of the entry.

No application for a warrant to enter will be made unless 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 options that are 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 formal caution
- To prosecute
- To carry out works in default
- To conduct a seizure
- To take forfeiture proceedings
- To take out an injunction
- 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 especially vulnerable and there is no risk to health, then no further action

by the Council may be required. Notwithstanding this, the investigating officer should note his/her findings and the reason for decision, which must be recorded 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 may 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

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.

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 Head of Regulatory Services or Environmental Health Services Manager

Notices will be served in accordance with any relevant statutory guidance and codes of practice. 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. Wherever possible the officer serving the notice will attempt to discuss the need for and requirements of the notice with the person responsible for compliance.

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 before formal appeals.

Housing – Minded To Notices

~~*Before the Council takes certain types of enforcement action, except in a case where it appears to the Council necessary to take such action immediately, a ‘Minded To’ Notice should be served. The notice informs the owner or person in control of the property that the Council is considering taking formal action and gives them an opportunity to make representations. The notice will give the recipient a reasonable timescale in which to make representations.*~~

~~*The Housing (Fitness Enforcement Procedures) Order 1996 requires a ‘Minded To’ notice to be served prior to serving notices for unfitness, substantial disrepair and before making closing and demolition orders.*~~

~~*The Housing (Enforcement Procedures for Houses In Multiple Occupation) Order 1997 requires a ‘Minded To’ notice to be served prior to serving notices for the execution of works either to render Houses in Multiple Occupation fit for the number of occupants or to remedy neglect in management.*~~

Formal Cautions

Formal cautions will be issued in accordance with guidance laid down in Home Office Circular 18/1994. The aim of the formal caution is to deal quickly and simply with less serious offences, divert offenders from unnecessary appearance in the criminal courts and reduce the chances of their re-offending.

Formal cautions will only be offered where the Division has confidence that this is in the public interest and where there is sufficient evidence to support a prosecution should the offender refuse to accept the caution, i.e.:

- 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.

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

Prosecution

The decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. Prosecution can have serious implications for all involved. The Council has regard to the Code for Crown Prosecutors so that it can make fair and consistent decisions about prosecutions. 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 investigating officer, Head of Regulatory Services or Environmental Health Services Manager and the Chief Solicitor or their nominated representative will assess relevant factors.

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

- The alleged offence involves an obvious breach of the law such that the safety, health or well being of residents or others is or has been 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 in full or part with a statutory requirement after having been given reasonable opportunity to do so
- A history of similar offences involving risk to the safety, health or well being of the public

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/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 seriousness of the alleged offence
- 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 (formal 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 the Chief Solicitor within 6 weeks of the decision to prosecute being made.

Fully documented contemporaneous notes will be kept of all cases.

Accepting guilty pleas

Where a defendant wishes to plead guilty to some, but not all, of the charges made against them, or to a different but less serious offence, the Council will consider accepting this plea if they feel that the court will still be able to pass a sentence matching the seriousness of the actual offence. This decision will be made through discussion with the Chief Solicitor or their nominated representative.

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. 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 Divisional 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 the Chief Solicitor.

Referral to Licensing Hearing Sub-Committee

Should serious breaches of Licensing conditions be breached, the Environmental Health Service 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; renew the licence; impose additional licence conditions in connection with supporting the Licensing Objectives 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 license, 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

8 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 Environmental Health Services Manager to the Social Committee and Licensing Committee for the proper discharge of the powers and duties.

The Environmental Health Services Manager and 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.

Liaison meetings with Surrey Fire & Rescue Service

Consultees on this policy:

Surrey Fire & Rescue Service
E&EBC Building Control Division
E&EBC Planning Division

Principal Employers within the Borough -

WS Atkins Plc
Hewitt Bacon & Woodrow
J Sainsbury plc
Nescot
Royal Mail
Surrey Oaklands Trust
Bellwater
Britannic Money
Bytes Technology Group
Dickins & Jones
Epsom & Ewell High School
Epsom Coaches
Epsom College
Gardner Merchant Ltd
Glynn Technology School
Greenman Group Plc
Homebase
Marks & Spencer plc
Premium Credit
Royal Automobile Club
Surrey Institute of Art & Design
Taylor Nelson Sofres plc
Tchibo Coffee International
Waitrose Ltd
Wilsons Group of Companies
Grayside Insurance

HOUSING ENFORCEMENT PROCEDURE

Annex 1

'Minded To' Notices will not be used where there is an imminent risk to health or the landlord is either absent or has a poor history of compliance.

If satisfactory representations have been received the recipient of the notice will be informed in writing of the agreed arrangements, including any changes to the schedule of works and timescales for the completion of works.

In situations where representations have not been made, the representations have been unsatisfactory, or there has not been sufficient progress with works after acceptance of representations, enforcement action will be taken.

Statutory Notices

In cases of unfitness, disrepair or failing to comply with legislation in respect of Houses in Multiple Occupation, a risk-based approach will be used to determine the most satisfactory course of action. All relevant guidance will be followed in securing the improvement and/ or repairs.

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.

Repair Notices under Section 189 and 190 of the Housing Act 1985

Notice under Section 352 of the Housing Act 1985

Deferred Action Notice under Section 81 of the Housing Grants Construction and Regeneration Act 1996

Renewal of Deferred Action Notice under Section 84 of the Housing Grants, Construction and Regeneration Act 1996

Closing Order under Section 264 of the Housing Act 1985

Demolition Order under Section 265 of the Housing Act 1985

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

Timescales for Works

Following the service of a 'Minded To' notice, a reasonable timescale for the works will be set down where representations are made and will be dependent on the nature of the works.

Where a formal notice is served, the timescales will be in accordance with those specified in the statutory rights of appeal and will be dependent on the nature of the works.

Extensions to timescales will be considered where there are genuine reasons for delay and there has been some progress with the works.

Works in Default

*Where a Statutory Notice has been served and-
the specified works have not been completed within the required timescale and no acceptable representations are made to extend the timescale; or
before the expiry of the required timescale it appears that reasonable progress is not being made towards compliance with the notice the Council may undertake to carry out the works in default.*

The person responsible for carrying out the works will be notified prior to the works being undertaken. The Council will, except in exceptional circumstances, seek to recover all costs incurred in the execution of the works including any administration fees.

Unfit Premises

Where an unfit property has been identified, the most satisfactory course of action will be taken in accordance with the Local Government and Housing Act 1989, as amended by the Housing Grants Construction and Regeneration Act 1996. The guidance within Department of the Environment Circular 17/96 will also be taken into account.

Renovation

In the majority of cases, the condition of properties is likely to be such that repairs and/or improvements will be possible, thus avoiding the need for closure or demolition. To assist with the cost of renovation, Housing Renewal grants are available to owner-occupiers who meet the qualifying criteria set out in the Housing Renovation Grant Policy.

Demolition and Closing Orders

Where this is deemed to be the most appropriate course of action, the Council will undertake to secure accommodation for any occupants who may be displaced.

Deferred Action Notice

Where an unfit property is identified, a deferred action notice may be considered appropriate in the following circumstances:-

Where an elderly occupier may not be able to cope with the disturbance caused by extensive renovation works or they do not wish to leave their home.

Where the funding is not currently available, but is likely to be available within 2 years.

Once a deferred action notice has been served, it does not prevent the Council from taking any other course of action in relation to the premises. The deferred action notice can be reviewed at any time as can the renewal of deferred action and must be reviewed not later than 2 years after the notice becomes operative, and at intervals of not more than 2 years thereafter.

Houses in Multiple Occupation ('HMO')

The Council has adopted standards for HMOs based on the categories of HMO established by the Chartered Institute of Environmental Health.

Under the Housing (Fire Safety in Houses in Multiple Occupation) Order 1997, a Local Authority has a duty to inspect certain categories of HMOs to ensure there is adequate provision for means of escape from fire and for other fire precautions. Enforcement is therefore targeted at these types of HMO's.

Where an HMO does not meet the requirements of Section 604 and/or 352 of the Housing Act 1985 (as amended) and the Council's HMO standards or the property is found to be in serious disrepair, enforcement action will be considered.

Where a HMO fails to meet fire safety requirements, the Fire Safety Officer from Surrey Fire and Rescue Service will be consulted on the works necessary to ensure adequate fire precautions are implemented.

Any enforcement action will be subject to consultation with the Planning Department to ensure there are no breaches of planning legislation.

Where a state of affairs exists which calls for the service of a Notice or further Notice under Section 352, a Direction under Section 354 of the Housing Act 1985 may also be served to limit the number of occupants in the house.

In certain circumstances when serving a Direction under section 354 it may be necessary to serve a section 352 notice at the same time.

Where it is not possible to provide an adequate means of escape or adequate other fire precautions, an undertaking can be accepted from the landlord or a Closing Order made to ensure that part of the house is not used for human habitation.

In accordance with Section 71 of the Housing Act 1996, where a Section 352 notice is served after 1 March 1997 and the works are carried out satisfactorily, another notice under this section in respect of the same requirement will not be served within 5 years from the date of service of the notice unless the Council considers that there has been a change in circumstances in relation to the premises, such as a re-arrangement of facilities or a significant change in the number of occupants.

Where a HMO is or is likely to become overcrowded and does not meet the Council's standards, an Overcrowding Notice under Section 358 of the Housing Act 1985 may be served to prevent an excessive number of persons being permitted to sleep on the premises or to prevent new residents from taking up occupation.

Where there is a neglect in management standards within a HMO and it fails to meet the requirements of the Housing (Management of Houses in Multiple Occupation) Regulations 1990, a notice under Section 372 of the Housing Act 1985 may be served specifying the works which, in the opinion of the Council, are required to make good the neglect.

In cases where there is an imminent risk to the health, safety and welfare of the tenants in a HMO, a Control Order under Section 379 of the Housing Act 1985 will be considered.

Statutory Nuisance

In cases where a statutory nuisance is established and/or the conditions are found to be prejudicial to health and informal attempts to abate the nuisance are unsuccessful, an abatement notice under Section 80 of the Environmental Protection Act 1990 will be served.

Examples of conditions which may cause a statutory nuisance or be prejudicial to health include:-

*Dampness or condensation resulting in mould growth
Extensive water penetration
Condition of mobile homes*

FOOD SAFETY ENFORCEMENT PROCEDURE**Annex 2****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 be it verbal warnings, the issue of written warnings or statutory notices, or prosecution, 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.

All authorised officers when making decisions will abide by this policy.

All authorised officers will be fully acquainted with the requirements of this policy. Initial and ongoing training considerations shall be addressed.

Where appropriate this policy will be read in conjunction with this Authority's Hazard Analysis and Health and Safety Enforcement Procedure.

AUTHORISATION

The designation of officers who may carry out enforcement is contained in LACORS advice in Section 3 of the Enforcement Policy Guidelines dated February 1994.

Designation of Persons who may authorise formal action.

In this context, formal action means a formal caution (in line with LACORS guidance - ref.: FS2923) or a prosecution (in line with the Food Safety Act Code of Practice No.2, Section C and guidance issued in Sections 3, 6 and 7 of this document).

The competency of officers specialising in food safety will follow the guidance in Code of Practice No.9 and other guidance issued from time to time by recognised bodies. Namely:

2.4.1 (a) INSPECTIONS - authorisation in accordance with Section G of Code of Practice No.9.

2.4.1 (b) SIGNING OF IMPROVEMENT NOTICES will only be undertaken by qualified officers with experience in food law enforcement, in accordance with Code of Practice No.5, para.20, i.e.

Environmental Health Officers;

Official Veterinary Surgeons;

Technical Officers who have obtained a degree in an appropriate food science or technology and received a period of structured training in relation to food law and enforcement powers and demonstrated an understanding in the use of these powers (Code of Practice No.5, para.21). Such training should be for a period of not less than 6 months.

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 or OVS 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, including prosecution. To achieve and maintain consistency, it is important that the guidance in the Quality Manual, procedure file, and in statutory Codes of Practice, LACORS circulars and advice offered in relation to the Home Authority Principle is always considered and followed where appropriate.

This Authority will seek to ensure that enforcement decisions are always consistent, balanced, fair and relate to common standards that ensure that the public is adequately protected. The Authority will base all enforcement decisions on an assessment of risk to the public health and will consider many criteria including seriousness of offence, the enterprise's past history, confidence in management, the consequences of non-compliance and the likely effectiveness of the various enforcement options.

Guidance on enforcement options is contained in Code of Practice 2 made under Section 40 of the Food Safety Act 1990.

In accordance with Department of Health 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 Food Liaison Group. Where agreement can not be reached via LACORS, referral of the matter to Legal Services should be considered.

Compliance should 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 to secure compliance with legislation includes offering advice, verbal warnings and requests for action, the use of written advice and requirements and the issue of inspection reports, including those generated on a premises following an inspection.

When an informal approach is used to secure compliance with food safety legislation, it is important that any written documentation issued:

*complies with Code of Practice 9,
contains all the clear unambiguous information necessary to understand what work is required and why it is necessary;
clearly indicates any recommendations of good practice, under an appropriate heading, to show that they are not a legal requirement;
ensures that the recipient is aware that the content of the written documentation is not exhaustive.*

The need to clearly differentiate between legal requirements and matters that are recommended as good practice should be recognised in all enforcement action, even if only giving verbal advice.

STATUTORY NOTICES

IMPROVEMENT NOTICES

The use of Improvement Notice is only appropriate if one or more of the following criteria apply:

There are significant contraventions of the legislation (it is not appropriate to issue a Notice for minor technical contravention)

There is a lack of confidence in the proprietor or enterprise to respond to an informal approach.

There is a history of non-compliance with informal action.

Standards are generally poor, with little management awareness of statutory requirements.

The consequences of non-compliance could be potentially serious or deteriorating.

In general, the use of Improvement Notices should relate to risk to health.

Improvement Notices may only be issued by Authorised Officers

SIGNATURE

The Authorised Officer who has witnessed the contravention and is satisfied that it is significant, and that the above criteria have been met and satisfied should sign the Notice.

Sufficient evidence in the form of photographs, diagrams or detailed notes made at the time of inspection should be available in case of appeal or non-compliance with a Notice.

The officer serving the notice will have followed the guidance in Code of Practice 5 regarding the service of Improvement Notices, and referred to any LACORS guidance regarding the use of Improvement Notices, together with any case law relating to appeals against Improvement Notices.

Prior to service of the Notice the Authorised Officer should discuss realistic time limits on Notices (preferably agreed with the proprietor as attainable and appropriate).

FAILURE TO COMPLY WITH AN IMPROVEMENT NOTICE

A revisit will be made to a premise within 24 hours of expiry of an Improvement Notice. Failure to comply with the notice will result in proceedings being instituted.

Home and originating Authorities should be consulted and advised of formal action, including the outcome.

Guidance on enforcement options is contained in Code of Practice 2 made under Section 40 of the Food Safety Act 1990.

In accordance with Department of Health and LACORS guidance, where this Authority is considering taking enforcement action that is not consistent with current guidance or not subject to guidance the matter should be referred to the Food Liaison Group. Where agreement cannot be reached via LACORS, referral of the matter to Legal Services should be considered.

Compliance should 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.

EMERGENCY PROHIBITION NOTICE

The use of an emergency Prohibition Notice is only appropriate if there is an imminent risk of injury of health in respect of premises, a piece of equipment or a process, and one or more of the following circumstances are present:

The consequences of not taking immediate and decisive action to protect the public health would be unacceptable.

An imminent risk of injury to health can be demonstrated. This may include evidence from a relevant expert including a food analyst or food examiner.

The guidance criteria specified in Code of Practice 6 concerning the conditions when prohibition may be appropriate are fulfilled.

There is no confidence in the integrity of any unprompted offer made by the proprietor voluntarily to close premises or cease the use of equipment, process, or treatment associated with the imminent risk.

A proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition.

The Home or Originating Authority should be advised of formal action, including the outcome.

The service of an emergency prohibition notice ensures the immediate prevention of use of a piece of equipment or a particular process. The authorised officer must then apply to the court for an emergency prohibition order within three days, giving the proprietor one days notice of intention.

PROHIBITION ORDER & EMERGENCY PROHIBITION ORDER

The courts make these orders, decisions in these cases are based on the evidence provided to the court by the authorised officer.

The first step in the process for the granting of a prohibition order is for the authority to successfully prosecute the proprietor of the food business for a breach of food hygiene or processing regulations.

Food Safety Hazard Analysis Regulation 4(3) Enforcement procedure

Introduction

Regulation 4(3) of the Food Safety (General Food) Hygiene Regulations 1995, provides a mechanism to help ensure businesses have a thorough understanding of their operations and have in place the necessary controls to assure food safety. LACORS advice (February 1998) is for local authorities to adopt a staged approach to enforcement with respect to this requirement.

Aim

*To ensure the proper and consistent enforcement of Regulation 4(3) of the Food Safety (General Food Hygiene) Regulations 1995,
To secure compliance with this regulation in respect of all Category A and B premises and at least 50% of Category C premises on an annual basis.
To ensure all licensable butchers and premises comply with specific requirements.*

Objectives

On a priority basis, to promote the adoption by food business of Regulation 4(3), where necessary and to enforce the legislation where an informal approach is not appropriate or has not been successful.

To ensure a risk-based and common sense interpretative approach by officers.

Targeting

June 2004

In Epsom & Ewell Council area there are in the region of 479 food premises. Of these, approximately 8% are Category A or B and 46% fall into Category C. No premises currently have a significant risk rating factor applied.

Within available resources, it is necessary to adopt a targeted approach to securing compliance with the hazard analysis requirement. The overall system for prioritising food hygiene inspections is laid down in Code of Practice No. 9: Annex 1 (Revised August 1997). There may, however, be a number of reasons why a business has not carried out or implemented a hazard analysis.

The possibilities that exist are:

No hazard analysis carried out

Analysis undertaken but not implemented

Controls in place but no evidence of hazard analysis, indicating lack of understanding

These factors, together with the risk to public health and the likely outcome of an informal approach need to be considered when deciding upon enforcement action.

Whilst securing compliance with Regulation 4(3) should always be an objective of inspection, officers should give priority to those businesses which present a significant risk to public health, i.e. those lacking management controls, with a score of 20 for this risk factor and those with a past history of non-compliance.

Achieving Compliance

The staged approach to securing compliance by all relevant food businesses within E&E BC is outlined below.

Stage 1 - ASSESSMENT OF HAZARD ANALYSIS (HA)

Initial routine inspection and discussion with proprietor or person responsible for implementing hazard analysis within the organisation.

Officers may need to give prior notice of a visit in order to ensure that the relevant person(s) is/are available.

The officer should make an assessment of any written policies and procedures and other documentation.

The officer may request further information if necessary and/or may require copies of any supporting paperwork.

In the case of multiples or where there is Home Authority involvement information / clarification may be sought from the Head Office or Local Authority concerned.

Where the officer is satisfied that the Reg. 4(3) is being complied with detailed notes should be made and kept on file. No further action is warranted until reassessment at the next programmed inspection, or unless relevant during investigation of a complaint.

If the officer considers that Reg. 4(3) is not being fully complied with they must consider their reasons for his opinion and the risk involved and take appropriate action - Stage 2 or Stage 4.

Stage 2 - ASSISTANCE IN COMPLIANCE

Where the officer is satisfied that non-compliance with the Regulation exists but is such that it does not constitute an imminent risk he/she should take the following steps to assist:-

Advise the proprietor on how compliance may be achieved, including referral to FSA leaflet and appropriate industry guide and/or codes of practice (if applicable)

Report back in writing on findings, highlighting major reasons for determining non-compliance

Provide information pack to assist.

Offer further assistance e.g. training.

Agree a timescale for hazard analysis to be carried out.

Programme a revisit to monitor progress

The officer should not devise the hazard analysis his/herself but may offer guidance and advice.

Stage 3 - MONITORING PROGRESS

Where appropriate steps have been taken to secure compliance with Reg. 4(3) the officer will need to monitor the situation to see it through to completion and to ensure that the control measures identified are both appropriate and effective. This is likely to require close liaison with the proprietor/responsible person and at least one revisit to the premises. It may be that a series of revisits are necessary before the officer can make a valid assessment. Where the officer is satisfied that a suitable risk assessment has been made and Hazard Analysis has been implemented no further action may be deemed necessary until the next programmed inspection (subject to changes in the organisation).

Stage 4 - ENFORCEMENT

Where every effort has been made to assist in securing compliance with the Regulation through methods detailed in Stages 2 and 3 but there has been little or no progress made by the organisation, the officer must consider enforcement action. Similarly, if at Stage 1. The officer determines that the absence of a hazard analysis is such that this constitutes an imminent risk, enforcement action would be the appropriate choice.

The options are as follows:-

Improvement Notice where non-compliance persists.

*Emergency prohibition notice may be necessary in addition to the above where there is imminent risk of injury to health. The Notice may prohibit a premise, a process or a number of processes, or a person most likely to be a process in this context. (CoP6)
Prosecution)*

Improvement Notices

Improvement notices should form part of the staged approach to enforcing Regulation 4(3).

When to issue an improvement notice

In determining the appropriateness of serving notice for compliance with Regulation 4 (3) officers must use their professional judgement but should also consider the requirements contained in the Schedules of the Regulations, e.g. cleaning, cross-contamination and pest control. The general guidance contained in Code of Practice No. 5 (revised April 1994) relating to proportionality and past history must also be taken into account:

Proportionality

The action taken to secure compliance must be proportionate to the risk to public health.

Consideration should be given to whether:

there are significant contravention of the legislation

the level of compliance and management awareness of statutory requirements is poor

the consequences of non-compliance could be potentially serious to public health

it is necessary for swift remedial action to be taken irrespective of any decision to prosecute.

Past History

Regard should be had to the previous history of compliance relating to food hygiene or food processing regulations. Considerations should be given to where informal action has in the past been unsuccessful and/or poor compliance and confidence in management scores have been given.

Service of Notice

Where an officer is of the opinion that a formal approach is necessary in order to secure compliance a staged approach to the service of improvement notices should be adopted. This is to be based on the officer's assessment of the business in terms of the inherent risks involved in the process and the adequacy of existing control mechanisms.

In drafting and serving a notice officers must follow the E&E Notice procedure and be mindful of the requirements of The Food Safety Act Code of Practice No. 5 (Revised April 1994). Advice must be sought from the EHSM at this stage.

NOTICE 1 - ANALYSIS

Where an officer is concerned that the manager or proprietor of the food business has not carried out his/her own assessment of the processes involved a notice may require him/her to identify the various stages in the production of the final product and to distinguish those states which are critical to ensuring its safety.

NOTICE 2 - IMPLEMENTATION

Where critical control points have been identified but the officer is concerned that these controls have not been implemented, notice may be served requiring steps to be taken to put in place systems to accomplish this action.

NOTICE 3 - MONITORING

Where the officer is not convinced that adequate checks are in place to ensure that the control systems are effective notice may be served requiring a suitable monitoring system to be adopted.

Timescales

Whilst the aim is to secure speedy compliance with the Regulation, it is important that officers devote adequate time to ensuring that businesses fully understand what the officer requires of them. This will require thorough explanation both of the officer's findings and his/her proposed course of action. Realistic and achievable timescales should, where possible, be agreed with the proprietor or other responsible person, which are to be incorporated in the pursuant notice.

Where an improvement notice is considered necessary, the timescale for compliance will vary depending upon the individual circumstances and should be discussed with the EHSM.

N.B. Improvement notices will always be checked on or before the date of expiry.

HEALTH & SAFETY ENFORCEMENT PROCEDURE

Annex 3

1.0 INTRODUCTION

1.1 *The principle aim is to protect the health, safety and welfare of employees and to safeguard others, principally the public, who may be exposed to risks from work activities. In order to do this we must secure compliance with health and safety legislation.*

1.2 *There are a number of options available to the local authority for dealing with non-compliance with health and safety legislation, including formal and informal action. This policy strives to adhere to current guidance issued by the HSC and HELA, namely HS (G)2 Rev. and HELA 22/1, and sets out the considerations to be had and procedures to be followed by authorised officers when making enforcement decisions. It should be read in conjunction with the Council's Health and Safety Competency Policy and health and safety enforcement procedures as appropriate.*

2.0 CONCORDAT**2.1 PROPORTIONALITY**

2.1.1 *Enforcement action must relate to the risk and the seriousness of any breach. A large number of offences are not strict liability offences i.e. the legislation is not prescriptive, but requires what is either 'practicable' or 'reasonably practicable'. Officers must therefore have an understanding of what is feasible in the circumstances and will often have to consider the cost of prevention relative to the risk presented.*

2.2 CONSISTENCY

2.2.1 *Consistency among officers at E&EBC will be achieved as described in the policy introduction: -*

2.2.2 *In addition to the above where a Lead Authority exists for a particular duty holder's business officers will liaise with that Lead Authority in the following circumstances:-*

- i) where there are any shortcomings in the participating company's centrally agreed policies or procedures.*
- ii) when considering the taking of formal enforcement action i.e. service of a Notice/s and/or prosecution against an owner of a participating company (except in the case of immediate action where this is required)*
- iii) as soon as is reasonably practicable after immediate action has been deemed necessary.*

2.3 TRANSPARENCY

2.3.1 *Officers must ensure that they explain to duty holders what is expected of them and what they should expect from the enforcing authority. Statutory requirements must be distinguished from advice or guidance relating to good practice.*

2.3.2 *Officers must conduct themselves in accordance with the Government's Enforcement Concordat. Duty Holders need to know what to expect when they are paid a visit by an officer regarding health and safety matters and what rights they have to lodge a complaint. This is explained in the HSE leaflet 'What to expect when a Health and Safety Inspector Calls' which will be left at the time of the health and safety visit.*

2.4 TARGETING

2.4.1 Resources must be targeted on those whose activities give rise to the most serious risks or where hazards are least well controlled.

2.4.2 The frequency of routine health and safety inspections at E&EBC is determined by a premises' risk rating on a priority rating system as detailed below and in accordance with HELA document 67/1 REV.

Category A - every 12 months

Category B₁ - every 24 months

Category B₂ - every 36 months

Category B₄ - every 48 months

Category B₅ - every 60 months

Category C - every 120 months

2.4.3 In addition, special projects chosen by the service to supplement routine inspections are targeted at those sectors for which specific problems exist or high risks have been identified.

2.4.4 Enforcement action is to be focused upon the duty holder i.e. those who are responsible for allowing an unacceptable risk to exist and who are best positioned to control it. The Duty holder may be the owner of the premises, or the supplier of a piece of equipment, or the designer or controller of a project, rather than the employer of the workers exposed to the risk. Officers should consider the facts, obtain all the necessary background information and seek advice, if necessary, to enable a decision to be made as to whom the duty holder is in each case. Where the enforcing authority for the duty holder falls to the Health & Safety Executive (HSE) under S6 of the Health and Safety at Work etc. Act 1974 the matter should be referred across to the relevant section of the HSE. Where several duty holders share a responsibility action should be taken against those who can be regarded as primarily in breach.

2.4.5 When necessary reference should be made to the Health and Safety (Enforcing Authority) Regulations 1998 to ensure that the Local Authority is the appropriate responsible body or with regard to the transfer of responsibility between the authority and the Executive.

3.0 SECURING COMPLIANCE WITH THE LAW

3.1 All Health and Safety Enforcement officers must be authorised and have the necessary competencies in accordance with the Council's Health & Safety Competency Policy so as to enable them to exercise the powers available to them under S.20 (& S21, S22 & S25 as appropriate) of the Health and Safety at Work etc. Act.

3.2 The primary responsibility for ensuring health and safety lies with those who create the risks, and, in particular, employers' and the self-employed need to recognise their responsibility for managing health and safety.

3.3 Compliance should normally be achieved through letters, reports and advice, seeking to achieve co-operation and promote a positive health and safety culture. The majority of employers do want to meet their health and safety obligations and, by having pointed out to them where they are failing in this respect or how they could make improvements, many willingly comply. A further number become keen to comply when they are reminded of the financial benefits of good health and safety management.

3.4 Before taking formal enforcement action it is advisable in all cases to take into account the employer's general attitude to health and safety. If it is largely a question of getting a normally well-conducted business to take action on one or two isolated matters advice should suffice. If however, the business is a regular offender or has no effective organisation for health and safety, formal action may be necessary.

4.0. TYPES OF INFORMAL & FORMAL ACTIONS AVAILABLE

4.1 *Informal action to secure compliance with health and safety legislation includes offering advice, verbal warnings and requests for action, the use of letters and the issuing of inspection reports including those produced on site at the time of an inspection or visit.*

4.2 *Informal action is likely to be deemed to be the most appropriate course of action in the following circumstances:-*

- *The act or omission is not serious enough to warrant formal action.*
- *From the individual/business' past history it can be reasonably expected that informal action will achieve compliance.*
- *Compliance in the individual/business' management is high.*
- *The consequences of non-compliance will not pose a significant risk to those affected by the work activities.*

5.0 FORMAL ACTION

5.1 *Formal action includes the service of Improvement or Prohibition Notices, Prosecution proceedings and Formal Cautions. The Council's policy with regard to each of these is detailed in the section 5. In each case strict criteria apply.*

5.2 *Officers will serve Improvement Notices when they have evidence that there is a contravention with one of the relevant statutory provisions at the time of the visit, or there has been such a contravention and there is evidence to suggest that this will be repeated. Generally an informal approach to remedy the matter will already have been taken by the officer (either at the time of an initial inspection or previously according to the premises file history) and this will have failed.*

5.3 *Prohibition Notices will be served where an officer has evidence that there is a risk of serious personal injury at a premise or associated with a work activity, whether or not a specific legal contravention can be identified.*

5.4 *Prosecutions will be reserved for the most serious offences which either result or could have resulted in serious injury or ill-health or which represent a blatant disregard by employers, employees or others of their responsibilities under health and safety legislation. They may be taken on their own or in addition to the service of enforcement notices and against individuals or companies.*

5.5 *Prosecution may be a useful and appropriate tool in certain circumstances, as a way of drawing attention to the need for compliance with the law and the maintenance of standards required by law. This may be particularly relevant where there would be a normal expectation that a prosecution would be taken or, where through the conviction of offenders, others may be deterred from similar failures to comply with the law.*

5.6 *In some case it will be appropriate to both serve Notice/s and prosecute a health and safety offender. For example, the Notice procedure can have an immediate impact, whereas a prosecution may not be resolved for several months. In the long term however, the Notice procedure alone may prove ineffective if a person knows that the only consequence of an unsafe practice will be a requirement for them to do something which they should have done in the first place. In such circumstances information must not be laid for at least 21 days after service of the Notice or once any appeal has been determined.*

5.7 *The gravity of the offence, the general record and attitude of the offender, the extent of public interest and the likelihood of a successful conviction will all be taken into consideration when deciding whether to prosecute or not. Officers should not avoid taking a prosecution because the case is likely to be difficult to prove, but should be able to demonstrate, through the collection of*

appropriate evidence, failure on the part of the offender to take appropriate steps to prevent the contravention.

5.8 *Specifically, prosecution as opposed to (or in addition to the service of Notice/s) should be considered where:-*

- i) There is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage to those who disregard it.*
- ii) When there appears to have been reckless disregard for the health and safety of work people or others.*
- iii) Where there have been repeated breaches of legal requirements in an establishment, or in various branches of a multiple concern, and it appears that management is neither willing nor structured to deal adequately with these. An examination of the company safety policy, if any, would be particularly useful in such a situation.*
- iv) Where a particular type of offence is prevalent in any activity or an area.*
- v) Where there was potential for considerable harm arising from the breach.*
- vi) Where a particular contravention has caused serious public alarm.*
- vii) Where there are persistent poor standards for the control of health hazards.*

5.9 *The reasons for recommending prosecution and all of the facts relating to the case must be clearly written down by the case officer and discussed with the EHSM. Where a decision is made to institute legal proceedings a prosecution file must be prepared by the case officer for scrutiny by the EHSM for authorisation in accordance with the staff Procedure on Legal Proceedings.*

6.0 PROSECUTION WITHOUT PRIOR WARNING

6.1 *As a general rule a person or company should be given reasonable opportunity to comply with the law, although in some circumstances it is appropriate to prosecute without giving prior warning. Examples of such circumstances include those where the contravention is a particularly serious one, or where there has been a particularly blatant disregard by employers, employees or others of their responsibilities under health and safety legislation. For example, the commission of an offence, similar to one that a Notice has previously been issued, to that person or organisation should normally result in prosecution. Failure to comply with an Improvement Notice or a Prohibition Notice should normally result in prosecution, and unless this happens the value of notices will be seriously undermined.*

7.0 PROSECUTION FOLLOWING AN ACCIDENT

7.1 *The seriousness of the contravention (not the severity of the accident) is the prime consideration in deciding whether to take a prosecution following an accident. The extent to which management was responsible for the circumstances that led to the accident and whether the employer had been previously warned of a similar infringement are also relevant. An important question for Inspectors to ask themselves is what they would have done if they had discovered the contravention in the absence of an accident. However, an accident may contribute to the strength of the evidence and therefore to the chances of achieving a successful prosecution.*

8.0 PROSECUTION OF INDIVIDUALS

8.1 *Sections 7,8,36 & 37 of the Health and Safety at Work etc. Act 1974 allows for the prosecution of individuals who have committed a health and safety offence. Where possible and justifiable individuals, including company directors and managers should be identified and*

prosecuted. Where no individual can be clearly identified as being responsible for an offence the prosecution should be taken against the company.

8.2 Where an employee is deemed to have contravened his/her obligations under S7 of the Health and Safety at Work etc. Act 1974 officers should consult with the EHSM before taking a decision to prosecute the individual. It may be more appropriate to write to the individual/s concerned and thereby warn them that a subsequent breach may result in formal action. The employer should also be reminded of their obligation to take the necessary disciplinary action.

8.3 Where a contravention appears to be the result of a failure on the part of both the employee and his/her employer the weight of responsibility needs to be carefully assessed and action taken as appropriate. Where the employer is able to demonstrate that he/she has taken all reasonable steps to secure compliance, but the employee has been negligent or has blatantly disregarded this, consideration should be given, subject to warning, to prosecution of the employee. Consultation with the workers' representative is important at this stage.

9.0 DEATH AT WORK

9.1 Where there has been a breach of the law leading to a work-related death consideration must be given to the possible charge of manslaughter. Officers must follow the Council's Fatal Accident Procedure, consult with their EHSM and should liaise with Legal Services, the police, the coroners court and the Crown Prosecution Service (CPS). Any evidence suggesting manslaughter must be passed to the police or, where appropriate, the CPS.

9.2 No decision to prosecute for health and safety offences resulting in a fatality should be taken until the police or CPS has made a decision as to whether or not they will be pressing manslaughter charges. Only if such charges are not being pursued can this Department take prosecution proceedings.

10.0 MATTERS FOR CONSIDERATION BY OFFICERS

10.1 The period of limitation for health and safety offences is 6 months from the date that the offence is brought to the enforcing authority's attention. . Particular statutes may provide otherwise for their own purposes. Nevertheless, it is policy at E&EBC that where prosecution is deemed to be the most appropriate course of action that the case be prepared from the file notes at the earliest opportunity.

10.2 Officers must have due regard at all times during the course of an investigation to the requirements of the Police and Criminal Evidence Act 1984 where there is any possibility that a prosecutable offence has been committed.

10.3 In preparing any prosecution case the investigating officer, officer in charge, disclosure officer and prosecutor must be clearly identified and discharge their duties in accordance with the Criminal Procedure and Investigation Act 1996.

10.4 It will be the service general policy to assist and guide, as opposed to taking formal action, in ensuring that duty holders are aware of their legal obligations in respect of any new health and safety legislation which may be passed. However, if the new legislation only requires standards which were expected by former or existing legislation, if the duty holder appears to be deliberately ignoring their health and safety obligations, or if the risks to health and safety are immediate, formal action must be considered.

11.0 PENALTIES

11.1 Health and safety law gives the courts considerable scope to punish offenders and to deter others. Summary of the maximum penalties which may be imposed on conviction for a summary health and safety offence are given below (as amended by the Offshore Safety Act 1992).

