



ENVIRONMENTAL HEALTH

ENFORCEMENT POLICY

October 2002
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ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

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INTRODUCTION

1. Worthing Borough Council has a number of powers and duties which it exercises in the general field of environmental health. This covers such diverse subjects as food safety, pollution control, occupational health, pest control, private sector housing standards and infectious disease control.
2. The Council recognises the value of business as the lifeblood of the town and wishes to be as helpful as possible in assisting business to operate effectively and efficiently.
3. The object of this Enforcement Policy is to set out, in a manner which will ensure transparency, the principles on which the environmental health enforcement function is based. These seek to ensure a fair and consistent approach, providing a means whereby business can obtain a greater understanding of how enforcement is carried out in the Borough.
4. The Council has formally signed up to the Cabinet Office Enforcement Concordat for the Environmental Health Service and has therefore committed to act in accordance with currently recognised best enforcement practice.
5. We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings to seek advice/information from us. Applications for approval of establishments, licenses, registrations, etc will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

GUIDING PRINCIPLES

6. The following principles underpin the Policy: -
 - a) The system of environmental health enforcement must be seen to be fair, equitable and consistent. Arrangements will therefore be put in place to promote consistency, including effective arrangements for liaising with other authorities and enforcement bodies.
 - b) Enforcement action will be proportionate to the level of risk
 - c) The officers involved in enforcement will be competent for the purpose, their competency tested from time to time, and any necessary ongoing training given.
 - d) In communicating with business, a clear distinction will be made between what is statutorily required and what is desirable.
 - e) As far as the law allows officers will take into account the circumstances of the case and the attitude of the operator when considering action, and will actively work with businesses, particularly small and medium sized enterprises, to advise on compliance without unnecessary expense.
 - f) Except on occasions when there is an imminent risk to health and/or safety, or a blatant disregard of the law, business will be given sufficient guidance and opportunity to comply with legislative requirements before formal action is considered by the Authority.

- g) If prosecution is deemed to be the most appropriate remedy, the Assistant Director (Health and Housing Services) will review the evidence before proceeding.

LIAISON WITH BUSINESS

- 7 The Borough Council will undertake from time to time to consult with business on how the enforcement of relevant environmental health legislation should be organised, and on the guidance needed to enable business to understand its responsibilities.
8. Business will be permitted access to any information on enforcement issues which it may reasonably require and which does not breach the rules of confidentiality.
9. The Borough Council will afford any individual business the opportunity to discuss enforcement issues with relevant Council staff at a mutually convenient time.
10. We undertake to conduct regular surveys with businesses in order to obtain feedback as to the acceptability of our approach, and in order to learn from the results.
11. It is accepted that occasionally, things do go wrong in our dealings and in consequence, businesses may feel aggrieved. The Council has a well-established Complaints Procedure, which is regarded as a positive tool in securing continuous improvements. Businesses and others are encouraged to make use of this procedure if they desire to pursue a complaint.

POLICY AREAS

12. Specific, detailed enforcement policies for specific subject areas within environmental health are given in the Appendices.

REVIEW

13. This enforcement document will be reviewed no later than two years from date of issue.

INTRODUCTION

The Environmental Health Section of Worthing Borough Council has duties under Food Safety and Health and Safety legislation which include enforcement action. This policy sets out the basic principles and approach that will be followed to ensure that the application of enforcement powers is fair and consistent, and is primarily based upon an assessment of the risks to public health or safety.

1. The policy will be followed by all authorised officers.
2. Specific guidance on enforcement is contained in Statutory Codes of Practice issued under the Food Safety Act 1990, in guidance from LACORS (The Local Authority Co-ordinating Body on Regulatory Services), Home Office Circulars, and from HELA (The Health and Safety Executive/Local Authority Enforcement Liaison Committee). This policy endorses that guidance and commits authorised officers to adhere to it.
3. Competency – Only authorised officers may undertake enforcement duties. Only officers with satisfactory qualifications and experience will be authorised. Officers will be assessed by the Environmental Health Manager – Food/Occupational Health (EHM)(FOH)) in association with the Assistant Director (Health and Housing Services) having regard to the above guidance before being recommended for authorisation.
4. Training – The training requirements to achieve and maintain the necessary competence levels for authorised officers will be regularly reviewed by the EHM (FOH) and training resources will be prioritised accordingly.

ENFORCEMENT OPTIONS

5. The officers will strive to ensure that all enforcement decisions are consistent, balanced, fair, and relate to common standards that ensure that the public and employees are adequately protected.

In coming to any enforcement decisions consideration will be given to the following factors:

- The seriousness of the offence
- The past history of compliance
- Confidence in management
- The consequences of non-compliance
- The likely effectiveness of the various enforcement options

6. The enforcement options are:

- To take no action
- To take informal action
- To use statutory notices
- To prosecute
- To use formal cautions

The general principles which will guide enforcement officers to the appropriate option are set out below

7. Informal Action – Appropriate where one or more of the following circumstances apply:

The act or omission is not serious enough to warrant formal action, having regard to the risks

Past history suggests that informal action will achieve compliance

Non-compliance will not pose a significant risk to health or safety

The nature of the undertaking is such that formal action in a particular circumstance would be inappropriate (e.g. voluntary/charitable organisations using volunteers)

Informal action may consist of letters, verbal advice/instruction, and training. Whichever option is decided upon officers will always clearly differentiate between legal requirements and matters which are recommended as good practice.

Formal Action N.B. If the company in question is participating in either the Home Authority or lead Authority schemes the proposed enforcement action should always be discussed with the Home/Lead Officer.

STATUTORY NOTICES

8. a) **Improvement Notices**

The power to serve improvement Notices is available under the Food Safety Act 1990 (FSA) and also the Health and Safety at Work etc Act 1974 (HASWA). Authorisation is different in each case. Officers must note the limit of their authorisation to issue notices and all notices will be checked before service by the EHM(FOH) or in his absence a Senior Health Officer – Food/Occupational Health (SHO) or the Senior Health and Safety Officer.

Officers will follow the requirements set out in FSA Code of Practice No.5 “The Use of Improvement Notices” and Departmental Procedure Notes.

The issue of an Improvement Notice should only need to be considered where one or more of the following criteria apply:

- There are significant contraventions of the legislation
- There is a lack of confidence that the proprietor or enterprise will 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 standards
- Formal action is proportionate to the risk to health and safety

Where practicable officers will discuss the works that will be required by a Notice, with the intended recipient. The time scale for completion will be realistic and, where possible, agreed with the recipient as being attainable and appropriate.

Officers will have regard to the need where appropriate to notify other bodies of formal action taken:

- HASWA Improvement Notices will need to be brought to the attention of affected staff (HASWA Section 28) and if the public are likely to be affected will be entered in the public register.

- In the case of large companies FSA Improvement Notices may need to be brought to the attention of the Home Authority or Originating Authority. The specific guidance of LACORS will be followed in considering the service of Notice on any company operating the Home Authority principle.

Failure to comply with the requirement of an Improvement Notice will normally result in prosecution, subject to authorisation by the Assistant Director (Health and Housing Services).

b) **Prohibition Notices**

The power to serve a Prohibition Notice is available under FSA and HASWA. The criteria for service are different.

HASWA Prohibition Notice – The Act states that there must be a risk of serious personal injury. There does not have to be a breach of statutory requirements. The Notice will prohibit the activity which gives rise to the risk and will be served on the person having control of the activity. The Notice can be issued to have immediate or deferred effect.

The implications of the service of the Notice will be significant and officers will where possible consult the EHM(FOH), SHO or Senior Health and Safety Officer before service.

FSA Emergency Prohibition Notice (EPN) Only Environmental Health Officers are authorised to serve EPN's. The FSA gives the power to serve an EPN when a food business presents an "imminent risk of injury to health". Officers will follow the requirements set out in FSA Code of Practice No.6 "Prohibition Procedures". An EPN should only be served in one or more of the following circumstances:

- The consequence of not taking immediate and decisive action to protect public health would be unacceptable.
- An imminent risk to public health can be demonstrated (this may include evidence from sampling/analysis)
- There is no confidence in the integrity of an unprompted offer made by a proprietor voluntarily to close premises or cease the use of any equipment, process or treatment associated with the imminent risk.
- The proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition.
- FSA Code of Practice No.6 contains examples of circumstances for service of an EPN which may be appropriate. In accordance with the Food Safety Act, service of an EPN must be followed within three days by an application to the Magistrates Court for an Emergency Prohibition Order, officers will therefore advise Legal Services as soon as a decision to service and EPN is made.

Prosecution will, in general, be restricted to a minority of circumstances where there is a blatant disregard for the law. Prosecutions will be related to risk and not used as a punitive response to minor breaches. There may be circumstances, e.g. following a serious accident at work, where as well as prosecution it will be appropriate to serve a Statutory Notice to enforce the remedy.

The circumstances where prosecution is appropriate should include one or more of the following:

- Where there is a blatant disregard for the law such that health or safety has been put at risk
- Where there is a failure to correct an identified serious risk to health or safety having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer
- Where there is a failure to comply in full or in part with the requirements of a statutory notice
- Where a particular contravention has caused serious public alarm.

Officers will adhere to the specific guidance given in HELA circular L5/6/3 "Choice of appropriate enforcement procedure" and FSA Code of Practice No.2 "Legal Matters".

All cases considered by officers to warrant consideration for prosecution must be considered by the EHM (FOH) who will decide whether the case should be presented to the Assistant Director (Health and Housing Services) for authority to prosecute.

10 **FORMAL CAUTIONS**

FSA Code of Practice No.1 "Legal Matters" advises that local authorities should consider using Formal Cautions as an alternative to prosecution.

Formal Cautions will be issued in accordance with Home Office Circular 18/1994 which identified the following criteria which must be satisfied

- The evidence available must be sufficient to give a realist prospect of conviction on prosecution
- The suspected offender must admit the offence
- The suspected offender must agree to be cautioned

The Circular states that the purpose of the Formal Caution:

- To deal quickly and simply with less serious offences
- To divert less serious offences away from the Courts
- To reduce the chance of serious offences

The Circular gives no further guidance on appropriate circumstances but officers may recommend this course of action where only one of the criteria for prosecution in Section 9 above is met and the officer considers that a Formal Caution will be successful in reducing the likelihood of a repeater offence.

Such cases should be full considered by the EHM (FOH) who will consult with Legal Services and will present the case to the Assistant Director (Health and Housing Services) for authority to issue a Formal Caution.

The Cautioning Officer will be the EHM (FOH) and the cautioning procedure in the Circular will be followed.

Where appropriate the issue of a Formal Caution will be notified to a home authority, originating authority and/or the Office of Fair Trading (OFT).

11 **MONITORING**

The operation of the policy will be monitored by the EHM (FOH) who will provide quarterly reports on environmental action to the Assistant Director (Health and Housing Services) as part of the operational report.

12 **REVIEW**

The policy will be reviewed annually by the EHM (FOH) and the Assistant Director (Health and Housing Services) when the Food Safety and Health and Safety Annual Enforcement Service Plans are produced, and any significant variations identified as necessary will be submitted for approval by members.

ENFORCEMENT POLICY - ENVIRONMENTAL PROTECTION ACT AIR POLLUTION CONTROLS

1, **INTRODUCTION**

The Environmental Health Section of Worthing Borough Council has air pollution control duties under Part 1 of the Environmental Protection Act 1990 in respect of certain prescribed processes.

The aim of this enforcement policy is to secure efficient and effective compliance while minimising the burden to businesses and local authorities.

The policy sets out the basic principles and approach that will be followed to ensure the application of enforcement powers is fair and consistent.

2. **KEY ELEMENTS OF THE POLICY**

There are essentially three stages of enforcement relevant to the unique, and often complex, legal requirements of Part 1 of the Environmental Protection Act 1990 (EPA). These stages provide the framework in which actions will be determined. The framework is relevant whether it be in respect of an application for initial authorisation, an upgrade, or compliance with authorisation conditions.

Stage 1- Promotion

Officers will seek to raise awareness about the need to comply with EPA requirements and to promote environmental good practice. This will usually be achieved through correspondence and personal visits to relevant businesses but seminars or meetings will be organised, if appropriate. The objective is to achieve a climate of environmental awareness and co-operation from operators of prescribed processes.

Stage 2 – Prevention

Officers will seek to ensure that business does not unnecessarily expose itself to possible formal action through lack of information or understanding. To this end, officers will enter into pre-application discussions with operators to give them a clear understanding what is required of them. Copies of draft authorisations will be sent to operators for comment prior to the issue of the official authorisation. Officers will endeavour to warn businesses of imminent breaches of requirements and their implications.

Stage 3 – Prosecution and Formal Notices

Although the primary responsibility for compliance rests with industry and the procedures of local authorities are determined by the Act and by Guidance Notes, prosecution will only be considered normally if the Council has done all it reasonably can in Stages 1 and 2 to achieve compliance OR where:-

- ▶ there is a risk of serious pollution of the environment or harm to health;
- ▶ there is a blatant disregard of responsibilities under EPA;
- ▶ the offence is of such gravity that other forms of action are inappropriate.

At this stage, the Council will exercise its discretion to ensure that resources are targeted effectively according to risk and there is an appropriate interpretation of what is reasonably practicable, so that expenditure is not disproportionate to benefits gained.

GENERAL

Local authority air pollution control under EPA differs from other enforcement areas in that its' principal component is prior authorisation rather than policing. The Act requires that operators comply with both procedural and operational conditions. Failure to do so in either instance could mean an offence has been committed. The Council will not pursue technical offences in a heavy-handed way and will always consider the Stage 3 criteria set out above. In addition, the likelihood of technical offences will be reduced if officers follow Stage 1 and 2 procedures, as set out above.

Officers will endeavour to keep a balance between facilitation of self-regulation by operators of prescribed processes and monitoring of conditions attached to authorisations. The decision in each case will be based on a risk assessment, taking into account the attitude and general record of the operator and the robustness of the systems in place to ensure compliance. Authorisation conditions will be reviewed regularly in accordance with the Department of the Environment, Food and Rural Affairs Guidance, and process operators will be consulted as part of the review process.

In the event of non-compliance with conditions or a variation notice, officers will normally issue a warning letter indicating the steps needed to rectify the contravention and the timescale. The service of an enforcement notice or prosecution will follow if the informal action fails to raise an appropriate response. Where there is an imminent risk of serious pollution of the environment, officers will be obliged to serve a prohibition notice. In this event the officer will normally discuss with the operator the requirements of the notices upon service.

The Council may use prosecution as a deterrent against non-compliance. In normal circumstances, however, the Council will regard prosecution as a mechanism to be used when informal action has failed. In some circumstances, as set out in Stage 3 procedure above, it will be more expedient to pursue a prosecution in the first instance. In deciding whether to prosecute the Council will always consider.

- the gravity of the offence;
- the general record and approach of the offender;
- whether the evidence provides a realistic prospect of conviction (having regard to the Code for Crown Prosecutors);
- whether there has been a blatant disregard for the law or reckless disregard for the environment;
- whether the offence causes public alarm and it is desirable to reassure the public and to deter other offenders

National arrangements exist through the HMIP/LA Enforcement Liaison Committee (IPLA) for co-ordination of enforcement standards. The Council will have regard to the national advice and guidance provided by IPLA.

TRAINING OF OFFICERS

The training requirements to achieve and maintain the necessary levels of compliance for authorised officers will be regularly reviewed by the Environmental Health Manager (Housing and Environmental Protection Group) (EHM) (HEP)) and training resources will be prioritised accordingly.

5. **MONITORING AND REVIEW**

The Assistant Director (Health and Housing Services) and the EHM (HEP) will monitor the operation of the policy through periodic scrutiny of reports from officers and annual statistics provided by the Department of Food and Rural Affairs. They will review the policy at least every two years and any significant amendments considered to be necessary till be submitted for approval by members.

**ENFORCEMENT POLICY – PUBLIC HEALTH NUISANCES
INCLUDING POLLUTION, NOISE AND DOG FOULING**

1. **INTRODUCTION**

The Environmental Health Section of Worthing Borough Council has duties under the Environmental Protection Act 1990 (EPA) in respect of statutory nuisances. The list of statutory nuisances includes noise, smoke, fumes and accumulations arising on any premises, and smell, dust or steam arising on business premises.

The Dog Wardens within the Environmental Health Group enforce byelaws and other legislation in respect of dog fouling, dogs on leads, stray dogs, dog identification tags and dog ban areas.

The aim of this enforcement policy is to secure efficient and effective compliance through a fair and consistent approach.

2. **THE POLICY**

Stage 1 – Promotion and Education

Officers will seek to raise awareness about the need to prevent statutory nuisances and the need for dog owners to act in a responsible manner. This will be achieved through education campaigns aimed at both children and adult groups, media releases, publication of advisory leaflets, meetings, correspondence and personal contact.

Stage 2 - Prosecution and Formal Notices

The Council has a statutory duty to serve a formal abatement notice if satisfied of the existence or likely occurrence of likely recurrence of a noise nuisance or other statutory nuisance.

The Council will prosecute for non-compliance of an abatement notice without reasonable excuse. However, the Council will consider representations from persons responsible for nuisances and will allow alternative methods of abatement or extensions of time for compliance, if appropriate, and provided the representations are made before expiry of the Notice.

Dog fouling offences will be reported to the Assistant Director (Health and Housing Services) with a view to instigating legal proceedings.

Stray dogs will be returned direct to their owners provided the dog is wearing an identification tag and the dog has not been picked up as a stray on any previous occasion. Otherwise, the dog will be taken to kennels and released only upon payment of a prescribed fee.

With regard to other dog control matters (dogs on leads, identification tags and dog ban areas), the Council will usually issue a warning to first offenders. Subsequent offences will be reported to the Assistant Director (Health and Housing Services) with a view to prosecution.

3. **GENERAL**

This area of environmental health attracts many more complaints from the public than any other, particularly in respect of noise nuisance and dog fouling. It is considered necessary to adopt a rigorous enforcement policy in this area in order to abate nuisances to deter other offenders, to reassure the public that strong action can be taken to resolve the matters that most concern them and, not least, to comply with statutory duties.

4. **TRAINING OF OFFICERS**

The training requirements to achieve and maintain the necessary levels of competence for authorised officers will be regularly reviewed by the EHM (HEP) and training will be prioritised accordingly.

5. **MONITORING AND REVIEW**

The Assistant Director (Health and Housing Services) and the EHM (HEP) will monitor the operation of the policy through periodic scrutiny of reports from officers and annual statistics. They will review the policy at least every two years and any significant amendments considered to be necessary will be submitted for approval by members.

ENFORCEMENT POLICY – PRIVATE SECTOR HOUSING

INTRODUCTION

The Environmental Services Section of Worthing Borough Council has duties under housing and related legislation which include enforcement action. This policy sets out the basic principles and approach that will be followed to ensure that the application of enforcement powers is fair and consistent, and is primarily based upon an assessment of the risk to public health or safety.

1. The policy will be followed by all authorised officers.
2. Specific guidance on enforcement is contained primarily in Government Circulars. This policy endorses that guidance and commits authorised officers to adhere to it.
3. Competency – Only authorised officers may undertake enforcement duties. Only officers with satisfactory qualifications and experience will be authorised. Officers will be assessed by the Environmental Health Manager, Housing and Environmental protection (EHM (HEP)) in association with the Assistant Director (Health and Housing Services) having regard to the above guidance before being recommended for authorisation.
4. Training – The training requirements to achieve and maintain the necessary competence levels for authorised officers will be regularly reviewed by the EHM (HEP) and training resources will be prioritised accordingly.

ENFORCEMENT OPTIONS

5. The officers will strive to ensure that all enforcement decisions are consistent, balanced, fair, and relate to common standards that ensure that the public and others are adequately protected.

In coming to any enforcement decisions consideration will be given to the following factors:

- The seriousness of the offence
 - The past history of compliance
 - Confidence in management
 - The consequences of non-compliance
 - The likely effectiveness of the various enforcement options
6. The enforcement options are:
 - To take no action
 - To take informal action
 - To use statutory notices
 - To prosecute
 - To use Formal Cautions

The general principles which will guide enforcement officers to the appropriate option are set out below. Only in relation to trivial matters will 'no action' be the chosen option.

7. Informal Action – Appropriate where one or more of the following circumstances apply:

- The act or omission is not serious enough to warrant formal action, having regard to the risks
- Past history suggests that informal action will achieve compliance
- Non-compliance will not pose a significant risk to health or safety
- The nature of the undertaking is such that formal action in a particular circumstance would be inappropriate (e.g. voluntary/charitable organisations using volunteers)

Informal action may consist of letters, verbal advice/instruction, and training. Whichever option is decided upon officers will always clearly differentiate between legal requirements and matters which are recommended as good practice.

8. Statutory Notices – Unless a clear duty exists to serve a Statutory Notice in particular circumstances the issue of a Statutory Notice under relevant legislation will need to be considered where one or more of the following criteria apply:

- There are significant contravention's of the legislation
- There is a lack of confidence that the landlord or enterprise will 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 standards
- Formal action is proportionate to the risk to health or safety

Where practicable officers will discuss the works that will be required by a Notice, with the intended recipient. The time scale for completion will be realistic and, where possible, agreed with the recipient as being attainable and appropriate.

Officers will have regard to the need where appropriate to notify other persons affected of formal action taken for example the tenants of a property. In certain instances a 'minded to' notice will be served giving notification to the landlord, or person in control of the premises, of the authority's intentions to take formal action.

Failure to comply with the requirement of a Statutory Notice will normally result in prosecution, subject to authorisation by members of the Council if appropriate.

9. **FORMAL CAUTIONS**

Local authorities are able to consider using Formal Cautions as an alternative to prosecution.

Formal Cautions will be issued in accordance with Home Office Circular 18/1994, which identified the following criteria, which must be satisfied:

- ▶ The evidence available must be sufficient to give realistic prospect of conviction on prosecution.
- ▶ The suspected offender must admit the offence.
- ▶ The suspected offender must agree to be cautioned

The Circular states that the purpose of the Formal Caution is:

- ▶ To deal quickly and simply with less serious offences
- ▶ To divert less serious offences away from the Courts
- ▶ To reduce the change of serious offences

The Circular gives no further guidance on appropriate circumstances but officers may recommend this course of action where only one of the criteria for prosecution in Section 9 above is met and the officer considers that a Formal Caution will be successful in reducing the likelihood of a repeater offence.

Such cases should be fully considered by EHM (HEP) who will consult with Legal Services.

The Cautioning Officer will be the EHM (HEP) and the cautioning procedure in the Circular will be followed.

10 **PROSECUTION**

Prosecution will, in general, be restricted to a minority of circumstances where there is a blatant disregard for the law. Prosecutions will be related to risk and not used as a punitive response to minor breaches. There may be circumstances where as well as prosecution it will be appropriate to serve a Statutory Notice to enforce the remedy.

The circumstances where prosecution is appropriate should include one or more of the following:

- Where there is a blatant disregard for the law such that health or safety has been put at risk.
- Where there is a failure to correct an identified serious risk to health or safety having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
- Where there is a failure to comply in full or in part with the requirements of a statutory notice
- Where a particular contravention has caused serious public harm.

All cases considered by officers to warrant consideration for prosecution must be considered by the EHM (HEP) who will decide whether the case should be reported to the Assistant Director (Health and Housing Services) and the Legal Services Section.

11 **MONITORING AND REVIEW**

The Assistant Director (Health and Housing Services) and the EHM (HEPO) will monitor the operation of the policy through periodic scrutiny of reports from officers and annual statistics. They will review the policy at least every two years and any significant amendments considered to be necessary will be submitted for approval by members.

ENFORCEMENT POLICY – LICENSING

INTRODUCTION

The Environmental Health Section of Worthing Borough Council has registration/licensing duties under a variety of legislation. Such registrations and licences include Public Entertainments, Theatres, Cinemas, Pet Shops, Late Night Refreshment Houses, Tattooists Acupuncturists and Ear Piercers.

Officers will seek to ensure that no activities which require a licence are carried on without a licence, and that licence holders carry out their activities in accordance with any conditions attached to their licence, and/or local byelaws.

ENFORCEMENT OPTIONS

5. In coming to any enforcement decisions consideration will be given to the following factors:

- The seriousness of the offence
- The past history of compliance
- Confidence in management
- The consequences of non-compliance
- The likely effectiveness of the various enforcement options

6. The enforcement options are:

- To take no action
- To take informal action
- To prosecute
- To use Formal Cautions
- To refuse to renew a licence
- To revoke a licence

The general principles which will guide enforcement officers to the appropriate option are set out below. Only in relation to trivial matters will 'no action' be the chosen option.

7. Informal Action – Appropriate where one or more of the following circumstances apply:

- The act or omission is not serious enough to warrant formal action, having regard to the risks
- Past history suggests that informal action will achieve compliance
- Non-compliance will not pose a significant risk to health or safety
- The nature of the undertaking is such that formal action in a particular circumstance would be inappropriate (e.g. voluntary/charitable organisations using volunteers)

Informal action may consist of letters, verbal advice/instruction, and training. Whichever option is decided upon officers will always clearly differentiate between legal requirements and matters which are recommended as good practice.

8 **PROSECUTION**

Prosecution will, in general, be restricted to a minority of circumstances where there is a blatant disregard for the law. Prosecutions will be related to risk and not used as a punitive response to minor breaches.

The circumstances where prosecution is appropriate should include one or more of the following:

- Where there is a blatant disregard for the law such that health or safety has been put at risk.
- Where there is a failure to correct an identified serious risk to health or safety having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
- Where a particular contravention has caused serious public harm.

All cases considered by officers to warrant consideration for prosecution must be considered by the EHM (HEP) or EHM (FOH) who will decide whether the case should be reported to the Assistant Director (Health and Housing Services) and the Legal Services Section.

9. **FORMAL CAUTIONS**

Local authorities are able to consider using Formal Cautions as an alternative to prosecution.

Formal Cautions will be issued in accordance with Home Office Circular 18/1994, which identified the following criteria, which must be satisfied:

- ▶ The evidence available must be sufficient to give realistic prospect of conviction on prosecution.
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The Circular states that the purpose of the Formal Caution is:

- ▶ To deal quickly and simply with less serious offences
- ▶ To divert less serious offences away from the Courts
- ▶ To reduce the change of serious offences

The Circular gives no further guidance on appropriate circumstances but officers may recommend this course of action where only one of the criteria for prosecution in Section 8 above is met and the officer considers that a Formal Caution will be successful in reducing the likelihood of a repeater offence.

Such cases should be fully considered by EHM (HEP) EHM (FOH) who will consult with Legal Services.

The Cautioning Officers will be the EHM (HEP) or EHM (FOH) and the cautioning procedure in the Circular will be followed.

10 **REFUSAL TO RENEW, OR REVOCATION OF LICENCES**

If an act, omission or breach of condition is considered so serious, having regard to the factors identified in 5 above, that it would be inappropriate for a licence to continue to be held then at renewal time Members may be recommended not to renew a licence. In cases of prosecution, Members may be recommended to revoke a licence with immediate effect rather than wait for renewal time.

11. **MONITORING AND REVIEW**

The Assistant Director (Health and Housing Services) and the EHM (HEPO) will monitor the operation of the policy through periodic scrutiny of reports from officers and annual statistics. They will review the policy at least every two years and any significant amendments considered to be necessary will be submitted for approval by members

ENFORCEMENT POLICY – PEST CONTROL

INTRODUCTION

The Environmental Services Section of Worthing Borough Council has duties under Pest Control legislation which include enforcement action. This policy sets out the basic principles and approach that will be followed to ensure that the application of enforcement powers is fair and consistent, and is primarily based upon an assessment of the risk to public health or safety.

1. The policy will be followed by all authorised officers.
2. Competency – Only authorised officers may undertake enforcement duties. Only officers with satisfactory qualifications and experience will be authorised. Officers will be assessed by the Assistant Director (Health and Housing Services) before being authorised.
4. Training – The training requirements to achieve and maintain the necessary competence levels for authorised officers will be regularly reviewed by the EHM (FOH) and training resources will be prioritised accordingly.

ENFORCEMENT OPTIONS

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 - To take no action
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The general principles which will guide enforcement officers to the appropriate option are set out below. Only in relation to trivial matters will 'no action' be the chosen option.

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 - The nature of the undertaking is such that formal action in a particular circumstance would be inappropriate (e.g. voluntary/charitable organisations using volunteers)

Informal action may consist of letters, verbal advice/instruction, and training. Whichever option is decided upon officers will always clearly differentiate between legal requirements and matters which are recommended as good practice.

8. Statutory Notices – The issue of a Statutory Notice will be considered where one or more of the following criteria apply:

- There are significant contravention's of the legislation
- There is a lack of confidence that the offender will respond to an informal approach
- There is a history of non-compliance with informal action
- Formal action is proportionate to the risk to health or safety

Where practicable officers will discuss the works that will be required by a Notice, with the intended recipient. The time scale for completion will be realistic and, where possible, agreed with the recipient as being attainable and appropriate.

Failure to comply with the requirement of a Statutory Notice will normally result in prosecution.

9 PROSECUTION

Prosecution will, in general, be restricted to a minority of circumstances where there is a blatant disregard for the law. Prosecutions will be related to risk and not used as a punitive response to minor breaches. There may be circumstances where as well as prosecution it will be appropriate to serve a Statutory Notice to enforce the remedy.

The circumstances where prosecution is appropriate should include one or more of the following:

- Where there is a blatant disregard for the law such that health or safety has been put at risk.
- Where there is a failure to correct an identified serious risk to health or safety having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
- Where there is a failure to comply in full or in part with the requirements of a statutory notice
- Where a particular contravention has caused serious public harm.

All cases considered by officers to warrant consideration for prosecution must be considered by the EHM (HEP) or EHM (FOH) who will decide whether the case should be reported to the Assistant Director (Health and Housing Services) and the Legal Services Section.

10 FORMAL CAUTIONS

Local authorities are able to consider using Formal Cautions as an alternative to prosecution.

Formal Cautions will be issued in accordance with Home Office Circular 18/1994, which identified the following criteria, which must be satisfied:

- ▶ The evidence available must be sufficient to give realistic prospect of conviction on prosecution.
- ▶ The suspected offender must admit the offence.
- ▶ The suspected offender must agree to be cautioned

The Circular states that the purpose of the Formal Caution is:

- ▶ To deal quickly and simply with less serious offences
- ▶ To divert less serious offences away from the Courts
- ▶ To reduce the change of serious offences

The Circular gives no further guidance on appropriate circumstances but officers may recommend this course of action where only one of the criteria for prosecution in Section 9 above is met and the officer considers that a Formal Caution will be successful in reducing the likelihood of a repeater offence.

Such cases should be fully considered by EHM (HEP) or EHM (FOH) who will consult with Legal Services.

The Cautioning Officer will be the EHM (HEP) or EHM (FOH) and the cautioning procedure in the Circular will be followed.

11. **MONITORING AND REVIEW**

The Assistant Director (Health and Housing Services) and the EHM (HEPO) will monitor the operation of the policy through periodic scrutiny of reports from officers and annual statistics. They will review the policy at least every two years and any significant amendments considered to be necessary will be submitted for approval by members