

**ENVIRONMENTAL  
HEALTH SERVICE**

**ENFORCEMENT  
POLICY**

**NOVEMBER 2005**

# **ENFORCEMENT POLICY**

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## 1. INTRODUCTION

At its Meeting on 17<sup>th</sup> April, 2002, the Community and Environment Policy Forum recommended adoption of the Environmental Health Enforcement Policy, which was circulated to Members. At the Council Meeting of 22<sup>nd</sup> May 2002, it was resolved to adopt the Policy.

East Lindsey District Council is committed to fair and transparent enforcement. As such it recognises its responsibilities under the Human Rights Act 1998 and will not discriminate against individuals or organisations. The Council has also signed up to the Government's *Concordat on Good Enforcement*. (Executive Board 31 May 2000, Minute No. 24).

The Environmental Health Service is an important part of East Lindsey District Council and has responsibility for enforcing a wide range of legislation that may affect individuals, organisations or businesses residing, visiting or operating within the district. Enforcement action is taken by the following Teams:-

- Environment - currently headed by David Dodds – Team Leader
- Commercial - currently headed by Mike Harrison – Team Leader

Officers within the Teams are trained in their enforcement functions and systems are in place to ensure competencies are maintained. Whilst most work is carried out during office hours, we have the resources to carry out both proactive and reactive work, outside of normal hours. Where work is undertaken out of office hours, the principles of this Policy will still be observed. Depending upon the particular circumstances, the Environmental Health Service may use a variety of means, including education, advice, guidance, warning letters and legal notices to ensure that individuals, organisations or businesses meet their legal responsibilities. Where there are serious breaches of legislation or risks to health, safety or the environment, activities may be prohibited, licences revoked, formal cautions issued, legal notices served, works done in default and prosecutions instigated.

Much modern legislation is goal setting – setting out what must be achieved, but not how it must be done. Guidance on how to achieve the goals is often set out in Codes of Practice and there are also a wide variety of advisory materials describing good practice. Neither Codes nor guidance materials are in terms which necessarily fit every case. In considering whether good practice has been adopted, Officers will 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. More is said about these matters below.

Sometimes the law is prescriptive – spelling out in detail what must be done. For example, contact with live electrical wires must be avoided.

Prescriptive law limits the discretion of the duty holder and the enforcer.

This document is intended to provide members of the public, organisations and businesses with information and guidance about the practical application of the Enforcement Policy operated by the Environmental Health Service. Whilst the document aims to provide the reader with a clear understanding of the policy the individual nature of many of the circumstances of enforcement mean that it cannot be considered either exhaustive or complete. The document also incorporates and adopts the principles set out in the LACORS (Local Authorities Co-ordinating Body on Regulatory Standards) guidance on Food Safety Enforcement Policy.

## **2. AUTHORISATION**

Environmental Health Service staff are required to be authorised to exercise statutory functions on behalf of the Council. Officers will carry a card with them that can be produced on request to confirm their employment by this Council. As there are numerous functions in that regard, their authority to carry out inspections, investigations and to enter premises will be provided on request. A separate certificate of appointment is provided for Officers appointed under the Health and Safety at Work etc. Act 1974 and the Food Safety Act 1990.

The Council has authorised the Head of Environmental Services to appoint and authorise staff with the Council in the Environmental Health Service to undertake necessary duties relevant to the posts under specified Acts of Parliament etc. and legislation made thereunder, including powers of entry to premises and the drafting, signing and serving of notices etc. where appropriate.

## **3. PRINCIPLES OF ENFORCEMENT**

The enforcement of all law should 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 the regulator operates and what those regulated may expect.

In applying this policy, the Environmental Health Service will have regard to the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 1999.

### **3.1. Proportionality**

- (a) Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that the action taken by the Environmental Health Service to achieve compliance should be proportionate to any risks to health, safety or the environment and to the seriousness of any breach.

- (b) Some duties are specific and mandatory – others require action so far as practicable. In general, the concept of proportionality is built into the regulatory system through the principle of "so far as is reasonably practicable". Deciding what is reasonably practicable to control risks involves the exercise of judgement by duty holders and discretion by enforcers. When duty holders and the Environmental Health Service, as enforcers, cannot reach agreement, final determination on what is reasonably practicable in particular circumstances is made by the Courts.
- (c) When the law requires that risks should be controlled, the principle of "so far as is reasonably practicable" will always be taken into account. In considering protective measures taken by duty holders, we will always take account of cost as well as the degree of risk. It is legitimately expected that relevant good practice and guidance will be followed. Where relevant good practice in particular cases is not clearly established, legislation requires duty holders to assess the significance of the risks (both their extent and likelihood) to determine what action needs to be taken. Some irreducible risks may be so serious that they cannot be permitted, irrespective of the economic consequences. At the other extreme, some risks may be so trivial that it is not worth the expenditure to reduce them. In general, risk-reducing measures would be weighed against the associated costs and benefits.

### **3.2. Consistency**

- (a) Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
- (b) Duty holders managing similar risks expect consistency from the Environmental Health Service in the advice tendered, the use of enforcement notices, approvals and other remedies, decisions on whether to prosecute and in the response to accidents.
- (c) It is recognised that, in practice, consistency is not a simple matter. Enforcing Officers are faced with many variables: the level of hazard, the attitude and competence of management, the accident, nature of the complaint or incident type. History and past record also vary between companies and proprietors which may otherwise appear similar. The decision on enforcement action is a matter of judgement and discretion must be exercised fairly. Arrangements are in place to promote consistency in the exercise of discretion, including effective liaison with other enforcing authorities through the Home Authority and Lead Authority procedure. In addition, all officers will have regard to statutory Codes of Practice and guidance from bodies such as LACORS (Local Authorities Co-ordinating Body on Regulatory Standards).

### **3.3. Targeting**

- (a) Targeting means making sure:
- that inspection or enforcement action is targeted towards those activities which give rise to the most serious risks or where the hazards are least well controlled;
  - and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it – whether owners, employers, manufacturers, suppliers, or others
- (b) We have systems for prioritising the nature of visits and the depth of inspections/investigations according to the risks posed by a duty holder's operations. These take account of hazards and the nature and extent of risks. Management competence is important, because a relatively low hazard site that is poorly managed can entail greater risk to its workforce or the public than a higher hazard site where risk-control measures are in place.
- (c) When formal enforcement action is necessary, the person or persons responsible for creating a risk should be accountable for it. The duty holder may be the owner of the premises, a supplier, the designer or client rather than the proprietor of the business. Where several duty holders share a responsibility, we will take action against those who can be regarded as primarily in breach.

### **3.4. Transparency**

- (a) Transparency means helping duty holders to understand what is expected of them and what they should expect from us. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they do not have to do. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.
- (b) Duty holders need to know what to expect when an enforcing officer calls and what rights of complaint are open to them. East Lindsey District Council's approach is set out in publications, "The Citizen's Charter" and "Environmental Health Services and Your Business" which reflect the principles of the Government's "Code for Enforcement Agencies". A number of these publications give information on specific complaints and services dealt with by the Environmental Health Service and the processes followed. The publications describe a complaints procedure in the case of administrative decisions and appeals to a court or an industrial tribunal in the case of statutory notices.

## **4. PRACTICAL APPLICATION OF THE POLICY**

The following gives an outline of the practical application of enforcement powers and the type of action that will normally be taken according to the circumstances that typically occur. Where it is appropriate for action to be taken by other Departments of the Council, they will be informed of the situation.

### **4.1. Minor Breaches of Legislation**

Where relatively minor breaches of legislation occur and there is a willingness of the duty holder to undertake the necessary remedial measures, an oral or written warning will normally be given in the first instance.

All reports or letters following any inspection, visit or monitoring activity will clearly state the breaches of legislation identified and the remedial measures required. Where recommendations are made which relate to good practice or advice, then these will be clearly distinguished from any legal requirements. Clear guidance, information or advice will also be given positively to encourage compliance.

### **4.2. Serious Breaches of Legislation**

The Environmental Health Service has powers to serve a range of legally binding enforcement notices upon duty holders in breach of legislation, in order to prohibit activities or effect necessary improvements. These notices are usually served where serious breaches of legislation have been identified or where there are serious risks to health, safety or the environment. Officers are authorised to serve various notices by virtue of their qualifications, training and competence.

The use of formal enforcement notices will normally be restricted to circumstances where: -

- (a) There are serious breaches of legislation;
- (b) There are potential or serious risks to health, safety or the environment;
- (c) The Environmental Health Service has a 'statutory duty' to serve a notice; or
- (d) An informal approach has proved unsuccessful.

Whenever practicable, and except in cases of immediate risks to health, safety or the environment, prior warning of the intention to serve an enforcement notice or to undertake enforcement action will be given to the duty holder. The warning will include a suitable period to deal with the matters or discuss the circumstances of the case, prior to the commencement of formal action.

### 4.3. Licensing and Permits – Breaches of Conditions

The Environmental Health Service issues licences and permits for a variety of activities such as caravan sites, riding and animal boarding establishments, zoos, pet shops, etc. Licences are usually issued subject to specific conditions which control the management and provision of appropriate facilities at such premises.

Where relatively minor breaches of licence and permit conditions occur and there is a willingness of the duty holder to undertake the necessary remedial measures, a verbal or written warning will usually be given in the first instance. Where there are serious failures to comply with licence conditions and/or where the informal approach has failed to effect the necessary improvements, a formal report will be submitted to the Council's General Licensing Committee and recommendations made as to whether or not a licence will be granted, renewed or revoked. The duty holder will be entitled to make representations in support of their case.

Where serious breaches of licensing or permit requirements occur, they may be considered in accordance with the criteria relating to prosecutions and, if appropriate, legal proceedings could be instigated.

### 4.4. Prosecutions

Consideration of formal action will only be undertaken after consultation with the Solicitor for the Council (or duly authorised representative).

There are certain circumstances in which it will be appropriate for prosecutions to be recommended following breaches of legislation. Examples of situations which could warrant recommendation of prosecution are:-

- (a) where there is a blatant disregard for the law, especially where there is an economic advantage to do so (i.e. if it is profitable to flout the law);
- (b) failure to comply with an enforcement notice;
- (c) where there is a reckless disregard for the law which could affect the safety or well-being of an individual or endanger the environment;
- (d) where there have been repeated breaches of legal requirements and management is neither willing nor structured to remedy the situation;
- (e) where there has been a serious accident or a case of ill-health arising from a substantial legal contravention;
- (f) where a contravention has caused serious public concern;

- (g) failure to pay a fixed penalty notice.

Before deciding whether or not to recommend prosecution, a number of factors may be taken into account including:-

- (a) the seriousness of the offence;
- (b) failure to comply with an enforcement notice;
- (c) previous history of the duty holder concerned; with particular emphasis on the previous remedial measures instituted and the level of co-operation with the Council's staff.
- (d) the willingness of the duty holder to prevent a recurrence of the problem;
- (e) the likelihood of the duty holder being able to establish a due diligence defence;
- (f) the probable public benefit of a prosecution and importance of the case – e.g. whether it might establish a legal precedent, or whether the case would be in the public interest;
- (g) the issue of an enforcement notice or other action, such as issuing a formal caution in accordance with Home Office Circular 18/1994, would be more appropriate;
- (h) any explanation offered by the affected person, organisation or business;
- (i) any views, concerns or comments of any other interested parties, e.g. businesses, employees and the public;
- (j) any views, concerns or comments of any home enforcement authority or Lead/Home Authority (see item 5 below)
- (k) that there is sufficient evidence to provide a realistic prospect of successful prosecution.

In addition to the above, prosecutions will only be considered when the circumstances fall within the guidelines produced by the Attorney General, such as the Code for Crown Prosecutors.

#### **4.5. Prosecution of Individuals**

Subject to the above, we may identify and prosecute or recommend prosecution of individuals, including company directors and managers, if it is considered that a conviction is warranted and can be secured.

#### **4.6. Works in Default**

In place or, or in addition to prosecutions, certain powers exist for the Environmental Health Service to carry out work in default. These powers will only be exercised following the expiry of a Notice to undertake works. All charges incurred by the Environmental Health Service will be recovered where possible either through the courts or as a land charge on property.

#### **4.7. Death at Work**

Where there has been a breach of the law leading to a work-related death, we will need to consider whether the circumstances of the case might justify a charge of manslaughter. Liaison may take place with the Police, the Coroner and the Crown Prosecution Service (CPS), and if evidence is found to suggest manslaughter, action will be taken by the Police or, where appropriate, the CPS. If the Police or the CPS decide not to pursue a manslaughter case, we may still prosecute or recommend prosecution of a health and safety case if that is appropriate.

### **5. LEAD/HOME AUTHORITY PARTNERSHIP SCHEMES**

The Lead Authority Partnership Scheme and Home Authority Arrangements promotes consistency of enforcement among businesses with multiple outlets in different local authority areas. The Lead Authority process involves a local authority forming a partnership with a company. The local authority then carries out a Safety Management Review (SMR) of the company, produces a report of its findings and, where necessary, the company produces an action plan in response. The Lead Authority then enters into a long term liaison arrangement where it acts as a focal point for liaison with other local authorities on health and safety issues affecting the company. The full list of registered partnerships is held by the Local Authority Unit.

We will discuss with the appropriate Lead/Home Authority any shortcomings in participating companies' centrally agreed policies or procedures. If we are considering formal enforcement action, i.e. notices or prosecution, against an outlet of a participating company we will except in the case of immediate action, discuss the matter with the Lead/Home Authority before taking action. Where immediate action has been necessary we will advise the Lead/Home Authority as soon as reasonably practicable.

### **6. SHARED ENFORCEMENT RESPONSIBILITY**

In circumstances where enforcement responsibility is shared between enforcement agencies, for example in relation to the operation of a Waste Transfer Station (where both local councils and the Environment Agency can take enforcement action), the Environmental Health Services will have regard to any procedures agreed with other

enforcement agencies, particularly where memoranda of understanding exist.

In some cases, enforcement powers will rest with another agency, for example the Health and Safety Executive. In these situations, the Environmental Health Service will act to ensure that the case is transferred to the enforcing agency promptly and in accordance with any agreed procedures.

## **7. APPEALS**

There is usually a statutory right of appeal against the requirement of an enforcement notice or action contained in the relevant legislation. Such appeals are usually made to a Magistrate's Court. Where health and safety legislation matters are concerned, it would be an Industrial Tribunal.

Individuals, small organisations or businesses may be reluctant to spend a considerable amount of time, effort and money preparing and submitting an appeal against enforcement action. East Lindsey District Council therefore provides an informal appeal mechanism whereby the individual circumstances of the case can be taken into account and considered prior to enforcement action being commenced. Where necessary, access will be made available to a service providing translation facilities. This for both verbal communication and written documents.

### **7.1. Informal Appeal**

If you do not agree with action taken by an Enforcement Officer, you should first contact the Environmental Health Service Manager to see if the problem can be resolved informally. If the disagreement remains after that, you should contact the Head of Environmental Services. Should your disagreement continue, an East Lindsey District Council Complaint Procedure Booklet is available which explains further action.

### **7.2. Statutory Rights of Appeal**

Where enforcement notices are served, detailed information will be provided to the person concerned regarding their statutory rights of appeal. The information will include, where appropriate, the necessary forms and help with completion to enable an appeal to be made.

## **9. CONSULTATION, REVIEW AND PUBLICATION**

Environmental Health Services will endeavour to form partnerships with local business organisations and will consult them regarding the contents of this policy and any significant changes that may arise from time to time.

Arrangements will be made for the Enforcement Policy to be monitored and reviewed as necessary so as to ensure that it is used in a fair and consistent manner.

The Policy will also be published and arrangements made for it to be brought to the attention of individuals, organisations and businesses in a 'user-friendly' format.