

ENVIRONMENTAL HEALTH



Great Yarmouth
Borough Council

ENFORCEMENT POLICY

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ENVIRONMENTAL HEALTH ENFORCEMENT POLICY



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1 INTRODUCTION

In March 1998 the Government's Better Regulation Unit published an Enforcement Concordat which sets out a blueprint for fair, practical and consistent enforcement across the Country. The Concordat has been developed jointly by representatives of Businesses, Local Authorities and Central Government and has been circulated for adoption by enforcement agencies. The Concordat draws on good practice already operated by many local authorities and other agencies.

Great Yarmouth Borough Council fully supports this initiative and has set out within this Enforcement Policy the principles to be adopted by the Officers of Environmental Health exercising any enforcement functions. In signing the Concordat and adopting this Enforcement Policy the Council is stating its commitment to an enforcement service which is courteous and helpful and which works with individuals and businesses, wherever possible, to help them comply with the law. The Council nevertheless acknowledges the need for firm action against those that flout the law and put consumers and others at risk.

In drafting this Policy the Council has taken the provisions of the Human Rights Act 1998 and the Race Relations (Amendment) Act 2000 into account. In the Council's view this Enforcement Policy is compatible with Convention Rights.

2 ENFORCEMENT ACTIVITY

The Council's Environmental Health Department has a duty to enforce a wide range of statutes relating to public health and safety, quality of life and maintenance of the environment. All of these activities will be carried out having regard to the general principles of good enforcement practice outlined in this Policy Document. The services falling within the scope of this Policy include:-

Environmental Protection, Pollution Control, Food Safety, Health & Safety, Public Health, Port Health functions, Private Sector Housing including Houses in Multiple Occupation, Animal Welfare, Caravan Sites, Unauthorized Encampments and Anti-Social Behaviour, Infectious Disease Control, Pest Control and Dog Control.

(For complete list of legislation see Appendix 1)

The Council will ensure that these services are flexible and responsive to needs in order to be equally accessible to all its citizens and ensure that all service users are treated equally and dealt with fairly

Although primary responsibility for compliance with the law rests with individuals and business, the Council will provide free information to help them to understand legal requirements and will seek to raise awareness about the need to comply.

3 DELEGATION OF AUTHORITY

The Council's Scheme of Delegation specifies the extent to which enforcement powers are delegated to Officers. Whilst delegation is mainly to Officers, in certain circumstances the decision to take enforcement action lies with the relevant Council Committee, for example refusal to grant or renew a Public Entertainments Licence.

4 PRINCIPLES OF ENFORCEMENT

The Council believes in firm but fair regulation. Underlying the Policy are the principles of proportionality in the application of the law and in securing compliance; consistency of approach; openness about how the Council operates and what those customers may expect and targeting of enforcement action.

4.1 *Proportionality*

The enforcement action taken by Environmental Health will be proportionate to the risks posed and to the seriousness of any breach of the law.

Some Environmental Health duties are specific and mandatory, others require action so far as is reasonably practicable with all due diligence, using the Best Available Technology not Entailing Excessive Cost. In general the concept of proportionality is built into the regulatory system.

One of the Council's responsibilities is to protect the public and prevent harm to the environment from occurring or continuing. Some incident or breaches of regulatory requirements have the potential to cause serious risks to public health and safety, environmental damage or loss of public or residential amenity. When considering the measures necessary to be taken by duty holders Environmental Health will take account of cost as well as the degree of risk. The existence of relevant established good practice will also be considered in cases of judgement.

There may be occasions when the breach of regulations will justify statutory action. Any such action will only be taken in accordance with the law and after due consideration has been given to any Convention Rights, under the Human Rights Act 1998, that may be affected by such action.

4.2 *Consistency*

The Council aims to achieve consistency in advice tendered, the response to complaints and other incidents, the use of powers and decisions on whether to prosecute. However, the Council recognises that consistency does not mean simple uniformity.

Officers need to take account of many variables; the scale of the breach; the attitude and actions of management and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgement and the Council, through its Officers, needs to exercise discretion. The Council will continue to develop arrangements to promote consistency including effective arrangements for liaison with other enforcing authorities.

4.3 *Helpfulness*

The Council believes that prevention is better than cure and that we will actively work with business, especially small and medium sized businesses to advise and assist with compliance we will provide a courteous and efficient service and our staff will identify themselves by name. We will encourage business to seek advice/information from us and provide a contact point and telephone number for further dealings with us. We will deal with applications for approval of establishments, licences, registrations, etc., efficiently and promptly. Wherever it is practicable we will co-ordinate our enforcement services effectively to minimise unnecessary overlaps and delays and to make provision for the particular interests of consumers within our area including business owners, employees and the public.

4.4 *Openness*

Openness is important in maintaining public confidence in the Council's ability to regulate. It means helping all customers to understand what is expected of them and what they should expect from Environmental Health. It also means making clear why an Officer intends to or has taken enforcement action.

Openness is an integral part of the role of Council Officers and Environmental Health continues to train its staff and to develop its procedures to ensure that:-

- where remedial action is required, it is clearly explained (in writing if requested) why the action is necessary and when it must be carried out; a distinction being made between best practice advice and legal requirements;
- opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to protect the environment, to prevent evidence being destroyed or in the course of an investigation into fraud which may lead to prosecution;
- where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event;
- written explanation is given on any rights of appeal against formal enforcement action at the time the action is taken.

4.5 *Targeting*

Targeting means making sure that regulatory effort is directed primarily towards those who are responsible for risk to health and safety or whose activity gives rise to serious environmental damage, where the risks are least well controlled or against deliberate or organised crime. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.

Environmental Health has systems for prioritising regulatory effort. They include the response to complaints from the public about regulated activities, the assessment of the risks posed by business operation and the gathering and acting on intelligence about illegal activity.

In the case of regulated industries, management actions are important. Repeated incidents or breaches of regulatory requirements which are related may be an indication of an unwillingness to change behaviour or an inability to achieve sufficient control and may require a review of the regulatory requirements, the actions of the operator and additional investment. A relatively low hazard site or activity, poorly managed, has potential for greater risk to the environment than a higher hazard site or activity where proper control measures are in place.

The Council will always seek to recover the costs of investigation and Court proceedings.

5 ENFORCEMENT OPTIONS

The Council recognises the importance of achieving and maintaining consistency in its approach to enforcement. For many areas of our enforcement activity Government guidance already exists in the form of Codes of Practice, Government Circulars etc. There may also be local or regional Codes of Practice which have been produced to promote consistency in our enforcement activity. When making enforcement decisions Officers must have regard to any relevant national or local guidance as well as the provisions of the Human Rights Act 1998 and this Enforcement Policy.

Enforcement decisions must be consistent, balanced, fair and relate to common standards that ensure the public or environment is adequately protected. The criteria to be considered will include:-

- the seriousness of the offence;
- the history of the activity;
- confidence in achieving compliance;
- consequences of non-compliance; and
- likely effectiveness of the various enforcement options

The criteria are not exhaustive and those which apply will depend on the particular circumstances of each case. This does not mean that all factors must be in favour of enforcement action, rather that on balance, the preponderance is in favour.

Having considered the enforcement criteria the following options are available:-

- to take no action; or
- to take informal action; or
- to serve statutory notices; or
- to issue a fixed penalty notice; or
- to issue formal cautions; or
- to suspend, revoke or refuse to renew a licence; or
- to prosecute or apply for a Court Order

Where appropriate a staged approach to enforcement should be adopted and in the first instance business should be given the opportunity to discuss and remedy problems before action is taken, unless immediate action is required.

5.1 *Informal Action*

Informal Action will be taken 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

When an informal approach is used to secure compliance with regulations, confirmation of what action is required must be confirmed in writing. All 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.

5.2 *Statutory Notices*

Statutory Notices will be issued 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 proprietor or enterprise 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

Failure to comply with a statutory notice will, in general and where relevant, result in prosecution and/or works in default where appropriate.

5.3 *Prohibition Notices*

It will be necessary to consider the service of a Prohibition Notice 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;
- where an unauthorised development is unacceptable and immediate remedial action is required because the breach is causing serious harm to public amenity in the neighbourhood of the site or where there has

- been breach of a condition notice;
- where unauthorised development is unacceptable and continuing works are causing irreversible damage and remedial action is not a satisfactory option;
- 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
- a proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition;
- where it would be the most effective remedy available

5.4 *Fixed Penalty Notices*

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

Littering (Environmental Protection Act 1990 s.88)

- a person throws down, drops or otherwise deposits litter then leaves it;
- the person declines to remove the said litter when requested to do so

Dog Fouling (Dogs [Fouling Land] Act 1996)

- a person in charge of a dog(s) allows it to foul land and does not remove the dog faeces from the land;
- the person in charge of the dog(s) declines to remove the dog faeces when requested to do so

5.5 *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 normally be taken by the Head of Environmental Health in consultation with the Council's Head of Legal Services. 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 or the environment;
- the alleged offence involves deception which may or may not result in a loss or potential loss of public funds;
- the integrity of the licensing framework is threatened;
- the alleged offence involves a failure by the suspected offender to correct an identified serious potential risk having been given a reasonable

opportunity to comply with the lawful requirements of an Authorised Officer;

- the alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice;
- there is a history 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;
- the gravity of the offence, together with the actual or potential harm warrants it;
- there have been repeated breaches which give rise to significant risk or persistent and significant poor compliance;
- a duty holders standard of managing health and safety is found to be far below what is required by law and to be giving rise to significant risk;
- 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 formal caution

In certain situations, both prosecution and notice procedures may be appropriate, for example if the situation is so hazardous, or if it was due to gross negligence then a notice may be required to rectify the situation but prosecution is also warranted.

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.

5.6 *Summary or Indictment*

Where an offence is triable either way, prosecution or indictment will only be recommended to the Courts where one of the following apply:

- the offence is extremely serious
- it is felt that the Summary Court does not have severe enough powers to punish the offence appropriately
- there is a very poor record of compliance
- the circumstances cause particularly great public alarm

5.7 *Referral for Manslaughter*

If an initial investigation into a work related death appears to involve Manslaughter, Environmental Health will inform the Police as soon as possible.

Environmental Health will liaise with the Police, Coroner’s Office and Crown Prosecution Service and continue to investigate the health and safety implications of the case.

Environmental Health will pass on to the Police any information they find in the course of the investigation that may be indicative of Manslaughter.

Where an individual has caused a death through a breach of duty that amounted to gross negligence, manslaughter will always be considered.

If both the Police and Environmental Health decide to pursue, a joint prosecution will be followed to avoid double jeopardy.

5.8 *Prosecution of Individuals*

Environmental Health will consider where appropriate and legislation allows, the prosecution of individuals, including company directors and managers.

Enforcement action will only be taken against employees where they have blatant disregard to health and safety, where Company disciplinary procedures have failed and there is strong evidence that the Company are in no way negligent.

Enforcement action will be taken against individual directors and managers where an investigation reveals an offence was committed with their consent or connivance or is attributable to neglect on their part.

5.9 *Prosecution Without Warning*

As a general rule a person or a company will be given a reasonable opportunity to comply with the law, although in some circumstances prosecution may be undertaken without giving prior warning, eg

- the contravention is a particularly serious one;
- there has been a particularly blatant disregard of the law;
- a statutory notice has been previously issued for a similar offence; or
- the integrity of the licensing framework is threatened

5.10 *Formal Cautions*

A formal caution may be issued as an alternative to a prosecution. Formal 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.

5.11 *Suspend, Revoke, Refuse to Renew a Licence*

Where a licensed premises does not meet the conditions attached to its 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.

5.12 *Home/Lead Authority*

The Council supports the principle of Home and Lead Authorities. Where formal action is being considered in respect of a company, Environmental Health will consult any relevant Home or Lead Authority before taking such action. Where immediate action is warranted they will be notified as soon as practicable afterwards.

5.13 *Non-Compliance with Policy*

If any person is unhappy with the action taken or information or advice given, they will be given the opportunity of discussing the matter with the relevant Line Manager or Head of Service. This is without prejudice to any formal appeals mechanism or to the Council's Formal Complaints Procedure.

6 **SHARED ENFORCEMENT**

The Council recognises that there are situations where there is a shared enforcement role with other agencies for example the Police, HSE, Trading Standards, DEFRA, Local Fire Authority, etc., and we will consult with the appropriate agency on any proposed enforcement action where there is a shared enforcement role.

7 **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.

All Officers will be formally authorised by the relevant Council Committee or Delegated Officer to exercise specified powers under relevant statutes (See Appendix 2). 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 their personal file.

The Council support 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.

8 **MANAGEMENT SYSTEMS**

Staff competency and the consistency of enforcement will be reviewed by Environmental

Health on a regular basis.

Environmental Health will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, as far as is reasonably practicable, a uniform and consistent approach. Where local or national co-ordinating bodies exist such as LACOTS and the Norfolk Food Liaison Group, the Council will ensure that wherever possible its enforcement practices are consistent with best practice. The review of the enforcement services may involve any of the following activities:-

- review of enforcement standards by Members of the Council;
- Quality Assurance Systems such as EFQM Excellence Model;
- Supervising Officer for enforcement action;
- monitoring visits by Line Managers;
- shadowing visits by colleagues;
- monitoring of correspondence and statutory notices;
- peer review exercises;
- internal training sessions and workshops on enforcement issues;
- customer satisfaction surveys;
- business focus groups;
- quality assurance

Complaints about the Service

The Council has a formal Complaints System. Information/forms etc are available at all Council Reception points or will be sent by post on request. In cases where disputes cannot be resolved, any right of appeal will be explained with the details of the process and the likely time scales involved.

9 REVIEW OF THE POLICY

This Policy Document will be reviewed on a regular basis.

MISC/ENV HEALTH ENFORCEMENT POLICY/PJA/RAA

LEGAL POWERS & OBLIGATIONS

The following primary Legislation, Regulations and Statutory Codes of Practice are enforced and administered by the Officers of Environmental Health. They contain general duties and powers to protect public health and the environment as well as a number of statutory targets:-

Animal Boarding Establishment Act 1963
 Breeding of Dogs Act 1973
 Breeding of Dogs (Licensing Records) Regulations 1999
 Breeding & Sale of Dogs (Welfare) Act 1999
 Building Act 1984
 Caravan Sites and Control of Development Act 1960
 Cinemas Act 1985 - enforcement of Conditions
 Clean Air Act 1993 (and associated Regs)
 Control of Pollution Act 1974
 Crime & Disorder Act 1998
 Criminal Justice and Public Order Act 1994 (Circular 18/94)
 Dangerous Wild Animals Act 1976
 Dogs (Fouling of Land) Act 1996 (Designation Order) relating to dog fouling in public places
 Energy Act 1996
 Environment Act 1995 (and associated Regs)
 Environmental Protection Act 1990 (and EEC Directive 90/675/EEC) (and associated Regs)
 Food Safety Act 1990 (and associated Regs) (Codes of Practice made under S.40 FSA 1990)
 Food and Environment Protection Act 1985 (as amended)
 Housing (Management of Houses in Multiple Occupation) Regulations 1990
 Housing (Enforcement Procedures for HMOs) Order 1997
 Housing (Fire & Safety in HMOs) Order 1997
 Houses in Multiple Occupation (Fees for Registration Schemes) Order 1997
 Housing (Recovery of Expenses for Section 352 Notices) Order 1997
 Health & Safety at Work etc Act 1974 (and associated Regs and further defined in HELA Circulars issued by the Health & Safety Commission)
 Health & Safety at Work etc Act 1974 (and associated Regs and HELA Guidance)
 Home Energy Conservation Act 1995
 Housing Grants Construction and Regeneration Act 1996
 Housing Act 1985 (as amended)
 Housing Act 1996
 Imported Food Regulations 1998
 International Health Regulations - relating to Port and Airport Health Control
 Local Government (Miscellaneous Provisions) Acts 1976 and 1982
 Local Government and Housing Act 1989
 National Assistance Act 1948
 Noise and Statutory Nuisances Act 1993
 Pet Animals Act 1951
 Pollution Prevention and Control Act 1999
 Prevention of Damage by Pests Act 1949
 Private Water Supplies Regulations 1991
 Public Health (Control of Disease) Act 1984 (includes Burials)
 Public Health (Infectious Diseases) Regulations 1988
 Public Health Acts 1936 and 1961
 Public Health (Aircraft) Regulations 1979
 Public Health (Ships) Regulations 1979
 Radioactive Substances Act 1993 (including Public Register)

Riding Establishment Acts 1964 & 1970

Theatres Act 1968

Water Supply (Water Quality) Regulations 1989

Water Industry Act 1991

Zoo Licensing Act 1981

The Data Protection Act

The Human Rights Act 1998

Apart from Byelaws, eg The Control of Skin Piercing, Dog Controls, adopted by the Council and the Great Yarmouth Designation Order relating to dog fouling, other powers are contained in a wide range of statutory instruments which impose formal guidance on the Council to aid it to carry out its functions.

ENVIRONMENTAL HEALTH - POWERS OF OFFICERS

HEAD OF ENVIRONMENT AND HEALTH	<p>The authority to serve all Statutory Notices within the delegated authority provided by the Constitution</p> <p>Authority to serve Improvement & Prohibition Notices (Food & Health & Safety)</p> <p>The powers of Detention & Seizure (Food & Health & Safety)</p> <p>The issue and authorisation of issue of Formal Cautions</p> <p>The initiating of Summary or Indictment Legal Proceeding</p> <p>The issue of Fixed Penalty Notices for littering (EPA 1990) and Dog Fouling (Dogs [Fouling of Land] Act 1996)</p>
ENVIRONMENTAL HEALTH OPERATIONS AND ENFORCEMENT MANAGER	<p>To deputise in the absence of the Head of Environment & Health on all matter for which he is authorised</p> <p>Authority to serve Improvement & Prohibition Notices (Food & Health & Safety)</p> <p>The powers of Detention & Seizure (Food & Health & Safety)</p> <p>The issue of Formal Cautions following consultation with Head of Environment & Health</p> <p>The issue of Fixed Penalty Notices for littering (EPA 1990) and Dog Fouling (Dogs [Fouling of Land] Act 1996)</p>
COMMERCIAL MANAGER AND SENIOR ENVIRONMENTAL HEALTH OFFICERS	<p>With effect from 27 September 2004 authority is delegated by the Head of Environment & Health to serve all Statutory Notices within the delegated authority provided by the Constitution.</p> <p>Authority to serve Improvement & Prohibition Notices and the powers of Detention & Seizure (Food & Health & Safety) within their current levels of competence and in line with any relevant competency policy</p> <p>Authority to issue Formal Cautions (Food & Health & Safety) within their current levels of competence and following consultation with the Environmental Health Operations & Enforcement Manager</p> <p>The instigation of legal proceedings for an offence following permission being granted by the Head of Environment & Health and in line with any relevant competency policy</p> <p>The issue of Fixed Penalty Notices for littering (EPA 1990) and Dog Fouling (Dogs [Fouling of Land] Act 1996)</p>
ENVIRONMENTAL HEALTH OFFICERS	<p>The powers of Detention & Seizure (Food & Health & Safety) within their current levels of competence</p> <p>With effect from 27 September 2004 authority to serve all Statutory Notices within the delegated authority provided by the Constitution.</p> <p>Authority to serve Improvement Notices and Prohibition Notices (Food & Health & Safety) within their current levels of competence and following consultation with the relevant Line Manager or in their absence the Environmental Health Operations & Enforcement Manager</p> <p>The issue of Fixed Penalty Notices for littering (EPA 1990) and Dog Fouling (Dogs [Fouling of Land] Act 1996)</p>
TECHNICAL OFFICERS	<p>May recommend Formal Action to Commercial Manager/Senior Environmental Health Officer within their current levels of competence</p> <p>The issue of Fixed Penalty Notices for littering (EPA 1990) and Dog Fouling (Dogs [Fouling of Land] Act 1996)</p>
ENVIRONMENTAL RANGERS	<p>May recommend Formal Action to Environmental Health Operations & Enforcement Manager within their current levels of competence</p> <p>The issue of Fixed Penalty Notices for littering (EPA 1990) and Dog Fouling (Dogs [Fouling of Land] Act 1996)</p>