

## **1.0 Scope of Enforcement Policy**

- 1.1 It is the aim of the Environmental Protection Division 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.
- 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.
  - An example of this would be a peripatetic operator taking advantage of his mobility to offend in many different areas without the knowledge of the enforcing authorities. In such a case blatant breaches of legislation will always be prosecuted.

- 2.4 In carrying out its enforcement role, the department 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 Environmental Health Unit has adopted the principles of the Government's Enforcement Concordat ie **proportionality** in applying the law and securing compliance; **consistency** of approach; **targeting** of enforcement action; **transparency** about how the regulator operates and what those regulated may expect; and **accountability** for the regulator's actions. These principles 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
- Notification of nuisance
- Notification of offence
- Issue of a fixed penalty notice##
- Service of statutory enforcement or prohibition notices
- Revocation of authorisation
- Carrying out works in default of a notice
- Seizure of equipment\*
- Formal caution
- Prosecution

## FPN available under certain legislation only

\* Noise nuisance only.

- 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 (BATNEEC).
- 2.8 All statutory notices will be served by officers in accordance with the scheme of delegation and the requirements of the appropriate legislation.
- 2.9 All statutory notices served on companies will be served at the registered

office and be directed to the company secretary. Wherever possible, a copy of the notice will be delivered to the site and handed to the person responsible for the process/incident, or a suitable representative.

### **3.0 Scope of work of the Environmental Protection Division**

The main areas covered by the division are:

- Pest Control
- Dog warden Service
- Drainage
- Accumulations on private land
- Atmospheric pollution / nuisance
- Noise pollution / nuisance
- Lighting and other areas of nuisance
- Contaminated land
- Various 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 **Fixed Penalty Notices** – certain legislation give the Council the option of issuing a fixed penalty notice (“on the spot fine”) which gives the offender the opportunity to discharge their offence by paying that fine. If the fine is not paid the Council would normally commence legal action to prosecute the offender.

4.4 **Statutory Notices** – statutory notices will be issued where there is sufficient evidence to prove an offence in court , where the Council may undertake works in default after expiration of a notified period, where informal action has failed or where the situation is such that there is a risk to public health.

- The service of a statutory notice will require a tangible and worthwhile outcome - i.e. something must be done/or stopped by a given date. The time period must reflect the risk and the practicality in remedying the problem.
- In some circumstances – eg an Abatement Notice under the Environmental Protection Act, the service of a statutory notice “officially notifies the recipient” of an offence.
- Additional time may be allowed at the discretion of the officer who served the notice – such requests usually being in writing.

- Non-compliance with the notice may, in some circumstances, result in works being carried out in default and the costs incurred plus relevant administration costs being recharged to the recipients of the notices.
- 4.5 **Prohibition Notice** –some legislation gives the Council the power to serve a prohibition notice to stop an activity or process where there is an imminent risk to health, safety or pollution.
- 4.6 **Prosecution** - A prosecution may result from:-
- non-compliance with a statutory notice
  - failure to pay a fixed penalty notice.
  - 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
  - Public benefit of a prosecution
- 4.7 **Simple (formerly Formal Cautions)** - The Head of the Business Unit 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.

**[Note** - A simple caution remains in force for three years]