



**GUILDFORD BOROUGH COUNCIL**  
**ENVIRONMENTAL HEALTH & LICENSING SERVICES**  
**ENFORCEMENT POLICY**  
**(Revised March 2006 and March 2007)**

**C O N T E N T S**

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## **ENFORCEMENT POLICY**

### **PART 1**

#### **GENERAL**

##### **Introduction**

- 1.1 The Council aims to protect the health, safety and welfare of the borough residents, visitors and the business community through a balanced approach of advice, assistance, encouragement, and where necessary by appropriate enforcement action.
- 1.2 We recognise that most businesses and individuals want to comply with the law. We will actively seek to help businesses and others meet their legal obligations without unnecessary expense, while taking firm action against those who flout the law or act irresponsibly, including prosecution where appropriate.
- 1.3 Enforcement will be carried out in a fair and consistent manner in accordance with the Enforcement Concordat which Guildford Borough Council signed up to in September 2000. Included in the term 'enforcement' are advisory visits and assisting with compliance as well as licensing and formal enforcement action.
- 1.4 The first section of this document sets out the general principles which underpin this enforcement policy and procedures, and the remaining parts relate to the specific work areas of food safety, health and safety, housing standards, licensing and pollution control enforcement. Although many aspects of these work areas are similar, separate statutory guidance is issued for each and therefore the specific policy for each is considered separately.
- 1.5 We are committed to ensuring that we treat all our customers fairly in respect of the discharge of our regulatory role regardless of race, ethnic origin, nationality, religion, gender, marital status, disability or age in accordance with the Department of Housing and Health Services Equalities Policy. In this connection, we will be willing to provide translation services where English is not the customer's first language.
- 1.6 We will act in accordance with the Human Rights Act 1998.
- 1.7 In the exercise of its functions the Council will have due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area in accordance with Section 17 of the Crime and Disorder Act 1998.
- 1.8 Where a shared enforcement role is identified, we will ensure that we have effective liaison arrangements in place with the relevant agency, e.g. Police, Food Standards Agency, HSE etc., to prevent any potential conflict of interest.
- 1.9 This policy will normally be reviewed annually, or more frequently, when there are significant changes to legislation, statutory Codes of Practice or official guidance.

## **Principles of Good Enforcement: Policy**

### Standards

- 1.10 We will draw up clear standards, in consultation with business and other relevant interested parties, setting out the level of service and performance that customers can expect to receive. We will publish these standards and our annual performance against them. The standards will be available to businesses and others who are regulated.

### Openness

- 1.11 Information and advice will be provided in plain language on the rules that we apply and we will publish this as widely as possible. We will be open about how we set about our work, including any charges that we set. We will discuss general issues, specific compliance failures or other problems with anyone experiencing difficulties.

### Helpfulness

- 1.12 We believe that prevention is better than cure and that we should work with customers to advise and assist with compliance. We will provide a courteous, prompt and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number and will encourage customers to seek advice and information. We will ensure that services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

### Proportionality

- 1.13 We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action. We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

### Consistency

- 1.14 We will carry out our duties in a fair, equitable and consistent manner. While staff are expected to exercise judgement in individual cases, we have arrangements in place to promote consistency including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Co-ordinating Body on Regulatory Services (LACORS).

### Complaints About Service

- 1.15 We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

### **Principles of Good Enforcement: Procedures**

- 1.16 Advice from an officer will be put clearly and simply and will normally be confirmed in writing, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.
- 1.17 Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).
- 1.18 Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.
- 1.19 Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

### **Training, Competency & Authorisation of Officers**

- 1.20 Only officers authorised by the Head of Environmental Health and Licensing Services in accordance with the documented procedure may undertake enforcement duties in accordance with the Council's scheme of delegation. The Head of Environmental Health and Licensing Services will only authorise officers where satisfied with their level of qualification, training, experience and competence. This section applies equally to those who are directly employed, to temporary staff, and to those employed by or as contractors.
- 1.21 All officers engaged in enforcement shall be appropriately qualified, experienced and competent in accordance with statutory Codes of Practice and shall receive such on-going training as necessary to maintain their competency and consistency. Training will be prioritized within available resources and incorporated into the annual divisional training plan. A matrix showing the current authorisations of individual officers will be maintained by each of the operational team leader.
- 1.22 Officers who undertake enforcement will be conversant with the provisions of the relevant legislation, including the Police and Criminal Evidence Act, 1984 (PACE), the Criminal Procedure and Investigations Act, 1996 (CPIA), and the Regulation of Investigatory Powers Act 2000 (RIPA).
- 1.23 The decision to prosecute, based on available evidence and professional judgement, will be initiated by the individual officer, but must be approved by the relevant operational team leader and authorised by the Head of Environmental Health and Licensing Services, subject to the Clerk and Solicitor being satisfied that the case has passed both the evidential and public interest tests, as set out in the Code for Crown Prosecutors.

### **Prosecution**

- 1.24 Specific prosecution guidance is given within the following technical sections of this document, but the following general matters apply.

- 1.25 Prosecution will in general be appropriate when the Council has not secured compliance with legislation through other available means or where the people are put at serious risk.
- 1.26 Consideration will be given to relevant guidance, statutory Codes of Practice and any other relevant documentation, with all cases being referred to the Clerk and Solicitor for their opinion on whether prosecution should proceed. The final decision for instigating legal proceedings rests with the Clerk and Solicitor.
- 1.27 Before a prosecution proceeds, the officer responsible for initiating the action must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must be sufficient evidence to provide a realistic prospect of conviction, a bare 'prima facie' case is not sufficient.
- 1.28 The Clerk and Solicitor will apply the principles of the, "The Code for Crown Prosecutors", before taking the decision to prosecute. The Clerk and Solicitor must be satisfied that a case has passed both the evidential and public interest tests before proceeding with a prosecution.
- 1.29 When decisions are being taken on whether to prosecute, the following factors will be considered:-
- the seriousness of the alleged offence;
    - the risk or harm to public health
    - identifiable victims
    - failure to comply with statutory notice served for significant breach of legislation
    - disregard of public health for financial reward.
  - the previous history of the party concerned;
    - offences following a history of similar offences
    - failure to respond positively to past warnings
    - failure to comply with statutory notices
  - the likelihood of the defendant being able to establish a defence;
  - the ability of any important witnesses and their willingness to co-operate;
  - the willingness of the party to prevent a recurrence of the problem;
  - the probable public benefit of a prosecution and the importance of the case - e.g. whether it might establish a legal precedent;
  - whether other action, such as issuing a formal caution, statutory notice or prohibition would be more appropriate or effective;
  - any explanation offered by the company or the suspected offender.

### **Formal Cautions**

- 1.30 In certain circumstances, formal cautions may be more appropriate and effective than prosecution. A formal caution is a documented caution, which is signed by the

suspected offender. It is formally recorded and may be cited in court in the event of proceedings being taken for any subsequent offences.

1.31 The purpose of a formal caution is: -

- to deal quickly and simply with less serious offences;
- to divert less serious offences away from the Courts
- to reduce the chances of repeat offences.

The use of a formal caution is discretionary and will be authorised by the relevant Divisional Manager, subject to the Clerk and Solicitor being satisfied as to the evidence, in accordance with Home Office Circular 18/1994.

1.32 The following conditions must be fulfilled before a formal caution is administered:-

- there must be sufficient evidence of the suspected offender's guilt to give a realistic prospect of conviction;
- the suspected offender must admit the offence;
- the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned; the suspected offender must be made aware that a caution may be cited in court in the event of future offending.;
- all other factors relevant to prosecution are fulfilled.

1.33 If the offender subsequently refuses to sign a formal caution, a prosecution will normally be instigated. Only in exceptional circumstances will alternative action be considered appropriate.

### **Appeals**

1.34 Individuals and businesses have a right to appeal against enforcement action. There are statutory appeal mechanisms, details of which will be given when action is taken. In addition, the corporate complaints procedure explains action that can be taken by a dissatisfied customer.

1.35 Every effort will be made to have appeals heard as soon as possible, but this is often outside our control. Costs will generally be sought if an appeal is found in favour of the Council or subsequently withdrawn by the appellant.

### **Powers of Entry**

1.36 Access to properties is normally achieved by informal means by appointment with the occupier. If there is a need to enter a premises and prior notice would be counterproductive, or it is anticipated that entry will be refused, or when seizing noise equipment, a visit will be made to the property without giving prior notice.

1.37 In appropriate circumstances, a Notice of Entry will be served or an application made to the Magistrates Court for a warrant to enter, e.g. if access is refused or the premises are vacant.

1.38 The relevant parts of the Police & Criminal Evidence Act 1984 are followed as they apply to enforcement activities. In particular, where an inspection of a property constitutes a 'search', a notice (known as a 'Notice of Powers') will be issued to the owner/manager if they are present at the time. This informs them of their rights and the powers under which the officer is acting.

## **PART 2**

### **FOOD SAFETY ENFORCEMENT POLICY**

#### **Objective**

- 2.1 It is this Council's policy to ensure that food and drink for sale for human consumption, which is produced, stored, distributed, handled or consumed within the Borough of Guildford is without risk to the health and safety of the consumer.
- 2.2 Enforcement action will always be reasonable and proportionate to the risk to public health occurring due to non-compliance with food safety law. Full regard will be given to statutory Codes of Practice, guidance from the Food Standards Agency, LACORS circulars and advice offered in relation to the LACORS Home Authority Principle. If enforcement action is being considered which is contrary to any advice issued by the relevant home and/or originating authorities, there will be discussion with the relevant authorities before taking any enforcement action.
- 2.3 All authorised officers will have regard to the policy when making enforcement decisions. Any departure from the policy must be exceptional, capable of justification and approved by the Head of Environmental Health and Licensing Services.
- 2.4 All authorised officers will be fully acquainted with the requirements of the enforcement policy.

#### **Enforcement Options**

- 2.5 Enforcement will be balanced by applying discretion wherever possible, taking a common sense approach and evaluating the risk inherent in each situation. The various options for action are as follows:-
  - take informal action;
  - service of Statutory Notices;
  - issue a formal caution; or
  - prosecute.

Details of how these various options will be applied are given below:

#### **Informal Action**

- 2.6 Informal action includes offering advice, verbal warnings and requests for action, the use of informal letters and self-duplicating inspection reports, and the issuing of leaflets, guidance notes and booklets. Informal action may be appropriate in the following circumstances:-
  - non-compliance will not involve a significant risk to public health; or
  - the issue is not serious enough to warrant formal action; or
  - from the individual's/business's past history it can reasonably be expected that informal action will achieve compliance; or

- confidence in the individual's/business's management is high.

2.7 We will issue inspection reports following all programmed inspections. We will ensure that we clearly differentiate between legal requirements and recommendations in all verbal and written communications. When we use an informal approach to ensure compliance with food hygiene legislation we will ensure that any written documentation issued or sent to food business operators: -

- contains all information necessary to understand what work is required, why it is necessary, and when it needs to be completed by;
- indicates the regulations contravened, measures necessary to comply and that other means of achieving the same effect may be chosen; and
- clearly indicates any recommendations of good hygiene practice to show that they are not a legal requirement.

2.8 Direct communications with multi site food businesses will normally be with head office unless the business has agreed other arrangements. Documents that are left with on site personnel will also be copied to the relevant head office or other address unless the business indicates otherwise.

### **Hygiene Improvement Notices**

2.9 Hygiene Improvement Notices will only be served by an authorised officer when one or more of the following criteria apply: -

- there are significant contraventions of legislation;
- there is a lack of confidence in the proprietor or business to respond to an informal approach;
- there is a history of non-compliance with informal action;
- standards are generally poor with little management awareness of statutory requirements;
- the consequences of non-compliance could be potentially serious to public health; and
- although there is an intention to prosecute, effective action is needed to remedy conditions that are serious or deteriorating.

2.10 Realistic time limits on notices will be set and normally agreed with the proprietor. Case officers will also discuss the specified works and will fully consider different solutions.

2.11 Where an officer receives a request for an extension to the expiry time of a notice because a proprietor has a genuine reason for not complying with the notice within the specified time, the following factors will be taken into account:

- the risk to public health which would arise if the extension were granted;
- the reason for the request;



- the remedy involved;
  - the past record of co-operation of the food business operator;
  - any temporary action which the proprietor proposes to take in the meantime.
- 2.12 If the officer considers that the request for an extension of the time limit is reasonable, the officer should advise the food business operator in writing of the decision and any new time limits set. Requests for extensions of time limits to notices will only be possible if the request is made prior to expiry of the notice.
- 2.13 Non-compliance with a hygiene improvement notice is an offence. Once the time limit has expired, the necessary works will be checked as soon as possible, but in any event within two working days. Failure to comply with a notice will normally be reported to the relevant Service Unit Head for prosecution.

### **Hygiene Emergency Prohibition Notices**

- 2.14 Hygiene Emergency Prohibition Notices will only be served by an authorised officer if the officer is satisfied that an imminent risk of injury to health exists in respect of a particular premises, equipment or a process and when one or more of the following circumstances apply:-
- where the consequences of not taking immediate and decisive action to protect public health would be unacceptable;
  - the guidance criteria, specified in the relevant statutory Code of Practice, concerning the conditions when prohibition may be appropriate, are fulfilled.
  - where there is no confidence in the integrity of an unprompted offer made by a food business operator to voluntarily close premises or cease the use of any equipment, process or treatment associated with the imminent risk; and
  - where a food business operator is unwilling to confirm in writing their unprompted offer of a voluntary prohibition.

### **Voluntary Closure**

- 2.15 Where any premises, process, treatment or equipment involves an imminent risk of injury to health and consideration is being given to hygiene emergency prohibition action, voluntary procedures may be used to remove a health risk condition, at the instigation of the food business operator, when the food business operator agrees that a health risk condition exists. An authorised officer may suggest this option to a food business operator in certain circumstances, but only when they are able to use Regulation 8. If the manager of a food business offers to close voluntarily, the officer will confirm that the manager has the authority of the food business operator to agree to such voluntary action.
- 2.16 In such cases, authorised officers will consider whether there is any risk of the premises being reopened without their knowledge and/or agreement, and explain to the food business operator that by making the offer to close, they may be relinquishing their rights to compensation. Written confirmation of the food business operator's offer and an undertaking not to reopen without specific permission will be

obtained. Frequent checks will subsequently be made on the premises to confirm that they have not reopened.

### **Remedial Action Notices**

- 2.17 In addition to the range of powers outlined above, authorised officers have a new power available to them under the Food Hygiene (England) Regulations 2006 in respect of product-specific establishments subject to approval under E.C. Regulation 853/2004.
- 2.18 Regulation 9 of the Food Hygiene (England) Regulations 2006 provides authorised officers the power to serve a Remedial Action Notice, on the relevant food business operator or his representative where
- any of the requirements of the “Hygiene Regulations” are being breached; or
  - inspection under the “Hygiene Regulations” is being hampered.
- 2.19 A remedial action notice can
- prohibit the use of any equipment or any part of the establishment specified in the notice;
  - impose conditions upon or prohibit the carrying out of any process; or
  - require the rate of operation to be reduced or to be stopped completely.
- 2.20 Circumstances which might lead to the issue of a remedial action notice will include:
- the failure of any equipment or part of an approved establishment to comply with the requirements of the “Hygiene Regulations”;
  - the need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the Regulations or hampering adequate health inspection;
  - where the rate of operation of the business is detrimental to its ability to comply with the Regulations.
- 2.21 A remedial action notice will be served as soon as practicable after an authorized officer becomes aware of an appropriate set of circumstances, as outlined above.
- 2.22 A notice of withdrawal of a remedial action notice will be issued by an authorised officer as soon as practicable after the matters specified in the notice have been complied with.

### **Seizure/Detention Powers**

- 2.23 Detention powers will be used by authorised officers if there is good reason to suspect that food does not satisfy food safety requirements and seizure powers used where there is clear evidence of such a failure. Careful judgement and consideration of the need to seek expert advice will always be exercised before using these powers, and guidance specified in the statutory Code of Practice will be adhered to.
- 2.24 Voluntary procedures to remove food that is not suitable for human consumption from the food chain may be used, either at the instigation of the owner of the food or at the suggestion of the authorized officer when the owner of the food agrees that the food is not suitable for human consumption.
- 2.25 In addition to the seizure/detention powers outlined above, authorised officers have a new power available to them under the Food Hygiene (England) Regulations 2006 in

respect of product-specific establishments subject to approval under E.C. Regulation 853/2004.

- 2.26 Where there are indications or suspicions that food is unsafe because of breaches of the requirements of the “Hygiene Regulations”; an authorised officer may serve a Detention Notice requiring the detention of food of animal origin for the purposes of examination (including the taking of samples).
- 2.27 Where the food has subsequently been found not to be unsafe, the authorized officer must issue a notice of withdrawal as soon as practicable after becoming aware that the food is not unsafe.

### **Prosecutions**

- 2.28 The following circumstances are likely to warrant prosecution:-
- a failure to correct a serious potential risk to food safety, having been given a reasonable opportunity to comply with the requirements of an authorised officer;
  - where the offence involves a failure to comply in full or in part with the requirements of a statutory notice;
  - where there is a history of similar offences related to risk to public health.

### **Hygiene Prohibition Orders**

- 2.29 Where there is a risk of injury to health, the Court may impose a Hygiene Prohibition Order following certain prosecutions. In appropriate cases, officers will ensure that they carry out a second or subsequent inspection of the premises prior to a court hearing. If the proprietor is convicted, and it is believed there is still a risk of injury to health, the attention of the court will be drawn to the powers available to them to prohibit premises, equipment or persons.

### **Formal Cautions**

- 2.30 The statutory Food Safety Act Code of Practice advises that local authorities should consider issuing a formal caution as an alternative to prosecution.
- 2.31 Any relevant home or originating authority and the Office of Fair Trading will be advised of the issue of any formal caution.

### **Specific Legislation:**

Enforcement of Article 5 of E.C. Regulation 852/2004 requiring food business operators to put in place, implement and maintain a food safety management system based on HACCP principles.

- 2.32 A staged approach to the enforcement of the food safety management system requirement will be adopted, with the protection of public health as the central objective.
- 2.33 The nature, range and scale of food handling operations and their associated hazards will vary from business to business, and the enforcement option chosen should reflect these differences and be proportional to the potential hazards and the degree of risk. Each case should be treated on its own merits and officers will be expected to make

professional judgments to ensure that the most appropriate action is taken to ensure compliance.

- 2.34 In general, a food business operator will be given two months to establish a fully operational food safety management system. However, when matters concern a failure to control a risk at a critical point, then immediate action will be taken to ensure that effective control measures are implemented. Other action could include, in extreme circumstances, the use of emergency prohibition powers when there is imminent risk to health.
- 2.35 A graduated approach to enforcement will generally be adopted with officers first taking informal action to achieve compliance with the food safety management system requirement. If the informal approach is unsuccessful consideration will be given to serving a Hygiene Improvement Notice.
- 2.36 Hygiene Improvement Notices are not appropriate for the maintenance of food safety procedures or periodic reviews, as these are ongoing requirements, but may be appropriate to require:-
- identification of steps critical to ensuring food safety; or
  - identification and/or implementation of adequate food safety controls, including monitoring and documentation.
- 2.37 Officers should always liaise with the relevant home authority of a company prior to taking any formal action in respect of food safety management system . The only circumstance where this would not be necessary would be where an officer is dealing with a situation where an imminent risk is apparent.

#### **Targeting of Enforcement Activity**

- 2.38 We will target enforcement activity on those premises or businesses, which give rise to the highest risk and where hazards are least well controlled in accordance with relevant Food Safety Act Codes of Practice and associated guidance. This will include an alternative enforcement strategy for the lowest risk premises and businesses as set out in our annual food safety service plan.
- 2.39 We will fully investigate all food safety complaints and reports of food poisoning in accordance with our annual food safety service plan.

#### **Secondary Inspections/Revisits**

- 2.40 Officers will undertake secondary inspections (revisits) to check on compliance with measures required at an appropriate time following a primary inspection in accordance with the Commercial Team Food Safety secondary inspection policy and set out in the annual service plan.
- 2.41 Secondary inspections will not normally take place where the contraventions are of a minor nature and/or where the proprietor has returned a fully completed self-certification slip confirming that the works have been completed. In other cases where previous history has shown a reluctance to carry out works within the agreed time-scale and/or where the self certification slip is not forwarded a secondary inspection or other follow up action may be appropriate.

- 2.42 Secondary inspections will be conducted as soon as possible following the expiry of all food safety notices in order to verify compliance.

**Enforcement in Premises Where the Council Have An Interest**

- 2.43 A potential conflict of interest may arise in premises for which the Council acts as enforcement authority and in which the Council also have an ownership or management interest.
- 2.44 Any breaches of food law that may be detected in GBC run catering premises will be brought to the attention of the Chief Executive, without undue delay. Any allegations of suspected food poisoning relating to food premises where the Council has an interest will be referred to Surrey and Sussex Health Protection Unit for independent investigation. Applying the principles of openness and transparency, any serious, or potentially serious breaches of food law will be notified to the Food Standards Agency.
- 2.45 Notwithstanding the above, caterers that operate within all premises where the Council have an interest will be treated in exactly the same way as any other commercial caterer, and will be inspected in accordance with the relevant Code of Practice and any relevant guidance. Enforcement will carried out in accordance with this enforcement policy.

## PART 3

### OCCUPATIONAL HEALTH AND SAFETY ENFORCEMENT POLICY

#### Scope

- 3.1 The Borough Council is responsible for health and safety enforcement as allocated under the Health and Safety (Enforcing Authority) Regulations 1998 which relates to approximately 3,000 premises within the Borough. In determining premises where we hold enforcement responsibility due regard will be given to the above regulations, guidance contained in LAC 23/15 and advice provided by HSE Enforcement Liaison Officer. The service also has responsibilities for registration of certain special treatment such as ear piercing, electrolysis and other invasive treatments in accordance with local byelaws.

#### Objective

- 3.2 It is this Council's policy to protect the health, safety and welfare of employees and to safeguard others, principally the public, who may be exposed to risks from work activity. This statement, based on the Health and Safety Commission's Enforcement Policy, sets out the general principles and approach, which the Council, as an enforcing authority will follow.
- 3.3 Much of modern health and safety law is goal setting - setting out what must be achieved, but not how it must be done. Guidance on how to achieve these goals is often set out in Codes of Practice and there is a wide range of advisory material describing good practice. Neither the Codes nor guidance material are in terms that necessarily fit every case. In considering whether good practice has been adopted, we will need to take relevant Codes and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them.
- 3.4 Sometimes the law is prescriptive - spelling out in detail what must be done. Prescriptive law limits the discretion of the duty holder and the Council.
- 3.5 Enforcement of health and safety law will be informed by the principles of **proportionality** in applying the law and securing compliance; **consistency** of approach, **targeting** of enforcement action and **transparency** about how we operate and what those regulated may expect.
- 3.6 Any enforcement action taken will be proportionate to the risk. Full regard will be given to statutory Codes of Practice, guidance and advice offered by Lead Authorities.
- 3.7 The Enforcement management model (EMM) will also be applied in accordance with the service's internal procedures. The EMM provides a framework to help make enforcement decisions that are in line with the Health and Safety Commission's Enforcement Policy Statement which is intended to:-
- Promote consistency of enforcement
  - Promote proportionality and targeting by confirming the risk based criteria against which decisions are made
  - Be a framework for making enforcement decisions transparent
  - Ensure that those who make decisions are accountable for them
  - Help experienced inspectors assess their decisions in complex cases

- Allow peer review of enforcement action, and guide less experienced inspectors and trainees in making enforcement decisions.

### **Transparency**

- 3.8 Transparency means helping duty holders to understand what is expected of them and what they should expect from enforcing authorities. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they don't. In this regard we will always distinguish between statutory requirements and advice or guidance about what is desirable but not compulsory.

### **Targeting**

- 3.9 Targeting means making sure that inspections are targeted on those activities, which give rise to the most serious risks or where hazards are least well controlled. It focuses on the duty holders who are responsible for the risk and are best placed to control it, for example, employers, landlords and suppliers etc.
- 3.10 We will prioritise inspections according to the risks posed by a duty holder's operations; which takes account of hazards, the nature and extent of risks and management competence.
- 3.11 In accordance with LAC 67/1 (rev 3) the inspection programme will include topic-based inspections as endorsed by HELA. In addition alternative intervention strategies may be used when dealing with lower risk premises rated as B3, B4 and C.
- 3.12 In accordance with LAC 67/1 revisits should not generally be necessary as significant non-compliance should be dealt with at the time of the initial visit. However re-visits will be conducted in line with internal procedures and as detailed in the annual and safety service plan. In order to verify that sufficient attention is being given to other legal requirements, a self-certifying reply slip may be used with the standard health and safety inspection report letter to enable businesses to notify the Council that all legal requirements have been completed. This provides a useful mechanism to verify that items of a less significant nature such as welfare improvements and revisions to risk assessments have been carried out. In some cases where previous history has shown reluctance to carry out works within the agreed time-scale and/or where the self-certification reply slip is not forwarded a revisit or other follow up action may be appropriate.
- 3.13 Notwithstanding the above the decision to revisit will be based on the significance of the breach observed at the initial inspection. Revisits will be conducted routinely following service of notices in order to verify compliance with the works or restrictions specified.
- 3.14 We will fully investigate all fatalities and those reported accidents which meet our set accident investigation criteria. Other reported accidents which fall outside these criteria will not be investigated unless they are the subject of a workplace health and safety complaint.
- 3.15 We will fully investigate all complaints regarding health, safety and welfare conditions and standards in accordance with our annual health and safety service plan approved by Members.
- 3.16 In accordance with LAC 22/5 when investigating complaints officers are instructed to avoid revealing that a complaint has been made unless the complainant has agreed otherwise and will take care to not reveal the identity of the complainant.

- 3.17 Further details on the Council's policy regarding health and safety inspections, complaint and accident investigations are provided in the health and safety service plan.
- 3.18 When formal action is necessary, the person responsible for creating a risk should be held to account for it. The duty holder may be the owner of the premises, or the supplier of the equipment or some other person, rather than the employer of the workers exposed to the risk. Where several duty holders share responsibility we will take action against those who can be regarded as primarily in breach.

### **Enforcement Options**

- 3.19 Enforcement will be balanced by applying discretion wherever possible, taking a common sense approach and evaluating the risk inherent in each situation. The various options for action are as follows:-
- take informal action;
  - service of Statutory Notices (Improvement or Prohibition);
  - issue a formal caution; or
  - prosecute.

### **Informal Action**

- 3.20 Informal action includes offering advice, verbal warnings and requests for action, the use of informal letters and self-duplicating inspection reports, and the issuing of leaflets, guidance notes and booklets. Informal action is appropriate in the following circumstances:-
- non-compliance will not involve a significant risk to public health; or
  - the issue is not serious enough to warrant formal action; or
  - from the individual's/business's past history it can reasonably be expected that informal action will achieve compliance; or
  - confidence in the individual's/business's management is high.
- 3.21 We will issue inspection reports following all programmed inspections even when conditions are satisfactory. We will ensure that we clearly differentiate between legal requirements and recommendations in all verbal and written communications. When we use an informal approach to ensure compliance with legislation we will ensure that any written documentation issued or sent to proprietors:-
- contains all information necessary to understand what work is required, why it is necessary, and when it needs to be completed by;
  - indicates the regulations contravened, measures necessary to comply and that other means of achieving the same effect may be chosen; and
  - clearly indicates any recommendations of good practice to show that they are not a legal requirement.



3.22 Direct communications with multi-site businesses will normally be with head office unless the business has agreed other arrangements. Documents that are left with on site personnel will be copied to the relevant head office or other address unless the business indicate otherwise.

### **Statutory Improvement Notices**

3.23 Improvement Notices will only be served by an authorised officer when one or more of the following criteria apply:-

- there are significant contraventions of legislation;
- there is a lack of confidence in the proprietor or business to respond to an informal approach;
- there is a history of non-compliance with informal action;
- standards are generally poor with little management awareness of statutory requirements;
- the consequences of non-compliance could be potentially serious to public health; and
- although there is an intention to prosecute, effective action is needed to remedy conditions that are serious or deteriorating.

3.24 Realistic time limits on notices will be set and normally agreed with the proprietor, with case officers discussing the specified works and fully considering different solutions. Extension of notices may be granted following receipt of satisfactory written representations from the proprietor detailing reasons for failing to complete the works within the agreed timescale. Extension of a notice is only possible if the written request is received prior to expiry of the notice. Confirmation of an extension or reason for a rejection of an extension will be put in writing to the applicant.

3.25 We will check compliance with the notice as soon as possible after the expiry date of the notice.

3.26 Failure to comply with a statutory notice will, other than in exceptional circumstances, result in prosecution.

### **Prohibition Notices**

3.27 Prohibition notices will only be served by authorised officers, in one or more of the following circumstances:-

- where a serious risk of injury to health can be demonstrated
- where the consequences of not taking immediate action to protect public health and safety would be unacceptable
- where there is no confidence in the integrity of an unprompted offer made by a proprietor voluntarily to close the premises, or cease the use of any equipment, process or treatment giving rise to the risk.

- 3.28 Prohibition notices will only be served by an authorised officer who has personally witnessed the matters to which the notice relates and is satisfied that it meets the above criteria. (N.B. There does not have to be a breach of any statutory requirement before a prohibition notice can be issued, but an officer who thinks that there has been should specify it in the prohibition notice.)
- 3.29 In the following circumstances we may serve a prohibition notice in addition to prosecuting and vice versa:-
- where a situation is so hazardous that even when a prohibition notice has been issued prosecution may also be merited; and
  - where a prosecution is taken owing to the circumstances of an accident and a prohibition notice has been used to enforce the remedy.

### **Seizure/Detention Powers**

- 3.30 Seizure or other powers will be used to render harmless any article or substance which is believed to be a cause of imminent danger or which could cause serious personal injury. Authorised officers will have regard to all relevant guidance and will consider the need to seek expert advice before using these powers.

### **Formal Caution**

- 3.31 We will consider issuing a formal caution as an alternative to prosecution if the criteria detailed in Section 1 of this enforcement policy are met.
- 3.32 Any relevant Lead Authority and the Office of Fair Trading will be advised of the issue of any formal caution.

### **Prosecution**

- 3.33 Prosecutions will only be taken by officers appropriately authorised by the Head of Environmental Health and Licensing in accordance with the Council's Constitution and the internal authorisation procedure.
- 3.34 In addition to those general circumstances that are considered likely to warrant prosecution, the following circumstances are likely to warrant prosecution:-
- where there have been repeated serious breaches of legal requirements in an establishment, or in various branches of a multiple concern, and it appears that management is neither willing or structured to deal adequately with these.
  - where, as a result of a substantial legal contravention, there has been a serious accident or a case of ill health.
- 3.35 In addition to the above, we will apply the principles of the " Code for Crown prosecutors", as detailed in Section 1 of this enforcement policy and the Enforcement Management Model prior to proceeding with any prosecution.

### **Prosecution of Individuals**

- 3.36 The Council will identify and prosecute individuals, including company directors and managers, if it appears that the offence was committed with his/her consent,

connivance or neglect, and can be secured or it is likely that the body corporate may be wound up to avoid criminal proceedings.

- 3.37 Prosecution of employees will only be considered in exceptional circumstances, where the employee has acted in a grossly negligent or willful manner in contradiction of the employer's instructions.

### **Death at Work**

- 3.38 Where there has been a breach of law leading to a work related death, we will consider whether the circumstances of the case might justify a charge of manslaughter. We will liaise with the Police, the Coroners Service and the Crown Prosecution Service (CPS) and if they find evidence suggesting manslaughter we will pass it on to the Police, or where appropriate the CPS. If the Police or the CPS decide not to pursue a manslaughter case, the Council may prosecute or recommend prosecution under appropriate health and safety legislation.

### **Consideration of Byelaws**

- 3.39 Application of the enforcement policy in relation to ear piercing, electrolysis and other invasive treatments requiring registration under local byelaws will be carried out in line with the principles of enforcement detailed in part 1 of this policy.

### **Enforcement in Premises Where the Council May Hold An Interest.**

- 3.40 A potential conflict of interest arises in premises for which the Council acts as enforcement authority and in which the Council also have an ownership or management interest.
- 3.41 In accordance with the principles of LAC 22/10 where the Council holds all responsibilities under health and safety law and its appointed contractors or occupiers hold none, it would be inappropriate for the Council to act as enforcing authority and in such cases responsibility will be transferred to HSE.
- 3.42 In cases where judgments about the Council's responsibilities are less clear regard will be made to the Health and Safety Commission's enforcement policy on targeting of enforcement and advice will be sought from the Nominated Enforcement Liaison Officer at HSE.
- 3.43 Where day to day management, including health and safety is passed to contractors or occupiers the Council can act as both owner of certain premises and enforcer even where it retains some health and safety responsibilities.
- 3.44 Notwithstanding the above, in premises where the council has an interest it will
- Carry out enforcement in accordance with this enforcement policy in exactly the same way as it does for all other premises,
  - Ensure that the attention received is in accordance with the criteria applied to all other duty holders and.
  - Will keep HSE informed of any situations in which it might have an enforcement interest so that it may consider the extent of its involvement.
- 3.45 Where accidents or complaints are referred to the Council as enforcing authority in premises where the Council has a duty holder responsibility, for example food outlets within Council owned premises, and the causes of the accident or nature of the

complaint are unclear or may be attributable to a failing of the Council, the HSE will be contacted to seek advice on the approach to enforcement applying the principles of openness and transparency. In such cases the complainant and or injured party will be advised of the limit of the Council's enforcement responsibilities and the Council's interest and be provided with contact details for HSE. In such cases the Council will ensure that any investigation retains its independence and objectivity and that enforcement and duty holder investigations do not fall to the same officer. In exceptional circumstances the Council will consider appointment of an officer from another Local Authority to carry out the investigation or consider contracting out the investigation to a consultant.

- 3.46 The Council may operate other controls such as the issuing of a licenses or granting of permissions under planning and building regulation regimes. The issuing of a licence or granting of approvals will not transfer any health and safety duty holder responsibilities to the Council and such premises will continue to be enforced for health and safety by the Council.

## **PART 4**

### **ENVIRONMENTAL CONTROL ENFORCEMENT POLICY**

#### **Objectives**

- 4.1 Guildford Borough Council is committed to protecting the quality of Guildford's air, water, land and promoting health education.
- 4.2 Those affected by the enforcement policy can be subdivided into:
- Residents
  - Other members of the public
  - Businesses
  - Landlords

Note: The Council is itself a landlord of a significant number of properties. In circumstances where a Council tenant may be in breach of environmental legislation, the Council's Housing Officers and Estate Managers will, where appropriate, endeavour to resolve the problem through the relationship of landlord and tenant before involving the Council's Enforcement Officers (equivalent to informal action as set out in paragraphs 4.7 to 4.9 below).

- 4.3 Any enforcement action taken will always be proportionate to the risk to public health and in accordance with all relevant guidance including the Chartered Institute of Environmental Health Noise Management, Local Air Pollution Control Management Guides and Code of Practice on Litter and Refuse (Environmental Protection Act 1990).

#### **Authorisations for Investigation and Enforcement**

- 4.4 The duty or power to investigate is primarily under the nuisance powers of the Environmental Protection Act 1990 and the Public Health Acts 1936 and 1961. There are a number of other legislative controls including Clean Air Act 1993, Environment Act 1995 and the Control of Pollution Act 1974.
- 4.5 Officers are authorised for carrying out investigations. Authority to take enforcement action rests with the Director of Housing and Health Services and Director of Environmental and Planning Services who have delegated the task to specific officers.

#### **Enforcement Options**

- 4.6 There are a number of options for action:-
- Informal Action
  - Statutory Notice
  - Fixed Penalty Notice
  - Prosecution

#### **Informal Action**

- 4.7 Informal action will generally be considered as the first step unless the problem is of a serious nature and there is an imminent risk to health and safety. Informal action by officers may include providing advice in person, by telephone, electronic mail or

writing a letter. Guidance suitable for all parties in the form of leaflets produced either in house or from a national body are available on a number of subjects.

- 4.8 All action is logged on file or on the computer system. The complainant is kept informed of progress of their enquiry.
- 4.9 Although the Council expects full voluntary compliance with relevant legislative requirements and licence provisions, it will not hesitate to use its enforcement powers where necessary.

### **Formal Action**

- 4.10 Formal action will be considered where the informal approach has not been successful in ensuring compliance. The service of a Statutory Notice is likely to be the main form of formal action. Notices can only be signed by an authorised officer who has been appointed as such by the appropriate Service Unit Head or Director.
- 4.11 Where a criminal offence has been committed, in addition to any other enforcement action, the officer will consider instituting a prosecution, administering a caution or issuing a warning.
- 4.12 Several areas of formal action exist. These are principally:

### **Night Time Noise Offence**

- 4.13 Guildford Borough Council is one of only 10 authorities in England who have adopted the provisions of the Noise Act 1996 relating to noise from residential properties between 23.00 and 07.00. In cases where the Night Time Noise Offence occurs officers may serve a Warning Notice. If after serving a Warning Notice there is any further offence a fixed penalty notice may be served. Additionally equipment that causes noise may be seized and charges made for its recovery. Seizure and powers of entry are described below.

### **Statutory Nuisance**

- 4.14 In cases where a statutory nuisance is established and/or the conditions are found to be prejudicial to health and informal attempts to abate the nuisance are unsuccessful, an abatement notice under section 80 of the Environmental Protection Act 1990 will be served.
- 4.15 Examples of conditions, which may cause a statutory nuisance or be prejudicial to health are detailed in Section 79 of the Environmental Protection Act 1990 they include:-
- Smoke
  - Fumes or gases
  - Noise
  - Accumulations or deposits

### **Authorised Processes**

- 4.16 Authorised processes are subject to conditions specified in consents, which are regularly checked by inspection. Where contraventions occur, informal action is not appropriate and officers will document enforcement action, record it in the public register and initiate legal action where necessary. Enforcement and prohibition

notices may be used to deal with:

- Enforcement notice where a condition has been or is likely to be breached.
- Prohibition notice where there is an imminent risk of serious pollution to the environment.

Failure to comply with a prohibition notice will normally result in the commencement of legal proceedings.

### **Statutory Notices**

4.17 The following are a list of most commonly used statutory notices:

- Section 80 Environmental Protection Act 1990. Abatement Notice in respect of Statutory Nuisance
- Sections 13 and 14 Environmental Protection Act 1990, Enforcement and Prohibition Notices for authorised processes
- Section 88 Fixed Penalty Notices for littering
- Section 92 Litter Abatement Notices
- Sections 93/94 Street Litter Control Notices
- Section 2 Clean Air Act 1993, Dark smoke from industrial or trade premises
- Sections 60 and 61, Control Of Pollution Act 1974, Noise From Construction Sites
- Section 29 Local Government (Miscellaneous Provisions) Act 1982, Notice to secure unoccupied buildings
- Section 4 Prevention of Damage by Pests Act 1949
- Section 59 Building Act 1984 Notice to execute works to defective drainage in existing buildings
- Section 50 Public Health Act 1936 Notice requiring works to or more frequent emptying of leaking or overflowing cesspools
- Section 17 Public Health Act 1961 Notice to remedy blocked/insufficiently maintained drains etc
- Section 4(1) Dogs Fouling of Land Act 1996 Fixed Penalty Notices for failing to clean up after dogs
- Section 3 Refuse Disposal (Amenity) Act 1978 Notices requiring the removal of abandoned cars

### **Seizure/ Detention Powers**

4.18 Seizure and detention of equipment will be carried out if in the opinion of the investigating officer there is one or other of the following:

- During the currency of a Warning Notice served under Section 3, action can be taken under Section 10 (1) Noise Act 1996
- Default powers relating to Noise Nuisance, Section 81(3) Environmental Protection Act 1990 action can be taken under Section 10(7) Noise Act 1996.

An authorised officer will need to obtain a warrant and can use an external party such as a contractor or the police to undertake the task in the officer's presence. Details of equipment seized are given to the offender including details of their rights and the system for appeal.

## **Works in Default**

4.19 Works in default are in two main categories:

- Abatement of noise nuisance where immediate action is required to alleviate disturbance to residents, for example intruder and car alarms which need to be silenced.
- Remedial work to clear premises or land after service of a notice where there is no other alternative available.

An authorised officer will need to obtain a warrant required for any action on private property and can use an external party such as a contractor or the police to undertake the task in the officer's presence.

Abatement of car alarms and noisy equipment in public areas under the Noise and Statutory Nuisance Act 1993 do not require warrants to be issued. Officers must ensure that they have followed the set procedures on security and recording of evidence.

## **Prosecution**

4.20 Prosecution will in general be restricted to blatant breaches of the law, where it is in the public interest and proportionate. Circumstances that may qualify are:

- Breach of conditions of a statutory notice
- Failure to comply with a warning notice under the Noise Act 1996
- Breach of condition of an authorised process
- Incidents or breaches which have significant consequences for the environment or which have the potential for such consequences
- Carrying out operations without a relevant licence
- Excessive or persistent breaches of regulatory requirements
- Failure to comply adequately with formal remedial requirements
- Reckless disregard for management or quality standards
- Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information
- Obstruction and impersonating staff

## **Charge for Enforcement Action**

4.21 Where enforcement action involves the carrying out of works in default a charge will be made for the cost of administration and all other expenses involved. The charging period will start from the time the notice is breached.

## **Other Environmental Control Offences**

### **Littering**

4.22 The offence of leaving litter is created by Section 87 of the Environmental Protection Act 1990 (EPA).

The Council will produce a detailed Litter Plan in accordance with the EPA Code of Practice on Litter and Refuse. As well as setting out the standards of cleanliness



required in the various zones and the Council's policy on providing and emptying litter bins etc, together with ongoing proposals for campaigning and education, the Plan will confirm the Council's intention to pursue enforcement (where practicable and necessary) through the following means:-

- Fixed Penalty Notices (Section 88)

This provision enables Authorised Officers of the Council to issue Fixed Penalty Notices to people who have been observed committing littering offences. The Notice provides the offender with an opportunity to avoid prosecution by paying a fixed penalty charge within 14 days of the date of the Notice.

- Litter Abatement Notices (Section 92)

Where the Council is satisfied that certain types of land (e.g Crown land, land of a designated statutory undertaker, land designated by the Council as a litter control area or land of a designated educational institution) are defaced by litter or refuse or the defacement of the land by litter or refuse is likely to recur, the Council shall serve a Notice on the owner imposing:-

- (a) a requirement that the litter or refuse be cleared within a specified time limit; and/or
- (b) a prohibition on permitting the land to become defaced by litter or refuse.

- Street Litter Control Notices (Sections 93/94)

This provision enables an authority to serve notice on certain types of commercial or retail premises with a view to preventing the accumulation of litter or refuse in any street or open land in the vicinity of those premises.

### **Fly Tipping**

- 4.23 It is an offence under Section 33 of the Environmental Protection Act 1990 to knowingly deposit controlled waste or knowingly cause or permit controlled waste to be deposited in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence. The provisions of Section 33 do not apply to household waste from a domestic property which is treated, kept or disposed of within the curtilage of the dwelling by or with the permission of the occupier of the dwelling.
- 4.24 Where the controlled waste is carried in or deposited from a motor vehicle, the person who controls it or is in a position to control the use of the vehicle shall be treated for the purposes of Section 33 as knowingly causing the waste to be deposited whether or not he or she gave any instruction for this to be done.
- 4.25 The Environment Agency or the Council may, where a deposit of controlled waste in breach of Section 33 is identified, serve a notice upon the occupier of the land pursuant to Section 59 of the Environmental Protection Act 1990 to require either or both that the waste is removed from the land or the occupier takes steps to reduce or eliminate the effects of the waste within a specified period (not less than 21 days from the service of the notice).
- 4.26 Actions will focus on campaigning and education. The following preventative measures will also be pursued:-

- Identification of preventative measures such as boundary treatment etc. and liaison with relevant landowners
- Liaison with the highway authority to agree preventative or remedial measures to deal with fly-tipping on highway verges.

Enforcement will also be pursued in liaison with the Environment Agency, who may also consider prosecutions, wherever those responsible for fly-tipping can be identified.

### **Abandoned Cars**

- 4.27 The control of abandoned vehicles is governed by the Refuse Disposal Amenity Act 1978.

The Council will affix Notices requiring the removal of abandoned cars in accordance with the Act. The Council will remove and destroy or take into storage as required by the Act.

Recovery of expenses connected with the removal of vehicles will be pursued through the Courts wherever practicable.

### **Dog Fouling**

- 4.28 The Council has, under the provisions of the Dogs (Fouling of Land) Act 1996, designated specified parts of the Borough as areas where dog owners should clean up after their dogs. Actions will focus on education but the Council will pursue the following formal measures:-

- serving fixed penalty notices which provide the opportunity for the offender to avoid prosecution by paying a fixed penalty charge within 14 days of the date of the Notice; and
- taking legal proceedings against the person in charge of a dog for permitting and failing to remove fouling in a place designated by the Council under the Act.

First time offenders will normally be given the option to pay a fixed penalty notice. In the case of repeat offenders, the Council will consider instituting legal action through the Courts.

## **PART 5**

### **PRIVATE SECTOR HOUSING ENFORCEMENT POLICY**

#### **Introduction**

- 5.1 Guildford Borough Council is committed to protecting the quality of Guildford's natural and built environment and facilitating and promoting better health. The overall aim of the Private Sector Housing Service is to ensure that residents have "access to a decent home", by seeking improvement in housing standards in the private sector through judicious application of statutory powers, education and financial incentives.
- 5.2 The Housing Enforcement team deals primarily with the private rented sector where some of the most unsatisfactory housing conditions are found. Improvements within this sector are generally sought through liaison with both landlords and tenants.
- 5.3 Those affected by the enforcement policy, such as private landlords, will be consulted and copies of the policy will be made available.
- 5.4 Any enforcement action taken will always be proportionate to the risk to health and in accordance with all relevant guidance such as Government Circulars.

#### **Authorisations for Investigation and Enforcement**

- 5.5 The duty or power to investigate is primarily under the Housing Act 2004 and Housing Act 1985 (as amended). There are also powers under the Protection from Eviction Act 1977, Environmental Protection Act 1990, Caravan Sites and Control of Development Act 1960 and the Public Health Acts 1936 and 1961.
- 5.6 Officers are authorised to carry out investigations, with authority to take enforcement action delegated to the Head of Community Care Services.

#### **Enforcement Options**

- 5.7 Informal action will generally be considered as the first step unless the problem is of a serious nature and there is an imminent risk to health and safety. In most circumstances, tenants will be advised to contact the landlord about the problem first if they have not already done so
- 5.8 Informal action by officers may include providing advice either in person, over the telephone or by writing a letter.
- 5.9.1 Formal action will be considered where the informal approach has not been successful in ensuring compliance. The service of a Statutory Notice is likely to be the main form of formal action.
- 5.9.2 The Council is unlikely to take formal action in owner occupied properties but would seek to provide assistance through advice and the home improvement policy.
- 5.10 There are some exceptions to the service of a Statutory Notice, where the only available course of action under the legislation may be to consider prosecution, for example where continuing breaches of site licence conditions occur on mobile home sites.

## **Housing Health and Safety Rating System**

- 5.11 The Housing health and safety rating system (HHSRS) has replaced the fitness standard for assessing and enforcing conditions in residential premises. HHSRS is a risk based approach to identifying and assessing hazards within a dwelling. Hazards are classified as category 1 or category 2 hazards and any enforcement action will be dependent on the category of hazard.

## **Statutory Notices**

- 5.12 **Hazard awareness notice** is an informal notice and does not specify any works.
- 5.13 **Improvement notice** specifies works to reduce or eliminate hazards.
- 5.14 **Prohibition Order** prohibits specified uses of premises.
- 5.15 **Emergency Prohibition Order** to be used where a hazard poses an imminent risk of harm to the health and safety of the occupants or to other residential premises.
- 5.16 **Demolition Order** – This still remains an option for dealing with certain hazards. The impact of the cleared site on the appearance and character of the neighbourhood should be taken into account along with whether the accommodation would be sustainable if the hazard were remedied.
- 5.17 **Emergency Remedial Action** – Can be taken where a category 1 hazard exists on a residential premises and the hazard involves an imminent risk to the health or safety of the occupiers of that or any other residential premises.

## **Suspended Improvement and Prohibition Notices**

- 5.18 There is also provision for improvement notices and prohibition orders to be suspended for a specified time in certain circumstances where a notice or order is suspended it will be subject to review at any time and will be reviewed not later than 1 year from the date of service.

## **Charge for Enforcement Action**

- 5.19 Where enforcement action involves the service of any of the following notices, a charge will be made for the cost of administration and other expenses involved.
- Improvement notice
  - Prohibition order
  - Emergency prohibition order
  - Demolition order
  - Suspended improvement notice and suspended prohibition order
- 5.20 The person upon whom the notice is served will be responsible for paying the expenses incurred by the Council in serving the Notice.

## **Timescales for Works**

- 5.21 Where a formal notice is served, the timescales will be in accordance with those specified in the statutory rights of appeal and will be dependent on the nature of the works.

5.22 Extensions to timescales will be considered where there are genuine reasons for delay and there has been some progress with the works.

### **Works in Default**

5.23 Where a Statutory Notice has been served and-

- the specified works have not been completed within the required timescale and no acceptable representations are made to extend the timescale; or
- before the expiry of the required timescale it appears that reasonable progress is not being made towards compliance with the notice the Council may undertake to carry out the works in default.

5.24 The person responsible for carrying out the works will be notified prior to the works being undertaken. The Council will, except in exceptional circumstances, seek to recover all costs incurred in the execution of the works including any administration fees.

### **Prosecution**

5.25 The following circumstances are likely to warrant prosecution:-

- Where there is a failure to comply in full or part with statutory notices.
- Where there is a persistent failure to comply with the mandatory HMO licensing scheme.
- A persistent failure to comply with Site Licence Conditions for Mobile Home Sites.
- Where there is a history of offences related to the risk to public health.
- Where the offence is of a serious nature and prosecution is in the public interest.

Before a prosecution is considered the guidance contained in the Code for Crown Prosecutors will be followed.

### **Category 1 Hazards**

5.26 Where category 1 hazards have been identified, the most satisfactory course of action will be taken in accordance with Housing Conditions Enforcement Guidance.

### **Category 2 Hazards**

5.27 Where category 2 hazards have been identified the Council is unlikely to take enforcement action in owner occupied properties but would offer advice.

5.28 In the case of private rented properties where the tenant does not have the power to reduce or eliminate a hazard and the hazard has a significant impact on tenants occupation of the property the Council may take enforcement action where informal attempts to secure compliance fails.

## **Renovation**

- 5.29 In the majority of cases, the condition of properties is likely to be such that repairs and/or improvements will be possible, thus avoiding the need for closure or demolition. To assist with the cost of renovation, Housing improvement loans are available to owner-occupiers who meet the qualifying criteria set out in the Housing Improvement Policy.

## **Prohibition and Demolition Orders**

- 5.30 Where this is deemed to be the most appropriate course of action, the Council will undertake to secure accommodation for any occupants who may be displaced.

## **Suspended Improvement Notice and Prohibition Orders**

- 5.31 Where a Category 1 and in some cases category 2 hazards are identified, a suspended improvement notice or suspended prohibition order may be considered appropriate in the following circumstances:-

- Where an elderly occupier may not be able to cope with the disturbance caused by extensive renovation works or they do not wish to leave their home.
- Where the funding is not currently available, but is likely to be available within 2 years.

- 5.32 Once a suspended improvement notice or suspended prohibition order has been served, it does not prevent the Council from taking any other course of action in relation to the premises. The notices and orders can be reviewed at any time and will be reviewed not later than 1 year after the notice becomes operative.

## **Houses in Multiple Occupation ('HMO')**

- 5.33 The Council has adopted standards for HMOs based on the categories of HMO established by the Chartered Institute of Environmental Health.

- 5.34 Where an HMO does not meet the Council's HMO standards or the property is found to be in serious disrepair, enforcement action will be considered.

- 5.35 Where a HMO fails to meet fire safety requirements, the Fire Safety Officer from Surrey Fire and Rescue will be consulted on the works necessary to ensure adequate fire precautions are implemented.

- 5.36 Any enforcement action will be subject to consultation with the Planning Department to ensure there are no breaches of planning legislation.

- 5.37 Where it is not possible to provide an adequate means of escape or adequate other fire precautions, an undertaking can be accepted from the landlord or a Prohibition Order made to ensure that part of the house is not used for human habitation.

- 5.38 Where a HMO is or is likely to become overcrowded and does not meet the Council's standards, an Overcrowding Notice under Section 139 of the Housing Act 2004 may be served to prevent an excessive number of persons being permitted to sleep on the premises or to prevent new residents from taking up occupation.

- 5.39 Where there is neglect in management standards within a HMO and it fails to meet the requirements of the management regulations enforcement action will be

considered to remedy the neglect of management.

### **Mandatory HMO Licensing**

- 5.40 The Housing Act 2004 introduces a mandatory licensing scheme for HMO's which comprise of 3 or more storeys and are occupied by 5 or more people.
- 5.41 For properties which fall within the scope of the scheme, a fee is payable. A license will be granted for a period of 5 years and after this time renewal will be required.
- 5.42 Licenses may be refused for certain reasons and in these circumstances an interim management and or final management order may be served which allows the Council to take over management of the HMO.
- 5.43 Where works are necessary to bring the HMO up to the relevant standards the works will be specified within the license conditions

### **Failure to apply for a licence**

- 5.44 Newly discovered HMOs will not normally be treated as an intentional failure to license unless it is evident that the owner was aware of the requirements and has intentionally avoided obtaining a license or the owner fails to respond to requests to apply for a licence.
- 5.45 Where an owner of a HMO persistently fails to respond to requests to apply for a license, prosecution will be considered.

### **Variation to Licences**

- 5.46 During the period of the license, before any increases in the number of households or occupants, an application should be made to the Council to vary the license. An additional fee may be payable for the variation.

### **Illegal Eviction and Harassment**

- 5.47 Cases of harassment and threatened illegal eviction will be investigated and in most cases the aim will be to get the tenant back into the property through facilitating negotiation and conciliation between the tenant and the landlord.
- 5.48 Before considering enforcement action the following will be taken into consideration
- circumstances leading to the alleged harassment and eviction
  - the conduct of both the landlord and tenant will be taken into account.
  - The reliability and standing of the witness

### **Statutory Nuisance**

- 5.49 In cases where a statutory nuisance is established and/or the conditions are found to be prejudicial to health and informal attempts to abate the nuisance are unsuccessful, an abatement notice under Section 80 of the Environmental Protection Act 1990 will be served.
- 5.50 Examples of conditions which may cause a statutory nuisance or be prejudicial to health include:-

- Dampness or condensation resulting in mould growth
- Extensive water penetration
- Condition of mobile homes

### **Mobile Homes**

- 5.51 The Caravan Sites and Control of Development Act 1960 provides for the licensing of caravan sites to ensure the health, safety and welfare of the residents. This is achieved by issuing suitable site licence conditions.
- 5.52 The Council may apply any conditions which are considered to be necessary. However, most site licence conditions will be in accordance with the published model standards.
- 5.53 Site licence conditions will be issued with the site licence and, where necessary, will specify a timescale for compliance.
- 5.54 Where breaches of site licence conditions are identified or the breaches are not rectified within specified timescales despite informal attempts to secure compliance, enforcement action will be considered.



## **PART 6**

### **Smoke Free Premises and Vehicles Enforcement Policy**

**(Approved by Committee 29 March 2007)**

#### **Scope**

- 1 In contrast to occupational health and safety enforcement, (referred to in Part 3 of this policy) the Borough Council is responsible for enforcement of the provisions of the Smoke Free Regulations across all sectors including, public buildings and vehicles, which relates to approximately 5,000 premises and 2,000 vehicles.
- 2 The Health Act 2006 and regulations made there under, chiefly the Smoke Free (Premises and Enforcement) Regulations 2006 set out the requirements of smoke free legislation and define the premises, vehicles and other places to which the regulations and any exemptions apply.
- 3 Enforcement action can be taken against both persons in control of smoke free premises, and individuals (including the public) for offences committed under the legislation.
- 4 For the purpose of this Part of the enforcement policy premises includes vehicles, public places and other areas to which smoke free regulations apply.

#### **Objective**

- 5 It is the Council's policy to protect the health of both the public and employees, by ensuring compliance with these regulations and preventing exposure to second smoke in any premises to which the smoke free regulations apply.
- 6 Enforcement will be informed by the principles of **proportionality** in applying the law and securing compliance, **consistency** of approach, **targeting** of enforcement action and **transparency** about how we operate and what those regulated can expect.
- 7 In carrying out these functions full regard will be given to relevant guidance and advice, in particular that issued by LACORS, CIEH and Department of Health.
- 8 All authorised officers will have regard to this policy when making enforcement decisions. Any departure from the policy must be exceptional and capable of justification and be approved by the Head of Environmental Health and Licensing Services.

#### **Transparency**

- 9 Transparency means helping duty holders to understand what is expected of them and what they should expect from Council Officers. It also means making clear to duty holders not only what they have to do, but where this is relevant, what they don't. In this regard we will always distinguish between statutory requirements and advice or guidance about what is desirable but not compulsory.

#### **Targeting**

- 10 Targeting means making sure that inspections are targeted at premises which give rise to the most serious risks or where smoking is least well controlled.

- 11 Inspections carried out by authorised officers will either be proactive, e.g. to advise businesses and to confirm compliance with the legislation, or reactive, i.e. in response to a complaint. In some cases inspections will be incorporated as part of other routine work, such as health and safety, food safety and licensing.
- 12 One or more of the following criteria may be used to help target inspections.
- Premises open to substantive numbers of people.
  - Premises where there is an absence of pre-existing self imposed smoking controls (i.e. there would initially be limited value in prioritising places such as cinemas, offices and shopping centres, which already have no-smoking policies).
  - Premises where there is a low confidence in management and/or a history of non-compliance or complaints.
- 13 Examples of the different types of inspections that may be used are set out below.
- a. **Official** - officers will announce themselves upon arrival and show appropriate identification to person in charge of premises, prior to assessing compliance with the provisions.
  - b. **Covert** – officers will assess compliance by observation within the premises, and subsequently announce themselves and show appropriate identification to person in charge of premises, at the end of the period of surveillance.
  - c. **Covert and leave** – officers will assess compliance by observation, but leave without announcing themselves and return at an appropriate time to discuss their findings with the manager of the premises.

### **Enforcement Options**

- 14 Under the regulations it is an offence, subject to exemptions to:
- Fail to display the specified no smoking signage
  - Smoke in a smoke free premises
  - Fail to prevent smoking where the regulations apply, And
  - To obstruct an authorised officer.
- 15 There are a number of enforcement options available:
- Informal action
  - Fixed Penalty notice
  - Issue of a formal caution
  - Prosecution

### **Informal Action**

- 16 Informal action includes offering advice, verbal warnings and requests for action, the use of informal letters, emails or report forms and issuing leaflets and guidance.
- 17 It is the intention that enforcement action only be taken forward when the seriousness of the situation warrants it. The approach will be non-confrontational, focused on raising awareness and understanding to ensure compliance.
- 18 Informal action would be appropriate in the following circumstances:

- Where non-compliance is not serious enough to warrant formal action, for example, the first occasion in which the required signage is not displayed.
- Where there is insufficient evidence to justify formal action, for example where a complaint is received regarding smoking in premises but an officer does not witness any contraventions
- Where contraventions are found when a business requests an initial inspection to seek advice on compliance

### **Fixed Penalty Notices (FPNs)**

- 19 An authorised officer, who has reason to believe that a person has committed an offence in relation to smoking in smoke free premises or not displaying the required signage, can issue a FPN. There is no FPN available for failing to control smoking.
- 20 FPNs offer a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a fixed penalty charge within the time period specified in the notice.
- 21 If the penalty is paid in accordance with the penalty notice then no proceedings for the offence can be brought.
- 22 In relation to the offence of failing to display the required signage a FPN will generally be issued where there is a history of non-compliance or where guidance and a previous warning has been given.
- 23 In relation to the offence of smoking in a smoke free premises a FPN will generally be issued to a person smoking where the premises concerned have demonstrated that they have taken all reasonable precautions to prevent smoking, including displaying the required signage. Notwithstanding the above where an individual persists in smoking, having received a verbal or written warning from an authorised officer, then a FPN may be issued without consideration as to the precautions taken by the premises to prevent smoking.

### **Prosecution**

- 24 In general FPNs will be favoured over prosecution. However, where there are repeated offences or where in the officer's opinion issue of a FPN is unlikely to result in remedy of the defect, then prosecution will be considered where it is in the public interest and proportionate to proceed.
- 25 Prosecutions will be used in cases of non-payment following a fixed penalty notice.
- 26 Where smoking is taking place in smoke free premises and all reasonable precautions have not been taken to prevent smoking, by the person in control of the premises, then proceedings against the person in control of the premises will be considered.
- 27 Prosecution will also be considered where an authorised officer is obstructed in performance of smoke free duties.

### **Formal Caution**

- 28 Formal cautions will be considered as an alternative to prosecution if the criteria detailed in Section 1 of this enforcement policy are met.

### **Enforcement in premises where the Council has an interest**

- 29 A potential conflict of interest arises in premises in which the Council has ownership or management interest.
- 30 Any breaches of smoke free requirements detected in such premises will be brought to the attention to the relevant Director without undue delay.
- 31 Notwithstanding the above, all premises where the council has an interest will be treated in exactly the same way as other premises and we will ensure that the attention received is in accordance with the criteria applied to all other premises.
- 32 Employees of the council committing offences will be treated in the same way as any other person found committing offences, in accordance with the criteria outlined in this policy. In addition, where these offences are committed within council premises or vehicles, action may also be taken under the Council's disciplinary procedures in accordance with its smoking policy.

### **Making information about smoke free compliance available to the public**

- 33 Where it is in the public interest, the Council may from time to time make available or publish information in relation to smoke free regulation, including details of non-compliant premises, fixed penalty notices served and prosecutions taken.