

ENVIRONMENTAL HEALTH ENFORCEMENT POLICY STATEMENT



1 AIM OF THE POLICY AND INTRODUCTION

1.1 The Council's vision, shared by the local strategic partnership, is that by 2020:

“With our partners we want the Isle of Wight to become a world renowned Eco Island, with a thriving economy, a real sense of pride and where residents feel safe and are treated with respect.”

Environmental Health contributes to several of the Council's corporate plan themes. In fulfilling our duties and realising the Council's vision we will seek to ensure, without fear or favour, that individuals, organisations or businesses are assisted or required (when necessary and proportionate) to fulfil their legal responsibilities.

1.2 Isle of Wight Council, in addition to the Enforcement Concordat, has adopted this documented general policy regarding Environmental Health's delegated enforcement responsibilities. This document details the general approach Environmental Health will follow in carrying out its enforcement duties. The appendices to this policy describe in detail the specific approach that will be adopted to enforce legislation relating to particular areas of the Department's activities; for example, Local Authority Pollution Prevention and Control, Health and Safety, Statutory Nuisance, Food Safety / Standards and Licensing.

1.3 This policy and its appendices are based upon advice from Government Departments, the Health and Safety Executive and Health and Safety Executive Local Authority Unit (HELA), the Local Authorities Co-ordinators on Regulatory Services (LACORS), the Chartered Institute of Environmental Health, best practice and “The Code for Crown Prosecutors”. The aim of this policy is to promote consistency and to ensure any enforcement action is proportional, consistent, transparent, targeted and accountable.

1.4 On 6 April 2008 the regulators [compliance code](#), [statutory code of practice](#) came into force. The Code establishes specific obligations based on Hampton Principles which regulators “must have regard to” when delivering regulatory activity. Each is based on a Hampton principle. The obligations of the Code are:

- **Economic progress:** Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.
- **Risk assessment:** Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.
- **Advice and guidance:** Regulators should provide authoritative, accessible advice easily and cheaply.
- **Inspections and other visits:** No inspection should take place without a reason.
- **Information requirements:** Businesses should not have to give unnecessary information or give the same piece of information twice.
- **Compliance and enforcement actions:** The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
- **Accountability:** Regulators should be accountable for the efficiency and effectiveness of their activities, while being independent in the decisions taken.

1.5 In accordance with national guidance it is felt that this enforcement policy, its appendices together with the current [Environmental Health Service Plan](#) 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 we may conclude that a provision in the Code is either not relevant or is outweighed by

another provision. Where we recognise this we will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

2 ENFORCEMENT METHODS

- 2.1 To fulfil Environmental Health's enforcement responsibilities, a variety of methods may be employed including informal approaches (for example, seminars, verbal or written advice) or formal means including the service of legal notices, issue of a formal caution, prosecution or other legal action.
- 2.2 The method used will aim to meet the following principles:
- i) **PROPORTIONALITY** The enforcement action taken will be related to the risks to health and safety, the environment or the extent of nuisance to the public. Those whom the law protects and those on whom it places duties expect that action taken by enforcing authorities to achieve compliance or bring the duty holders to account should be proportional to any risks or to the seriousness of any breach. Care will be taken to ensure that any action required will not incur unnecessary costs.
 - ii) **CONSISTENCY** The approach adopted to achieve similar ends will aim to be similar under similar circumstances. This will be assisted through quality control of officers' work, review of cases by senior management within Environmental Health, where necessary, and advice from relevant professional bodies, if deemed to be appropriate.
 - iii) **TRANSPARENCY** Environmental Health will assist individuals, organisations or businesses to understand what is expected of them and what they should expect from us. Environmental Health will also ensure that individuals, organisations or businesses can distinguish advice from legal obligations. Requirements and/or recommendations will always be put in writing if requested.
 - iv) **TARGETING** Environmental Health's resources will be targeted primarily on those activities by individuals, organisations or businesses giving rise to the most serious risks to health and safety, the environment or the extent of statutory nuisance to the public.
 - v) **ACCOUNTABILITY** Officers in the employ of the Isle of Wight Council are accountable to the public for their actions and decisions. This is dealt with in paragraph 4.7 below.

3 FORMAL CAUTIONS AND PROSECUTIONS

- 3.1 In addition to any specific guidance, as detailed in the attached appendices, in determining whether or not to issue a formal caution, or instigate legal proceedings the following criteria shall be used:
- i) The advice in the "The Code for Crown Prosecutors", particularly relating to the "***the evidential test***" and the "***the public interest test***" ([The CPS : The Code for Crown Prosecutors](#))
 - ii) Home Office, other public body or professional guidelines on the cautioning/prosecution of offenders. In particular, formal cautions will only be offered in circumstances where the specific factors to an individual outweigh the "***public interest factors***" for prosecution.
 - iii) The seriousness of the alleged offence. In determining the "seriousness" regard shall be made although not exclusively limited to:
 - a) whether any injury has resulted or there is a potential for injury to occur (the nature of the injury or possible injury and the degree of risk are also considerations),
 - b) whether the environment or health and safety of the public or employees has been disregarded for financial reward or otherwise
 - c) whether a statutory nuisance has been caused or permitted to continue for financial reward or otherwise,
 - d) whether there is reckless disregard for the law which places at risk public health, safety or the environment,

- e) whether there is a failure to comply, without reasonable excuse, with a statutory notice.
- iv) The previous history of the individuals, organisations or businesses concerned and in particular:
 - a) whether there is a history of similar offences or failures,
 - b) any previous responses to advice, warnings and enforcement action,
 - c) whether the confidence in the ability of the individual's, or management of the organisation's or businesses to take positive effective action to remedy the situation is poor.
- v) The perceived public benefit of a prosecution. A prosecution may be considered to be in the public interest when its outcome impacts upon a section of the community whose protection, health, safety, well being, legal rights or the environment as a whole, was placed at risk of being affected or was adversely affected. Additionally, the importance of a prosecution in establishing an important precedent or drawing public attention to national or local campaigns or issues, may be considered. (See also the [The CPS : The Code for Crown Prosecutors](#))
- vi) The suitability of witnesses and their willingness to give evidence. Where a prosecution may result in unjustified risk or harm to witnesses or complainants, advice shall be sought from Legal Services and relevant external bodies on whether or not to proceed.
- vii) Whether there is evidence that a defendant may be able to rely on a statutory defence.
- viii) Where precedents have been set, revealing reluctance to impose reasonable penalties in relation to similar matters or to award prosecution costs.
- ix) The way in which the investigation has been conducted and whether any unreasonable delay has occurred in completing the investigation or the commencement of proceedings.

3.2 In any event legal proceedings will be instigated where there has been any illegal obstruction or assault of any officer in the course of their duty.

3.3 In compiling a prosecution file as a result of application of this policy the procedure for production of prosecution reports shall be followed by all officers.

4 GENERAL

4.1 All authorised officers shall abide by this policy and appendices when making enforcement decisions. Unless it is considered by Environmental Health that there would be immediate significant risk to the public or the environment, any departure from this policy must be exceptional, capable of justification and be fully considered by a panel of senior officers of Environmental Health and a representative of the Isle of Wight Council legal service team.

4.2 Environmental Health will ensure that officers who are authorised to initiate enforcement action are competent to do so, are suitably qualified and possess relevant experience as determined by available guidance whether statutory or non statutory and undergo regular managerial supervision so as to ensure consistency.

4.3 All authorised officers will be fully acquainted with the requirements of this policy and appendices relevant to their operational duties. Initial training upon recruitment and periodic refresher training of officers will be undertaken and their activities will be monitored to ensure compliance with this policy and relevant appendices. This will be through regular management supervision and the enforcement panel review of prosecution reports.

4.4 Where necessary and appropriate for any enforcement activities requiring an inter agency approach, officers shall ensure that liaison is made with those bodies in accordance with national and local guidelines.

4.5 The Service will actively seek to attend national, regional and specialist group meetings in order to share and facilitate good enforcement practice.

4.6 Where necessary and possible, section service plans and procedures will address particular interests of consumers on the Island including business owners, employees and the public. For example, where appropriate, arrangements shall be made for interpreters and translators where businesses or the public do not have English as their first language, and the provision of out of hours visits to deal with premises only operating at night. Section service plans will record the activities requested and carried out in accordance with these arrangements.

- 4.7 The Environmental Health Manager shall carry out or cause to be carried out a review of this policy on a 12 monthly basis. The review shall incorporate any significant legal precedents, consideration of any unnecessary duplicate requests made by the service, reassessment of needs, where appropriate and consistent with national guidelines and any public comments.
- 4.8 Any complaints relating to this policy or the application of it shall be dealt with in accordance with the [Isle of Wight Council Complaints Procedure](#) a hard copy of which is also available on request.

APPENDIX ONE
SPECIFIC GUIDANCE ON GENERAL ENFORCEMENT ISSUES
RELEVANT TO ALL SECTIONS OF ENVIRONMENTAL HEALTH

1 ENFORCEMENT OPTIONS

1.1 The Isle of Wight Council will aim to ensure that enforcement decisions are always consistent, balanced, fair and relate to common standards that ensure the public is adequately protected. Whether as a result of an inspection, request for assistance, or other form of interaction the following options for enforcement action (dependant on the circumstances) singly or in combination may be available:

- i) take no action
- ii) take informal action
- iii) issue a statutory notice
- iv) issue a formal caution
- v) instigate legal proceedings

1.2 The investigating officer shall, where it is viewed as necessary to issue a statutory notice, discuss the matter with his/her line manager, unless it is considered that there would be significant risk to the public or the environment by any delay,. In **all cases** the officer shall ensure that a checklist for notices is completed, PRIOR to service of a notice ([Appendix 9](#)). Officers engaged in food safety/standards enforcement shall also refer to relevant sections specific procedures.

1.3 Any decision to issue a formal caution or instigate legal proceedings shall be determined by a panel of senior officers of Environmental Health and a representative of the Isle of Wight Councils legal services team, following the presentation of the facts by the investigating officer.

1.4 The issue of fixed penalty notices are subject to specific guidance relevant to the particular offence.

2 NO ACTION

2.1 Where conditions at the time of inspection are satisfactory, positive feedback and advice may be given to the business concerned and, where the inspection frequency is risk based, a history of satisfactory compliance may result in the risk rating for that business being altered on the basis that good, continual compliance has been demonstrated.

3 INFORMAL ACTION

3.1 Informal action to secure compliance with legislation includes:

- i) offering advice both verbally and in writing,
- ii) requests for action to be carried out relating to the findings of any inspection or investigation.

3.2 The circumstances when it is appropriate to use informal action include but are not exclusively limited to when:

- i) the act or omission is not serious enough to warrant formal action
- ii) the responsible person's past history is such that it can be expected that informal action will achieve compliance
- iii) confidence in the responsible person or management is high
- iv) the consequences of non compliance will not pose a significant risk of injury / ill health to employees, self employed or the public
- v) as indicated in internal procedures including the result of the Enforcement Management Model (EMM) (Where applicable)

- 3.3 The findings of any inspection or investigation of an individual/business will be communicated to the responsible person in writing if requested. This applies even in those circumstances where conditions at the time of the inspection or investigation are satisfactory. The report findings will make clear the areas of the premises inspected.
- 3.4 Where an informal approach is used to secure compliance with this legislation the written documentation sent to the responsible person will:
- i) where applicable, indicate that a complaint, or complaints, have been received and detail the nature and cause of the complaint(s)
 - ii) contain all the information necessary to understand what work is required and why it is necessary with reference to any Act, Regulation, including section and regulation number contravened,
 - iii) indicate measures which will enable compliance with legal requirements and state (where applicable) that other means of achieving the same effect may be chosen,
 - iv) clearly separate and distinguish any recommendations of good practice to show that they are not a legal requirement,
 - v) state a time period for compliance with any requirement
 - vi) be sent as soon as is reasonably practicable and in any event **within ten working days** of the inspection or investigation visit,
 - vii) include with the letter a leaflet explaining that the recipient may contact the officer's line manager to discuss the situation and rights of appeal (if appropriate the officer should tell the person responsible at the visit that they should expect a letter).

4 **STATUTORY NOTICES**

- 4.1 See section specific guidance below.

5 **PROSECUTIONS**

- 5.1 See section specific guidance below.
- 5.2 In addition to 5.1 above, prosecution will also be considered, if it is appropriate in the circumstances, as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by the law. This is particularly so 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.
- 5.3 When circumstances have been identified which may warrant prosecution, all relevant evidence and information will be collated and produced in a format as detailed in the Environmental Health Prosecution Procedure.
- 5.4 The investigating officer's role is to provide all relevant information to the panel of officers who will then decide whether any proceedings should be instigated.
- 5.5 When decisions are being taken on whether to prosecute, any relevant guidance will be followed in addition to the criteria contained within Section 3 of the Enforcement Policy Statement.

APPENDIX TWO
SPECIFIC GUIDANCE ON ENFORCEMENT OF THE DUTIES OF
ENVIRONMENTAL HEALTH WITH RESPECT TO
LOCAL AUTHORITY POLLUTION PREVENTION AND CONTROL (LAPPC)

- 1 INTRODUCTION AND DESCRIPTION OF STATUTORY DUTIES AND OFFICER DUTIES**
- 1.1 All officers authorised to undertake duties with respect to LAPPC shall comply with this appendix, unless, it is considered by Environmental Health that there would be significant risk of harm to the public or the environment. Any departure from this appendix must be exceptional, capable of justification and be fully considered by a panel of senior officers of Environmental Health and a representative of the Isle of Wight Councils legal services team.
- 1.2 All officers authorised to undertake duties with respect to LAPPC shall be suitably qualified and possess relevant experience as determined by any relevant available guidance whether statutory or non statutory. Each authorised officer's competence will be continually assessed through regular managerial control involving their compliance with this policy, relevant guidance, customer evaluation questionnaires and other performance indicators as determined by Environmental Health management and agreed with the individual.
- 1.3 Applications for permit (authorisation) from operators of certain processes designated for local air pollution control are received, or required by the Authority, and processed in accordance with guidance. A statutory set fee is payable on application and annually thereafter. Permits are issued to the operators containing conditions with which the process operator must comply with. These conditions relate to air pollution control and require that the Best Available Techniques (BAT) are used to control emissions to prevent "harm". The requirement to achieve BAT, for existing processes, is time and process related and is specified in individual process guidance. For new processes the requirement for BAT is immediate. Each operator, not required to achieve BAT immediately, is required to submit an upgrading programme to ensure that their process meets the specified emission limits within the time deadlines. Permits are required to be reviewed four yearly and the processes inspected at frequencies determined by risk to check compliance with the conditions and the upgrading programme. Annual, statistical returns are required to be made to the Department of the Environment, Transport and the Regions (DEFRA). These relate to the number of applications received, the number of processes permitted (authorised), the number of inspections made, the number of complaints received and the time spent by officers carrying out these duties, the income received from permit fees and enforcement action taken. A public register containing specified information of all permitted processes is required to be maintained.
- 1.4 Applications for permits shall be dealt with in accordance with DEFRA guidance. Each permitted process shall be inspected, at a frequency and in accordance with DEFRA guidance. Where applicable, each process shall meet its time dead line for upgrading. However, in *exceptional circumstances* an extension may be granted to the time deadline. In determining whether an extension should be granted relevant guidance from the DEFRA, the advice of the Air Pollution Control Link Authority Scheme and or other Local Authorities authorising similar processes **must** be obtained in order to obtain a consensus of opinion and promote consistency. Each process shall have its permit reviewed on a four yearly basis and the permit shall be varied upon receipt of an upgrading plan (if appropriate). Requests for assistance concerning processes shall be dealt with according to the priority assigned to the request which shall be designated by the Principal Environmental Health Officer or other senior officer. In assigning the priority due regard shall be made to any perceived risk to the public, the environment or any statutory set deadline for action.

2 **ENFORCEMENT OPTIONS**

2.1 Due regard shall be made to paragraph 1.1 of Appendix One above.

2.2 Where an officer is considering enforcement action which they believe may be open to interpretation the matter shall be discussed, after consultation with their line manager, with the appropriate representative of the Air Pollution Control Link Authority Scheme and/or other Local Authorities authorising similar processes in order to obtain a consensus of opinion and promote consistency. (This is especially important in deciding whether any extension to time deadlines for upgrading should be granted.) However, if no reasonable consensus may be achieved and the issue appears to be of national importance the advice of the DEFRA should be sought.

3 **STATUTORY NOTICES**

3.1 **Variation Notices**

3.1.1 Variation notices shall be served on process operators in circumstances as described in and in accordance with legislation and DEFRA guidance.

3.1.2 The circumstances when it is appropriate to use variation notices include:

- i) where there is a legal requirement to serve a variation notice e.g. prior to substantial change of a permitted process, need to ensure upgrading time deadlines are met
- ii) in accordance with DEFRA guidance e.g. following submission of an upgrading programme

3.1.3 Where the changes to existing permits are significant a draft variation notice will be sent to the process operator asking for comments within 14 days. Due regard shall be paid of any comments received and where possible, if not conflicting with any guidance or the requirements of the authorisation to secure statutory objectives, be incorporated within the original notice.

3.1.4 In any variation notice the rights of appeal notes shall be enclosed and the operator shall be informed of these rights in an accompanying letter. In exercising their rights the operator shall be advised in the first instance to contact the officer issuing the notice.

3.1.5 Where a variation notice is likely to be disputed by the process operator the matter must be dealt with in accordance with 2.2 above.

3.2 **Revocation and Suspension Notices**

3.2.1 Revocation and suspension notices shall be served on process operators in circumstances as described in and in accordance with legislation and DEFRA guidance. In all cases the process operator shall be informed that should the process be operated in breach of the notice they will be liable to prosecution.

3.2.2 The circumstances when it is appropriate to use revocation notices include:

- i) where there is a legal requirement to serve a revocation notice e.g. operator no longer wishes to operate process or fails to pay subsistence fee
- ii) in accordance with DEFRA guidance

3.2.3 The circumstances when it is appropriate to use suspension notices include:

- i) where the consequences of carrying on the process, or carrying it on in a particular manner, poses an imminent risk of serious pollution to the environment

3.2.4 In any revocation or suspension notice the rights of appeal notes shall be enclosed and the operator shall be informed of these rights in an accompanying letter. In exercising their rights the operator shall be advised in the first instance to contact the officer issuing the notice, or their line manger.

3.2.5 Where a revocation or suspension notice is likely to be disputed by the process operator the matter must be dealt with in accordance with 2.2 above.

3.3 **Enforcement Notices**

3.3.1 Enforcement notices shall be served on process operators in circumstances as described in and in accordance with legislation and DEFRA guidance. In all cases the process operator shall be informed that should the notice not be complied with or they contravene it they will be liable to prosecution.

3.3.2 The circumstances when it is appropriate to use enforcement notices include:

- i) where there are significant contravention's of the conditions of the operators authorisation
- ii) where there is a lack of confidence in the process operator to respond to informal action owing to past history of non compliance with informal action
- iii) where the consequences of non compliance could pose a risk of harm to the public or the environment

3.3.3 In any enforcement notice the rights of appeal notes shall be enclosed and the operator shall be informed of these rights in an accompanying letter. In exercising their rights the operator shall be advised in the first instance to contact the officer issuing the notice or their line manager.

3.3.4 The issue of an enforcement notice must be dealt with in accordance with 2.2 above.

4 **PROSECUTIONS**

4.1 The decision to prosecute will, in general, be restricted to those persons who:

- i) put the public or environment at serious risk of harm
- ii) fail to meet the requirements of a permit after being given a reasonable opportunity to comply as determined by appropriate guidance
- iii) blatantly disregard the law
- iv) operate a prescribed process without a valid permit, unless genuinely unaware of the requirement, after being given a reasonable opportunity to comply as determined by appropriate guidance
- v) fail to comply in part or in full with statutory notices

APPENDIX THREE
SPECIFIC GUIDANCE ON THE ENFORCEMENT DUTIES OF
ENVIRONMENTAL HEALTH WITH RESPECT TO
CONTAMINATED LAND

1 INTRODUCTION AND DESCRIPTION OF STATUTORY DUTIES AND OFFICER DUTIES

- 1.1 All officers authorised to undertake duties with respect to contaminated land shall comply with by this appendix, unless, it is considered there would be significant risk of harm to the public or the environment, any departure from this appendix must be exceptional, capable of justification and be fully considered by a panel of senior officers of the Environmental Health and a representative of the Isle of Wight Councils legal services team.
- 1.2 All officers authorised to undertake duties with respect to contaminated land shall be suitably qualified and possess relevant experience as determined by any relevant available guidance whether statutory or non statutory. Each authorised officer's competence will be continually assessed through regular managerial control involving their compliance with this policy, relevant guidance, customer evaluation questionnaires and other performance indicators as determined by Environmental Health management and agreed with the individual.
- 1.3 Part IIA of the EPA places a duty on Local Authorities to inspect their area in order to identify land which appears to meet the statutory definition of "Contaminated Land". The definition is a function of the harm which the contamination is doing, or may do.

The method of inspection is pro-active in nature, though complaints of contamination will be investigated. A programme of on-going research continues to identify sites potentially affected by contamination, the identified sites are then prioritised for more detailed investigation. This programme is on going. When a piece of land appears to the Local Authority to be likely to meet the statutory definition of "Contaminated Land" a site visit will take place with the Environment Agency or English Nature if relevant. Section 108(6) of the Environment Act 1995 powers of entry shall be used if necessary.

In addition, in order to gain evidence, a detailed intrusive investigation may be undertaken to establish if the site actually meets the definition of "Contaminated Land".

The results shall be used in conjunction with current Government guidance as to what poses a significant risk of harm. Where land meets the definition, the land shall be formally determined as "Contaminated Land".

Where a site is determined as "Contaminated Land" the Council will identify the "appropriate persons". The Council will ensure that reasonable remedial actions are carried out to reduce the risk of harm posed by the site to a level which means the site no longer meets the definition of "Contaminated Land". If urgent remediation is required, the Council will undertake that which in its view is necessary and reclaim the costs from the appropriate persons later.

The Council will ensure where possible in the first instance that the person who caused or knowingly permitted the contaminating substance to be in, on, or under the land (known as Class A persons) undertakes the remedial actions. Where there are a number of Class A persons the Council may undertake the works itself and recharge them.

If there are no Class A persons, Class B persons (e.g. landowners) will be responsible for the remedial actions.

2 ENFORCEMENT OPTIONS

- 2.1 Due regard shall be made to paragraph 1.1 of Appendix One above.
- 2.2 Where an officer is considering enforcement action which they believe may be open to interpretation, the matter shall, after consultation with their line manager, be discussed with the Councils legal services team, or an appropriate representative of the Environment Agency (especially in relation to sites affecting controlled waters), or other Local Authorities or any other relevant organisation in order to obtain a consensus of opinion and promote consistency.
- 2.3 The Contaminated Land Regime Enforcement Procedure (Figure 7 Isle of Wight Contaminated Land Inspection Strategy) will be followed where a site has been determined as “Contaminated Land”.

3 STATUTORY NOTICES

3.1 Remediation Notices

- 3.1.1 Where the Class A person (s) (or Class B persons where there are no Class A persons) are not cooperative, a remediation notice shall be served 3 months after they have been notified of the necessary remedial actions. The notice shall specify the reasonable remedial actions which must be undertaken within a specified period.
- 3.1.2 In any enforcement notice the rights of appeal notes shall be enclosed and the operator shall be informed of these rights in an accompanying letter. In exercising their rights the operator shall be advised in the first instance to contact the officer issuing the notice or their line manager.

4 PROSECUTIONS OR OTHER LEGAL ACTION

- 4.1 The decision to prosecute will, in general, be restricted to those persons who:
 - i) fail to comply, in part or in full, with statutory notices,
 - ii) carry on activities or permit/allow circumstances to occur which involve significant risks to human health or the wider environment,
 - iii) blatantly disregard the law

APPENDIX FOUR

SPECIFIC GUIDANCE ON ENFORCEMENT OF THE DUTIES OF ENVIRONMENTAL HEALTH WITH RESPECT TO THE HEALTH AND SAFETY AT WORK ETC ACT 1974

1 INTRODUCTION AND DESCRIPTION OF STATUTORY DUTIES AND OFFICER DUTIES

- 1.1 All officers authorised to undertake duties with respect to the Health and Safety At Work etc Act 1974 (HASAWA) shall comply with this appendix, unless, it is considered there would be significant risk to employees, the self employed or the public, any departure from this appendix must be exceptional, capable of justification and be fully considered by a panel of senior officers of Environmental Health and a representative of the Isle of Wight Councils legal services team.
- 1.2 All officers authorised to undertake duties with respect to HASAWA shall be suitably qualified and possess relevant experience as determined by any relevant available guidance whether statutory or non statutory. Each authorised officer's competence will be continually assessed through regular managerial control involving their compliance with this policy, relevant guidance, customer evaluation questionnaires and other performance indicators as determined by Environmental Health management and agreed with the individual.
- 1.3 The responsibility for Health and Safety enforcement in workplace premises nationally is split between the Health and Safety Executive and the Local Authority. Premises enforced by Local Authorities are generally service based, with enforcement for manufacturing, construction, medicine and agriculture being allocated to the Health and Safety Executive. Premises in the employment categories which fall to the Local Authority for enforcement are required to register with the enforcing authority and such premises are required to inform the authority of any notifiable accidents which occur within their premises. In accordance with internal procedures all accident notifications and Health and Safety complaints are investigated either by a visit to the premises concerned or by correspondence with the parties concerned. All complaints are acknowledged and the business informed of the details of the complaint (with the exception of anonymous complaints). The introduction of new health and safety legislation over a short period of time has affected all employers, employees and self employed persons. In accordance with internal procedures all requests for information are actioned. Annual statistical returns are required to be made to the Health and Safety Executive's Local Authority Unit. The Council is under a statutory duty to provide adequate arrangements for the enforcement of health and safety within its area and mandatory guidance is issued stipulating the minimum standards expected.
- 1.4 Requests for assistance concerning HASAWA shall be dealt with according to the priority assigned to the request which shall be designated by the Principal Environmental Health Practitioner (PEHP) or other senior officer in accordance with internal procedures. In assigning the priority due regard shall be made to any perceived risk to the employees or to the public, the nature and extent or perceived risk of any injury, the nature of the complaint and the seriousness of any perceived breach of legislation, as detailed in specific procedures.

2 ENFORCEMENT OPTIONS

- 2.1 Due regard shall be made to paragraph 1.1 of Appendix One above.

- 2.2 To aid officers in their decision making the HSE has issued the Enforcement Management Model (EMM) to all Local Authorities. Under Section 18 of the Health and Safety at Work etc Act 1974, Local Authorities **MUST** have due regard to it. Accordingly, all officers involved in the enforcement decision making process have been trained in its application. In determining what action to take all officers **SHALL** pay due regard to the results of the EMM. Where the results of the EMM conflict with those of the officer, the matter shall be referred to the line manager or other senior officer for ratification. In all cases, the issue of a statutory notice, shall be referred to their line manager, unless, it is considered there would be significant risk to employees, self employed or the public by any delay. With regard to the issue of a formal caution or the instigation of legal proceedings the matter, including the results of the EMM will be referred for determination to a panel of senior officers of Environmental Health and a representative of the Isle of Wight Councils legal services team. All officers on the panel shall ensure that they are aware of the EMM and have undergone the training on its application.
- 2.3 To ensure consistency as part of the work reviews of operational officers the PEHP shall ensure that the monitoring includes a check of enforcement decisions made by officers against the EMM.
- 2.4 Where an officer is considering enforcement action which they believe may be open to interpretation the matter shall, after consultation with their line manager, be discussed with the appropriate representative of the CIEH Health and Safety Advisory Committee, the HSE Enforcement Liaison Officer and/or other Local Authorities in order to obtain a consensus of opinion and promote consistency. However, if no reasonable consensus may be achieved and the issue appears to be of national importance the advice of HELA should be sought.
- 2.5 Where the duty holder has a home authority, contact shall be made with that authority prior to service of any notice or other enforcement action, unless, it is considered there would be significant risk to employees, self employed or the public by any delay.

3 **STATUTORY NOTICES**

3.1 **Improvement Notices**

- 3.1.1 Improvement notices may be served on responsible persons, which may also include limited companies, in circumstances as described in and in accordance with legislation and HELA guidance. In all cases the responsible person shall be informed that should the notice not be complied with or they contravene it they will be liable to prosecution.
- 3.1.2 The circumstances when it is appropriate to use Improvement Notices include:
- i) where there are significant contraventions of legislation
 - ii) where there is a lack of confidence in the responsible person to respond to informal action owing to past history of non-compliance with informal action
 - iii) where the consequences of non-compliance could pose a significant risk of injury to employees, self employed or the public
 - iv) where the results of the EMM
- 3.1.3 The officer will discuss the Improvement Notice with the responsible person and, if possible, resolve matters in dispute, before serving it. The notice may say what needs to be done, it will state by when and why, with reference to which particular Act, Sections and or Regulations are being contravened, the reason the officer holding the opinion that the specified legislation is being contravened, and an indication of the potential consequences of failing to comply with the notice will also be included in the notice. Where applicable, the notice will also indicate that other means of achieving the same effect as detailed in the notice may also be chosen by the responsible person. The minimum time period specified on the notice, within which to take remedial action, will be 21 days.

3.1.4 Together with any Improvement Notice the rights of appeal notes shall be enclosed and the responsible person shall be informed of these rights of appeal in an accompanying letter.

3.2 Prohibition Notices

3.2.1 Prohibition notices shall be served on responsible persons in circumstances as described in and in accordance with legislation and HELA guidance. In all cases the responsible person shall be informed that should the notice not be complied with or they contravene it they will be liable to prosecution.

3.2.2 The circumstances when it is appropriate to use Prohibition Notices include:

- i) where there are any activities being carried on, or likely to be carried on, which involve ,or will involve, a risk of *serious personal injury* to employees, self employed or the public
- ii) where there is a lack of confidence in the responsible person to respond to informal action owing to past history of non compliance with informal action
- iii) where the consequences of not taking immediate and decisive action to eliminate or reduce the risk would be unacceptable
- iv) where the result of the EMM indicate this as appropriate

3.2.3 The notice will specify what activity is causing or is likely to cause the risk of injury and the reason for the officers' opinion that the activity is likely to cause injury. It may state what needs to be done; it will say by when, why, with reference to which particular Act, Sections and or Regulations are being contravened and indicate the potential consequences of failing to comply with the notice. Where applicable, the notice may also indicate that other means of achieving the same effect as detailed in the notice may also be chosen by the responsible person.

3.2.4 Together with any Prohibition Notice the rights of appeal notes shall be enclosed and the responsible person shall be informed of these rights of appeal in an accompanying letter.

4 PROSECUTIONS

4.1 The decision to prosecute will, in general, be restricted to those occasions where:

- i) death was a result of a breach of the legislation;
- ii) the gravity of the offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- iii) there has been a reckless disregard of health and safety requirements;
- iv) there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- v) work has been carried out without, or in serious non compliance with, an appropriate licence or safety case;
- vi) a duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;
- vii) there has been a failure to comply with an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a formal caution;
- viii) false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives or gave rise to significant risk;
- ix) inspectors have been intentionally obstructed in the lawful course of their duties.

PROSECUTION OF INDIVIDUALS

4.2 Subject to the aforementioned, in appropriate circumstances, prosecution will also be considered of individuals such as directors and managers. Such cases would be appropriate where an offence was committed with their consent or connivance or the matter was felt to have been attributable to neglect on their part. Where appropriate, the authority will also seek disqualification of directors under the Company Directors Disqualification Act 1986.

GENERAL

- 4.3 *In appropriate circumstances*, whilst taking care not to prejudice any subsequent trial, media attention shall be drawn to factual information concerning charges laid before the courts. Publicity shall also be drawn to those convictions which could serve to reinforce the need to comply with the law or deter others from disregarding their duties under health and safety law.
- 4.4 In cases of sufficient seriousness, and when given the opportunity, the authority shall 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 may be imposed.
- 4.5 Where the duty holder has a home authority, contact shall be made with that authority prior to instigation of proceedings to advise them of our findings.

REVISITS

- 4.6 Where contraventions of health and safety legislation are identified during an inspection or other visit, the premises will be revisited to confirm compliance if:
- i) the contraventions are serious i.e. where the consequences of non-compliance might pose a significant risk to employees or public health;
 - ii) there is a lack of confidence in the management of the business to address the contravention/s identified; and/or,
 - iii) a statutory notice has been served.
- 4.7 Further action will be considered following each revisit where satisfactory compliance has not been achieved.

DEATH AT WORK

- 4.8 Where there has been a breach of law leading to a work related death the authority will consider whether the circumstances of the case might justify a charge of manslaughter. In such cases the applicable parts of the HSE / CPS / ACPO document *Work related deaths; A protocol for liaison*, shall be followed.

5 ENFORCEMENT POLICY IN RESPECT OF THOSE PREMISES WHERE THE ISLE OF WIGHT COUNCIL HAS AN INTEREST

- 5.1 A potential conflict of interest may arise in those premises for which the Council is the Enforcing Authority but in which they may have an ownership or management interest. Examples of such premises include leisure centres, shopping malls, museums, golf courses etc which under the Enforcing Authority Regulations 1998 are the responsibility of the Council unless solely operated by them. The nature of the relationship between the Council owning the premises and a contractor/client using the premises can potentially impact upon the Council's role as enforcer and enforced. The purpose of the following paragraphs of this section is to set out this Council's policy in accordance with HELA Circular 22/10 so as to ensure openness and transparency.
- 5.2 In relation to premises in which the Council may have an interest the Council will:
- i) carry out its enforcement policy and practice in exactly the same way that it does in all other premises;
 - ii) ensure that the attention received is in accordance with the criteria applied to other duty holders.

- 5.3 Where any potential conflict of interest may arise, public and employee safety will take precedence over political or economic considerations so far as is reasonably practicable. Where it is apparent following an investigation that the Council may have contributed to a Health and Safety contravention by one of its contractors/clients through a failure of its own duties this will be brought to the attention of the HSE. All information obtained from any such investigation will be passed to the HSE as soon as reasonably practicable.
- 5.4 Officers employed by the Council and/or Elected Members with an interest in the premises concerned shall ensure that they co operate fully with any investigation and that they shall not attempt influence the findings of an investigation by applying pressure upon any officer employed by the Council in the course of the investigation.
- 5.5 In appropriate exceptional circumstances, which shall be determined by the Environmental Health Manager in consultation with the Head of Consumer Protection/Director and/or Chief Executive, consideration shall be given to the employment of an external investigator. Legal advice shall be sought in order to ensure impartiality in serious cases.
- 5.6 In those premises where a genuine conflict of interest has been identified and cannot be resolved by this policy, consideration shall be given to request the HSE for a formal transfer of Enforcement Responsibility.

APPENDIX FIVE

SPECIFIC GUIDANCE ON ENFORCEMENT OF THE DUTIES OF ENVIRONMENTAL HEALTH WITH RESPECT TO THE ENVIRONMENTAL PROTECTION ACT 1990 (AND OTHER RELATED LEGISLATION) CONCERNING NOISE CONTROL

1 INTRODUCTION AND DESCRIPTION OF STATUTORY DUTIES AND OFFICER DUTIES

- 1.1 All officers authorised to undertake duties with respect to the Environmental Protection Act 1990 (EPA)(and other legislation concerning noise control) shall comply with this appendix, unless it is considered there would be significant risk to public health or allow a substantial nuisance to occur, recur or continue, any departure from this appendix must be exceptional, capable of justification and be fully considered by a panel of senior officers of Environmental Health and a representative of the Isle of Wight Councils legal services team.
- 1.2 All officers authorised to undertake duties with respect to EPA shall be suitably qualified and possess relevant experience as determined by any relevant available guidance whether statutory or non statutory. Each authorised officer's competence will be continually assessed through regular managerial control involving their compliance with this policy, relevant guidance, customer evaluation questionnaires and other performance indicators as determined by Environmental Health management and agreed with the individual.
- 1.3 Part III of the EPA places a duty on Local Authorities to inspect their areas from time to time for statutory nuisances and to investigate any complaint of statutory nuisance, received from persons living within their areas. Other legislation concerning statutory nuisances and noise control places Local Authorities under similar duties. The actual method and extent of investigation is dependant upon the specific details and nature of the nuisance complained of. All complaints of nuisance are investigated in accordance with internal procedures. Due regard shall be made to the seriousness of any risk to public health, the nature and extent of the alleged nuisance and the cost effective use of resources. The complaint is then dealt with in terms of its urgency, or otherwise, in accordance with internal procedures.

2 ENFORCEMENT OPTIONS

- 2.1 Due regard shall be made to paragraph 1.1 of Appendix One above.
- 2.2 Where an officer is considering enforcement action which they believe may be open to interpretation and or subject to a Best Practicable Means Defence the matter shall, after consultation with their line manager, be discussed with the Councils legal services team, or an appropriate representative of the CIEH (Environmental Protection Control Advisory Committee) or other Local Authorities or any other relevant organisation in order to obtain a consensus of opinion and promote consistency.

3 STATUTORY NOTICES

3.1 Abatement Notices

- 3.1.1 Abatement notices shall be served on responsible persons, which may also include limited companies, in circumstances as described in and in accordance with legislation and relevant guidance. In all cases the responsible person shall be informed that should the notice not be complied with or they contravene it they will be liable to prosecution, in addition to any costs incurred by the Local Authority in carrying out the works in default of the notice and that the Local Authority could seek a high court injunction.

3.1.2 The circumstances when it is appropriate to use Abatement Notices include:

- i) where there is or may be a significant risk to public health or a statutory nuisance is occurring, likely to occur, or recur
- ii) where the consequences of not taking immediate and decisive action to abate or prohibit the activity giving rise to the significant risk to public health or statutory nuisance would be unacceptable.

3.1.3 Where practicable, the officer will discuss the Abatement Notice with the responsible person and, if possible, resolve matters in dispute, before serving it. The notice will specify the activity which is causing the nuisance or risk to public health; it may say what needs to be done to abate the nuisance; it will say by when, why with reference to which particular sub section of the relevant legislation is being contravened and indicate the potential consequences of failing to comply with the notice. The minimum time period within which remedial action must be taken will be specified on the notice.

3.1.4 Together with any Abatement Notice the rights of appeal notes shall be enclosed and the responsible person shall be informed of these rights in an accompanying letter. In circumstances where it is not practicable to provide an accompanying letter with the notice, the letter shall be sent together with a copy of the notice to the responsible person within ten working days.

4 PROSECUTIONS OR OTHER LEGAL ACTION

4.1 The decision to prosecute will, in general, be restricted to those persons who:

- i) fail to comply, in part or in full, with statutory notices,
- ii) carry on activities or permit/allow circumstances to occur which involve significant risks to public health or allow a statutory nuisance to occur, recur or continue, particularly for financial or other reward,
- iii) show a blatantly disregard for the law

4.2 In exceptional circumstances as outlined in respective procedures the enforcement options of high court injunctions and or anti social behaviours orders, acceptable behaviour contracts may also be considered. In all such cases the advice of the Legal Services Section and the Safer Communities Team shall be sought.

APPENDIX SIX

SPECIFIC GUIDANCE ON ENFORCEMENT OF THE DUTIES OF ENVIRONMENTAL HEALTH WITH RESPECT TO THE ENVIRONMENTAL PROTECTION ACT 1990 (AND OTHER LEGISLATION) RELATING TO PUBLIC HEALTH AND PEST CONTROL

1 INTRODUCTION AND DESCRIPTION OF STATUTORY DUTIES AND OFFICER DUTIES

- 1.1 All officers authorised to undertake duties with respect to the Environmental Protection Act 1990 (EPA)(and other legislation concerning public health and pest control) shall comply with this appendix, unless it is considered there would be significant risk to public health or allow a substantial nuisance to occur, recur or continue, any departure from this appendix must be exceptional, capable of justification and be fully considered by a panel of senior officers of Environmental Health and a representative of the Isle of Wight Councils legal services team.
- 1.2 All officers authorised to undertake duties with respect to EPA shall be suitably qualified and possess relevant experience as determined by any relevant available guidance whether statutory or non statutory. Each authorised officer's competence will be continually assessed through regular managerial control involving their compliance with this policy, relevant guidance, customer evaluation questionnaires and other performance indicators as determined by Environmental Health management and agreed with the individual.
- 1.3 Part III of the EPA places a duty on Local Authorities to inspect their areas from time to time for statutory nuisances and to investigate any complaint of statutory nuisance, received from persons living within their areas. Other legislation concerning public health and pest control places Local Authorities under similar duties. The actual method and extent of investigation is dependant upon the specific details and nature of the nuisance or health issue complained of. All complaints are investigated in accordance with internal procedures. Due regard shall be made to the seriousness of any risk to public health, the nature and extent of the alleged nuisance and the cost effective use of resources. The complaint is then dealt with in terms of its urgency, or otherwise, in accordance with internal procedures.

2 ENFORCEMENT OPTIONS

- 2.1 Due regard shall be made to paragraph 1.1 of Appendix One above.
- 2.2 Where an officer is considering enforcement action which they believe may be open to interpretation and or subject to a Best Practicable Means Defence the matter shall, after consultation with their line manager, be discussed with the Councils legal services team, or an appropriate representative of the CIEH (Environmental Protection Control Advisory Committee) or other Local Authorities or any other relevant organisation in order to obtain a consensus of opinion and promote consistency.

3 STATUTORY NOTICES

3.1 Notices

- 3.1.1 Notices shall be served on responsible persons, which may also include limited companies, in circumstances as described in and in accordance with legislation and relevant guidance. In all cases the responsible person shall be informed that should the notice not be complied with or they contravene it they will be liable to prosecution, for any costs incurred by the Local Authority in carrying out the works in default of the notice and that the Local Authority could seek a high court injunction (Where the relevant legislation permits).

3.1.2 The circumstances when it is appropriate to use Notices include:

- i) where there is or may be a significant risk to public health or a statutory nuisance is occurring, likely to occur, or recur
- ii) where the consequences of not taking immediate and decisive action to abate or prohibit the activity giving rise to the significant risk to public health or statutory nuisance would be unacceptable.

3.1.3 Where practicable, the officer will discuss the notice with the responsible person and, if possible, resolve points of difference, before serving it. The notice will specify what activity is causing the nuisance or risk to public health; it may say what needs to be done to abate the nuisance; it will say by when, why with reference to which particular Act, Sections and or Regulations which are allegedly being contravened and indicate the potential consequences of failing to comply with the notice. The minimum time period within which remedial action must be taken will be specified on the notice.

3.1.4 Together with any Notice the rights of appeal notes shall be enclosed and the responsible person shall be informed of their rights of appeal in writing in an accompanying letter. In circumstances where it is not practicable to provide an accompanying letter with the notice, the letter shall be sent together with a copy of the notice to the responsible person within ten working days.

4 PROSECUTIONS OR OTHER LEGAL ACTION

4.1 The decision to prosecute will, in general, be restricted to those persons who:

- i) fail to comply, in part or in full, with statutory notices,
- ii) carry on activities or permit/allow circumstances to occur which involve significant risks to public health or allow a statutory nuisance to occur, recur or continue, particularly for financial or other reward,
- iii) show a blatantly disregard for the law

4.2 In exceptional circumstances as outlined in respective procedures the enforcement options of high court injunctions and or anti social behaviours orders, acceptable behaviour contracts may also be considered (Where the legislation permits). In all such cases the advice of the Legal Services Section and the Safer Communities Team shall be sought.

APPENDIX SEVEN

SPECIFIC GUIDANCE ON ENFORCEMENT OF THE DUTIES OF ENVIRONMENTAL HEALTH WITH RESPECT TO FOOD SAFETY/STANDARDS LEGISLATION

1 THE AIM OF THE FOOD SAFETY/STANDARDS ENFORCEMENT POLICY

- 1.1 The aim of this policy is **to strive to ensure that food and drink intended for sale for human consumption, which is produced, stored, distributed, handled or consumed on the Isle of Wight, is without risk to the health, safety or detriment of the consumer.**
- 1.2 Enforcement action whether it is informal or formal will be primarily based upon an assessment of risk to public health and whether food businesses are negligent of their obligations or are intentionally infringing the law. In the context of this policy, this risk is the probability of harm to health occurring due to non-compliance with food safety law. Enforcement action will not generally be instigated as a punitive response to minor technical contraventions of legislation.
- 1.3 All officers authorised to carry out food safety duties will have regard to guidance on enforcement action contained in statutory code of practice issued under food legislation, any industry guides approved by the Secretary of State for the particular food sector in question and guidance, advice issued by LACORS (formerly LACOTS) and the Chartered Institute of Environmental Health.
- 1.4 All authorised officers will abide by this policy when making enforcement decisions. Any departure from the policy must be exceptional, capable of justification and be fully considered by a panel of senior officers of Environmental Health and a representative of legal services before the decision is taken, unless it is considered that there is significant risk to the public in delaying the decision.
- 1.5 All authorised officers will be fully acquainted with the requirements of this policy. Initial and periodic training of appropriate members of staff will be undertaken. Authorised officer's activities will be monitored to ensure compliance with this policy.

2 AUTHORISATION OF DECISION MAKING

- 2.1 Recommendations for prosecutions and formal cautions will be considered by a panel of senior officers of Environmental Health and a representative of the Isle of Wight Councils legal services team.
- 2.2 The majority of food safety enforcement action is initiated by authorised officers without any reference to a senior officer. The Council will ensure that officers who are authorised to initiate enforcement action are competent to do so, are suitably qualified, in terms of the requirements detailed in the statutory Codes of Practice, and have relevant and adequate experience in food enforcement.
- 2.3 The Council will continually assess the competence of authorised officers, having regard to the requirements detailed in the statutory code of practice.

3 ENFORCEMENT OPTIONS

- 3.1 The Isle of Wight Council wishes to be consistent in its approach to food enforcement action, including prosecution. To achieve and maintain consistency, officers will always have regard to paragraph 1.3 above.
- 3.2 Special consideration will be given to the enforcement of the food safety management procedures based on HACCP principles in view of the European Union Regulation 852/2004. This regulation requires food businesses to put in place and maintain food safety management

procedures (based on HACCP Principles), in order to improve the management of food safety within the food industry.

- 3.3 Where an officer is considering taking enforcement action which he believes is inconsistent with that adopted by other authorities or contrary to any advice, the matters will be discussed with the Hampshire and Isle of Wight Food Liaison Group or Food Advisory Committee. If the Group or Committee cannot achieve a reasonable consensus, or the issue appears to be of national significance, or it is felt existing guidance had not adequately taken account of the legal provisions, case law, relevant research or other evidence, the group or committee will be requested to ask LACORS to consider the issue to ensure consistent enforcement.
- 3.4 Where an officer is considering taking enforcement action which he believes may be contrary to any advice issued by relevant Home and/or Originating Authorities, he will discuss the matter with the relevant authorities before taking action (Home Authority Principle). The Isle of Wight Council recognises that where enforcement action impacts on aspects of an enterprise's policy which has been agreed centrally by the decision making base of the enterprise, then reference to the Home Authority is particularly necessary.

4 INFORMAL ACTION

- 4.1 Informal action to secure compliance with legislation includes offering advice, verbal warnings and requests for action, the use of letters and the issue of food hygiene/standards inspection reports.
- 4.2 Inspection reports will be issued following all programmed inspections, where deficiencies are identified and/or advice on good practice is appropriate. The minimum content of such reports will be that specified in statutory code of practice.
- 4.3 When enforcing legislation, the Isle of Wight Council recognises the need to clearly differentiate between legal requirements and matters which are recommended as good hygiene practice, even if only giving verbal advice.

5 STATUTORY NOTICES

5.1 Hygiene/Improvement Notices

- 5.1.1 Hygiene/Improvement Notices will normally only be served where one or more of the criteria below apply:
- i) where formal action is proportionate to the risk to public health;
 - ii) where there is a record of non-compliance with breaches of food hygiene/standards or food processing regulations;
 - iii) where confidence in the responsible person is low;
 - iv) where the authorised officer has sufficient evidence available to justify their issue and is satisfied that any subsequent legal proceedings are likely to succeed.
- 5.1.2 The use of Hygiene/Improvement Notices will, in general, be related to risk to health. It will not normally be appropriate to issue improvement notices for minor technical contraventions.
- 5.1.3 Hygiene/Improvement Notices will only be served by officers who hold relevant qualifications as specified in relevant provisions of statutory code of practice.
- 5.1.4 An authorised officer will not sign Hygiene/Improvement Notices unless that officer has witnessed the contravention.
- 5.1.5 All authorised officers will follow the relevant statutory code of practice and LACORS guidance on the use of statutory notices. Officers will place realistic time limits on notices and where possible these time limits will be agreed in advance with the proprietor. Where practicable, Officers will discuss the works that will be specified with the proprietors and fully consider the availability of solutions.

- 5.1.6 Failure to comply with a Hygiene/Improvement Notice generally will result in prosecution for non-compliance with that notice.
- 5.1.7 In any enforcement notice the rights of appeal notes shall be enclosed and the operator shall be informed of these rights in an accompanying letter. In exercising their rights the operator shall be advised in the first instance to contact the officer issuing the notice or their line manager

5.2 **Emergency Hygiene Prohibition Notices**

- 5.2.1 An Emergency Hygiene Prohibition Notice will only be considered in the following circumstances:
- i) where there is an imminent risk of injury to health can be demonstrated - this may include officer evidence of the conditions / practices etc found and or evidence from relevant experts, including the public analyst, food examiner, or Consultant in Public Health Medicine,
 - ii) where the guidance criteria, specified in the statutory code of practice, concerning the conditions when prohibition may be appropriate, are fulfilled.
- 5.2.2 An Emergency Hygiene Prohibition Notice will only be issued by authorised Environmental Health Practitioners who have adequate experience and are currently involved in food safety enforcement.
- 5.2.3 Once an Emergency Hygiene Prohibition Notice has been issued an application for an Emergency Hygiene Prohibition Order will be made to a Magistrates Court within three days. The proprietor MUST be given 1 days notice of the intention to apply for the Order. Failure to do so will entitle the proprietor of a business to claim compensation.
- 5.2.4 If such an enforcement notice is served, the operator shall be informed of the procedure for determination by the Magistrates' Court and their rights in an accompanying letter. In exercising their rights the operator shall be advised in the first instance to contact the officer issuing the notice or their line manager

6 **FORMAL CAUTIONS**

- 6.1 The statutory code of practice advises local authorities to consider issuing a Formal Caution as an alternative to a prosecution in the appropriate circumstances.
- 6.2 When decisions are being taken on whether to issue a Formal Caution the following guidance, in addition to that mentioned in the general enforcement policy statement, will be considered:
- i) statutory code of practice,
 - ii) LACORS guidance and advice,
 - iii) the CIEH Hampshire and Isle of Wight Branch procedural document on Formal Cautions.
- 6.3 When circumstances have been identified which may warrant the issue of a formal caution, all relevant evidence and information will be collated and produced in a format as detailed in the Environmental Health Prosecution Procedure.

7 **PROSECUTIONS**

- 7.1 The decision to prosecute will, in general, be considered where but not limited exclusively to:
- i) those persons who blatantly disregard the law such that public health, safety or well being is or has been put at risk,
 - ii) those persons who fail to comply in full or in part with the requirements of a statutory notice,
 - iii) those persons who have a history of similar offences related to risk to public health,
 - iv) circumstances where it is necessary to draw general attention to the need for compliance with the law and the maintenance of standards required by the law, especially 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.

7.2 When decisions are being taken on whether to prosecute the following guidance will be considered:

- i) statutory code of practice,
- ii) LACORS guidance and advice,

7.3 Following certain prosecutions, if a Court is satisfied that there is a risk of injury to health; it must impose a Hygiene Prohibition Order. The prohibition may relate to the use of a process or treatment, the use of premises or equipment, or impose a prohibition on the proprietor from running a food business. The prosecution report will include a reference to this legal provision in appropriate cases in order to enable the Court to come to an appropriate decision regarding the existence of a risk of injury to health.

8 REVISITS

Where contraventions of food hygiene/standards or food processing regulations are identified during an inspection or other visit, the premises will be revisited to confirm compliance if:

- i) the contraventions are serious i.e. where the consequences of non-compliance might pose a significant risk to public health;
- ii) there is a lack of confidence in the management of the business to address the contravention/s identified; and/or,
- iii) a statutory notice has been served.

Further action will be considered following each revisit where satisfactory compliance has not been achieved.

APPENDIX EIGHT

SPECIFIC GUIDANCE ON ENFORCEMENT OF THE DUTIES OF ENVIRONMENTAL HEALTH WITH RESPECT TO LICENSING LEGISLATION

1 INTRODUCTION AND DESCRIPTION OF STATUTORY DUTIES AND OFFICER DUTIES

- 1.1 All officers authorised to undertake duties with respect to licensing shall comply with this appendix. Unless it is considered there would be significant risk to public health, safety or allow a public nuisance to occur, recur or continue, any departure from this appendix must be exceptional, capable of justification and be fully considered by a panel of senior officers of Environmental Health and a representative of the Isle of Wight Councils legal services team.
- 1.2 All officers authorised to undertake duties with respect to licensing shall be suitably qualified and possess relevant experience as determined by any relevant available guidance whether statutory or non statutory. Each authorised officer's competence will be continually assessed through regular managerial control involving their compliance with this policy, relevant guidance, customer evaluation questionnaires and other performance indicators as determined by Environmental Health management and agreed with the individual.
- 1.3 The Licensing Section administers a wide range of licenses and permits which may be mandatory, where the local authority must license particular activities, or adoptive where the Council has elected to control certain businesses, activities or individuals through the issue of licenses and the imposition of license conditions. A fee may be payable for such licenses and permits the costs of which may be found [here](#).
- 1.4 The main purpose of licensing enforcement is to:
- a) Secure the health, safety and welfare of members of the public who either make use of the licensed activity or who are affected by it in some way.
 - b) Deal immediately with serious risks.
 - c) Promote and achieve sustained compliance with the law.
- 1.5 External agencies including Hampshire and IW Police and IW Fire and Rescue Service also have an interest in the enforcement of licensing legislation. Where there is a shared enforcement role, the Council's Licensing Section will liaise with the appropriate body to ensure effective co-ordination. An enforcement protocol with the Police in relation to Liquor Licensing responsibilities has also been developed.

2 ENFORCEMENT OPTIONS

- 2.1 Due regard shall be made to paragraph 1.1 of Appendix One above.
- 2.2 Enforcement officers must seek to secure compliance with the law. Most of the time this will be conducted informally, by offering information, advice and support, both verbally and in writing. They may also use formal mechanisms, as set out in law, including the imposition of conditions, suspension/revocation of licenses, or prosecution.

3 INFORMAL ACTION

- 3.1 Informal action will include the following:-
- a) offering advice
 - b) verbal warnings and requests for action
 - c) the use of letters / reports

3.2 The circumstances in which informal action may be appropriate include:-

- a) Where it is considered that informal action will achieve compliance based on the offender's past history.
- b) Where confidence in the management of the licensed activity or the licensee is high.
- c) Where the consequences of non-compliance will not pose a significant risk to the physical, financial or emotional well-being of the public, or is of a minor technical nature.

4 STATUTORY ACTION

4.1 Such action may involve the suspension, revocation or the refusal to grant or vary a licence and the imposition of conditions to a licence. Full details of officer delegated authority is detailed in the below schedule of delegations. Such action may be taken when the following applies either singly or in combination:

- i) where formal action is proportionate to the risk to public health or safety;
- ii) where there is a record of non-compliance with breaches of licence conditions;
- iii) where confidence in the responsible person is low;
- iv) where the authorised officer has sufficient evidence available to justify their issue and is satisfied that any subsequent proceedings are likely to succeed.

4.2 Any person aggrieved by the Licensing Sub Committees decision to suspend, revoke or refuse to grant/vary a licence has the right of appeal to the Magistrates' Court, or in some cases, to the Crown Court. Where such authority rests with officers the right of appeal may be to the Licensing Sub Committee and/or the Courts. In such cases applicants will be advised accordingly.

5 FORMAL CAUTIONS

5.1 When circumstances have been identified which may warrant the issue of a formal caution, all relevant evidence and information will be collated and produced in a format as detailed in the Environmental Health Prosecution Procedure.

6 PROSECUTION

6.1 The following circumstances may warrant prosecution:

- a) where the offence involves a flagrant breach of the law such that public health, safety or well being is or has been put at risk;
- b) where the offence involves a failure to comply in full or in part with the requirements of a statutory notice;
- c) where there is a history of similar offences;
- d) where the obstruction or assault of an authorised officer;
- e) where false or misleading information is provided to an authorised officer.

SCHEDULE OF DELEGATIONS

Matter to be dealt with	Committee/Panel	Authorised Officer
<u>Acupuncture, Tattooing, Earpiercing, Electrolysis, Body Piercing</u>		
Local Government (Miscellaneous Provisions) Act 1982 Part VIII		
Grant of a Premise Registration		All cases
Grant of a Person Registration		All cases
Breach of Byelaw		All cases
Suspension/Cancellation	Magistrates' Court	

Matter to be dealt with	Committee/Panel	Authorised Officer
<u>Animal Boarding Establishments Act 1963</u> Grant or renewal of licence Cancellation or disqualification of licence	Adverse comments or objections received Magistrates' Court	Where no objections or adverse comments received
<u>Public Health Act 1936</u> Grant or renewal of Camping Site Licence <u>Caravan Sites and Control of Development Act 1960</u> Grant or renewal of Caravan Site Licence Revocation/appeal against conditions	 Magistrates' Court	All cases All cases
<u>Dangerous Wild Animal Act 1976</u> Grant or renewal of a Dangerous Wild Animal Licence Power to seize and to dispose of unlicensed animals Cancellation of licence or disqualification	Adverse responses received Magistrates' Court	No adverse responses All cases
<u>Breeding of Dogs Act 1973 as amended by Breeding of Dogs Act 1991 and Breeding and Sale of Dogs Act 1999</u> Power to inspect premises not covered by licence under Breeding of Dogs Act 1973 Grant or renewal of a Dog Breeding Licence Cancellation of licence or disqualification	Magistrates' Court Adverse responses received Magistrates' Court	 No adverse responses
<u>Guard Dogs Act 1975</u>	(Not yet implemented)	

Matter to be dealt with	Committee/Panel	Authorised Officer
<u>Town Police Clauses Act 1847 – Licensing of Hackney Carriages</u> Grant, renewal or transfer as per Council policy Appeals against refusal to grant the above Revocation of Licence of proprietors or drivers Appeals against revocation	 Magistrates' Court Magistrates' Court	 All cases All cases
<u>Local Government (Miscellaneous Provisions) Act 1976, Part II</u> Hackney Carriage licence conditions Return of identity plate or revocation on expiry Suspension and revocation of vehicle licences, section 60 and 68 All other Hackney Carriage vehicle enforcement action under Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976, Part II		All cases All cases All cases All cases
Grant, renewal, refusal or suspension of a Hackney Carriage Drivers Licence and/or Private Hire Drivers Licence under the above legislation Appeals against refusal or suspension	 Magistrates' Court	All cases
<u>House to House Collections Act 1939</u> Application for a licence Appeals against refusals or revocation	 Secretary of State	All cases
<u>Performing Animals (Regulations) Act 1925</u> Application for registration Power to prohibit or restrict exhibition and training of performing animals	 Magistrates' Court	All cases
<u>Pet Animals Act 1951 – Licensing of Pet Shops</u> Grant or renewal of licence Appeal against refusal or conditions attached	 Magistrates' Court	All cases

Cancellation or disqualification of licence or holder	Magistrates' Court	
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Matter to be dealt with	Committee/Panel	Authorised Officer
<u>Public Health Acts Amendments Act 1907</u> Power to licence pleasure boats and boatmen Power to withhold, suspend or revoke any of the above licences If registration is refused or revoked	Crown Court	All cases All cases
<u>Local Government (Miscellaneous Provisions) Act 1976, Part II</u> Application for grant or renewal of Private Hire Operators Licence with conditions Suspension or revocation of licence Appeal against suspension or revocation or conditions of licence	Magistrates' Court	All cases All cases
Application for grant or renewal of Private Hire Driver Licence with conditions Suspension or revocation of licence Appeal against suspension or revocation or conditions of licence	All cases	All cases All cases
Application for grant or renewal of Private Hire Vehicle Licence with conditions Suspension or revocation of licence Appeal against suspension or revocation or conditions of licence	Magistrates' Court	All cases All cases
<u>Riding Establishments Act 1964 and 1970</u> Application for grant or renewal of a licence or extension due to death of licensee Refusal of licence Appeal against refusal of licence, revocation or disqualification	Adverse comments Magistrates' Court	No adverse comments All cases
<u>Scrap Metal Dealers Act 1964</u> Application for registration Refusal of application		All cases All cases

Matter to be dealt with	Committee/Panel	Authorised Officer
<u>Local Government (Miscellaneous Provisions) Act 1982</u> Schedule 3, Control of Sex Establishment Application for grant, renewal or transfer Refusal of Licence	Adverse responses received All cases	No adverse responses
<u>Safety of Sports Grounds Act</u> Application for certificate	Adverse responses received	No adverse responses
<u>Police, Factories etc (Miscellaneous Provisions) Act 1916</u> Application for / refusal of Street Collection Permit		All cases
<u>Local Government (Miscellaneous Provisions) Act 1982 – Schedule 4 – Street Trading</u> Grant or renewal of Consents meeting the criteria contained within the Council's guidelines Amend Consent Conditions if appropriate Applications to which objections have been made Unopposed applications that do not meet the criteria contained within the Council's policy Appeals against the imposition of conditions on a consent by an officer on a delegated basis	All cases All cases All cases	All cases Officer, Panel Chairman or Vice Chairman and Local Councillor
<u>Vehicles (Crime) Act 2001</u> Motor Salvage Operators regulations Application for grant on Renewal of registration certificate	Adverse responses received	No adverse responses
<u>Isle of Wight Act 1990</u> Application for a licence refusal	Adverse responses received All cases	No adverse responses

Matter to be dealt with	Committee/Panel	Authorised Officer
<u>Gambling Act 2005</u>		
<u>Three Year Licensing Policy</u>	Full Council	
<u>Policy not to permit casinos</u>	Full Council	
<u>Fee Setting</u>		All cases
<u>Application to grant a premises licence</u>	Representations received and not withdrawn	No representations have been received/representations have been withdrawn
<u>Application for a variation to a licence</u>	Representations received and not withdrawn	No representations have been received/representations have been withdrawn
<u>Application for a transfer of a licence</u>	Representations received from Gambling Commission	No Representations received from Gambling Commission
<u>Application for a provisional statement</u>	Representations received and not withdrawn	No representations have been received/representations have been withdrawn
<u>Review of a premises licence</u>	All cases	
<u>Application for club gaming/ club machine permits</u>		All cases
<u>Cancellation of club gaming/ club machine permits</u>		All cases
<u>Application for other permits</u>		All cases
<u>Cancellation of licensed premises gaming machine permits</u>	All cases	
<u>Consideration of temporary use notice</u>		All cases
<u>Decision to give a counter notice to a temporary use notice</u>	All cases	
Licensing Act 2003		
Application for personal licence	If Police objection	If no objection made
Application for personal licence with unspent convictions	All cases	
Application for premises licence/club premises certificate	If a representation made	If no representation made
Application for provisional statement	If a representation made	If no representation

Application to vary premises licence/club premises certificate	If a representation made	made If no representation made
Application to vary designated premises supervisor	If Police objection	All other cases
Request to be removed as designated premises supervisor		All cases
Application for transfer of premises licence	If Police objection	All other cases
Applications for interim authorities	If Police objection	All other cases
Application to review premises licence/club premises certificate	All cases	
Decision on whether a complaint is irrelevant, frivolous, repetitious or vexatious etc		All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application	All cases	
Determination of a Police objection to a temporary event notice	All cases	
In cases where the Magistrates Court has determined the licence on appeal		All cases

APPENDIX NINE

CHECKLIST FOR NOTICE SERVICE

ITEM	CHECK	COMPLETED Y/N
Notice Reference Number	Unique notice reference for each notice served generated by FLARE	
Necessity for notice	Decision to serve justified with reference to Enforcement Policy Statement, other relevant guidance ?	
Name	i) Correct individual/company identified (result of Company search ?) ii) If Ltd company-full company name including company number (NOT to the "Company Secretary" on the notice but envelope may be addressed to them) iii) If unregistered business need to identify each partner/individual and separate notice to each/person trading as-"xxx"	
Address	Addressed to the registered office address sent by recorded delivery (Check receipt on the PO web page)	
Recipients status	Person responsible, employer, proprietor etc	
Legislation	Specific in sufficient detail including sub sections as appropriate	
Compliance Time	Is it reasonable? (If requiring works involving contractors suggest at least 8-12 weeks unless urgent risk involved) Not less than the statutory minimum?	
Additional Recipients	e.g. premises managers, employees etc	
Appeal Notes	Attached/incorporated/up to date?	
Public Register	Can a copy of the notice be placed on the public register or is it exempt?	
Evidence	Sufficient evidence obtained to defend any appeal? List all evidence	
Signature	Signature of officer and name printed (for food).	
Date	Notice dated?	
Final Checking	Notice read, signed (ensure sufficient authorisation to sign notice) and countenanced by senior manager	

	(Unless, urgent)	
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APPENDIX TEN

SPECIFIC GUIDANCE ON ENFORCEMENT OF THE DUTIES OF ENVIRONMENTAL HEALTH WITH RESPECT TO THE HEALTH ACT 2006 CONCERNING SMOKE FREE

1 INTRODUCTION AND DESCRIPTION OF STATUTORY DUTIES AND OFFICER DUTIES

- 1.1 All officers authorised to undertake duties with respect to the Health Act 2006 (HA) shall comply with this appendix unless, it is considered there would be significant risk to health of employees and the public, any departure from this appendix must be exceptional, capable of justification and be fully considered by a panel of senior officers of Environmental Health and a representative of the Isle of Wight Councils legal services team.
- 1.2 All officers authorised to undertake duties with respect to HA shall possess adequate experience and knowledge of enforcement of this legislation. Each authorised officer's competence will be continually assessed through regular managerial control involving their compliance with this policy, relevant guidance, customer evaluation questionnaires and other performance indicators as determined by Environmental Health management and agreed with the individual.
- 1.3 The responsibility for Smokefree enforcement on the Isle of Wight is entirely that of the Council. This is with the exception of the Prisons and any vessels based on the Island. Premises and vehicles under the control of the Council will need to comply strictly with the legislation to ensure fairness and that an example is set. In accordance with internal procedures all Smokefree complaints are investigated either by a visit to the premises/vehicle concerned or by correspondence with the parties concerned. All complaints are acknowledged and the business informed of the details of the complaint (with the exception of anonymous complaints). In accordance with internal procedures all requests for information are actioned. Annual statistical returns are required to be made to the Department of Health. The Council is under a statutory duty to provide adequate arrangements for the enforcement of Smokefree within its area.
- 1.4 Requests for assistance concerning HA shall be dealt with according to the priority assigned to the request which shall be designated by the Principal Environmental Health Practitioner (PEHP) or other senior officers in accordance with internal procedures. In assigning the priority due regard shall be made to premises or vehicles:-
- Which are open to a substantive numbers of people, for example a nightclub, bingo hall, book makers etc.
 - Where there is an absence of pre-existing self-imposed smoking controls.
 - Where officers do not usually visit as part of their routine inspections under other legislation.

2 ENFORCEMENT OPTIONS

- 2.1 Due regard shall be made to paragraph 1.1 of Appendix One above.
- 2.6 Where an officer is considering enforcement action which they believe may be open to interpretation the matter shall, after reference to any guidance from the Local Authority Co-ordinating Body for Regulatory Services (LACORS) and consultation with their line manager, be discussed with the appropriate representative of the CIEH Health and Safety Advisory Committee, and/or other Local Authorities in order to obtain a consensus of opinion and promote consistency. However, if no reasonable consensus may be achieved and the issue appears to be of national importance the advice of LACORS should be sought.

3 **INFORMAL ACTION**

- 3.1 Informal action to secure compliance with legislation includes offering advice, verbal warnings and requests for action, the use of letters and the issue of inspection reports.
- 3.2 Inspection reports will be issued following all programmed inspections and service requests, where contraventions are identified. The minimum content of such reports will aim to be that specified in any appropriate enforcement guidance or statutory code of practice.
- 3.3 When enforcing legislation, the Isle of Wight Council recognises the need to clearly differentiate between legal requirements and matters which are recommended as good practice, even if only giving verbal advice.

4 **FIXED PENALTY NOTICES**

- 4.1 If an officer has reason to believe an offence under Section 6 (signage) or section 7 (smoking in smoke-free place) of the Health Act 2006 has been committed, they may deal with the offence by issuing a Fixed Penalty Notice to the person concerned. The decision to issue a fixed penalty notice rather than adopt other forms of enforcement action *may* include the perceived efficiency and effectiveness of this option as a method of dealing with the offence in addition to paragraph 1.1 of Appendix One above.
- 4.2 There is no right of appeal against the issue of a penalty notice, other than the right to request the matter to be heard by the court. However, if an enforcement authority considers that a penalty notice issued by an authorised officer ought not to have been given, it may give notice to the recipient of the notice withdrawing the penalty notice. In doing so the authority must repay any amount which has been paid by way of penalty, and proceedings may not be brought or continued against the recipient of the notice for the offence in question. Any decision to withdraw a fixed penalty notice will be made by the Environmental Health Manager or deputy upon consideration of written representations from the recipient of the notice.

5 **PROSECUTIONS AND FORMAL CAUTIONS**

- 5.1 The decision to prosecute will, in general though not exclusively, be restricted to those occasions where:
 - x) the gravity of the offence, taken together with the seriousness of any actual or potential harm to health, or the general record and approach of the offender warrants it;
 - xi) serious efforts are not being made to comply;
 - xii) there have been repeated breaches which give rise to significant risk to health, or persistent and significant poor compliance;
 - xiii) the attitude of the offender is uncooperative and antagonistic;
 - xiv) a duty holder's standard of managing Smokefree compliance is found to be far below what is required by Smokefree law and to be giving rise to significant risk to health;
 - xv) there has been a failure to pay a fixed penalty notice; or there has been a repetition of a breach that was subject to previous fixed penalty notice or a formal caution;
 - xvi) false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives or gave rise to serious non-compliance;
 - xvii) inspectors have been intentionally obstructed in the lawful course of their duties.

GENERAL

- 5.2 *In appropriate circumstances*, whilst taking care not to prejudice any subsequent trial, media attention shall be drawn to factual information concerning charges laid before the courts or to accepted formal cautions. Publicity shall also be drawn to those convictions/cautions which could serve to reinforce the need to comply with the law or deter others from disregarding their duties under Smokefree law.

6 REVISITS

6.1 Where contraventions of Smoke free legislation are identified during an inspection or other visit, the premises will be revisited to confirm compliance if:

- iv) there is a lack of confidence in the management of the business to address the contravention/s identified; and/or,
- v) a fixed penalty notice has been served.

6.2 Further action will be considered following each revisit where satisfactory compliance has not been achieved.

7 ENFORCEMENT POLICY IN RESPECT ISLE OF WIGHT COUNCIL PREMISES AND VEHICLES

7.1 A potential conflict of interest exists in connection with premises and vehicles for which the Council has ownership or responsibility as the Council is the sole enforcing authority. To overcome this and ensure public confidence the Council has produced its own policy on compliance with Smoke free law. In short Council employees or Councillors found smoking in a smokefree premises or vehicles, or management with delegated responsibility for displaying no-smoking signs and stopping persons smoking in designated premises will be subject to either disciplinary action (employees) or action by the standards committee and potential report to the standards commission (Councillors) for bringing their office into disrepute.

7.2 In addition, to the above, Staff or Councillors found not complying with the law shall also be subject to consideration of legal proceedings consistent with this policy.