

# ENVIRONMENTAL HEALTH & LICENSING



**GREAT  
YARMOUTH**  
BOROUGH COUNCIL

## ENFORCEMENT POLICY

**REVIEWED: DECEMBER 2011**

## **1. Environmental Health and Licensing**

The purpose of the Environmental Health and Licensing services is predominantly to protect the health, safety and environment of residents within the Borough. To help achieve this purpose Environmental Health and Licensing have a duty to enforce a range of statutes relating to public health and safety, quality of life and maintenance of the environment.

This policy therefore intends to outline how these two services will use their powers in relation to enforcement. In particular this policy is designed to help promote efficient, effective and consistent approaches to regulatory inspection.

The policy itself has been written taking into account the Legislative and Regulatory Reform Act 2006, the Regulators Compliance Code 2008, The Freedom of Information Act 2000 and The Regulation of Investigatory Powers Act 2000. It also has regard to the Human Rights Act 1998 and the Equalities Act 2010.

## **2. Principles of Good Regulation**

### **2.1 Transparency**

Transparency is important to help all customers understand what is expected of them and what they should expect from Environmental Health and Licensing. As such these services will:-

- Where remedial action is required, clearly explain (in writing if requested) why the action is necessary and timescales if required; with distinctions always being made between best practice advice and legal requirements;
- Provide opportunity to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required.
- Give written explanation on any rights of appeal against formal enforcement action at the time the action is taken.
- Where possible communication must be made in plain language. If known and required, an alternative appropriate language or method should also be used.

## **2.2 Accountability**

Regulators must be able to justify decisions, and be subject to public scrutiny, to help achieve this, Officers will therefore;

- Show their identification at the outset of every visit and explain the reason for that visit, unless the nature of the investigation requires otherwise.
- Provide their names and contact details when requested.
- Will strive to deal with their enforcement activities as promptly and efficiently as possible in order to minimise delays.
- Will gather feedback and act upon information about the service provided, as appropriate.
- Direct people to the Council's complaint procedure which is also available from reception points, online and over the phone, as required or requested.

## **2.3 Helpfulness**

Environmental Health and Licensing recognises the importance of working with their customers, as in many cases this helps to prevent the need for enforcement action. Officers will do this by:-

- Listening to and finding out what matters to the customer, and as appropriate build a rapport with its customers.
- Provide advice and guidance either verbally, written or through the web.
- Where required signpost its customers to other agencies and information.
- And where appropriate co ordinate advice with other agencies to prevent unnecessary overlaps.

## **2.4 Proportionality**

Any enforcement actions taken by Environmental Health and Licensing will be proportionate to the risks posed and to the seriousness of any breach of law.

- When considering the measures necessary to be taken by duty holders Environmental Health and Licensing will take account of cost as well as the degree of risk.
- The existence of relevant good practice will also be considered in cases of judgment.

## **2.5 Consistency**

Environmental Health and Licensing aims to achieve consistency in actions they take.

- Therefore all Officers undertaking enforcement duties will be suitably trained, qualified and authorised so as to ensure that they are fully competent to undertake their duties.
- Officers will also have regards to codes of practice, government circulars and guidance as appropriate to also aid with consistence actions.

## **2.6 Targeted**

Targeting means making sure that regulatory effort is directed primarily towards those who are responsible for the most serious risks, where the risks are least controlled and against deliberate or organised crime.

In addition to this other factors from time to time will determine priorities for enforcement activities, including Government and local targets and priorities, new legislation, national campaigns and public concerns.

## **3. Enforcement Options**

Enforcement actions must be consistent, balanced, fair and relate to common standards that ensure the public or environment is adequately protected.

Firstly, and where appropriate a staged approach to enforcement should be adopted and in the first instance customers should be given the opportunity to discuss and remedy problems before action is taken, unless immediate action is required. If enforcement action is still required after this approach the following must then be considered.

- The seriousness of the offence.
- The history of the activity.
- Confidence in achieving compliance.
- Consequences of non compliance.
- Likely effectiveness of the various enforcement options.
- The impact of the offence on the individual or community.

And in considering this any sanction or penalty should:-

- Aim to change the behaviour of the offender.
- Aim to eliminate any financial gain or benefit from non compliance.
- Be proportionate to the nature of the offence and harm caused.
- Aim to restore the harm caused by regulatory non compliance.
- Aim to deter future non compliance.

## **Enforcement Options Available**

### **3.1 Informal Action**

Informal Action will be considered when:-

- The act or omission is not serious enough to warrant formal action; or
- From the individual's or business's past history it can be reasonably expected that informal action will achieve compliance; or
- The confidence in an individual or business proprietor is high; or
- The consequences of non-compliance will not pose a significant risk to public health, public safety or the environment.

Any correspondence must clearly differentiate between legal requirements and recommendations of good practice and must indicate the regulations contravened and the measures which will enable compliance.

### **3.2 Statutory Notices**

Statutory Notices will be considered where one of the following criteria apply:-

- Where there is a statutory duty to do so;
- There are significant contraventions of legislation;
- There is a lack of confidence in the persons responsible to respond to an informal approach;
- There is a history of non-compliance;
- Standards are generally poor with little management awareness of statutory requirements;
- The consequences of non-compliance could be potentially serious to public health or cause public nuisance or be irreversible; or

- Where, in addition to prosecution, measures need to be taken to remedy conditions that are serious, deteriorating or where the service of a notice is needed to support a prosecution.

### **3.3 Prohibition Notices/Orders**

It will be necessary to consider the service of a Prohibition Notice, Order or injunction in one or more of the following circumstances:-

- An imminent risk or injury to health or safety can be demonstrated;
- An imminent risk of serious pollution to the environment can be demonstrated;
- The consequences of not taking immediate and decisive action to protect the public would be unacceptable;
- The guidance criteria concerning the conditions when prohibition may be appropriate are fulfilled;
- There is no confidence in the integrity of an unprompted offer made by a proprietor to voluntarily close premises or cease the use of any equipment, process or treatment associated with the imminent risk; or
- Where it would be the most effective remedy available.

### **3.4 Fixed Penalty Notices**

Fixed Penalty Notices may be issued under the following circumstances:-

- To provide an effective and visible way to respond to low level crimes without going to court.
- As a response to genuine problems or as part of a wider enforcement strategy.
- That there is enough evidence to progress with a prosecution or alternative action if nonpayment of a fixed penalty notice follows.
- Known persistent offenders will not be issued with FPNs but shall be considered for prosecution.

### **3.5 Prosecution**

The Council recognises that the decision to prosecute is significant and could have far reaching consequences on the offender.

The decision to undertake a prosecution will be taken by the Service Unit Manager or the Head of Department in their absence. Proceedings will be issued when one or more of the following criteria are met:-

- Officers have been intentionally obstructed in the lawful course of their duties;
- The alleged offence involves a flagrant breach of the law such that public health, safety or well being is or has been put at risk or irreversible damage had resulted;
- There has been a reckless disregard for health and safety of the environment;
- The alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice, prohibition or fixed penalty notice;
- There is a history or repetition of similar offences;
- The alleged offence causes public alarm and it is desirable to reassure the public and deter other offenders;
- A breach of health and safety legislation resulted in death, or serious injury;
- There have been repeated breaches which give rise to significant risk or persistent and significant poor compliance;
- A prosecution is in the public interest, there is a realistic prospect of conviction and sufficient evidence to support proceedings;
- There has been a repetition of a breach that was subject to a simple caution.

It is worth noting that in certain situations, both prosecution and notice procedures may be appropriate. All relevant evidence and information will be considered, taking into account the guidance set out in “The Code for Crown Prosecutors”, before deciding upon a prosecution in order to enable a consistent, fair and objective decision to be made.

### **3.6 Simple Cautions**

A simple caution may be issued as an alternative to a prosecution. Simple cautions will be issued to:-

- Deal quickly and simply with less serious offences
- Divert less serious offences away from the Courts; or
- Reduce the chances of repeat offences.

To safeguard the suspected offenders’ interests the following conditions will be fulfilled before a caution is administered:-

- There must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction; and
- The suspected offender must admit the offence; and
- The suspected offender must understand the significance of a formal caution and given an informed consent to being cautioned.

No pressure will be applied to a person to accept a formal caution. Should a person decline the offer of a formal caution a prosecution will be pursued, unless there are extenuating circumstances.

### **3.7 Suspend, Revoke, Refuse to Renew a Licence**

Where a licensed holder does not meet the conditions attached to the licence, suspension, revocation or refusal to renew a licence may be considered:-

- In the most serious cases.
- Where previous formal letters have not resulted in improvement.
- There is a history of non-compliance and
- Standards are generally very poor with little management awareness of what is required.
- Where the licence fees have not been paid.

### **3.8 Review of Licences**

At any stage, following the grant or variation of a Licensing Act 2003 or Gambling Act 2005 licence, a responsible authority or an interested party, may ask the licensing authority to review a licence because of a matter arising at the premises in connection with any of the licensing objectives. The licensing authority itself cannot initiate the review process in respect of Licensing Act 2003.

The licensing authority recognises the importance of partnership working and responsible authorities will aim to give licence holders early warning of any concerns identified at a premises and the need for improvement. A failure to respond to such warnings is likely to lead to a decision to request a review.

Where the licensing authority considers that action under its statutory powers is necessary, it may take any of the following steps:-

- To modify the conditions of the premise licence (which includes adding new conditions or any alteration or omission of an existing condition).
- To exclude a licensable activity from the scope of the licence.
- To remove the DPS.
- Exclude a default condition imposed by the Secretary of State (e.g. opening hours) or remove or amend such an exclusion.
- To suspend the licence for a period not exceeding three months.
- To revoke the licence.

In cases when the crime prevention objective is being undermined, it is expected that revocation of the licence – even in the first instance – will be seriously considered.

#### **4. Working with External Agencies and Enforcement Bodies**

If a business has a primary Authority, Lead or Home Authority scheme an Officer will contact these before enforcement action is taken, unless immediate action is required because of imminent danger.

The Officer will also liaise with other regulators as required.

#### **5. Training and Appointment of Officers**

All Officers undertaking enforcement duties will be suitably trained and qualified so as to ensure that they are fully competent to undertake their enforcement activities.

Officers will be formally authorised by the relevant Delegated Officer to exercise specified powers under relevant statutes. The level of authorisation for each Officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines. Authorisation will be in writing and in a form which can be shown on request. A copy of an Officer's authorisation will be held in a central file.

Environmental Health and Licensing also supports the principle of continuing professional development and will ensure that all Officers are given additional in-post training to maintain up to date knowledge and skills.

#### **6. Review of this Policy**

This Policy will be reviewed in January 2014 or before, if required.