

Regulatory Services

ENFORCEMENT POLICY

1 Document Information

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3 INTRODUCTION

- 3.1 Regulatory Services' primary function is to achieve regulatory compliance in order to protect the public, legitimate business, the environment and groups such as consumers and workers. Enforcement action is at the discretion of the Local Authority and enforcement action may be taken in some cases after compliance has been achieved if it is in the public interest to do so.
- 3.2 This Policy applies to all the legislation enforced by Officers with delegated enforcement powers employed by Regulatory Services.
- 3.3 Enforcement includes any criminal or civil action taken by Officers aimed at ensuring that individuals or businesses comply with the law.
- 3.4 The purpose of this document is to enable Officers to interpret and apply relevant legal requirements fairly and consistently.
- 3.5 All authorised Officers shall abide by this policy when making enforcement decisions unless it is considered by the Regulatory Service Manager or a nominated deputy that there would be immediate or significant risk to the public or the environment. Any departure from this policy must be justified in writing and approved by a member of the Regulatory Services Management Team.
- 3.6 Duties will be carried out in a fair, equitable, non-discriminatory and consistent manner. Consistency will be promoted by following clear standards of enforcement and where possible through liaison with other authorities and enforcement bodies.
- 3.7 Regulatory Services recognises that where it becomes necessary to take enforcement action against a business, or individual, such action will be taken. There is a wide range of tools available to Officers. The actions which can be considered are:
- a) No action;
 - b) Informal action and advice;
 - c) Referral to another agency;
 - d) Fixed Penalty Notices;
 - e) Statutory notice;
 - f) Refusal, Suspension or Revocation of a licence, permit or consent;
 - g) Review of Premises Licence;
 - h) Simple Caution;
 - i) Seizure;
 - j) Prosecution;
 - k) Work in default;
 - l) Confiscation proceedings;
 - m) Restrictions on trading activities;
- 3.8 When considering enforcement action Regulatory Services will convene a meeting (to be known as an authority panel) consisting of a minimum of two members of the Regulatory Service Management Team or an appointed senior officer and a representative from Legal Services to decide the most appropriate course of action after considering the Officer's evidence and any written submission received from the accused.
- 3.9 When taking enforcement action, Regulatory Services will:

- a) Seek to adopt the most effective approach to enforcement by co-ordinating action between enforcement agencies both internal and external to the Council.
- b) Clearly explain what needs to be done to comply with the law and confirm in writing.
- c) Distinguish between requirements that are stated in law and recommendations that are intended to achieve higher standards.
- d) Provide an opportunity for the individual or business suspected of an offence to make representations before formal action is taken unless immediate action is required.
- e) Where immediate action is considered necessary and there is a departure from this policy, provide an explanation of why such action is required in writing within 10 working days of that decision to the affected person.
- f) Provide information of the right of appeal, where one is available.
- g) Where applicable, contact the nominated Primary Authority (As established by the Regulatory Enforcement and Sanctions Act 2008) before giving detailed advice or taking enforcement action.

4 CONSIDERATIONS

4.1 In order to ensure that decisions are consistent, balanced, fair and relate to common standards ensuring the public and/or environment are adequately protected, the following principles will be considered by the investigating Officer and the authority panel;

- a) Proportionality to the circumstances;
- b) Consistencies as to process and outcome;
- c) Transparencies to all duties; and
- d) Targeted at the more serious risks.

4.2 When deciding on the most appropriate method of enforcement the Officer and authority panel will also consider:

- a) The seriousness of the offence;
- b) Consequence of non compliance/continued non compliance;
- c) Previous history of compliance;
- d) Wilfulness of non compliance;
- e) Public interest including consideration of impact on vulnerable groups;
- f) Effectiveness of the enforcement options.

5 ENFORCEMENT OPTIONS

5.1 No Action

This will be appropriate for less serious offences or minor technical breaches, which are immediately remedied whilst the Officer is still on the premises or where it is anticipated that the problem will be removed shortly afterwards. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances.

5.2 Informal Action & Advice

Informal action includes offering advice, warnings and requests for action, the use of letters, informal notices and inspection reports. Such correspondence will be in writing, identifying the breach, giving advice on how to put them right and a deadline by which to do it. Time allowed for rectifying breaches must be reasonable.

5.3 Referral to another Agency (including Primary or Home Authority)

Sometimes the infringement may be more appropriately dealt with by means of referral to another agency or local authority.

5.4 Fixed Penalty Notices

Certain offences can be dealt with by issuing fixed penalty notices where prescribed by legislation. The fixed penalty notice is recognised as an enforcement tool and enable a defendant to avoid a criminal record by discharging their liability to a prosecution for the original offence. Where legislation permits, an offence may be dealt with by way of a Fixed Penalty Notice, on the first occasion without issuing a warning.

5.5 Statutory Notice

This should be used in circumstances where:

- a) There is an imminent risk; or
- b) The consequences of not taking action would be unacceptable; or
- c) There is no confidence in that voluntary compliance will be gained; or
- d) Where Legislation and/or Codes of Practice deem it necessary.

Any time allowed to rectify the offence will be reasonable.

5.6 Refusal, Suspension or Revocation of a Licence, Permit or Consent

This should be used in circumstances where there:

- a) Is an imminent risk; or
- b) The consequences of not taking action would be unacceptable; or
- c) There is no confidence in that voluntary compliance will be gained; or
- d) Where Legislation and/or Codes of Practice deem it necessary.

5.7 Review of a Premises Licence

Under the Licensing Act 2003 responsible authorities are able to call for a review of the Premises Licence where one or more of the four licence objectives are not being met.

5.8 Simple Caution

Simple Caution should only be issued for offences where there is no imminent risk or where the offence is readily admitted and immediate action has removed the imminent risk. A caution can be used to:

- a) deal quickly and simply with less serious offenders;
- b) to divert them from unnecessary appearance in the criminal courts;
- c) to reduce the chances of their re-offending.

Simple cautions should not be used as an alternative to prosecutions where insufficient evidence is available.

5.9 Seizure

Certain legislation enables authorised Officers to seize goods, equipment or documents, where appropriate this power will be exercised.

5.10 Prosecution

Regulatory Services acknowledge that such action should be reserved for those who blatantly disregard the law or who refuse to implement legal requirements. Prosecution shall not be limited to such situations if the authority panel feels that in all the circumstances of the relevant case prosecution is the most suitable enforcement option. In addition prosecution will always be considered where:

- a) the offence involves a failure to comply in full or in part with the requirements of a statutory notice
- b) there is an obstruction or assault of an officer
- c) false or misleading information is provided to officers in the course of any investigation or inspection

5.11 Work in Default

Certain legislation provides the power to allow for the enforcing agency to carry out works in default to ensure the issue or problem is resolved. The costs of this work will where possible be recharged to the person responsible for causing the problem or issue.

5.12 Confiscation Proceedings

The purpose of confiscation proceedings is to recover the financial benefit that the offender has obtained from their criminal conduct. Action under the Proceeds of Crime Act 2002 will be considered where the defendant has been convicted of a relevant offence

5.13 Restriction on Trading Activities

Proceedings for Enforcement Orders may be considered under Part 8 of the Enterprise Act regarding continuous and/or multiple infringements of specified civil and criminal legislation as prescribed in Schedule 13. The trader's history, previous guidance or business advice provided by Trading Standards and the trader's response will be a relevant consideration.