

NORTH NORFOLK DISTRICT COUNCIL



ENVIRONMENTAL HEALTH DEPARTMENT

Enforcement Policy

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A summary of the Policy is available in large print, on tape or in other languages on request

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1. Introduction

- 1.1. In 1998 the Cabinet Office published the “Enforcement Concordat” to help promote consistency in the UK regulatory enforcement regime.
- 1.2. The Enforcement Concordat set out principles of good enforcement policy and, although a voluntary code of practice, it was adopted by 96% of all central and local government bodies with enforcement functions.
- 1.3. Following the recommendations of the Hampton Report¹, the Enforcement Concordat was supplemented by a statutory code of practice, the “Regulators Compliance Code”, to give the Hampton Principles a statutory basis.
- 1.4. This is provided by the Legislative and Regulatory Reform Act 2006, which places a duty on regulators to have regard to five Principles of Good Regulation². The code of practice was issued on 17th December 2007 and came into force on 6th April 2008.
- 1.5. This enforcement policy, which is a developed enhancement of a document originally produced by the Norfolk Better Regulation Partnership (NBRP), seeks to deliver improved regulatory outcomes, whilst reducing unnecessary burdens on compliant businesses.
- 1.6. The enforcement policy re-affirms the work originally developed by the NBRP and furthers the aim of providing consistency of approach within North Norfolk District Council’s Environmental Health Department and with other partner regulatory services within Norfolk.
- 1.7. This enforcement policy accords with the principles of the Human Rights Act 1998, the European Convention on Human Rights, The Freedom of Information Act 2000 and Regulation of Investigatory Powers Act 2000.
- 1.8. This enforcement policy reiterates the basic principles of enforcement activity. Specific matters and issues relating to the following areas are detailed in appendices to this policy:
 - Food Hygiene and Safety
 - Licensing
 - Health and Safety
 - Environmental Protection

In all cases this main policy and the specific relevant document must be considered together.

¹ “Reducing administrative burdens: effective inspection and enforcement” – Philip Hampton 2005

² Transparency, accountability, proportionality, consistency and targeted action.

2. Enforcement Activity

For the purpose of this document 'enforcement' includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action, such as prosecution or issue of notices, and includes the inspection of premises to check compliance with legal requirements and the provision of advice to aid compliance.

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.

In certain instances the regulator may conclude that a provision in the Code is either not relevant or is outweighed by another provision. The regulator will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

2.1 Formal Action

2.1.1 Whilst recognising that most businesses want to comply with the law the regulator also recognises that some elements of business and individuals will operate outside the law (both intentionally and unintentionally).

2.1.2 North Norfolk District Council will consider taking formal action for serious breaches, which may include any of the following circumstances:

- a. Where there is a risk to public health, safety or damage to the environment.
- b. For matters where there has been recklessness or negligence.
- c. A deliberate or persistent failure to comply with advice, warnings or legal requirements.
- d. Any act likely to affect animal health or welfare, disease prevention measures, or the integrity of the food chain.
- e. Obstruction or assault (including verbal assault) of an officer in the execution of their duties.

(THIS LIST IS NOT EXHAUSTIVE)

2.1.3 For the purposes of this document 'formal action' means: Prosecution, Simple Caution, Issue of Penalty Notices, Seizure, Suspension, Forfeiture, revocation/suspension of a licence, registration or approval, Written or Verbal Instruction, Advice or Warning, or any other criminal or civil proceedings, applied either separately or in any appropriate combination.

3. Principles of Good Regulation

The five principles of good regulation are:

- 3.1 Transparency;
- 3.2 Accountability;
- 3.3 Proportionality;
- 3.4 Consistency; and
- 3.5 Targeted only at cases for which action is needed.

3.1 Transparency

We will communicate in plain English or in the appropriate language or method

- In most circumstances we will ensure that people affected by formal action are informed of what is planned, and allow for discussion and time to respond before the action is taken. We will also give them a named officer's contact details. These arrangements must have regard to legal constraints and requirements.
- When a notice is served it will say what needs to be done, why, and by when, and that in the officers opinion a breach of the law has been committed and why the notice is necessary
- We will make a clear distinction between legal requirements and recommended works.

As part of our commitment to equality we will use the following:

- Where businesses or the public do not have English as a first language we will offer translations of correspondence.
- We also use INTRAN, the Interpretation and Translation Agency for the Public Services of Norfolk covering telephone interpreting, face to face interpreting, sign language and lip speaking service.
- We can provide large print documents and Braille
- We can provide taped information
- Documents can be emailed

3.2 Accountability

The regulatory officers will actively work with businesses and the public to advise and to assist with compliance and complaints.

- Out of hours contact for services will be provided for complaints or requests of an immediate high risk public health impact such as food poisoning outbreaks; serious pollution incidents; serious accidents and animal disease outbreaks.
- We will carry out evening visits and inspections when businesses are open during these times.
- Regulatory Officers will show their identification (and authority if requested) at the outset of every visit and explain the reason for the visit, unless the nature of the investigation requires otherwise.
- Contact points and telephone numbers will be provided for business and public use.
- The whole range of enforcement activities will be dealt with as promptly and efficiently as possible in order to minimise time delays.
- The Environmental Health Department has a complaint procedure for use by businesses, the public, employees and consumer groups. This is available on request by telephone and from reception desks.
- Feedback questionnaires will be routinely used to gather and act upon information about the service we provide.
- We will include information to highlight new legal requirements, with letters sent after an inspection or visit; information on the internet and direct mailing to help keep businesses up to date.

3.3 Proportionality

- Any action required will be proportionate to the seriousness of the breach and the risk to health, safety or the environment.
- The most serious formal action, including prosecution, will be for serious breaches of the law where there is a significant risk to health, safety or the environment or where there has been a flagrant disregard for the requirements of the law.

3.4 Consistency

- Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
- There are arrangements in place to ensure discussion and comparison of enforcement decisions by the Regulatory Officers.
- All Regulatory Officers undertaking enforcement duties will be suitably trained, qualified and authorised to ensure that they are fully competent to undertake their enforcement duties.

3.5 Targeted

All enforcement action will be primarily targeted towards those situations that give rise to the most serious risks, where the risks are least well controlled and against deliberate or organized crime. Other factors also determine priorities for enforcement activity, including Government targets and priorities, new legislation, national campaigns and public concerns.

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

4. Intelligence and Risk Led Enforcement

By having a coherent and robust intelligence system, effective strategies can be formed to enable and co-ordinate solutions to particular problems. This enables the identification of new, current and emerging issues, allowing provision of strategic and tactical direction on how the issues can best be tackled. Activities are targeted based on general or specific risks identified via trends, history or specific incidents. Enforcement Agencies exchange information as part of their partnership work in reducing crime and disorder.

5. Enforcement Action

The Regulatory Officers will have regard to the guidance documents, which exist both generally, for example, the Code for Crown Prosecutors produced by the Crown Prosecution Service (CPS), as well as other guidance relevant to the individual regulator.

In determining the nature of enforcement action to be taken, the Regulators should ensure that any sanction or penalty should:

- Aim to change the behaviour of the offender;
- Aim to eliminate 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 the regulatory non-compliance where appropriate;
- Aim to deter future non-compliance.

A person who it is believed may have committed an offence may be formally interviewed during an investigation. These interviews will be conducted under the rules of the Police and Criminal Evidence Act 1984.

5.1 Conflict of Interest in Enforcement Matters

Where a breach is detected in where the enforcing authority is itself is the responsible operator, then except where the health and safety of an individual or the community is at risk and immediate action is required, the following protocol will be followed:-

Where the breach is sufficiently serious to warrant more than the provision of advice, information, assistance or a written warning, an Officer from another authority within Norfolk will assist in the decision making process as to the action required to be taken. The Chief Executive will be informed of serious breaches without delay.

The additional Officer's role is to assist and challenge the decision making process to ensure that appropriate, proportionate and consistent action is to be taken to remedy the breach, prevent re-occurrence and to minimise the risk of 'conflict of interest' for the enforcing authority. A record of the additional Officer's involvement will be kept such that it is auditable.

5.2 Prosecution

Regulatory Officers will follow guidance which requires two main tests to be considered in relation to instigating a prosecution:

5.2.1 The Evidential Sufficiency Test – i.e.

- Is there admissible, substantial and reliable evidence that an offence has been committed? i.e. Can it be used in court? Is there enough evidence? Is the evidence sound and factual? (Which may include an expert opinion).

- Has the Police and Criminal Evidence Act 1984 been complied with to ensure fair and open gathering of the evidence?

5.2.2 The Public Interest Test – i.e.

- Is it in the public interest to prosecute?

The guidance gives a number of factors that may lead to a decision not to prosecute, including: -

- a) The court is likely to impose a nominal penalty;
- b) The offence was committed as a result of a genuine mistake or misunderstanding;
- c) If the loss or harm caused can be described as minor and was the result of a single incident;
- d) There has been a long delay between the offence taking place and the date of the trial, unless:
 - The offence is serious;
 - The delay has been caused in part by the defendant;
 - The offence has only recently come to light; or
 - The complexity of the offence has meant that there has been a long investigation;
- e) A prosecution is likely to have a bad effect on the victim's physical or mental health;
- f) The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health;
- g) The defendant has put right any loss or harm; or
- h) Details may be made public that could harm sources of information, international relations or national security.

The Regulatory Officers will also consider whether or not a prosecution is appropriate by consideration of the factors contained in paragraph 2.1.2 of this policy.

When considering formal enforcement action, the Regulatory Officer will, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding the best approach.

The Environmental Service Department will have an internal procedure for the authorisation of any investigations that may result in prosecution. All such cases will be regularly reviewed.

If formal action is taken, the Environmental Health Department is likely to seek to recover the costs of the investigation. The Court determines the level of fine imposed and costs awarded.

5.3 Simple Cautions

A simple caution in certain cases may be offered as an alternative to a prosecution. The purpose of a simple caution is to deal quickly with less serious offences, to divert less serious offences away from the Courts, and to reduce the chances of repeat offences.

The regulators will comply with the provisions of the Home Office Circular 016/2008. The following conditions must be fulfilled before a caution is administered:

- 1 There must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction;
- 2 The offender must admit the offence; and
- 3 The offender must understand the significance of the caution and agree to being cautioned.

If a person/Company declines the offer of a formal caution, the regulator will normally pursue the prosecution action.

5.4 Forfeiture

Where an accused has not agreed to voluntarily surrender any infringing goods then, on successful conclusion of legal proceedings, forfeiture may be applied for. This does not preclude a regulator taking forfeiture proceedings in their own right in appropriate circumstances.

5.5 Proceeds of Crime

Where appropriate, working in partnership as necessary, the regulatory authority will seek to recover the assets of convicted offenders under the Proceeds of Crime Act 2002.

5.6 Directors

On the conviction of a Director connected with the management of a company the prosecutor will, in appropriate cases, draw to the Court's attention their powers to make a Disqualification Order under the Company Directors Disqualification Act 1986.

5.7 Civil Claims

Any enforcement action is completely separate and distinct from civil claims made by individuals for compensation or other remedy. Enforcement is not undertaken in all circumstances where civil claims may be pursued, nor is it undertaken to assist such claims.

The Environmental Health Department may, upon request, provide a factual report which details its' investigation and involvement in the case to individuals, or their solicitors, pursuing a civil claim . There may be a charge for this report.

6. Working with External Agencies and Enforcement Bodies

If a business has a Primary Authority (also, if appropriate, a Lead or Home Authority scheme or informal Lead or Home Authority scheme), the regulator will contact the Primary Authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety or the environment.

The Environmental Health Department will liaise with the other partner regulators to ensure that any proceedings instituted are for the most appropriate offence.

7. Publicity

Regulatory authorities have a responsibility to protect the public from detrimental trading and environmental practices. Regulators undertake a range of activities to achieve this. These include actions that are taken after the detection of an offence, as well as measures to prevent and deter their commission.

One such measure is the publication of convictions and information concerning significant detrimental trading or other behaviour. The publicity generated by prosecutions and other enforcement action acts as a deterrent to others. It also reassures the general public that Regulators take a serious view of such detrimental behaviour.

The Head of the Environmental Health Department will therefore consider publishing the name and address of each person convicted of, or subject to,

other enforcement action, together with details of the issues involved. To reach decision as to whether to publish such information, the Head of Environmental Health will consider the following factors:

- The specific details of the offence committed or detrimental activity.
- The public interest in disclosing personal information e.g. the deterrent effect of the publication.
- Whether the publication would be proportionate.
- The personal circumstances of the offender.

This list is not exhaustive and other factors may be relevant in the circumstances of an individual case.

8. Contacting the Environmental Health Department

Copies of this document and other advisory leaflets are available from:

North Norfolk District Council
Environmental Health
Holt Road
Cromer
Norfolk
NR27 9EN

Telephone: 01263 516008 / 01263 516085
Email: environmental.health@north-norfolk.gov.uk
Website: www.northnorfolk.org

We will make this policy available on tape, in Braille, large type, or in another language on request,

The policy will be reviewed annually.

9. Appendices

- 1. FOOD SAFETY**
- 2. REGULATORY SERVICES AND LICENSING**
- 3. HEALTH AND SAFETY**
- 4. ENVIRONMENTAL PROTECTION**

ENVIRONMENTAL HEALTH DEPARTMENT ENFORCEMENT POLICY

APPENDIX ONE

FOOD SAFETY

General

All enforcement action shall have regard to guidance issued by the [Food Standards Agency](#) (the Agency) and other relevant organisations.

The Council will ensure that authorised officers have up-to-date information readily available to enable them to carry out their duties competently.

This includes;

- relevant legislation;
- the [Food Law Code of Practice \(England\)](#);
- UK Guides to Good Practice and, where appropriate, guidance issued by the Agency and “[Local Government Regulation](#)”;
- relevant industry codes of practice;
- appropriate technical literature.

Types of Action and Approach

Authorised officers will take account of the full range of enforcement options.

This includes

- educating food business operators,
- giving advice,
- informal action,
- sampling,
- detaining and seizing food,
- serving Hygiene Improvement Notices/Improvement Notices,
- serving Hygiene Prohibition Procedures/Prohibition Procedures,
- prosecution procedures.

Except where circumstances indicate a significant risk, officers should operate a graduated and educative approach (*the hierarchy of enforcement*) starting at the bottom of the pyramid i.e. advice/education and informal action and only move to more formal action where the informal action does not achieve the desired effect.

In deciding the type of enforcement action to take, regulators will have regard to:

- the nature of the breach and the history of compliance of the food business operator; or in the case of new businesses, an assessment of the food business operator’s willingness to undertake the work identified by the officer

Note that

- the full range of enforcement options is always open to an authorised officer and
- the Council will not adopt policies where the number of (hygiene) improvement notices served or the number of other legal processes, such as prosecution or formal caution, is an indicator of performance.

ENVIRONMENTAL HEALTH DEPARTMENT ENFORCEMENT POLICY

APPENDIX TWO

REGULATORY SERVICES AND LICENSING

General

- 1 All enforcement action will be based upon an assessment of risk to public health and/or the environment.
- 2 All enforcement action will be based upon an objective assessment following consideration of all the facts of the matter. Enforcement action will not be based on anecdotal, hearsay or other subjective assessment.
- 3 It will not be normal practice for formal enforcement action to be used as a punitive measure for minor technical contravention.
- 4 All enforcement action shall have regard to relevant legislation, codes of practice, and guidance periodically issued by the government, the Chartered Institution of Environmental Health, the Home Office, Local Government Regulation, DCMS, Gambling Commission and other relevant bodies. This also includes the Human Rights Act and the test of proportionality. Regard will also be had to departmental procedures and work instructions. In respect of matters relating to the Licensing Act 2003
- 5 All authorised officers, when making enforcement decisions will abide by the requirements of the Enforcement Policy. Any departure from this policy must be exceptional, be capable of justification and be fully considered by the Head of Environmental Health before the decision is taken, unless there would be a significant risk to public health and/or safety by delaying the decision.
- 6 The reference to enforcement action taken by the department in this document is separate from any administrative sanctions which may imposed by the Council or a Committee of the Council (including suspension; revocation or failure to renew a licence or registration)

Types of Action

1. Formal Action

- a) Formal action to secure compliance with legislation may include:
- Formal verbal warning (confirmed in writing)
 - Formal written warning
 - Unfit Vehicle Notice (HC or PHV)
 - Suspension of Drivers Licence
- b) The circumstances where it is appropriate to use formal action include:
- There are significant contraventions of legislation or failure to comply with Licensing Conditions.
 - There is a lack of confidence in the individual/business to respond to an informal approach
 - There is a history of non-compliance with informal action
 - The consequence of non-compliance could be potentially serious to public health and/or safety of both the public and employees
 - Although prosecution is intended, immediate or swift action is necessarily required to remedy a serious threat to public health.
- c) **Verbal Warning** - Authorised officers issuing verbal warnings shall specify clearly the reason for the warning, the relevant statutory provision being (or likely to be breached, the works or actions required if any, and the time limit in which to carry out any works.) In the main, verbal warnings will be issued for matters requiring action in the immediate or very short term. Verbal warnings will be confirmed in writing at the earliest opportunity.
- d) **Written Warning** - Formal written warnings or requests for works or actions to be carried out shall specify the reasons, the relevant statutory provisions being, or likely to be breached, the works or actions required and the time limit in which the individual/businesses should comply. The recipient of the letter shall be advised that failure to comply may lead to the issue of a statutory notice by the council.
- e) **Unfit Vehicle Notice (hackney carriage or private hire vehicle)** - The circumstances where authorised officers will consider the issue of an unfit vehicle notice (which maybe deferred) are detailed in the Council's Private Hire and Hackney Carriage Policy and Conditions.
Unfit vehicle notices will only be issued and signed by those officers authorised to do so.
Generally failure to comply with an unfit vehicle notice will result in the authorised enforcement officer of the council seeking authorisation to instigate legal proceedings in respect of contraventions of legislation.

ENVIRONMENTAL HEALTH DEPARTMENT ENFORCEMENT POLICY

APPENDIX THREE

HEALTH AND SAFETY

General

1. North Norfolk District Council aims to protect the health, safety and welfare of people at work, and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out.
2. The Health and Safety Executive (HSE) and local authorities (LA) share the responsibility for the enforcement of health and safety law. Enforcement activities at work premises are allocated to either the HSE or the LA based on the main work activity. This allocation is specified in the Health and Safety (Enforcing Authority) Regulations 1989.
3. North Norfolk District Council enforces health and safety law in workplaces including: offices, shops, retail and wholesale distribution centres, leisure, hotel and catering premises.
4. This Enforcement Policy Statement is in accordance with the Regulators' Compliance Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006. It sets out the general principles and approach which health and safety enforcing authorities are expected to follow.
5. All local authority and HSE staff who take health and safety enforcement decisions are required to follow the HSE's Enforcement Policy Statement. Consequently, North Norfolk District Council has adopted the Policy. In general, staff taking enforcement decisions will be appointed inspectors, so this policy refers to inspectors for simplicity.
6. The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare.
7. In allocating resources, enforcing authorities should have regard to the principles set out below, the objectives published in the HSE Delivery Plan, and the need to maintain a balance between enforcement and other activities, including inspection.

The purpose and method of enforcement

1. The ultimate purpose of the enforcing authorities is to ensure that duty holders manage and control risks effectively, thus preventing harm. The term 'enforcement' has a wide meaning and applies to all dealings between enforcing authorities and those on whom the law places duties (employers, the self-employed, employees and others).
2. 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 in England and Wales, or recommending prosecution in Scotland, in the circumstances set out later in this policy.
3. The enforcing authorities have a range of tools at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Inspectors may offer duty holders information, and advice, both face to face and in writing. This may include warning a duty holder that in the opinion of the inspector, they are failing to comply with the law. Where appropriate, inspectors may also serve improvement and prohibition notices, withdraw approvals, vary licence conditions or exemptions, issue simple cautions (England and Wales only), and they may prosecute.
4. Giving information and advice, issuing improvement or prohibition notices, and withdrawal or variation of licences or other authorisations are the main means which inspectors use to deal with serious risks, securing compliance with health and safety law and preventing harm. A prohibition notice stops work in order to prevent serious personal injury. Information on improvement and prohibition notices should be made publicly available.
5. Every improvement notice contains a statement that in the opinion of an inspector an offence has been committed. Improvement and prohibition notices, and written advice, may be used in court proceedings.
6. Prosecution and, if appropriate, simple cautions are important to bring duty holders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy, enforcing authorities should use one of these measures in addition to issuing an improvement or prohibition notice.
7. Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, enforcing authorities should have regard to the principles of enforcement set out in this statement and the objectives published in HSE's Delivery Plan. In particular, in allocating resources, enforcing authorities must strike a balance between investigations and mainly preventive activity.

8. Sometimes the law is however, much of modern health and safety law is goal setting – setting out what must be achieved, but not how it must be done. Advice on how to achieve the goals is often set out in Approved Codes of Practice (ACOPs). These give practical advice on compliance and have a special legal status. 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.

Advice is also contained in other HSE guidance material describing good practice. Following this guidance is not compulsory, but doing so is normally enough to comply with the law. Neither ACOPs nor guidance material are in terms which necessarily fit every case. In considering whether the law has been complied with, inspectors will need to take relevant ACOPs and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them.

9. HSE expects enforcing authorities to use discretion in deciding when to investigate or what enforcement action may be appropriate. This is detailed in the Enforcement Policy.

The principles of enforcement

1. North Norfolk District Council believes in firm but fair enforcement of health and safety law. This should be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency about how the regulator operates and what those regulated may expect; and accountability for the regulator's actions. These principles should apply both to enforcement in particular cases and to the health and safety enforcing authorities' management of enforcement activities as a whole.

Investigation

1. As with prosecution, HSE expects enforcing authorities to use discretion in deciding whether incidents, cases of ill health, or complaints should be investigated. Indicative targets related to levels of investigation by HSE are normally specified in HSE's Delivery Plan, which is approved by the Government
2. Investigations are undertaken in order to determine:
 - causes;
 - whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
 - lessons to be learnt and to influence the law and guidance;
 - what response is appropriate to a breach of the law.
3. To maintain a proportionate response, most resources available for

investigation of incidents will be devoted to the more serious circumstances. It is neither possible nor necessary for the purposes of the Health and Safety at Work etc Act 1974 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.

4. Enforcing authorities should carry out a site investigation of a reportable work-related death, unless there are specific reasons for not doing so, in which case those reasons should be recorded.
5. In selecting which complaints or reports of incidents, injury or occupational ill health to investigate and in deciding the level of resources to be used, the enforcing authorities should take account of the following factors:
 - the severity and scale of potential or actual harm;
 - the seriousness of any potential breach of the law;
 - knowledge of the duty holder's past health and safety performance;
 - the enforcement priorities;
 - the practicality of achieving results;
 - the wider relevance of the event, including serious public concern.

Prosecution of individuals

1. Subject to the above, enforcing authorities should identify and prosecute or recommend prosecution of individuals if they consider that a prosecution is warranted. In particular, they should consider the management chain and the role played by individual directors and managers, and should 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, enforcing authorities should seek disqualification of directors under the Company Directors Disqualification Act 1986.

Publicity

1. Enforcing authorities in England and Wales should make arrangements for the publication annually of the names of all the companies and individuals who have been convicted in the previous 12 months of breaking health and safety law. They should also have arrangements for making publicly available information on these convictions and on improvement and prohibition notices which they have issued.

Action by the courts

1. Health and safety law gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences. Unlimited fines

may be imposed by higher courts.

2. Enforcing authorities should, 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 judgments). HSE 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

1. In cases of sufficient seriousness, and when given the opportunity, the enforcing authorities should 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, enforcing authorities should have regard to Court of Appeal guidance: the Court of Appeal has said 'In our judgment 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

1. Where there has been a breach of the law leading to a work-related death, enforcing authorities need to consider whether the circumstances of the case might justify a charge of manslaughter or corporate manslaughter.
2. To ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, HSE, the Association of Chief Police Officers (ACPO), the British Transport Police, the Crown Prosecution Service (CPS), the Local Government Association (LGA) and the Office of Rail Regulation (ORR) have jointly agreed and published *Work-related deaths: A protocol for liaison*. Other non-signatory organisations, such as the Maritime and Coastguard Agency (MCA), Civil Aviation Authority (CAA) and the Chief Fire Officers Association (CFOA), have agreed that they will take account of the protocol when responding to work-related deaths.
3. The police are responsible for deciding whether to pursue a manslaughter or corporate manslaughter investigation and whether to refer a case to the CPS to consider possible manslaughter charges. The enforcing authorities are responsible for investigating possible health and safety offences. If in the course of their health and safety investigation, the enforcing authorities find evidence suggesting manslaughter or corporate manslaughter, they should pass it on to the police. If the police or CPS decide not to pursue a manslaughter or corporate manslaughter case, the enforcing authorities will normally bring a health and safety prosecution in accordance with this policy.

Crown Bodies

1. Crown bodies must comply with health and safety requirements, but they are not subject to statutory enforcement, including prosecution. The Cabinet Office has established non-statutory arrangements for enforcing health and safety requirements in Crown bodies. These arrangements allow HSE to issue non-statutory improvement and prohibition notices, and for the censure of Crown bodies in circumstances where, but for Crown immunity, prosecution would have been justified. In deciding when to investigate or what form of enforcement action to take, HSE should follow as far as possible the same approach as for non-Crown bodies, in accordance with this enforcement 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 12 months' imprisonment
- Higher court maximum Unlimited fine and/or 2 years' imprisonment

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 this power 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 on the website www.hse.gov.uk and in these free leaflets:

What to expect when a health and safety inspector calls: A brief guide for businesses, employees and their representatives Leaflet HSC14 HSE Books 1998 (single copy free) Web version available at www.hse.gov.uk/pubns/hsc14.pdf

Work-related deaths: A protocol for liaison Booklet MISC491 HSE Books 2003 www.hse.gov.uk/pubns/misc491.pdf

Work-related deaths: A protocol for liaison among the Crown Office and Procurator Fiscal Service, the Health and Safety Executive, the Association of Chief Police Officers (Scotland) and British Transport Police 2006

HSE priced and free publications are available by mail order from HSE Books, PO Box 1999, Sudbury, Suffolk CO10 2WA Tel: 01787 881165 Fax: 01787 313995 Website: www.hsebooks.co.uk (HSE priced publications are also available from bookshops and free leaflets can be downloaded from HSE's website: www.hse.gov.uk)

For information about health and safety ring HSE's Infoline Tel: 0845 345 0055 Fax: 0845 408 9566 Textphone: 0845 408 9577 e-mail: hse.infoline@natbrit.com or write to HSE Information Services, Caerphilly Business Park, Caerphilly CF83 3GG.

ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

APPENDIX FOUR

ENVIRONMENTAL PROTECTION

General

- 1 All enforcement action will primarily be based upon an assessment of risk to public health and/or the environment.
- 2 All enforcement action will be based upon an objective assessment following consideration of all the facts of the matter.
- 3 It will not be normal practice for formal enforcement action to be used as a punitive measure for minor technical contraventions. Nevertheless it should be recognized that there are some offences, for example involving the service of a fixed penalty notice (FPN), which, in the public interest, it may be appropriate to administer to bring about general environmental benefits and discourage offences by others. For example the issuing of FPN's for littering, dog fouling, etc. More serious environmental crime such as fly-tipping will generally be viewed as offences which should be pursued by prosecution also for the aforementioned reasons following consideration by the Environmental Health Manager.
- 4 All enforcement action shall have regard to relevant legislation, codes of practice, and guidance periodically issued by the government, stand alone Agencies such as the Environment Agency, relevant professional institutions such as the Chartered Institution of Environmental Health, Local Government Regulation and other relevant bodies. This also includes the Human Rights Act and the test of proportionality. Regard will also be had for departmental procedures and work instructions.
- 5 All authorised officers, when making enforcement decisions will abide by the requirements of the Enforcement Policy. Any departure from this policy must be exceptional, be capable of justification and be fully considered by the Environmental Health Manager before the decision is taken, unless there would be a significant risk to public health and/or safety by delaying the decision.

Types of Action

1 Informal Action

- a) Informal action to secure compliance with legislation includes:-
- Offering verbal advice
 - Verbal requests for action
 - Informal written advice (visit reports and letters)
- b) The circumstances where it is appropriate to use informal action are:-
- Where the act or omission is trivial or not of a serious enough nature to warrant formal action.
 - As an initial notification to the alleged offender of a minor problem.
 - Where from the individual/organisations/businesses past history it can be reasonably expected that informal action will achieve compliance.
 - Where confidence in the individual/businesses management is high
 - Where the consequences of non-compliance will not pose a significant risk to public or the environment.

There may be circumstances when some of the above are not met. However it may be more effective than a formal approach; e.g. this may apply to charitable or voluntary organisations. If an authorised enforcement officer considers this is appropriate, then they will discuss the matter with their immediate line manager to ratify their action. For non-hazardous and minor contraventions, a revisit may be an inappropriate use of resources.

All enforcement documentation issued or sent will:

- Contain all the information necessary to understand what needs to be done, why, when and by whom.
- Clearly distinguish between legal requirements and best practice advice or recommendations
- Indicate the legislation that applies

Authorised enforcement officers will at all times, even if only giving verbal advice, differentiate between legal requirements and matters which are recommended as good practice.

2 Formal Action

- a) Formal action to secure compliance with legislation may include:
- Formal warning
 - Service of Statutory Notices
 - Simple Caution
 - Prosecution (summary or indictment)
 - Other formal action as laid out in legislation
- b) The circumstances where it is appropriate to use formal action include:

- Where there are significant contraventions of legislation
- Where there is a lack of confidence in the individual/organisation/business to respond to an informal approach
- Where there is a history of non-compliance with informal action
- Where the consequence of non-compliance could be potentially serious to public health and/or safety of both the public and employees

c) **Formal Warning** – Formal warnings or requests for works or actions to be carried out shall specify the reasons, the relevant statutory provisions being, or likely to be breached, the works or actions required and the time limit in which the individual/businesses should comply. The recipient of the warning shall be advised that failure to comply may lead to the issue of a statutory notice by the council. Where warnings are issued verbally to ensure immediate compliance, they must be confirmed in writing.

d) **Service of Statutory Notices**

The circumstances where officers will consider the issue of a statutory notice will include the following:

- Authorised officers have little confidence in individual/businesses to resolve the matter unless a statutory notice is served
- The service of a statutory notice and subsequent enforcement, for example by way of works in default or prosecution, is the only realistic option to secure compliance.
- Informal action has failed to resolve the issue in question.
- Where the law allows the issuing of a fixed penalty notice (FPN) for a specific offence eg. dog fouling, littering, certain waste offences, etc. Notices will only be issued where there is satisfactory evidence available of an offence and after consideration that the service of the notice is a proportionate response to the offence. Failure to pay and discharge the notice will normally lead to prosecution (see below).

In general, statutory notices will not be used for minor technical contraventions.

Statutory notices will only be signed by those officers authorised by the Strategic Director – Environment.

Authorised officers shall only sign statutory notices where they are satisfied that sufficient evidence has been presented to them and that service of a notice is the most appropriate way forward.

When drafting notices, realistic time limits for compliance shall be imposed and the case officer shall, where possible or appropriate, discuss these with the recipient.

Case officers shall also discuss with the recipient, where appropriate, the works that will be specified and that there will be the opportunity to fully consider any alternatives put forward by the recipient and the availability of solutions.

Generally, failure to comply with statutory notices will result in the council instituting prosecution proceedings and/or carrying out the works specified in the notice in default.

The circumstances where a statutory notice **will** be served are:

- Where (under Part III Environmental Protection Act 1990 or subsequent legislation) the council is satisfied that a statutory nuisance exists, or is likely to occur or recur

Any legislation where the Council has a duty to serve a statutory notice given satisfactory evidence

e) **Simple Caution**

The issuing of a simple caution may be considered appropriate under the following circumstances:

- To deal quickly and simply with less serious incidents
- To divert them from unnecessary appearance in the criminal courts of matters that can be more quickly and equally efficiently dealt with by way of a simple caution
- To reduce the chance of a repeated offence

The council will not issue a caution unless the following conditions are fulfilled:

- There must be sufficient evidence to instigate prosecution proceedings
- The offender must admit the offence
- The offender must show remorse and have undertaken to prevent recurrence of the offence
- Taking a prosecution proceeding is not in the public interest, taking into account the public interest principles described in the code for crown prosecutors

If a person declines the offer of a caution, prosecution proceedings will normally be the next course of action. In some circumstances, the council may consider a written warning will suffice instead of a caution, e.g. in the case of an offence which is minor in nature.

f) **Prosecution**

The council will consider it appropriate to instigate prosecution proceedings where one or more of the following criteria are met:

- There is general disregard for the law, particularly where the economic advantages of breaking the law and / or the loss / adverse impact or potential loss / adverse impact on others resulting from the offence are substantial.
- There is a history of non-compliance with the law, an approved Code of Practice or the relevant guidance and the person in charge and / or company is not intending to rectify or deal with this non-compliance
- The person in charge and / or company is not capable of dealing adequately with the issues and/or is not prepared to pay for professional advice, or take on board their recommendations
- As a result of a legal contravention, there has been a serious incident or case of ill health.
- The offence involves failure to comply with a notice
- In cases of fly-tipping and other waste offences where there is a general public expectation of enforcement to combat environmental crime. Individual incidents, although possibly not serious on their own, when viewed collectively are viewed by the public as unacceptable. In such cases it is generally in the public interest to instigate legal proceedings as a matter of course, after taking into account all relevant factors. The decision to take such action in individual cases will be the responsibility of the Environmental Health Manager.
- In other waste or environmental offences such as littering, dog fouling, etc where a fixed penalty notice (FPN) has been served but not paid. Individual incidents although possibly not serious on their own, when viewed collectively are viewed by the public as unacceptable. In such cases it is generally in the public interest to instigate legal proceedings as a matter of course, whilst taking into account all relevant factors. The decision to take such action in individual cases will be the responsibility of the Environmental Health Manager.

When considering whether to prosecute for a breach of legislation following an incident, the seriousness of the contravention not the severity of the incident, is generally the prime issue for consideration. The extent of personal or company responsibility for the incident is also relevant.

- Due regard must also be taken of guidance contained in **The Code of Practice for Crown Prosecutors** issued by the Crown Prosecution Service and relevant statutory codes of practice and the test of proportionality under the Human Rights Act.

Once a decision to instigate prosecution proceedings has been taken, the matter should be referred, without undue delay, to the council's legal advisors.