

1.0 Scope of Enforcement Policy

- 1.1 It is the aim of the Licensing Service to secure effective compliance with all the legislation it has a duty to enforce whilst minimising, as far as possible, the burden on the Council and local businesses. The policy also provides the basis on which action will be taken with respect to none compliance and other enforcement activities.
- 1.2 It recognises that statutory enforcement action is not always appropriate or necessary, or a good use of resources. For example, compliance with statute may require the completion of physical works by an offender. To proceed rapidly to prosecution without seeking to gain compliance informally can result in significant expenditure on legal and expert services, together with a potentially large penalty. That considerable sum would then not be available to achieve compliance. Unfortunately, in a small number of cases, only the firmest action may persuade offenders to conform.

2.0 The General Principles of Enforcement

- 2.1 There are several distinct stages in the hierarchy of decision making which lead ultimately to enforcement action. These are invariably unique to each piece of legislation and/or circumstance. The aim, therefore, of identifying each potential enforcement situation and considering the legislation and associated guidance individually, allows a clear picture to form which will assist officers, the Council and ultimately the courts, in achieving a logical and sequential decision making processes.
- 2.2 The general principle behind the process will be based on persuasion, education and support, to ensure maximum environmental benefit from minimum resource input.
- 2.3 Enforcement procedures will always follow statutory requirements and guidance but prosecution will generally be a last resort unless the situation presents little or no option.
- 2.4 In carrying out its enforcement role, the service will have regard to the rights of individuals and affected parties and will, in particular, take into account the requirements and principles of the Human Rights Act 1998, Regulation of Investigatory Powers Act 2000, the Data Protection Act 1998, Code for Crown Prosecutors and the Freedom of Information Act 2000.

The Licensing Service will continue to operate within the principles of the Government's Enforcement Concordat, that is **proportionality** in applying the law and securing compliance; **consistency** of approach; **targeting** of enforcement action; **transparency** about how the regulator operates and what those regulated may expect; and **accountability** for the regulator's actions.

The Service will have due regard to the provisions of the Regulators' Compliance Code (approved by Parliament under Section 23 of the Legislative and Regulatory Reform Act 2006).

These principles will apply both to enforcement in particular cases and to the management of enforcement activities as a whole.

2.5 **Enforcement options**

- No action
- Informal action verbal or written
- Informal warnings in writing
- Action/Compliance plan
- Formal caution
- Prosecution

2.6 Not all of these options are available in every circumstance emphasising the need to consider powers available under each piece of legislation individually.

2.7 Decisions on whether to prosecute will always take into consideration appropriate statutory defences, such as best practicable means, and, where applicable, best available techniques not entailing excessive cost.

3.0 **Scope of work of the Licensing Service**

The main areas covered by the division are:

- Licensing Act 2003
- Gambling Act 2005
- Private hire driver, vehicle and operator's licences
- Hackney carriage driver and vehicle licensing
- Street trading consents
- Small lotteries
- Street collections
- House to house collections
- Various ancillary licensing issues

4.0 Summary of Action Available To Enforcement Officers

4.1 **Verbal Advice** - Verbal advice will be given for any offences where the offender shows an understanding and willingness to remedy contraventions, which will often be of a minor nature. If requested verbal advice will be confirmed in writing.

4.2 **Written Informal Advice** - Written informal advice will be given where offences occur and where there is no imminent significant risk to health or of injury and if the officer has no reason to believe that the offender will not co-operate in remedying the offence. Written advice may also be given where it is felt necessary for the offender to consider their liabilities under the law.

4.3 **Prosecution** - A prosecution may result from:-

- non-compliance with legislation
- a serious breach of the law

In the latter case the considerations must include:-

- Seriousness of alleged offence
- Previous history/co-operation of duty holder, if applicable
- Possible defences
- Availability of witnesses
- In the public interest

4.4 **Simple (formerly Formal Cautions)** - The Licensing Services Manager may issue a Simple Caution in accordance with Home Office Circular 30/2005 in the following circumstances -

- i) There is evidence sufficient for realistic prospect of conviction
- ii) The duty holder admits the offence
- iii) The duty holder understands the significance of a Simple Caution and is willing to accept the Caution
- iv) A Simple Caution is in the public interest

If the duty holder does not accept the offer of a Simple Caution, then a prosecution will be instituted.

5.0 Provision of Information and Advice

- 5.1 One of the principles of the Regulator's Compliance Code is the provision of appropriate, authoritative advice. The Licensing Service will keep under review the need to provide appropriate guidance and / or information, including centrally available guidance etc, to enable licence holders to be fully aware of the requirements of legislation enforced by the service. Further more, officers in the service will offer verbal or written advice and guidance to licence holders to ensure compliance where this can be done in a cost effective way.