

ENVIRONMENTAL HEALTH
AND
PRIVATE SECTOR HOUSING SERVICES

ENFORCEMENT POLICY

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ENVIRONMENTAL HEALTH **AND** **HOUSING SERVICES**

ENFORCEMENT POLICY

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PART 1

GENERAL

1.1 Enforcement Policy Statement

This part of the policy sets out the general principles on which the enforcement function in various sections of Environmental Health and Housing Services is based. Any variation or amendment must be agreed by the Council and be properly documented and include the reason for the change and the date the amendment was agreed; except where the change is due to a change in legislation, organisational arrangements or are factual or grammatical corrections when the Head of Service in consultation with the Portfolio holder can agree amendments.

1.2 Introduction

The effectiveness of legislation in protecting society depends on the compliance of those regulated. We recognise that most businesses and individuals want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. The Services provided under this policy will reflect the objectives set out in the Councils Corporate Plan.

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

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.

In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

We will draw up clear standards, in consultation with business and other relevant interested parties, setting out the level of service and performance provided by the Environmental Health and Housing Services.

The services will target their resources to achieve the regulatory outcomes of the protection of employees, the public, and the environment;

Where there is a national scheme for risk assessment (eg food, health and safety) then Service will follow this as the most effective way to meet regulatory outcomes and achieve improvements whilst having regard to the Regulators Compliance Code.

We will also have regard to other risk assessment schemes produced by National organisations such as Local Authorities Coordinator Of Regulatory Services and the Chartered Institute of Environmental Health

Where there are no national schemes risk will be assessed in a variety of ways such as through visits, inspections, desk based assessments.

We recognise that other agencies may be involved in enforcement in premises and situations where we have a role to play. These include the Trading Standards Service, Environment Agency, Health and Safety Executive etc., in such circumstances we will ensure that any service enquiry which fall within their ambit are forwarded to the appropriate office.

Where a Council owned premises is leased, occupied by or activities run by an organisation other than the Council then the following protocol will apply

- 1) Health and Safety Inspectors and Environmental Health Officers have powers of entry and inspection but are restricted from disclosing information obtained as a result of these powers. Any discussion or correspondence with or from the company or organisation will be confidential to the relevant team in the Environmental Health Service.
- 2) Officers will inspect these premises as part of a risk based inspection programme, as a result of notification of a reportable accident or as the result of a complaint.
- 3) Officers will forward complaints received that relate to health and safety to the contract monitoring officer or other nominated person for attention.
- 4) Where a health and safety officer has concerns which could arise as a result of the activities or negligence of the Company, Organisation or relevant Council Department they will write to any or all parties to request information, any information received will not be available to other parties without the agreement of the originator
- 5) Where there is an immediate or ongoing concern for the Health and Safety of the public or employees arising out of the activities of the Council this information will be passed to the Health and Safety Executive

We will consult with stakeholders when developing and amending this Enforcement Policy by sending a copy to representative groups and publishing it on the Council's Web site.

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

Where regulated entities that have consistently achieved good levels of compliance, positive feedback will be given to them and where applicable a change in their risk rating as a result of their performance

As required by National Indicator 182 we undertake customer surveys to assess the views of regulated entities in respect of the services they provide – including regulatory work. This information will be used to improve our services.

1.3 Interpretation

Consistency does not mean uniformity of approach - it means applying consistent criteria by taking a similar approach in similar circumstances to achieve similar ends after considering the general record and approach of the offender.

Proportionality means relating the choice of enforcement action to the degree of risk and the seriousness and circumstances of the breach.

Fairness means that the criteria used for choosing enforcement action are transparent and applied in a consistent manner. Action is normally focused on those who hold duties under the law and are best placed to comply with it. The personal circumstances of the offender (such as gender, ethnic origin, sexual orientation) do not influence the fact of enforcement action or the method chosen.

Transparency means helping those who hold duties under the law to understand what is expected of them and what they should expect from the enforcing authority. It also means being open and clear to those who receive our services, as to what we are doing and why we are doing it, not only in ensuring compliance with the law but also what the Service recommends should be implemented as good practice.

1.4 Openness & Helpfulness

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

When we do develop guidance for regulated entities to understand and meet their regulatory obligations regulated entities will be included in the development process. Such information, advice and guidance should be provided in clear, concise and accessible language, using a range of appropriate formats and media.

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

We will make provision for the different needs of our customers in the following ways:

- We will offer out of hours inspections;
- We will provide an interpreter or translator if required;
- We will operate a 'flexible working system' for our officers so that they are available to carry out visits etc outside of office hours.
- We will provide a variety of leaflets and literature in a range of languages
- We will provide information and advice regarding our services on the Council's website.

Under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 the Council is required to provide information it has in its possession in connection with the functions and duties it performs in response to written requests from members of the public or from organisations, including the media. Requests for information can be requests for copies of reports, including inspection reports of businesses, and copies of correspondence received by the Council."

1.5 Authorisation of Officers

Only officers who are competent by training, qualification and/or experience or who are under the direct supervision of a competent officer, will be authorised to undertake inspections, serve notices or take enforcement action.

Authorised officers will also have sufficient training and understanding of the Services procedures to ensure a consistent approach to service delivery.

Officers who undertake criminal investigations will be conversant with the provisions of the Police and Criminal Evidence Act 1984 (PACE), the Criminal Procedure and Investigations

Act 1996 (CPIA), the Data Protection Act 1998, the Human Rights Act 1998, the Disability Discrimination Act 1995 and the Regulation of Investigatory Powers Act 2000

1.6 Enforcement Options

Each Service will seek to secure compliance with the laws they enforce. Each case is unique and will be considered on its own merits. There are however, general principles that apply in the way each case must be approached. These are laid out in this policy

The Services staff will be fair, independent and objective. Personal views about issues such as ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender do not influence their decisions. They are not affected by improper or undue pressure from any source.

Officers will ensure that they differentiate between those items that are legal requirements and those that are recommended as good practice when writing to clients. Where necessary, verbal advice will be confirmed in writing.

The Services will, so far as is possible for an enforcing authority, endeavour to foster a good working relationship with duty holders and stakeholders.

Both Services are part of a public authority for the purposes of the Human Rights Act 1998. Environmental Health Services staff will apply the principles of the European Convention on Human Rights in accordance with the Act.

In undertaking its enforcement role the following options are available to the Service: -

- No action
- Informal action
- Statutory Notices
- Seizure
- Revocation, Suspension or Refusal of Licence/Approval
- Modification of a licence condition
- Simple Caution
- Prosecution

1.6.1 No Action

In exceptional circumstances, contraventions may not warrant any action. This can be where

- the cost to the offender of compliance outweighs the detrimental impact of the contravention on the community,
- the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community
- it is considered not to be in the public interest

A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their well being.

A decision to take no action will be recorded in writing and will take into account the health, safety, environmental damage or nuisance implications of the contravention.

1.6.2 Informal Action

This includes: -

- Offering advice
- Verbal warnings
- Requests for action
- Reports of visits generated at the time of inspection and follow up letters.

Informal action may be appropriate in the following circumstances: -

- The act or omission is not serious enough to warrant formal action i.e. minor offence with no risk to public health. OR
- The past history of the individual concerned/record of compliance indicates that informal action will achieve the required result. OR
- The enforcing officer has a high level of confidence in the management of an organisation or an individual OR
- The consequence of non-compliance will not pose a significant risk to public health / safety. OR
- Any combination of the above.

1.6.3 Statutory Notices

The decision to use formal enforcement action, such as the service of a statutory notice, will be dependant upon the degree of risk created by the breach, the seriousness of the breach and the general record and approach of the offender.

Notices may be appropriate in the following circumstances: -

- There are significant contraventions of legislation but prosecution is not appropriate OR
- Where informal action has not achieved the desired effect OR
- There is a lack of confidence in the individual/company to respond to an informal approach. OR
- There is a history of non-compliance with informal action. OR
- Standards are generally poor with little management awareness of statutory requirements. OR
- The consequences of non-compliance could be potentially serious to public health / safety. OR
- Any combination of the above.

The use of statutory notices will be related to risk. Officers serving statutory notices will be prepared to discuss the works specified and the time-scales with individuals / company representatives.

Failure to comply with a Statutory Notice will be referred to the Section Head concerned and will normally lead to the institution of legal proceedings or works being undertaken in default or both.

1.6.4 Seizure

Various powers are available for authorised officers, to seize or render harmless articles or substances where there is an imminent danger of serious personal injury. There are also powers to seize unfit unwholesome or contaminated food or equipment responsible for causing a noise nuisance, to prevent them causing nuisance or harm to consumers, other businesses or residents. An appropriate receipt or acknowledgement will be given to the person from whom the goods are taken and any other interested parties.

1.6.5 Revocation/Withdrawal, Suspension or Refusal of a Licence or Approval

In order to warrant Revocation/Withdrawal, Suspension or Refusal of a Licence or Approval, the individual or organisation must meet one or more of the following criteria: -

- Engaged in fraudulent activity
- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others
- Deliberately or persistently ignored written warnings or formal notices,
- Endanger, to a serious degree, the health, safety or well being of people, animals or the environment
- Obstructed an officer whilst undertaking their duties.

1.6.6 Prosecution / Simple Caution

When the gravity of the offence is such so as to warrant formal action, the following will be used to assist in the decision whether a case should proceed to a prosecution or simple caution will be made. For Health and Safety the Enforcement Management Model will be used, other services will use the matrix in Appendix 1. These will be documented and placed on the appropriate file. If the score exceeds 23 on Appendix 1 then Appendix 2 will be used to assist in the determination as to whether a simple caution should be issued or the case should proceed to court

1.6.7 Simple Caution

A simple caution is a statement by an inspector that is accepted in writing by the individual / company, that they have committed an offence for which there are realistic prospects of a conviction. A simple caution may only be used where a prosecution could be properly brought. Simple cautions are entirely distinct from a caution given under the Police and Criminal Evidence Act by an inspector before questioning a suspect about an alleged offence. The Council will take account of current Home Office guidelines when considering whether to offer a simple caution.

A simple caution is a serious matter. It may be used to influence any decision whether or not to institute proceedings if the individual / company should offend again. Simple cautions may also be referred to in subsequent court proceedings.

A simple caution may be offered as an alternative to prosecution in order to: -

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

A simple caution will only be offered where: -

- there is evidence of the offender's guilt sufficient to give realistic prospect of conviction
- the offender admits the offence, and
- the offender clearly understands the significance of a formal caution and gives informed consent to being cautioned
- the use of a formal caution is considered to be in the public interest.

Simple cautions will not be used as a substitute for prosecutions that would otherwise be defective.

In order to assist in making a decision on whether to prosecute offenders or issue a simple caution the matrix in Appendix 2, or the Enforcement Management Model for Health and Safety, will be used and documented by the Officer. The document will then be passed to the appropriate Section Head and Head of Service for their consideration. The decision and reasons for it must be documented and put on the property file. The Section Head or Head of Service may exercise discretion in reaching a decision whether to issue a simple caution or prosecute even if this is contrary to the indication of the Matrix. This decision will be recorded and placed on the file.

Simple caution can only be administered by those Officers authorised to do so.

These will only be administered in the Councils offices except where the offender is elderly, infirm or otherwise vulnerable.

Where a central register is available and simple cautions issued relate to matters that may be included on that register, they will be submitted for inclusion. Otherwise, relevant details will be posted on EHCnet, an online environmental health community used by local authorities across the UK. All local authorities may request information about cautions issued.

Where legal action is taken within a three-year period from the issue of a simple caution and the court finds the defendant guilty, the caution may be brought to the attention of the court.

Where the offer of a simple caution is declined legal proceedings will be instigated.

1.6.8 Prosecutions

The Service recognises that the decision to prosecute is significant and could have far reaching consequences upon the alleged offender.

Legal proceedings will only be instigated where there is sufficient, admissible and reliable evidence that an identifiable individual or company has committed the offence, that there is a realistic prospect of conviction and that the prosecution of the offence is in the public interest.

Prosecution will be considered when,

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law OR
- through the conviction of offenders, others may be deterred from similar failures OR
- there is judged to have been potential for considerable harm arising from the breach OR
- the gravity of the offence, taken together with the general record and approach of the offender warrants it. OR
- Any combination of the above

In making the decision to prosecute regard will be had to the Crown Prosecution Service code of practice for Crown Prosecutors (see para.1.10).

In addition the following will be taken into account

a)

- the seriousness of the offence;
- the risk to health / safety
- identifiable victims
- failure to comply with a statutory notice served for a significant breach of legislation
- failure to comply with statutory management responsibilities resulting in a significant risk to health / safety
- disregard for public health / safety for financial reward

b)

- the previous history of the individual or company concerned;
- offences following a previous history of similar offences
- failure to respond positively to past warnings
- failure to comply with statutory notices

c)

- the ability of the witnesses and their willingness to co-operate;

d)

- evidence that the individual or company is concerned to prevent a recurrence of the problem;

e)

- whether a prosecution would be in the public interest and the importance of the case;
- the likely penalty or conviction
- the offender's age and state of health
- the offender's attitude to the offence

- f)
 - whether other action, such as issuing a simple caution or the service of a statutory notice would be more effective
- g)
 - any explanation by the offender

The decision to prosecute will normally be made by the Head of Service or Section Head in consultation with Legal Services. In exceptional circumstances when a prosecution may have a significant local effect the decision will be referred to the Executive. Any decision taken must have due regard for this policy.

1.7 Appeals

1.7.1 Statutory Rights of Appeal

Where enforcement notices are served, detailed information will be provided to the person concerned regarding their statutory right of appeal. Such appeals are usually made to the Magistrate's Court.

1.7.2 Informal Appeals

Where there are no statutory rights of appeal and you do not agree with the action taken by the enforcement officer, you should first contact the Section Head of the Officer's Section to see if the problem can be resolved informally. If the disagreement remains after that, a Reigate and Banstead Borough Council Complaint Procedure Booklet is available which explains further action.

1.8 Legal Requirements

(a) Human Rights Act 1998

Officers will have due regard to the Act during investigations and any subsequent action to ensure human rights are not infringed.

(b) Regulation of Investigatory Powers Act 2000

Officers will have due consideration to the provisions of this Act with regard to surveillance undertaken as part of an investigation and obtain such authorisation as may be required for any directed surveillance and/or use of covert human intelligence source.

(c) Police and Criminal Evidence Act 1984

Officers will have due regard to all relevant codes during their investigations. Including Code B - Search and Code E -Taped Interviews

(d) Prosecution of Offences Act 1985-Section 10

Prosecutions will only proceed to court if the criteria set out in "The Code For Crown Prosecutors" (published by the Crown Prosecution Service, January and June 1994) are met.

(e) Criminal Procedure and Investigations Act 1996, Section 23(1)

Officers will have due regard for the requirements of the Act and the Codes of Practice issued under the Act during the preparation and submission of evidence for prosecution.

(f) Freedom of Information Act 2000 and Environmental Information Regulations 2004.

The Council is required to provide information it has in its possession in connection with the functions and duties it performs in response to written requests from members of the public or from organisations, including the media. Requests for information can be requests for copies of reports, including inspection reports of businesses, and copies of correspondence received by the Council.

1.9 Monitoring of the Policy

Monitoring systems will be maintained and a sample of the enforcement action taken by our officers will be reviewed to ensure compliance with this policy. This will be done by monitoring and discussion at the regular one-to-one meetings. The results will be reported to Section Heads meetings at four monthly intervals. If changes are found to be needed an objective will be built into the Service Plan.

1.10 References

The Code for Crown Prosecutors. Crown Prosecution Service, 2000.

Crown Prosecution Service
50 Ludgate Hill
London,
EC4M 7EX. Telephone 020 7769 8000

The Enforcement Concordat. Regulatory Impact Unit, March 1998.

Regulatory Impact Unit
Cabinet Office
35 Great Smith Street,
London,
SW1P 3BQ. Telephone 020 7276 2194 Fax 020 7276 2577

Cautioning of Adult Offenders Home Office Circular 30/2005 June 2005

Justice and Information Unit
Fry Building
2 Marsham St
London
SW1P 4 DF Telephone 020 7035 8674

Statutory Code of Practice for Regulators
Better Regulation Executive
Dept for Business Enterprise and Regulatory Reform
1 Victoria Street
London SW1H 0ET

PART 2

OCCUPATIONAL HEALTH AND SAFETY

2.1 Introduction

The Health and Safety Executive (HSE) requires local authorities to make adequate arrangements for the enforcement of health and safety law in relation to specified work activities. The HSE guidance states that Local Authorities should use a combination of enforcement processes to manage enforcement in line with the HSE Statement of Enforcement Policy. These core enforcement processes include:

- intervention before any incident to assess, promote and enforce compliance;
- investigation after an incident to identify underlying causes and the lessons to be learned, prevent recurrence, detect breaches and take appropriate action, including formal enforcement;
- permissioning (e.g. asbestos removal), where the law requires close control of those activities where the potential for significant health impairment is high.

The Council is responsible for the enforcement of health and safety law in the premises allocated to them – including offices, shops, retail and wholesale distribution centres, leisure, cultural, hotel and catering premises.

The Councils aims for the regulation of health and safety are to protect the health, safety and welfare of people at work, and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out.

This Enforcement Policy Statement sets out the general principles and approach the Council and any Inspectors of Health and Safety appointed by the Council will follow. Where inspectors undertake enforcement decisions they will abide by the principles of this policy. In allocating resources, the Council has regard to the principles set out below, the objectives published in HSE's and the HSE/Local Authority Enforcement Liaison Committee's (HELA) strategic plans and the need to maintain a balance between enforcement and other activities, including inspection.

2.2 Authorisation of Officers

Action can only be taken by Officers who are specifically authorised. Authorised officers will be competent by training, qualification and/or experience to undertake inspections and/or serve notices and/or take enforcement action. Authorised officers will also have sufficient training and understanding of the quality system to ensure a consistent approach to service delivery.

2.3 The principles of enforcement

Reigate and Banstead Borough Council believes in firm but fair enforcement of health and safety law. This should be informed by the principles of *proportionality* in applying the law and securing compliance; *consistency* of approach; *targeting* of enforcement action; *transparency* about how the regulator operates and what those regulated may expect; and *accountability* for the regulator's actions. These principles will apply both to enforcement in particular cases and to the management of the Health and Safety Service.

2.3.1 Proportionality

Proportionality means relating enforcement action to the risks.¹ Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by

¹ In this policy, 'risk' (where the term is used alone) is defined broadly to include a source of possible harm, the likelihood of that harm occurring, and the severity of any harm.

the Council to achieve compliance or bring duty holders to account for non-compliance will be proportionate to any risks to health and safety, or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law.

In practice, applying the principle of proportionality means that the Council will take particular account of how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

Some health and safety duties are specific and absolute. Others require action so far as is reasonably practicable. The Council applies the principle of proportionality in relation to both kinds of duty.

Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where duty holders must control risks so far as is reasonably practicable, the Council will consider protective measures taken by duty holders, taking account of the degree of risk on the one hand, and on the other the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, the duty holder must take measures and incur costs to reduce the risk.

The Council will expect relevant good practice to be followed. Where relevant good practice in particular cases is not clearly established, health and safety law effectively requires duty holders to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately, the courts determine what is reasonably practicable in particular cases.

Some irreducible risks may be so serious that they cannot be permitted irrespective of the consequences.

2.3.2 Targeting

Targeting means making sure that contacts are targeted primarily on those whose activities 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 employers, manufacturers, suppliers, or others.

The Council operates systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a duty holder's operations. The duty holder's management competence is important, because a relatively low hazard site poorly managed can entail greater risk to workers or the public than a higher hazard site where proper and adequate risk control measures are in place. Certain very high hazard sites will receive regular inspections so that the Council can give public assurance that such risks are properly controlled.

Any enforcement action will be directed against duty holders responsible for a breach. This may be employers in relation to workers or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; designers or clients of projects; or employees themselves. Where several duty holders have responsibilities, the Council may take action against more than one when it is appropriate to do so in accordance with this policy.

When inspectors issue improvement or prohibition notices; withdraw approvals; vary licence conditions or exemptions; issue formal cautions; or prosecute; the Council will ensure that a senior officer of the duty holder concerned, at board level, is also notified.

2.3.3 Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

Duty holders managing similar risks expect a consistent approach from enforcing authorities in the advice tendered; the use of enforcement notices, approvals etc; decisions on whether to prosecute; and in the response to incidents.

The Council recognises that in practice consistency is not a simple matter. Inspectors are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the duty holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Decisions on enforcement action are discretionary, involving judgement by the enforcer. The Council has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

2.3.4 Transparency

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

Transparency also involves the Council in having arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements must have regard to legal constraints and requirements.

This statement sets out the general policy framework within which the Council will operate. Duty holders, employees, their representatives and others also need to know what to expect when an inspector calls and what rights of complaint are open to them. Inspectors are required to issue the HSC leaflet '*What to expect when a health and safety inspector calls*' to those they visit. This explains what employers and employees and their representatives can expect when a health and safety inspector calls at a workplace. In particular: -

- When inspectors offer duty holders information, or advice, face to face or in writing, including any warning, inspectors will tell the duty holder what to do to comply with the law, and explain why. Inspectors will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice;
- In the case of improvement notices the inspector will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why, and by when, and that in the inspector's opinion a breach of the law has been committed.
- In the case of a prohibition notice the notice will explain why the prohibition is necessary.

2.3.5 Accountability

Regulators are accountable to the public for their actions. This means that enforcing authorities must have policies and standards (such as the four enforcement principles above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

The Council is anxious to ensure a fair and consistent level of enforcement. Complaints about decisions by inspectors or if procedures have not been followed should be made to the inspectors' manager. If this does not resolve the issue the Council has a Complaints Procedure, a copy of this procedure can be obtained from any Council Office or Help Shop. Complainants can also contact the HSE's Local Authority Unit, Rose Court, 2 Southwark Bridge, London SE1 9HS.

Duty holders will be informed in writing about the right of appeal to an Industrial Tribunal when an improvement or prohibition notice is served. The duty holder will be told:

- how to appeal, and given a form with which to appeal
- where and within what period a notice may be bought: and
- that the remedial action required by an improvement notice is suspended while an appeal is pending.

2.4 Investigation

The Council will use discretion in deciding whether incidents, cases of ill health or complaints should be investigated. The Council will take account of the HSE's Strategic Plan and the HELA Strategy to target their activities and resources, via the Service Plan.

Investigations are undertaken in order to determine:

- causes;
- whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
- lessons to be learnt and to influence the law and guidance;
- what response is appropriate to a breach of the law.

To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. HSE's Strategic Plan recognises that is neither possible nor necessary for the purposes of the Act to investigate all issues of non-compliance with the law which are uncovered in the course of preventive inspection, or in the investigation of reported events.

The Council will carry out a site investigation of a reportable work-related death, unless there are other specific reasons for not doing so, in which case those reasons will be recorded.

It is not possible for Health and Safety Enforcement Officers to investigate all incidents and complaints. A systematic approach is therefore needed to ensure the more serious incidents receive appropriate attention. Effort will be targeted at the more significant events but not so as to distort the overall balance of resource between preventive and reactive work.

In selecting which complaints or reports of injury or occupational ill health to investigate and in deciding the level of resources to be used. We will take account of the selection criteria in Annex 3, whether reportable or not.

2.5 The purpose and method of enforcement

The ultimate purpose of the Council in its role as an enforcing authority is to ensure that duty holders manage and control risks effectively, thus preventing harm. The term 'enforcement' has a wide meaning and applies to all dealings between the Council and those on whom the law places duties (employers, the self-employed, employees and others).

The purpose of enforcement is to:

- Ensure that duty holders take action to deal immediately with serious risks;
- Promote and achieve sustained compliance with the law;
- Ensure that duty holders who breach health and safety requirements, and directors or managers who fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts.

- Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor to assist such claims.

2.6 Enforcement Options

The Council has a range of tools at its disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences.

Sometimes the law is prescriptive – spelling out in detail what must be done. However, much of modern health and safety law is goal setting – setting out what must be achieved, but not how it must be done. Advice on how to achieve the goals is often set out in Approved Codes of Practice (ACOPs). These give practical advice on compliance and have a special legal status. If someone is prosecuted for a breach of health and safety law and did not follow the relevant provisions of an ACOP, then the onus is on them to show that they complied with the law in another way. Advice is also contained in other HSE and HELA guidance material describing good practice. Following this guidance is not compulsory, but doing so is normally enough to comply with the law. Neither ACOPs nor guidance material are in terms which necessarily fit every case. In considering whether the law has been complied with, inspectors will take relevant ACOPs and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them.

Clearly the decision on which enforcement option is chosen will involve consideration of a number of criteria e.g.

- The seriousness of the offence
- The proprietors previous history
- Confidence in the management
- Lead Authority report
- The consequence of non - compliance
- The likely effectiveness of the various enforcement options.

An authorised officer will not take enforcement action that is disproportionate to the risk to public health and safety arising from any contravention identified and reference to any relevant industry guidance will be considered

The Options are: -

- No Action
- Information and Advice
- Improvement and Prohibition Notices
- Seizure/Rendering Harmless
- Simple Cautions and Prosecutions

2.6.1 No Action

An inspection that reveals no contravention of the relevant legislation and the presence of excellent safety practices and management controls will result in no action. Officers will offer advice where appropriate or when it is requested to help ensure compliance with legislation and encourage businesses to adopt good standards practices

2.6.2 Information and Advice

Inspectors may offer duty holders information, and advice, both face to face and in writing. This may include: -

- Offering advice
- Verbal warnings
- Requests for action
- Reports of visits generated at the time of inspection listing no or minor contraventions.
- Letters listing several contraventions.

The need to differentiate between legal requirements and recommendations at all times is essential and all advice will be confirmed in writing. These Informal Actions may warn a duty holder that in the opinion of the inspector, they are failing to comply with the law.

2.6.3 Improvement and Prohibition Notices

Where appropriate, inspectors who are authorised may also serve improvement and prohibition notices, issue formal cautions, and they may prosecute.

Issuing improvement or prohibition notices, are the main means which inspectors use to achieve the broad aim of dealing with serious risks, securing compliance with health and safety law and preventing harm. A Prohibition Notice stops work in order to prevent serious personal injury. Information on improvement and prohibition notices will be made publicly available. Every improvement notice contains a statement that in the opinion of an inspector an offence has been committed. Improvement and Prohibition Notices, and written advice may be used in court proceedings.

(a) Improvement Notices

An Improvement Notice will be issued where the breach of the law is more serious. The Officer will discuss the improvement notice and, if possible, resolve points of difference, before serving it. The notice will say what needs to be done, why and by when. The time period within which to take remedial action will be at least 21 days to allow the duty holder time to appeal to an Industrial Tribunal, if they so wish.

(b) Prohibition Notices / Deferred Prohibition Notices

A Prohibition Notices/Deferred Prohibition Notice will be served where an activity involves, or will involve, a risk of serious personal injury. The notice will prohibit the activity immediately or after a specified time period, and will not allow it to be resumed until remedial action has been taken. The notice will explain why the action is necessary. The duty holder will be told in writing about the right of appeal an Industrial Tribunal.

2.6.4 Seizure/Rendering Harmless

Seizure or other powers will be used to render harmless any article, substance or equipment which is believed to be a cause of imminent danger or which could cause serious personal injury. Officers will follow all relevant guidance, exercising careful judgement and considering the need to seek expert advice before using these powers.

2.6.5 Simple Cautions and Prosecutions

Simple cautions and prosecutions are important ways to bring duty holders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy, the Council will use one of these measures in addition to issuing an improvement or prohibition notice.

Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, the Council will have regard to the principles of enforcement set out in this statement and the objectives published in HSE and HELA strategic plans. In

particular, in allocating resources, we will strike a balance between investigations and mainly preventive activity.

The Council will use discretion in deciding whether to bring a prosecution. The decision whether to prosecute will take account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. A prosecution will not go ahead where there is insufficient evidence to provide a realistic prospect of conviction, or where prosecution would not be in the public interest.

While the primary purpose of the Council is to ensure that duty holders manage and control risks effectively, thus preventing harm, prosecution is an essential part of enforcement. Where in the course of an investigation the Council has collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and taking account of the Code for Crown Prosecutors, that it is in the public interest to prosecute, then that prosecution will go ahead. Where the circumstances warrant it and the evidence to support a case is available, the Council may prosecute without prior warning or recourse to alternative sanctions.

Subject to the above, the Council will normally prosecute, or recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances apply. Where:

- death was a result of a breach of the legislation;²
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- there has been reckless disregard of health and safety requirements;
- there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- work has been carried out without or in serious non-compliance with an appropriate licence or safety case;
- a duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk.
- there has been a failure to comply with an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a simple caution;
- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- inspectors have been intentionally obstructed in the lawful course of their duties.

Where inspectors are assaulted, the Council will seek police assistance, with a view to seeking the prosecution of offenders.

The Council will consider prosecution, or consider recommending prosecution, where following an investigation or other regulatory contact, one or more of the following circumstances apply: -

² *Health and safety sentencing guidelines regard death resulting from a criminal act as an aggravating feature of the offence. If there is sufficient evidence, HSC considers that normally such cases should be brought before the court. However, there will be occasions where the public interest does not require a prosecution, depending on the nature of the breach and the surrounding circumstances of the death.*

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law;
- a breach that gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

Prosecution of individuals

Subject to the above, the Council will identify and prosecute or recommend prosecution of individuals if they consider that a prosecution is warranted. In particular, they will consider the management chain and the role played by individual directors and managers and will take action against them where the inspection or investigation reveals that the offence was committed with their consent or connivance or to have been attributable to neglect on their part and where it would be appropriate to do so in accordance with this policy. Where appropriate, the Council will seek disqualification of directors under the Company Directors Disqualification Act 1986.

Publicity

The Council will publish annually of the names of all the companies and individuals who have been convicted in the previous 12 months of breaking health and safety law. The Council will also make publicly available information on any convictions and on improvement and prohibition notices, which they have issued.

The Council will consider in all cases drawing media attention to factual information about charges which have been laid before the courts, but great care will be taken to avoid any publicity which could prejudice a fair trial. They will also consider publicising any conviction which could serve to draw attention to the need to comply with health and safety requirements, or deter anyone tempted to disregard their duties under health and safety law.

The Council will use discretion in deciding when to investigate or what enforcement action may be appropriate. Inspectors will apply the principles of the Enforcement Management Model (EMM) in all their regulatory actions when deciding on enforcement action but will only formally apply the EMM and record the outcome in certain circumstances, e.g. following the investigation of fatalities and serious breaches of the legislation.

2.7 Action by the courts

Health and Safety law gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences. Higher courts may impose unlimited fines. A list of the sanctions presently available to the courts is attached to this statement. (See para. 2.7.3)

The Council will, when appropriate, draw to the court's attention all the factors which are relevant to the court's decision as to what sentence is appropriate on conviction. The Court of Appeal has given guidance on some of the factors which should inform the courts in health and safety cases (*R v F Howe and Son (Engineers) Ltd [1999] 2 All ER*, and subsequent judgements). The Council notes that the Lord Chancellor has said that someone injured by a breach of health and safety legislation is no less a victim than someone who is assaulted.

2.7.1 Representations to the courts

In cases of sufficient seriousness, and when given the opportunity, the Council will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make, the Council will have regard to Court of Appeal guidance. The Court of Appeal has said ‘In our judgement magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence’.

2.7.2 Death at work

Where there has been a breach of the law leading to a work-related death, the Council will consider whether the circumstances of the case might justify a charge of manslaughter.

In England and Wales, to ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, HSE, the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS) have jointly agreed and published *Work-related deaths: A protocol for liaison*. The Council will take account of the protocol when responding to work-related deaths.

The police are responsible for deciding whether to pursue a manslaughter investigation and whether to refer a case to the CPS to consider possible manslaughter charges. The Council is responsible for investigating possible health and safety offences. If in the course of their health and safety investigation, the Council find evidence suggesting manslaughter, they will pass it on to the police. If the police or the CPS decide not to pursue a manslaughter case, the Council will normally bring a health and safety prosecution in accordance with this policy.

2.7.3 Penalties for Health and Safety Offences³

The Health and Safety at Work etc Act 1974 (the HSW Act), section 33 (as amended) sets out the offences and maximum penalties under health and safety legislation.

Failing to comply with an improvement or prohibition notice, or a court remedy order (issued under the HSW Act sections 21, 22 and 42 respectively):

<i>Lower court maximum</i>	£20,000 and/or 6 months’ imprisonment
<i>Higher court maximum</i>	Unlimited fine and/or 2 years’ imprisonment

Breach of sections 2-6 of the HSW Act, which set out the general duties of employers, self-employed persons, manufacturers and suppliers to safeguard the health and safety of workers and members of the public who may be affected by work activities:

<i>Lower court maximum</i>	£20,000
<i>Higher court maximum</i>	Unlimited fine

Other breaches of the HSW Act, and breaches of ‘relevant statutory provisions’ under the Act, which include all health and safety regulations. These impose both general and more specific requirements, such as requirements to carry out a suitable and sufficient risk assessment or to provide suitable personal protective equipment:

<i>Lower court maximum</i>	£5,000
<i>Higher court maximum</i>	Unlimited fine

³ As at January 2003. These penalties can change from time to time.

On conviction of directors for indictable offences in connection with the management of a company (all of the above, by virtue of the HSW Act sections 36 and 37), the courts may also make a disqualification order (Company Directors Disqualification Act 1986, sections 1 and 2). The courts have exercised this power following health and safety convictions. Health and safety inspectors draw these powers to the court's attention whenever appropriate.

Lower court maximum

5 years' disqualification

Higher court maximum

15 years' disqualification

2.8 Further information

More information about the way health and safety legislation is enforced and about health and safety legislation generally can be found in these free leaflets:

Successful health and safety management HSG65 (Second edition) HSE Books 1997
ISBN 0 7176 1276 7

What to expect when a health and safety inspector calls: A brief guide for businesses, employees and their representatives HSC14 HSE Books 1998

Work-related deaths: A protocol for liaison MISC114 HSE Books 1998

While every effort has been made to ensure the accuracy of the references listed in this publication, their future availability cannot be guaranteed.

PART 3

LICENSING

3.1 Introduction

The Environmental Health Services issue licences, registrations and permits for a wide range of activities with the purpose of protecting the safety and welfare of members of the public and animals

For the purpose of brevity the term licence also refers to registration or permit throughout this policy.

3.2 Licences are Issued for

- Drivers, Vehicles & Operators of Hackney Carriages
- Drivers, Vehicles & Operators of Private Hire Vehicles;
- Sale and supply of alcohol;
- Regulated Entertainment;
- Animal Boarding Establishments and Dog Breeding Establishments;
- Riding Establishments;
- Pet Shops;
- Late Night Refreshment;
- Acupuncture, Electrolysis, Tattooing and Ear Piercing;
-
- Gambling premises
- Gaming Machines;
- Scrap Metal Dealers;
- Dangerous Wild Animals;
- Lotteries;
- Sex Establishments;
- Amusement with prizes
- Street Collections
- House to House Collections
- Motor Salvage Operators

Each licence is issued according to the relevant statute and places obligations upon the licence holder to comply with the conditions attached to the licence.

Most licences require an appropriate fee and are granted for any time between one year and the life of the business, subject to the Regulations or Licence conditions being satisfied. Conditions can be attached to the licence. Individuals may also require registration or licensing e.g. Taxi Drivers, Private Hire Car Drivers and Personal Licences for the sale of alcohol.

3.3 Determination of Enforcement Policy

All types of enforcement action will be based upon an assessment of the risk due to non-compliance. Any enforcement action chosen by an inspector will be by a policy that considers consistency, proportionality, fairness and is transparent.

Where an enforcement matter affects a wide geographical area beyond the Borough boundaries, or involves enforcement by one or more other local authorities or organisations; all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

3.4 Authority to Investigate

The majority of enforcement powers involve the sending of letters, the suspension or the revocation of licences and the prosecution for non-compliance with licensing legislation bylaws or conditions and undertaking activities without the requisite Licence..

Consideration will always be given to Codes of Practice, the Code for Crown Prosecutors. If enforcement action is being considered which is inconsistent with this guidance there will be discussion with the relevant authorities, if appropriate.

Depending on particular circumstances, duly authorised Officers, acting on behalf of the Borough of Reigate and Banstead may use a variety of means to ensure licence holders meet their responsibilities, including education, advice, warning letters. Refusal to issue licences, revocation or suspension of licences, formal cautions or prosecutions can only be agreed by officers specifically authorised to do so or if the legislation requires by a Committee or Sub- Committee of the Council.

We will generally reserve prosecutions for the more serious offences, which represent a blatant disregard by licence holders of their responsibilities of the requirements of the legislation. Where licences are refused, suspended or revoked applicants will be advised in writing within the legal timeframe and in any case no longer than 14 days of the reason for the action and advised of the appeal procedures.

3.5 Enforcement Activity

The frequency of enforcement activity made under the licensing provisions will be determined by a risk assessment including the types of activities carried on at the premises and the number of complaints in connection with the licence.

To ensure the inspector meets the right person(s) responsible for running the business, it may be necessary for some inspections of premises to be arranged in advance. However, unannounced inspections will take place especially where a complaint regarding public safety has been made and the inspector considers that prior warning will lead to a deliberate concealment of either the lack of an appropriate licence or a breach of Licence Conditions.

Most enforcement activities will be made during normal office hours, but out of hours inspections will be undertaken where necessary. (see below)

3.6 Out of Hours Inspections

It is necessary to carry out enforcement activity outside of normal business hours e.g. during the evening and at weekends. These activities are carried out in exactly the same way as those conducted during conventional business hours.

3.7 Enforcement Options

An authorised officer should not take enforcement action that is disproportionate to the risk arising from any contravention identified and reference to any relevant industry guide should be considered.

The Options are: -

- Take no action
- Take Informal Action
- Revoke Refuse or Suspend Licences (or attach Conditions to the Licence)
- Simple cautions
- Prosecute.
- Refer the matter to a Committee or Sub Committee for decision.

3.7.1 No Action

An activity that reveals no contravention of the relevant legislation and the presence of excellent safety practices and management controls will result in no action. Officers will offer advice where appropriate or when it is requested to help ensure compliance with legislation and encourage businesses or clients to adopt good standards practices.

3.7.2 Informal Action

Informal action includes offering advice, verbal warnings, requests for action, the issuing of leaflets, newsletters, guidance notes and booklets plus the issue of informal notices. Informal action is appropriate in the following circumstances: -

- where a non-compliance will not involve a significant risk to employees and/or the public, or animal welfare; or
- the issue is not serious enough to warrant formal action; or
- from past history it can reasonably be assumed that informal action will achieve compliance; or
- confidence in management is high.

Informal action will be followed by written documentation to the proprietor or individual, which will: -

- contain all information necessary to understand what is required, why it is necessary, and when it needs to be completed by;
- indicate the licence conditions contravened, measures necessary to comply and that other means of achieving the same effect may be chosen

3.7.3 Revoke, Refuse or Suspend Licences

In order to warrant Revocation Suspension or Refusal of a Licence, the individual or organisation must meet one or more of the following criteria: -

- Engaged in fraudulent activity
- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others
- Deliberately or persistently ignored written warnings or formal notices,
- Endanger, to a serious degree, the health, safety or well being of people, animals or the environment
- Obstructed an officer whilst undertaking their duties.
- Deliberately or persistently failed to comply with Licence Conditions

Where conditions are unacceptable, the following also may apply: -

- Consideration will be given to withholding a licence until such time as standards have improved (if permitted by the appropriate legislation).
- In some cases, licences may be suspended.

- With Licences under the Licensing Act 2003 a licence may be cancelled or conditions varied following a hearing to consider an application to vary or review the licence, or a successful prosecution.

If an applicant fails to meet the licence criteria then it will not be granted, except if agreed under the exceptions policy by the appropriate Committee.

As it is an offence to undertake licensable activities without a licence, operators will be advised informally of the requirements. If they still fail to obtain a licence, consideration will be given to instigating legal proceedings.

3.7.4 Prosecutions and Cautions

In keeping with its preventive role a local authority may use prosecution as a way to draw attention to the need for compliance and the maintenance of good standards. Officers investigating offences consider the potential for harm as well as any harm actually caused. Thus a local authority may seek prosecution if a breach has significant potential for harm regardless of whether it caused an injury.

In deciding whether to prosecute, a local authority will also consider: -

- the gravity of the offence;
- the general record, approach and explanation of the offender;
- whether it is desirable to be seen to produce some public effect, including the need to ensure remedial action and, through the punishment of offenders, to deter others from simple failures to comply with the law;
- whether the evidence available provides a realistic prospect of conviction. (In this respect a local authority is guided by the Code for Crown Prosecutors published by the Crown Prosecution Service).

3.8 Working with other agencies

The Council works with other agencies such as: -

- Surrey Police,
- Surrey Fire and Rescue Services.
- Dept. of Health (DoH),
- Home Office (HO)
- National Health Service (NHS)
- LACORS
- Dept. Culture Media and Sport (DMCS)
- Surrey Trading Standards Service
- Surrey County Council Social Services
- Gambling Commission

Any Licensing enforcement action resulting from a multi-agency approach will be in accordance with the procedures outlined in this enforcement policy.

PART 4

FOOD SAFETY

4.1 Statement of Objectives

It is Reigate and Banstead Borough Council's policy to strive to minimise any risk to the health safety and wellbeing of people within the Borough associated with the consumption of food and drink.

4.2 Authority to Investigate or Enforce

The majority of enforcement powers involve the service of informal or statutory notices under the Food Safety Act 1990 (as amended) and any Orders or Regulations made thereunder or having effect by virtue of the European Communities Act 1972, e.g. the Food Hygiene (England) Regulations 2006.

There are also powers under Legislation other than the Food Safety Act e.g. Food and Environmental Protection Act 1985, The Health and Safety at Work etc Act 1974, The Environmental Protection Act 1990, Public Health Acts 1936 and 1961, Public Health Control of Diseases Act 1984 and Prevention of Damage by Pests Act 1949.

4.2.1 Food Inspections

The frequency of food hygiene inspections will be determined by the use of a risk factor, with premises graded according to their perceived risk as determined by the Food Law, Code of Practice

In accordance with Code of Practice the majority of inspections will be unannounced. In exceptional circumstances appointments may be made for example, inspections after initial registration, visits to large manufacturers or when a specific matter needs to be discussed with the proprietor.

Officers will offer advice where appropriate or when it is requested to help ensure compliance with legislation and encourage food businesses to adopt good food hygiene and standards practices.

The Service resolves to comply with the Code of Practice issued under Section 40 of the Food Safety Act 1990, Regulation 24 of the Food Hygiene (England) Regulations 2006 and Regulation 6 of the Official Food and Feed Controls (England) Regulations 2006 and to support the guidance on enforcement matters issued by LACORS and the Food Standards Agency. Documented procedures within the Service Level Assurance Manual will aim to be in line with those organisations and such other groups that may issue guidance, including the Surrey Food Liaison Group.

4.2.2. Follow-up Inspections

Where upon inspection, a food business is regarded by the inspecting officer to have failed to comply with significant statutory requirements, then appropriate enforcement action shall be taken and a further inspection made.

In the context of the above statement, 'significant' means that the failure;

- compromises food safety or public health, or
- indicates ineffective management when taken as a whole, or
- relates to compliance with a Hygiene Emergency Prohibition Notice or Order.

The timing of the follow-up inspection will be determined by the action taken as a result of the first inspection.

4.2.3 Food Sampling

Sampling for analysis or examination is carried out in accordance with the Food Law Code of Practice and the Council's Food Sampling Policy.

4.3 General

4.3.1 Authorised Officers

All authorised officers of the Council will abide by this enforcement policy when carrying out their enforcement duties and shall receive relevant training to enable them to do so. Only with the relevant competence / experience will be authorised to carry out food hygiene inspections and issue / sign legal notices.

4.3.2 Review

This enforcement policy will be reviewed on an annual basis or more frequently in the light of new guidance issued by LACORS or any other appropriate professional and governing body.

4.3.3 Quality Assurance

The Service Level Assurance Manual is reviewed on a continuous basis.

4.3.4 Home Authority Principle

The Council endorses and will work within the guidelines of the Home Authority Principle.

4.4 Enforcement Options

4.4.1 Determination of Enforcement Policy

All types of enforcement action will be based mainly upon an assessment of the risk to public health due to non-compliance with Food Safety legislation. Any enforcement action chosen by an inspector will be by a policy that considers consistency, proportionality, fairness and transparency.

Consideration will always be given to the Code of Practice, LACORS circulars and guidance including the LACORS Home Authority Principle and the Code for Crown Prosecutors when considering the different enforcement options available to officers. If enforcement action is being considered which is inconsistent with the Home Authority Principle, there will be discussion with the home authorities if appropriate.

Clearly the decision on which enforcement option is chosen will involve the consideration of a number of criteria e.g.

- The seriousness of the offence
- The proprietors previous history
- Confidence in the management
- Home or Originating Authority report
- Availability of due diligence defence
- The consequence of non - compliance
- The likely effectiveness of the various enforcement options.

An authorised officer should not take enforcement action that is disproportionate to the risk to public health arising from any contravention identified and reference to any relevant industry guide should be considered.

The Options are: -

- Take no action
- Take Informal Action

- Use statutory notices
- Detain or seize food
- Prohibition of premises processes treatment or equipment
- Suspension / withdrawal of approval
- Use simple cautions
- Prosecute.

4.4.2 No Action

An inspection that reveals no contraventions of the relevant legislation and excellent food safety practices and management controls will result in no action.

4.4.3 Informal Action

Informal action includes offering verbal or written advice, written warnings, requests for action and the issuing of leaflets, guidance notes and booklets. Written advice and warnings can be in the form of a hand-written 'Report of an Inspection' form, a letter or a letter and a schedule of works.

Written Advice is appropriate when no regulations have been contravened and only recommendations of good hygiene practice have been identified.

A warning letter and schedule of works or contraventions identified on a 'Report of Inspection' form is appropriate in the following circumstances:

- non-compliance will not involve a significant risk to public health; or
- the issue is not serious enough to warrant formal action, e.g. the service of a statutory notice or prosecution; or
- from past history it can reasonably be assumed that informal action will achieve compliance; or
- confidence in management is satisfactory.

A warning letter and works schedule or a 'Report of Inspection' form will be addressed to the person(s) responsible for running the food business, and will:

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

In addition, the leaflet "Food Law Inspections and Your Business" will be given to the proprietor.

Inspection reports will be issued following all programmed inspections even when conditions are satisfactory, with all legal requirements and recommendations clearly differentiated.

4.4.4 Statutory Notices

4.4.4.1 Improvement Notices

Hygiene Improvement Notices under the Food Hygiene (England) Regulations 2006 will only be served by authorised officers when one or more of the following criteria apply: -

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

Hygiene Improvement Notices will be related to risk to health and not issued for minor technical contraventions.

Authorised officers will only sign Hygiene Improvement Notices on behalf of non-authorised staff if they have personally witnessed the contravention and are satisfied that it meets the above criteria. Realistic time limits will be set and preferably agreed with the proprietor, with case officers discussing the specified works and fully considering different solutions. Extension of time limits will not normally be necessary, however, it may be granted on receipt of a written request before the notice expires..

4.4.4.2 Remedial Action Notices / Detention Notices

Remedial Action Notices under the Food Hygiene (England) Regulations 2006 will only be served by authorised officers if regulatory requirements in approved establishments are being breached or the inspection is being hampered. Circumstances might include:-

- failure of equipment or parts of premises to comply with regulatory requirements
- need to impose conditions or prohibit any process breaching regulatory requirements or hampering an inspection
- limiting the rate of operation of the business where this is detrimental to compliance.

Detention notices under the Food Hygiene (England) Regulations 2006 will only be served by authorised officers for the detention of food of animal origin in approved establishments so that it may be examined when it is suspected of being unsafe.

A notice of withdrawal will be issued as soon as the matters specified in the Notice are complied with.

4.4.4.3 Hygiene Emergency Prohibition Notices

The use of Hygiene Emergency Prohibition Notices will be considered when an imminent risk of injury to health can be demonstrated (including evidence from relevant experts, such as a food examiner or analyst) and when one or more of the following circumstances apply:

- where the consequences of not taking immediate action to protect public health would be unacceptable;
- where the criteria specified in the Code of Practice, concerning the conditions when prohibition may be appropriate, are fulfilled;

- where there is no confidence in the integrity of an offer made by a proprietor to voluntarily close premises or cease the use of any equipment, process or treatment associated with the imminent risk; and
- where a proprietor is unwilling to confirm in writing their offer of a voluntary prohibition or include an undertaking not to re-open without the officer's prior approval.

Hygiene Emergency Prohibition Notices will only be signed by authorised officers if they have personally witnessed the matters to which the Notice relates.

4.4.5 Voluntary Closure

Where any premises, process, treatment or equipment involves an imminent risk of injury to health and consideration is being given to emergency prohibition action, the proprietor of the business may offer to close voluntarily.

In such cases, authorised officers will consider all the evidence, circumstances and official guidance very carefully including whether there is any risk of the premises being reopened without their knowledge and/or agreement. Where such consideration indicates voluntary closure could be accepted, officers will explain to the proprietor that in making the offer to close, they will be relinquishing their rights to compensation. Written confirmation of the proprietor's offer and an undertaking not to reopen without specific permission will be required. Frequent checks will subsequently be made on the premises to confirm that they have not reopened.

Voluntary closure by the proprietor does not prejudice the right of the Council to commence legal proceedings for contraventions identified during the course of the inspection.

4.4.6 Suspension / Withdrawal of Approval or Conditional Approval

In respect of approved establishments, all other appropriate enforcement options and measures to control hazards will be considered before procedures are initiated to suspend or withdraw approvals.

4.4.7 Seizure/Detention Powers

Detention powers will be used if there is good reason to suspect that food does not satisfy food safety requirements and seizure powers used where there is clear evidence of such a failure. Careful judgement and consideration of the need to seek expert advice will always be exercised before using these powers, and guidance specified in the Code of Practice will be adhered to.

4.4.8 Prosecutions and Cautions

The Head of Service and the Food & Safety Manager (Section Head) are authorised to take decisions concerning prosecutions and cautions.

In addition to those general circumstances that are considered likely to warrant prosecution, listed in part one of this Policy, prosecution will take place where: -

- an alleged offence involves a failure to correct a serious potential risk to food safety, and a reasonable opportunity to comply with the requirements of an authorised officer has been given;
- foodstuffs are offered for sale or are sold past their use by date where the 20 day rule* devised by LACORS has been exceeded, and taking into account any previous history of non-compliance in respect to similar food labelling offences ;
- there is evidence of the re-dating of use by dates.

*Multiply number of items by number of days out of date e.g. 4 items 5 days out of date = 20days

- the alleged offence involves a failure by the offender to correct an identified potential risk to food safety having been given a reasonable opportunity to comply.
- the offence involves failure to comply with the requirements of a Statutory Notice.
- there is a history of similar offences related to risk to public health.

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

4.5 Working with Other Agencies

Occasionally, the Council works with other agencies such as

- The Food Standards Agency (FSA),
- Health and Safety Executive (HSE),
- Dept. of Farming & Rural Affairs (DEFRA),
- Primary Care Trust (PCT),
- Health Protection Agency (HPA)
- Surrey County Council Trading Standards Dept.
- Surrey Police and Fire services.

Any food safety enforcement action resulting from a multi-agency approach will be in accordance with the procedures outlined in this enforcement policy.

Part 5

Private Sector Housing

5.1. Statement of Objectives

The Private Sector Housing Team has responsibility for the enforcement of various pieces of mandatory and discretionary legislation associated with private sector drainage and private sector housing. The team strives to minimise the risks to human health and the environment for the people of Reigate and Banstead from unsatisfactory housing conditions, with the ultimate aim of ensuring:

- (a) a private sector housing stock that is sound and whose condition does not endanger the health and well-being of its occupants or visitors.
- (b) rented housing that is properly managed and maintained

5.2. Determination of the Enforcement Policy

All types of enforcement action will be based upon an assessment of the risk to public health and the environment, caused by non-compliance with the legislation. Any enforcement action chosen by the officer will be governed by a policy that considers consistency, proportionality, fairness, and is transparent.

5.3. Authorised Officers

All authorised officers of the Service will abide by this enforcement policy when carrying out their enforcement duties and shall receive relevant training to enable them to do so.

5.4. Review

This enforcement policy will be regularly reviewed either annually, or as necessary due to changes in legislation or new guidance from the Government, the Council or appropriate professional bodies.

5.5. Authority to Investigate or Enforce

The majority of enforcement powers involve the service of statutory notices. The legislation enforced by this section is contained in the following Acts of Parliament and regulations orders etc made under those principal Acts.

Housing Acts 1985 and 2004 (HA85/04)

Building Act 1984 (BA84)

Local Government (Miscellaneous Provisions) Acts 1976 & 1982 (LGMP76/82)

Public Health Acts 1936 and 1961 (PHA36/61)

Prevention of Damage by Pests Act 1949 (PDPA49)

Environmental Protection Act 1990 (EPA90)

Caravan Sites and Control of Development Act 1960 (CSCDA60)

Public Health (Control of disease) 1984 (PH(COD)A84)

Protection from Eviction Act 1977 (PFEA77)

Action can only be taken by officers who are specifically authorised. This will only be those who are competent by training, qualification and/ or experience. Authorised

officers will also have sufficient training and understanding of the team's procedures to ensure a consistent approach to service delivery.

5.6. Prior to enforcement

Before considering taking any action in respect of a tenanted property the tenant(s) will normally be required to contact their landlord about the problems first. This applies to both private and housing association tenants. Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property. This is because landlords can only carry out their obligations under the legislation once they have been made aware of the problem. Copies of correspondence between the landlord and tenant should be provided for officers.

In certain situations tenants will not be required to write to their landlord first, e.g.:

- where the matter appears to present an imminent risk to the health and safety of the occupants;
- where there is a history of harassment/ threatened eviction/ poor management practice;
- where the tenant is old and frail or otherwise vulnerable, e.g., where the tenant's first language is not English and this is likely to cause them difficulty;
- where the tenant could not for some other reason be expected to contact their landlord/ managing agent;

Tenants are responsible for keeping officers informed of any contact they have with their landlord (or the landlord's agent or builder, etc.), which may affect the action the Council is taking or considering taking.

5.7. Enforcement Options

In determining the most appropriate form of action the criteria outlined in General Principles for Enforcement Action will be followed.

(a) No Action

Where no action is possible or the general principles for enforcement action lead the officer to determine that no action should be taken by the Authority customers will be given advice on ways that they can deal with the matter themselves by taking their own legal action or other means. These include:

Referral to Thames Utilities in the case of Public Sewers; referral to a solicitor in relation to potential action under section 11 of the Landlord and Tenant Act 1985.

In cases that fall outside our legislative remit no other action will be taken.

(b) Informal Action

Informal action includes offering advice, or letter requesting action.

"Housing Matters" - Informal action will generally be used as a preliminary step prior to any statutory action.

"Public Health/Drainage Matters" - Informal action can be used alone or as a preliminary step prior to statutory action. However statutory action will not always be preceded by informal action in respect of these matters depending on the severity of the circumstances and any imminent public health risk.

In all instances landlords and owner-occupiers (for drainage works) will be advised what is considered to be a reasonable time scale for works to be put in hand and completed.

(c) Statutory Action

List of statutory notices

Housing Act 2004

Sec 11, 12	Improvement notices
Sec 20, 21	Prohibition orders
Sec 28, 29	Hazard awareness notices
Sec 40, 43	Emergency action and emergency prohibition
Sec 133, 134, 135, 136 & 137	Interim and final empty dwelling management orders
Sec 139, 140, & 144	Overcrowding notices (for HMOs that are not required to be licensed)

Housing Act 1985

Sec 265	Demolition Order
Sec 335	Requisition -persons sleeping in dwelling
Sec 338	Abatement of Overcrowding notice

Public Health Act 1936

Sec 45	Notice to require cleansing of WC's in Buildings
Sec 50	Notice to empty/repair leaking/overflowing cesspools
Sec 83	Notice to cleanse filthy and verminous premises

Public Health Act 1961

Sec 17	Notice to unblock private sewer/drain
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Local Government (Miscellaneous Provisions) Act 1976

Sec 16	Notice requiring information
Sec 35	Notice requiring removal of obstruction in private sewer/drain

Local Government (Miscellaneous Provisions) Act 1982

Sec 29	Notice to secure property
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Building Act 1984

Sec 59	Notice in respect of defective drains/sewers
Sec 60	Notice in respect of the use of vent pipes
Sec 76	Notice to remedy defective premises
Sec 84	Notice to remedy drainage of yards

Caravan Sites and Control of Development Act 1960

Sec 9(2) initiate proceedings	Notice of contravention of site licence conditions
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Prevention of Damage by Pests Act 1949

Sec 4	Notice requiring works
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Public Health (Control of Disease) Act 1984

Sec 31	Notice of disinfection of a premises
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Environmental Protection Act 1990

Sec 80

Abatement Notice

As stated above, statutory action may follow informal action. Persons receiving an informal letter, (usually a landlord or agent), will be given up to twenty-eight days, (depending on the type, extent and complexity of the work required), in which to either contact the case officer to discuss their proposals for remedying the problem raised or to do the work. A decision will then be made as to whether to proceed with enforcement action, taking the following factors into account.

- the proposed works and whether, (if they are different to those suggested in the letter), they are considered to be adequate/appropriate;
- the landlord or agent's proposed timescale for the works and whether this is within the time limit specified in the informal letter;
- whether the landlord or agent has made clear his intention to carry out works to solve the problem raised;
- the landlord or agent's previous history;

Where the landlord or agent's response is satisfactory, they will be sent a letter confirming this. This letter will also set out the agreed terms for example the work they intend to carry out and the timescale for completion.

Enforcement action will be taken in the following circumstances;

- where a landlord or agent makes no contact with the case officer following receipt of an informal letter;
- where the landlord or agents proposals are unacceptable;
- where the landlord or agent has made unsatisfactory progress after agreeing terms as described above.

5.7.1. Housing Act 1985 and 2004

Tenure

(a) Owner occupied property

Enforcement action will only be considered where an owner-occupied property contains a category 1 hazard (as determined by a Housing Health and Safety Rating (HHSRS) Assessment - see below) and a person of the vulnerable age group is in occupation. A statutory notice can be served where the action is designed to assist the owner by allowing the work to be carried out by agreement or in default by the Council and the cost made a charge against the property. Section 31 and Schedule 3 of the Housing Act 2004 refer.

(b) Privately rented property

Where there are potential risks to the health and safety of the occupants from deficiencies in the dwelling, or in a dwelling within a house in multiple occupation, a risk assessment will be undertaken using HHSRS to determine the appropriate course of action and to inform the officer as to whether enforcement action is necessary.

In securing the repair and improvement of properties all relevant Government guidance will be followed. In particular, Office of the Deputy Prime Minister

"Housing Health and Safety Rating System, operating guidance, Housing Act 2004 Guidance" about inspections and assessment of hazards given under section 9 of the Act.

Types of Enforcement Action

(a) Improvement Notices

In the vast majority of cases properties are in such a condition that they can be repaired or improved rather than demolished or closed and so improvement notices are likely to be a common type of enforcement for category 1 hazards. The service of a notice will seek to reduce a category 1 hazard to a category 2 hazard or else to remove it entirely.

An improvement notice will specify the following information:

- which category of hazard it relates to
- the nature of the hazard and the premises/ property on which it exists;
- the deficiency giving rise to the hazard;
- the premises and nature of remedial action required;
- the date by which remedial action is to be started, (not less than 28 days);
- the period in which the remedial action is to be completed;
- notes in respect of the right of appeal.

An improvement notice will be revoked when it is complied and may be varied by agreement.

(b) Suspension of an Improvement Notice (or a prohibition order see below)

Normally an improvement notice would become operative 21 days after service and a prohibition order after 28 days. However both may be suspended. The notice may specify an event that triggers the end of the suspension, such as:

- non-compliance with an undertaking
- a change of occupancy

Typically the activation of a suspended notice would be a change of occupancy, where an occupier is replaced by one who is of the vulnerable age group. Alternatively a notice may be suspended if the property is vacated and not re-occupied prior to the service of a notice. The notice will require the owner or landlord to notify the Council of a change of occupancy to ensure that the notice can be reviewed.

Consideration will be given to any request by the tenant to suspend the notice or replace the action by the issue of a hazard awareness notice where the works are likely to affect that tenants' health. All suspended notices and orders will be reviewed every 12 months or earlier as deemed to be appropriate.

(c) Prohibition Orders

A prohibition order may be used for either a category 1 or 2 hazard. It may prohibit the use of a part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people.

A prohibition order will specify the following:

- whether it relates to a category 1 or 2 hazard;
- the nature of the hazard and the premises on which it exists;
- the deficiency giving rise to the hazard;
- the premises and prohibitions which are imposed;
- any remedial action that would result in the order being revoked. (An order becomes operative 28 days after it is made);
- notes in respect of the right of appeal.

A prohibition order will be revoked if the Council is satisfied that the hazard to which it relates no longer exists.

This action will only be used in exceptional circumstances and may include the following:

- where the conditions present a serious threat to health or safety but where remedial action is considered unreasonable or impractical for cost or other reasons e.g. where the remedial works cannot be undertaken with the tenant in occupation;
- to specify the maximum number of persons who occupy a dwelling where it is too small for the household's needs;
- to control the number of persons who occupy a dwelling where there are insufficient facilities (e.g. personal washing facilities, sanitary facilities, or food preparation or cooking facilities).
- to prohibit the use of the dwelling by a specified group (until such time as improvements have been carried out), where a dwelling is hazardous to some people, but relatively safe for occupation by others: The specific group relates to the class of people for whom the risk arising from the hazard is greater than for any other group, for example, elderly people or those with young children;
- in an HMO, to prohibit the use of specified dwelling units or of common parts.

Regard will be had to the following matters when considering serving a prohibition order:

- the risk of exclusion of vulnerable people from the accommodation;
- whether the building is listed;
- the position of the premises in relation to neighbouring buildings;
- irrespective of any proposals the owner may have, the potential alternative uses of the premises
- any conservation or renewal area and any general proposals for the area
- the effect of complete prohibition on the well being of the local community and the appearance of the locality
- the availability of local accommodation for re-housing any displaced occupants
- whether it is appropriate to offer financial advice or assistance

See page 34 for information on the suspension of a prohibition order.

(d) Hazard Awareness Notice

Category 2 hazards i.e. a score of 500 or more will result in a hazard awareness notice being served. This will draw the attention of the owner to the desirability of remedial action. There will be no requirement to carry out the recommended works. NB no informal action will be taken prior to the issue of a HAN.

A hazard awareness notice will specify:

- the nature of the hazard and the premises on which it exists;
- the deficiency giving rise to the hazard;
- the premises on which the deficiency exists;
- the reasons for deciding to serve the notice, including the reasons for deciding that serving the notice is the most appropriate course of action;
- the details of any remedial action, which the Council considers, would be practical and appropriate to take.

The advisory nature of the notice may result in monitoring of any premises to ascertain if works have been undertaken. The service of a hazard awareness notice will not prevent further formal action.

Standard Enforcement Action Thresholds

	Vulnerable age group in occupation	No vulnerable age group in occupation
Category 1 Hazard		
Score >1000	Statutory Action/ Improvement notice	Statutory Action / Improvement Notice
Category 2 Hazard		
Score 500-999	Statutory Action/Hazard awareness notice	Statutory Action/Hazard awareness notice
Score <500	No Action	No Action

In exceptional circumstances however all types of enforcement action will be considered.

Where the hazard score results in no action the occupier/tenant will be advised of any other action that may be available to them to deal with the issues that are of concern to them. Such advice will be confirmed by letter and may be copied to the owner for information.

(e) Emergency Remedial Action/ Emergency Prohibition Orders

The Council has the discretion to take emergency enforcement action against hazards, which present an imminent risk of serious harm to occupiers of those or other residential premises. This action will only be taken in exceptional circumstances and will require the following:

- the existence of a category 1 hazard
- that the hazard presents an imminent risk of serious harm to the health and safety of the occupiers
- that no management order is in force in respect of the premises.

The Council can take remedial action to remove the hazard and recover reasonable expenses, or prohibit the use of all or part of the property. There are appeal provisions but any appeal will not prevent any remedial works being undertaken or prohibition order being made.

A notice will be served within seven days of remedial action being started. This will state:

- the nature of the hazard and the premises / property which it exists;
- the deficiency giving rise to the hazard
- the premises and nature of remedial action required;
- the power under which the remedial action has been (or is to be) taken;
- the date when the remedial action was (or is to be), started.
- notes in respect of right of appeal

(f) Demolition

Where a Demolition Order is used, the Council will assist in the re-housing of the occupants who are displaced. The Council will consider the following matters in reaching a decision on a making demolition order:

- the availability of local accommodation for re-housing occupants
- the demand for, and the sustainability of the current accommodation if the hazard were remedied;
- the prospective use of the cleared site;
- the local environment, the suitability of the area for continued residential use and the impact on the area of the cleared site.

A demolition order may be replaced with a prohibition order if proposals are submitted for the use of the premises for use other than human habitation.

(g) Clearance Areas

Clearance is unlikely to be the most viable option in most cases. However the following matters would be taken into account in reaching a decision on the most appropriate action.

- the likely long term demand for residential accommodation;
- the degree of concentration of dwellings containing serious intractable hazards;
- the density of buildings and street pattern around which they are arranged;
- the overall availability of housing accommodation in the wider neighbourhood in relation to housing needs and demands;
- the proportion of dwellings free of hazards and other, non residential, premises in sound condition which would also need to be cleared to arrive at a suitable site;
- whether it would be necessary to acquire land surrounding or adjoining the proposed clearance area; and whether added land can be acquired by agreement with the owners;
- the existence of any listed buildings;
- the results of statutory consultation;
- the arrangements necessary for re-housing the displaced occupants and the extent to which occupants are satisfied with those arrangements;
- the impact of clearance on, and the scope for relocating, commercial premises;
- the suitability of the proposed after-use(s) of the site having regard to its shape and size, the needs of the wider neighbourhood and the socio-economic benefits which the after-use(s) would bring, the degree of support by the local residents and the extent to which such use would attract private investment into the area.

Licensing of Houses in Multiple Occupation

The owners of certain types of HMOs must apply to the Council to have their property licensed.

The responsibility for licensing rests with the person having control of, or the person managing, the property. This is the owner, or the person who lets the property out and collects rents. Licences can be issued with conditions attached and run for up to 5 years.

Failure to apply for a licence and the continued operation of a licensable HMO is a criminal offence. A person found guilty of such an offence will be subject to a fine of up to the maximum of £20,000.

The Council is under a duty to make an interim management order where an HMO is required to be licensed and they consider that either –

- That there is no reasonable prospect of it being licensed in the near future, or
- That the health and safety of the occupants requires protecting.

The making of such an order, agreed by the Residential Property Tribunal (RPT), would effectively result in the Council taking over the management of the property.

Once a person has been successfully prosecuted in this manner then the Council may apply for a Rent Repayment Order.

Failing to comply with a condition attached to a licence is also an offence. A person found guilty of such an offence will be subject to a fine of up to the maximum of £5,000

Temporary Exemption Notice

Where a landlord is, or shortly will be, taking steps to make an HMO non-licensable, the Council may serve a Temporary Exemption Notice (TEN). A TEN can only be granted for a maximum period of three months. A second three month TEN can be served in exceptional circumstances. A TEN will be served where an owner of a licensable HMO states in writing that he/she is taking steps to make an HMO non licensable and states that the HMO will not be licensable within three months.

HMO declaration

In circumstances where an application for a licence has not been received since the owner of an HMO disagrees with the Councils assertion that a certain building is an HMO then the Council will make an HMO declaration. This has the effect of formalising the Councils' decision. An owner may appeal this decision to the residential property tribunal (RPT). The decision of the RPT is final.

Management of Houses in Multiple Occupation

There are prescribed standards of management in respect of all HMOs and non compliance with the Management of Houses in Multiple Occupation (England) Regulations 2006 (regulations made under section 234 of the Housing Act 2004), is an immediate offence. Although no enforcement notices can be served an informal letter to the landlord will normally be made to try to ensure compliance before deciding on prosecution as a course of action.

Penalties for Non Compliance for all types of Housing Legislation

(a) Prosecution/Formal Caution (given either by the Head of Community Safety and Environmental Health or the Director of Development)

Where an officer believes that an offence has been committed and a prosecution or caution is appropriate, The Head of Housing and Leisure must be consulted and give their agreement to the proposed course of action. The general circumstances that are considered likely to warrant prosecution are listed in part one of this Policy. Specific instances are indicated under each legislation heading in this part. In each case prosecution or formal caution will be considered in accordance with the Matrices in appendix 1 and 2.

(b) Works in Default

In circumstances where works required on an enforcement notice are not undertaken then the Council has the power to undertake works in default. This course of action will be considered irrespective of any prosecution action that might also be undertaken for the same offence. This action must be with the agreement of the Head of Housing and Leisure and recorded on file or on the database. The cost of the works, plus the Councils reasonable administration charges (based on an officer hourly rate), will be charged to the responsible party and recovered through the civil court.

Charges will be made for abortive costs in preparing to carry out work in default where an order has been placed and the owner then carries out the work required.

Where there is no prospect of the money being recovered, the debt may be placed on the property as a land charge. In some cases interest will be added annually

(c) Rent repayment order

The Council may apply to the RPT for a Rent Repayment Order (RRO), where a landlord is convicted for failure to licence an HMO.

If rents were paid through Housing Benefit, the Council will use its powers under the Act to seek RROs for repayment of up to twelve months Housing Benefit. We will also provide tenants with information about how to apply for a RRO.

(d) Interim management order and Final management order

Where there is no prospect of an HMO being licensed or the health and safety condition is satisfied, the Council is required to make an Interim Management Order. This enables the Council to take over the management of an HMO and become responsible for the running of the property and collecting rents for up to one year. In extreme cases this can be extended as a Final Management Order to five years with the Council also having the power to grant tenancies.

We will only use these powers in exceptional circumstances. Any proposed action will have to be agreed by the Head Of Housing and Leisure. These orders can only be made with the authorisation of the Residential Property Tribunal.

The Council may also

- Refuse a licence
- Revoke a licence
- Vary a licence
- Refuse to vary a licence

(e) Interim and Final Empty Dwelling Management Order

Where property has been left empty for at least 6 months the Council has the power to ask the RPT for approval to issue an interim Empty Dwelling Management Order. This gives the Council the power to take over the management of the house and seek to ensure it becomes occupied. The Council is required to engage with the owner to try and reach a solution before applying for such an order, which may last up to 1 year. This interim order may then be made final with the approval of the RPT if a solution has not been found in the first year. This final EDMO can last up to 7 years. These powers will only be considered in very exceptional circumstances.

(f) Compulsory Purchase Order

This option is only taken up in exceptional circumstances, for example:-

- Where the property has been derelict for some time and is having a detrimental affect on the local environment or neighbouring properties; or
- Where the property appears to be abandoned and the owner cannot be traced; or
- Where all other avenues for bringing the property back to a useful life have been exhausted; or
- Where the property is suitable for immediate residential use, but is not likely to be occupied for residential purposes unless bought by the Council.

The making of a CPO has to be agreed by the relevant Portfolio holder, by the Executive and full Council. The Department of Communities and Local Government must then approve it before it can be made.

Vacated properties with Statutory Notice

In cases where properties are subject to a statutory notice and the property is subsequently vacated, all notices or orders will be reviewed to consider whether the impact of any hazard has diminished, and whether notices or orders may be varied, suspended or revoked.

Charges for enforcement action

Although the Council has powers to charge for enforcement action at the present time no charges are made. However in deciding whether to exercise these powers following a review, the following matters would be taken into account:

- the reasonableness of the charges in relation to enforcement costs;
- the personal circumstances of the person or persons against whom the enforcement action is being taken.

5.7.2. Drainage (including BA84, PHA36, PHA61)

Tenure

Enforcement action will be considered irrespective of tenure in relation to drainage. However in the case of privately rented accommodation owners will receive notices concerning defects whilst tenants will be expected to deal with blockages.

Surface Water Drainage

In general terms blockages in the surface water sewer will not be subject to enforcement action except in extreme circumstances. The Council however has a duty in law to deal with defects in the surface water system.

Foul Drainage

Blockages in the foul water system can be dealt with by way of enforcement action; however it is the Council's policy to refrain from such action wherever possible in the case of blocked private sewers serving less than seven properties (for reasons of disproportionate administration costs to the home owners). The Council has a duty in law to deal with defects in the foul drainage system

Enforcement Notices

- A notice may be served to effect the removal of a blockage in a drain (s17 PHA61)
- Notices may be served to effect the removal of a blockage from a private sewer. (s35 LGMPA76)
- A notice must be served in relation to defective drainage. (s59 BA84)
- A notice may be served to unstop a drain/repair a drain (s17 PHA61)
- A notice may be served to remedy a leaking cesspool (s50 PHA36)
- A notice may be served to repair a water closet not requiring reconstruction (s45 PHA36)

All notices will specify the works required and the time by which they must be completed. Notices will be complied once works are completed to the satisfaction of Council officers

Penalties for Non-Compliance

(a) Prosecution/Formal Caution

Although still an option available to the Council, prosecution will not normally be considered in relation to non-compliance with notices requiring the unblocking or repairing of private sewers where multiple owners are responsible for works. The Council recognises the difficulties faced by the recipients of such notices and therefore as a general rule will propose simply to undertake the works in default.

(b) Works in Default

See explanation in housing (above)

5.7.3. Public Health (inc, LGMPA82, PHA36, PDPA49, EPA90, PH(CoD)A84)

Tenure

Enforcement action will be considered irrespective of tenure however in the case of privately rented accommodation other remedies will be thoroughly investigated and help sought from partner organisations (SCC, PCT, Landlord etc).

Enforcement notices

- Notice may be served to board up premises (LGMPA82)
- Notice may be served to disinfect premises/persons (PHA83)
- Notice will be served to treat land or keep land free from rats and mice (PDPA49)

- Notice will be served in relation to statutory nuisances that exist (are likely to exist or recur)(animals, accumulations & premises)(EPA90)

All notices will specify the works required and the time by which they must be completed.

Penalties for Non-Compliance

(a) Prosecution/Formal Caution

Although prosecution and formal caution are options available to the Council, they will normally only be considered where there is wilful non-compliance with one of the Public Health Act Notices; these notices are often served on vulnerable persons to enable the Council to intervene and get work done when the recipient is unable to and therefore the sanction of prosecution would be inappropriate.

(b) Works in Default

See explanation in housing (above).

Also in the case of notices served on tenants, the Council will try to avoid undertaking works in default as costs are difficult to recover from a tenant as they have no owners' interest and therefore no property against which to register a debt as a local land charge.

5.7.4. Miscellaneous (inc CSCDA60, PFEA77, LGMPA76)

(a) Caravan Sites and Control of Development Act 1960

The Council is required to issue Site licences to mobile home sites within its area. The Council has the power to enforce the conditions on that site licence.

Enforcement Notice

A notice may be served in order to bring a site licence contravention to the attention of the site owner.

Penalties for Non Compliance

Prosecution/Formal Caution

See explanation in Housing above.

After 3 successful prosecutions the Council can apply to the Magistrates Court to revoke the licence

Works in Default

See explanation in Housing above.

(b) Protection from Eviction Act 1977

The Council will act to try to ensure that landlords uphold their obligations in connection with the ending of tenancies. Officers will provide advice to landlords and tenants where threats to illegally evict have been made and will endeavour to prevent/or reverse illegal eviction. However where landlords fail to heed such advice and either harass or illegally evict their tenants then the Council will consider taking prosecution action.

Penalties for Non Compliance

Prosecution/Formal Caution

See explanation in Housing above.

(c) Local Government (Miscellaneous Provisions) Act 1976 - Reconnection of Services

The Council has the power to ensure the re-connection (or to prevent the disconnection) of the gas, electricity or water supply, to lettings within a tenanted property. These powers will only be used where the tenants are not responsible for payment of the bill. In properties occupied by a single tenant it is expected that he/she will arrange for a supply in their own name and reconnection by the Council will not normally be considered appropriate.

Recovery of Money

The owner of the property will be charged the cost of re-connection and/or payment of the bill plus interest. This debt will be recovered either by way of rent from tenants or in the civil court.

PART 6

Environmental Protection

6.1 Statement of Objectives

The Environmental Protection Team strives to eliminate, or where this cannot be achieved reduce to an acceptable level, the risks to the environment and human health of the people who live, work and visit the area. This directly contributes toward achieving the principal aim of Council in improving the quality of life in the Borough and the subordinate aim of promoting economic, social and environmental well being for a sustainable future.

6.1.1 Determination of Enforcement Action

All types of enforcement action may be based upon an assessment of the risk to the public health and the environment caused by non-compliance with the legislation or the direction powers. The choice of enforcement action may be in accordance with this enforcement policy that ensures consistency, proportionality, fairness and is transparent.

6.1.2 Authorised Officers

All authorised officers of the Service will abide by this enforcement policy when carrying out their enforcement duties and shall receive relevant training to enable them to do so.

6.1.3 Review

This enforcement policy will be reviewed annually, or more frequently in the light of changes in legislation.

6.2 Enforcement Options

Consideration will always be given to Codes of Practice, British Standards and any other guides to good practice.

6.2.1 No Action

When an inspection/ Investigation reveals no contraventions of the relevant legislation present this will result in no action.

6.2.2 Informal Action

Informal action is appropriate where the problem is of an insufficient scale to justify taking statutory action and there is no significant risk to health. Informal action includes offering advice and issuing a verbal warning or a warning letter. Informal action is not considered as a step to be taken before statutory action is initiated, if circumstances justify statutory action may be commenced.

6.2.3 Statutory Action

The following general principles apply to taking statutory action: -

- reasonable time limits for compliance with the terms of each notice will be set according to the circumstances of each case;
- where there is an immediate risk to health, or in noise cases where a nuisance is being caused to neighbours, notices may specify immediate compliance;

6.2.4 Seizure Powers

Seizure powers may be used if there is good reason to suspect that there is a major or ongoing problem. Careful judgement and consideration of the need to seek advice will always be exercised before using these powers.

6.2.5 Prosecutions and Cautions

The Head of Service and the Environmental Protection Manager (Section Head) are authorised to take decisions concerning prosecutions and cautions.

In addition to those general circumstances that are considered likely to warrant prosecution, listed in part one of this Policy, prosecution may take place where: -

- an alleged offence involves a failure to correct a serious potential risk to health or nuisance and a reasonable opportunity to comply with the requirements of an authorised officer has been given;
- the offence involves failure to comply with the requirements of a Statutory Notice.
- there is a history of similar offences related to risk to public health.

6.3 Specific Legislation

6.3.1 Clean Air Act 1993.

Part I - Dark Smoke

Under Part I of the Act it is an offence for dark or black smoke to be emitted from a chimney. Normally a prosecution for this offence will only be taken either when informal action has failed to prevent the recurrence of the problem or when such emissions cause major problems or are prejudicial to health.

Part II – Smoke Grit Dust & Fumes

This part of the Act deals with the control of the installation of furnace arrestment plant and the heights of chimneys. Any applications for approval will be dealt with as quickly as possible and within the statutory time limits. Where the Council are minded to refuse an application an explanation will be sent to the applicant giving him the opportunity to respond. Any offence under this part of the act will be dealt with informally. Where this fails to resolve the problem then consideration will be given to prosecuting the offender.

6.3.2 Control of Pollution Act 1974 - Control of Construction Site Noise

Noise from construction activities may be controlled by serving a notice on the contractor's head office, with copies to the site office and subcontractors where possible, under the Control of Pollution Act, 1974. The notice can be served at any stage during the construction activity. Variations to the notice may be considered if the contractor notifies the department in sufficient time and there are reasonable grounds for the variation. If there is evidence of a failure to reasonably comply with the notice legal proceedings may be taken.

Section 61 of the Control of Pollution Act allows contractors to apply to the Local Authority for prior approval for construction site works. Agreement can be reached with the contractor on the methodology, equipment to be used, site access, etc. Where the noise on the site is from a faulty or badly maintained piece of equipment action may be taken under the provisions of Part 3 of the Environmental Protection Act, 1990.

All contractors will be expected to comply with the code of practice 'Control of Pollution and Noise on Construction Sites' issued by Reigate and Banstead Borough Council to all those who apply for Planning Permission for developments and all Building Regulation applications.

6.3.3 Environmental Protection Act 1990 Part 1 (Pollution Prevention and Control Act 1999)

6.3.3.1 The Council's Duty

The Council's duty in administering Part I of the Environmental Protection Act 1990 (EPA 1990) is to protect the environment and human health by ensuring operators of certain industrial processes adequately control emissions to air from their processes.

6.3.3.2 The Aim of the Policy

The aim of this enforcement policy is to ensure that the Council's duty is carried out in a manner that secures the efficient and effective compliance with the air pollution controls placed upon industry, whilst having regard to minimising the burden on the Council and on local industry. It will achieve much of this through education, by providing advice and by regulating. Securing compliance with legal regulatory requirements, using enforcement powers including prosecution, where appropriate, is an important part of achieving this aim.

This Policy sets out the general principles which the Council intends to follow in relation to the application of Part I of the EPA 1990 including handling applications, setting conditions on authorisations, enforcement and prosecution. It is to be used in conjunction with more detailed specific guidance for staff and the guidance produced by the Department of Environment, Transport and the Regions. The Council will monitor the implementation and effectiveness of the Policy.

The Council regards prevention as better than cure. It offers information and advice to those it regulates and seeks to secure co-operation avoiding unnecessary bureaucracy or excessive cost. It encourages individuals and businesses to comply with the Act and to integrate good environmental practices into normal working methods.

Where discretion is exercised or a decision is made that affect convention rights of an individual, then those processes will be conducted with regard to and in accordance with the articles and protocols of the Human Rights Act 1998 for the protection of individuals and any policy, procedures and practices adopted by the Council in respect of this.

The staff employed to deal with this work liaise with other staff who have different responsibilities and other regulators to raise awareness and ensure coherent regulation.

6.3.3.3 Fair Regulation

The Council believes in firm but fair regulation. Underlying the policy of firm but fair regulation are the principles of; **proportionality** in the application of the law and in securing compliance; **consistency** of approach, **transparency** about how the Council operates and what those regulated may expect from the Council, and **targeting** of enforcement action.

(i) Proportionality

This is the reasonable relationship between the objective, which is sought to be achieved, and the means used to that end. The term when applied to the air pollution control scheme is used to describe the balance of the action to protect the environment and human health against risks from air pollution versus the means of preventing the pollution. In general, the concept of proportionality is included in much of the regulatory system through the standards set down in the process specific guidance, the general guidance and the mechanism by which categories of industrial processes are assessed before they are approved to be prescribed in legislation. This concept is extended to local authorities as they have a duty to have regard to the guidance issued by central government. The guidance cannot cater for all scenarios and allows for local discretion, where required. Officers of the Council will have regard to the principle of proportionality in the decision making process and when they require action.

(ii) Consistency

Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council aims to achieve consistency in advice tendered, producing authorisations, inspection frequency and actions, the response to pollution and other incidents and 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 in issuing an authorisation and enforcing the local authority air pollution control scheme. Decisions on what is contained in an authorisation and when and how enforcement action should be taken are matters 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.

(iii) Transparency

Transparency is important in maintaining public confidence in the Council's ability to regulate. It means helping those regulated and others, to understand what is expected of them and what they should expect from the Council. It also means making clear why an officer intends to carry out, or has chosen a specific course of action, whether it be in relation to the drafting of authorisation conditions, agreeing an upgrading or enforcement action.

Transparency is an integral part of the role of Council officers and the Council continues to train its staff and to develop its procedures to ensure that:

- where action is required, it is clearly explained (in writing, if requested) why the action is necessary and when it must be carried out; a clear 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 or to prevent evidence being destroyed.
- where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event.
- written explanation is given of any rights of appeal against conditions on an authorisation or formal enforcement action at the time the authorisation is issued or enforcement action is taken.

(iv) Targetting

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

The Council has systems for prioritising regulatory effort. They include the response to complaints from the public about processes, the assessment of the risks posed by an operator's process and the gathering and acting on information about illegal activity.

6.3.3.4 Management

The Council will maintain documented management systems to monitor all the activities associated with this policy to demonstrate the effectiveness of and compliance with the policy. The documents will be reviewed in light of new guidance that may be issued by other regulatory bodies, central government, bodies for achieving accreditation for quality standards or as a result of information from others.

6.3.3.5 Officer Competence

The Head of Environmental Health Services will only authorise officers in accordance with the Council's scheme of delegation when:

- they are suitably qualified and experienced to undertake the enforcement role; or
- they are not yet suitably qualified or experienced but remain under the direct supervision of an officer who is.

Training will be made available to officers where a clear need is identified for that training.

6.3.3.6 Applications

The principal component to the local authority air pollution control scheme is prior authorisation rather than post policing. To obtain authorisation the operator of the industry must submit an application containing sufficient information for the Council to proceed.

Pre-application discussions will be used to target specific advice and information, to ensure that requirements and procedures are fully understood where the operator advises the Council of his intent to apply for authorisation. The Council expects the operator to employ competent persons to assist in making an application, particularly where it involves complex or voluminous work.

Applications that do not contain sufficient information will be returned to the operator, with an explanation of the reasons why the application was not accepted. Where there is sufficient information to proceed but not enough to issue the authorisation further information will be sought by formal means during which time the application is held in abeyance.

6.3.3.7 Issuing Authorisations

During consideration of the application the operator will be given the opportunity to comment on the draft of the authorisation so that he is aware of the developments and has an opportunity to provide feedback on key issues such as technical feasibility. Amending the authorisation following consultation with the applicant is at the discretion of the Council officers. Where comments are rejected the reasons why will be stated, and if the matter is significant, for example due to large cost or substantial deviation from the requirements of the process specific guidance, confirmed in writing with the applicant as soon as is practicable. The period within which the Council is obliged to issue authorisations in is limited so the applicant should respond promptly and clearly, having given the draft due consideration.

Within each authorisation it is implicit that the operator has to use the Best Available Techniques Not Entailing Excessive Cost (BATNEEC) to prevent emissions, or where this isn't practical, to reduce the quantity of the substance emitted and then rendering harmless what is released. This standard is a national industry standard but has the flexibility to take account of local circumstances; examples are contained in process specific guidance notes published by the Secretary of State.

6.3.3.8 Setting Conditions

In addition to the general implied condition, specific conditions may also be attached to the authorisation. Specific conditions make plain to the operator what is expected of him, are more readily enforceable than the general condition and provide more comprehensive information to members of the public who consult the public register.

In setting conditions the Council has regard to the **objectives** specified in the Environmental Protection Act 1990, **Directions** issued by the Secretary of State and the **consideration of the process by its own officers**.

The objectives of the Act are:

- BATNEEC is used for preventing the release to air, or where not practicable reducing the release to a minimum and rendering harmless substances that are released.
- Compliance with the implementation of obligations of the United Kingdom to European law on environmental protection.
- Compliance with limits or requirements and achievement of any quality standards or objectives prescribed by the Secretary of State under:

-Statutory nuisance provisions under Part III Environmental Protection Act 1990.

-Pollution and information about pollution of the atmosphere Part IV of Control of Pollution Act 1974.

-Regulations issued under the Clean Air Act concerning the emission of grit and dust from furnaces.

-National Air Quality Strategy and related legislation in the Environment Act 1995.

-Matters to control emissions to atmosphere under Part I of the Health and Safety at Work etc Act 1974.

-Compliance with emission limits, volumes and quality objectives under Part I of the EPA 1990 where they exist.

6.3.3.9 Directions

The Secretary of State may issue directions to the Council as to the conditions it must or must not include on authorisations.

6.3.3.10 Consideration by Officers

In considering the application and producing the authorisation, officers of the Council will have regard to the process specific guidance and general guidance notes. To ensure conditions are properly targeted, the points in the process that minimise or prevent the release of pollutants will be identified and specific conditions will be drafted to ensure they are appropriately controlled and that the operator can demonstrate that they are being controlled. Other reasons for the placing of specific conditions is to provide base-line data upon which future decisions can be made and to allow the operator to demonstrate compliance with specific emission criteria to the Council and the public.

Specific conditions must meet the tests of enforceability, clarity for industry and the public, relevance to air pollution control over the process and workability. The burden is on the operator to submit accurate, comprehensive information that reflects the process to permit the Council to achieve this.

6.3.3.11 Upgrading

Where a new type of industry is brought within the scope of the local authority air pollution control there is normally a period during which the process must upgrade to meet the full standards expected of the industry sector. Following application an authorisation will be issued to control the process with a requirement for the submission of a program detailing the measures and the time-scales over which the process will implement the full standard. The Council will liaise with the operator to determine what is required to bring the process up to the standard required by the law. As with applications the Council expects the operator to employ competent persons to assist in the upgrade process, particularly where it involves complex or voluminous work. In determining what is necessary to upgrade to the full standard the Council will have regard to the matters referred to above in producing conditions.

There may be instances where the process must upgrade before the deadlines specified in the process specific guidance. The following is not exhaustive but the reasons include where there is justified complaint against the process or where repetitive breaches of the authorisation occur due to faulty or outdated equipment. Where deviation from published time-scales is required by the Council, the operator will be informed of the reasons and given the opportunity to respond. This will be considered when determining the matter.

The operator may wish to deviate from the examples of BATNEEC given in the process specific guidance. The reasons for this must be clearly stated and will then be considered by the Council. However, in only exceptional circumstances will the Council permit deviation from the process specific guidance note.

6.3.3.12 Four Year Reviews

At least once every four years, the Council will review the conditions attached to an authorisation and, if necessary, amend them to reflect changes in the process specific guidance issued by central government or changes in the process. The review is normally triggered by:

- the issue of process guidance notes updated to reflect changes in technology, systems or practices.
- significant changes in the process that are notified to the Council by the operator or that are identified during regular officer visits.

In setting new authorisation conditions, the matters detailed above in drafting conditions will be considered, as will the principles outlined in the upgrading section above where appropriate.

6.3.3.13 Access to Information

The underlying principle is that information about prescribed processes is made freely available to the public.

The Council maintains a public register of information about processes subject to the air pollution control scheme. The information can be inspected free of charge during normal office hours and copies of documents on the public register are available for a charge that covers the reasonable costs borne by the Council for providing copies of information.

The information that is placed on the public register is in accordance with regulations and includes: a copy of the application for authorisation, a copy of the public advertisement, comments from the public, comments from statutory consultees, the authorisation. Notices served, the response of the operator to Notices, information submitted to fulfil the requirement of an authorisation condition, details of appeals, convictions and Directions from the Secretary of State about the process. Reports produced by the Council or other regulator about the process may also be placed on the register.

There are occasions where for reasons of **commercial confidentiality** or due to the **interests of national security**, or where a member of the **public making representation** as a result of a public advertisement wishes to have their details, including comments withheld, the information cannot be placed on the public register. Due to the nature and scale of the processes controlled by the Council, exclusion of information from the public register will be extremely unusual.

Where information is not placed on the public register the procedures, and in the case of operators, the standards expected, and the way in which they are enforced by the Council, are exactly the same as if the information had been placed on the public register. Exclusion of information from the public register is the only difference in the application of the scheme.

6.3.3.14 Information subject to commercial confidentiality

Request to exclude information from the public register on the grounds of commercial confidentiality must contain sufficient information giving precise reasons why the Council should do so. It must demonstrate that disclosure of information would negate or significantly diminish the commercial advantage over a competitor. Discrete enquiries may be made of other enforcement agencies to validate the request. The outcome of the application will be confirmed with the applicant.

The exclusion of information from the public register for reasons of commercial confidentiality is time limited. After four years the operator must apply for an extension of the exclusion. The Council will give the operator an opportunity to apply for an extension before it places information on the public register that had been previously excluded.

Regularly updated statements on compliance of a process with monitoring and emission limits where information has been excluded will be placed on the public register to assure the public and others that the obligations of the law are being complied with.

6.3.3.15 Information in the interests of national security

Information in the interest of national security is excluded in its entirety from the public register. Information can only be excluded on these grounds where the Secretary of State makes a Direction forcing the Council to do so. The Direction is also excluded from the public register.

6.3.3.16 Exclusion of information about public representation

A person making representation following a public advertisement may request that the details are withheld from the register. A statement that does not identify the person will be placed on the public register advising that the representation was received. The person's comments although they may be excluded from the public register will be considered and treated in the same way as any other person's response.

6.3.3.17 Removing Information from the public register

Information may be removed from the public register under certain circumstances. Information must be kept on a public register for a minimum of four years after it is superseded and may be removed after this period unless officers of the Council consider there would be benefit in retaining it, for example, where the process was the subject of substantial public attention or concern. Details of spent convictions will be removed in accordance with the Rehabilitation of Offenders Act 1974. In the case of someone who is fined or sentenced, the details of the conviction are removed after five years and where there is an absolute discharge, after a period of six months.

6.3.3.18 Inspections

The Council aims to inspect processes twice per year but in any event each process will receive at least one inspection per year. The frequency of inspection will depend upon the outcome of a risk assessment of the process. The inspection frequency of a particular process may vary as a result of, for example:

- As a result of complaint.
- Where confidence in the process, or its management, or both, by Council officers is low.
- Where the process is complex or substantial scale.
- The pollutant release from the process would affect a local community.

- As a result of new guidance concerning a pollutant that may be emitted from the process or the control techniques employed at the process.

The purpose of the inspection is to ensure the operator is complying with the authorisation and that the authorisation still adequately describes the process and provide an opportunity for the operator and the Council's staff to discuss issues related to the process. In addition to compliance inspections, inspections may be carried out for other purposes such as the four-year review.

6.3.3.19 Purpose and Methods of Enforcement

The purpose of enforcement is to ensure that preventative or remedial action is taken to protect the environment and human health or to secure compliance with an authorisation or the regulatory system. The need for enforcement may stem from a process not being authorised or from a breach of the conditions of an authorisation. Although the Council expects full voluntary compliance with Part I of the EPA 1990 it will not hesitate to use its enforcement powers where necessary.

The powers available include enforcement notices, where contravention can be prevented or needs to be remedied; prohibition notices, where there is an imminent risk of serious environmental damage or harm being caused; revocation of authorisation; variation of authorisation conditions; injunctions and the carrying out of remedial works. Where the Council has carried out remedial works, it will seek to recover the full costs incurred from those responsible.

Where a criminal offence has been committed, in addition to any other enforcement action, the Council will consider instituting a prosecution, administering a formal caution or issuing a warning.

6.3.3.20 Principles of Enforcement

Some incidents or breaches of authorisation cause or have the potential to cause serious environmental damage or harm to human health. Others may interfere with people's enjoyment or rights, or the Council's ability to carry out its activities. The Council's first response is to prevent harm to human health or the environment from occurring or continuing. The enforcement action taken by the Council will be proportionate to the risks posed to the environment and human health and to the seriousness of any breach of the law.

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 process poorly managed has potential for greater risk to the environment than a higher hazard process where proper control measures are in place.

6.3.3.21 Prosecution

(i) Purpose

The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing, to avoid a recurrence and to act as a deterrent to others. It follows that it may be appropriate to use prosecution in conjunction with other available enforcement tools, for example, a prohibition notice requiring the operation to stop until certain requirements are met. Where the circumstances warrant it, prosecution without prior warning, or recourse to alternative sanctions, will be pursued.

The Council recognises that the institution of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. Decisions about prosecution will take account of The Code for Crown Prosecutors.

(ii) Sufficiency of Evidence

A prosecution will not be commenced or continued by the Council unless it is satisfied that there is sufficient, admissible and reliable evidence that an offence has been committed and

that there is a realistic prospect of conviction. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious it may be. Where there is sufficient evidence, a prosecution will not be commenced or continued by the Council unless it is in the public interest to do so. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender.

(iii) Public Interest Factors

The Council will consider the following factors in deciding whether or not to prosecute:

environmental effect of the offence,
foreseeability of the offence or the circumstances leading to it,
intent of the offender, individually and/or corporately,
history of offending,
attitude of the offender,
deterrent effect of a prosecution, on the offender and others,
personal circumstances of the offender.

The factors are not exhaustive and those which apply will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Council will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

(iv) Companies and Individuals

Criminal proceedings will be taken against those persons responsible for the offence. Where a Company is involved, it will be usual practice to prosecute the Company where the offence resulted from the Company's activities. However, the Council will also consider any part played in the offence by the officers of the Company, including Directors, Managers and the Company Secretary. Action may also be taken against such officers (as well as the Company) where it can be shown that the offence was committed with their consent, was due to their neglect or they tacitly consented to the offence or the circumstances leading to it. In appropriate, exceptional cases, the Council will consider seeking disqualification of Directors under the Companies Act.

(v) Choice of Court

In cases of sufficient gravity, for example serious environmental damage over a wide area, where circumstances allow, consideration will be given to requesting the magistrates to refer the case to the Crown Court. The same factors as listed in paragraph 54 (above) will be used, with the additional consideration of the sentencing powers of the Magistrates' Court.

(vi) Penalties

The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Council will continue to raise the awareness of the courts to the gravity of many environmental offences and will encourage them to make full use of their powers. Examples of penalties presently available to the courts for certain environmental offences are:

- Magistrates' Court: up to six months imprisonment and/or £20,000 fine.
- Crown Court: up to five years imprisonment and/or an unlimited fine.

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

(vii) Presumption of Prosecution

Where there is sufficient evidence, the Council will normally prosecute in any of the following circumstances:

incidents or breaches which have significant consequences for the environment or human health or which have the potential for such consequences. The Council takes seriously such incidents or breaches.

carrying out operations without an authorisation. It is a pre-requisite to successful regulation that those required to be regulated come within the local authority air pollution control scheme.

excessive or persistent breaches of regulatory requirements in relation to the same authorisation.

failure to comply or to comply adequately with authorisation or Notice requirements. It is unacceptable to ignore or to fail to comply with the requirements of an authorisation, the requirement to be authorised and Notices. It is unfair to those who do take action to comply.

reckless disregard for management or quality standards. It is in the interests of all that irresponsible operators are brought into compliance or cease operations.

failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information. It is essential that lawful requests for information by the Council are promptly complied with and that accurate information is always supplied to enable informed regulation to be exercised.

obstruction of Council staff in carrying out their powers. The Council regards the obstruction of, or assaults on, its staff while lawfully carrying out their duties as a serious matter.

impersonating Council staff. The Council regards impersonation of staff, for example, in order to gain access to premises wrongfully, as a serious matter.

(viii) Alternatives to Prosecution

In cases where a prosecution is not the most appropriate course of action, the alternatives of a formal caution or warning will be considered, the choice depending on the factors referred to above. If a formal caution is considered appropriate the principles set down in Home Office Circular 18/1994 will be applied, including in the decision whether or not to issue a formal caution and in administering it.

A formal caution is the written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought. It deals quickly with less serious offences, diverts less serious offences away from the court and reduce the chances of repeat offences. It will be brought to the Court's attention if the offender is convicted of a subsequent offence.

A warning is a written notification that, in the Council's opinion, an offence has been committed. It will be recorded and may be referred to in subsequent proceedings. Where this may prove to be ineffective an enforcement Notice may be used in addition to, or instead of, a written warning.

As with a prosecution, additional enforcement mechanisms may also be used in conjunction with a formal caution or warning.

Where any business or individual believes that they have not been treated in accordance with the enforcement policy of the Council, they may contact the Head of Environmental Health Service and be given the opportunity of discussing the matter with the Environmental Protection Manager (Section Head). This is without prejudice to any formal appeal mechanism.

6.3.3.22 The Pollution Prevention and Control Act 1999

The Pollution Prevention and Control Act 1999 and regulations made under the Act have established a new legal regime for dealing with pollution from industry. From 1 April 2003 onwards, certain industrial installations in Reigate and Banstead will need to have their authorisations “transferred” to permits issued under the new legislation. The Council will be contacting operators of plant to arrange for this to be done. The principles outlined above will apply in the enforcement of the new legislation.

6.3.4 The Environmental Protection Act 1990 – Part IIA

The Environmental Protection Act 1990 as amended by the Environment Act 1995 and the Contaminated Land (England) Regulations 2000 require all local authorities to identify any contaminated land in their areas. Contaminated land is defined by the legislation as land which poses or has the potential to pose a “significant risk” of causing “significant harm” to human health or the environment, including watercourses.

Once any contaminated land has been identified by the Council, it is the responsibility of the “appropriate person”, the person who caused the contamination or knowingly permitted it to occur to clean up the contamination. If the polluter is not known or cannot be traced, the current owner or occupier of the land may be the appropriate person and may be legally responsible for its remediation. The Council is required to take responsibility for any sites where no one else can be found who is legally responsible for the land.

6.3.4.1 Informal action

Wherever possible the Council will seek a voluntary approach by the person responsible for any necessary remediation works to clean up contaminated land.

6.3.4.2 Remediation Notice

A Remediation Notice to secure the effective remediation of contaminated land may be served:

- where the appropriate remediation is not being carried out, despite an informal approach having been agreed with the person responsible;
- where agreement cannot be reached with the person responsible on the remediation actions required;

Except where there is imminent danger of serious harm or serious pollution of controlled waters by contaminated land, Remediation Notices will not be served without giving at least 3 months notice to the appropriate person that the land is contaminated.

Where more than one appropriate person is associated with a contaminated site, the Council will determine the responsibility for remediation work and apportion liability to reflect the amount of contamination that each appropriate person may have caused. Liability will be considered on a site-specific basis and in accordance with the conditions set out in Government guidance to local authorities. All information concerning exclusion from and apportionment of liability will be given to the appropriate person.

6.3.4.3 Prosecution and Cautions

In addition to the general situations outlined in Part One of this enforcement policy, prosecution or a caution may be considered in the following cases:

- failure to comply with a Remediation Notice

Where the Council is of the opinion that proceedings for an offence would not provide an effective remedy against a person who has failed to comply with the requirements of a

Remediation Notice, it may take proceedings in the High Court for the purpose of securing compliance with the notice.

6.3.5 Environmental Protection Act 1990 - Part III

6.3.5.1 Introduction

Statutory nuisance provisions are set out in Part III of the Environmental Protection Act 1990. Statutory nuisances pertain to how the activities on one piece of land affect another. Considerations of statutory nuisance (unlike commonlaw) are based on health effects. The Council's role is to balance the rights of the person who is complaining, against those of the person who is the subject of the complaint. Following an investigation, the Council may intervene, requiring that an activity upon, or the use of land is stopped or controlled so as not to cause unreasonable interference with the use or enjoyment of other land. Failure to observe this may result in the Council taking action to achieve a satisfactory remedy or instigating legal proceedings against the person responsible for the nuisance.

The Act specifies a range of matters that may be regarded as a statutory nuisance. These include:

- Smoke
This includes smoke from any source for example, bonfires and chimneys. Smoke from transportation and arising from waste disposal activities that should be licensed cannot normally be controlled through this mechanism.
- Odour
Odour must, according to the statute, arise from industrial, trade or business premises.
- Fumes
- Noise
Noise may arise on residential or industrial and commercial premises. Through the Noise and Statutory Nuisance 1993, the emission of noise is extended to controlling some of the emissions in streets, in particular from a vehicle, machinery or equipment. Other forms of noise are not included for example transportation noise.

The law decrees that statutory nuisance is more than annoyance. Neither should statutory nuisance be confused with the term nuisance as it is used in every day language, the two phrases having very different meanings. Officers of the Council, in determining if a matter appears to be a statutory nuisance will consider, amongst other things, the court precedents in reaching a decision on a case. There are many factors that need to be taken into consideration as to whether an event or sequence of events constitutes a statutory nuisance, these include, but not exclusively the following principles:

- The nature of the area
- The frequency of an event
- The effect or persistence of the event
- The sensitivity of the complainant. The law does not permit action to be taken where a person is sensitive due to;
 - unreasonable expectations of the person about the quality of an area,
 - the standard of health of an individual,
 - a persons mode of living.
- There being a health implication to the effect of the matter

6.3.5.2 Most Effective Solution

The Council recognises that other agencies, through their own statutory duties may prevent or abate matters that fall within the above categories. The Council's officers will work in

partnership with these other agencies to secure the most effective solution to complaint. In particular the Council recognises the role of the Environment Agency in controlling smoke, dust and noise from licensed waste disposal operations and the improper disposal of trade waste.

Where possible the Council will seek to control burning at demolition sites by specifying conditions of demolition under the of the Building Act 1984.

Before considering taking any action under Part III of the Environmental Protection Act 1990, a person making a complaint will normally be advised to contact the person who is affecting them and to try and resolve the matter informally. In certain circumstances this may be inappropriate for example:

- where the matter appears to present an imminent risk to the health;
- where there is a history of similar incidents.

6.3.5.3 Conduct of an Investigation

The Council is under a duty to make reasonable investigations into complaints that it receives from the inhabitants of the borough. The nature and course of an investigation is dependent upon the circumstances of each complaint and the nature of the interference with the neighbouring land. The common tools that may be used to investigate complaints include diary record sheets kept by the person making the complaint, officer visits interviews, audio or visual recordings and enquiries of others.

As part of the investigation it is expected that the complainant will provide assistance to the investigating officers by providing access to the affected land and in collecting evidence, for example by completing record sheets or activating and deactivating monitoring equipment. Advice and guidance will be provided to the complainant on any investigative methods employed.

All evidence that is collected must satisfy a court that it is admissible, reliable and is a true representation of the facts of the case. Evidence that does not satisfy these requirements will be disregarded in consideration of the case.

In some cases, enquiries will be made of and co-operation sought from, other agencies who are likely to hold information that may assist resolve a case, for example with vehicle and house audible intruder alarms. The Police have access to information that may assist to identify the person who can stop an alarm from sounding.

6.3.5.4 Where Nuisance is Not Proven

Upon completion of the investigation a decision will be made as to whether a statutory nuisance exists. Where it is not proven, information will be provided on the mediation service if it appears appropriate and the section 82 procedure for individual action.

6.3.5.5 Remediating Nuisance

(1) The Abatement Notice

Where a statutory nuisance exists, has ceased and is likely to recur or is likely to occur, the Council shall serve an abatement notice to require the person responsible to remedy the statutory nuisance or prevent it's occurrence or recurrence.

In the preceding paragraph likely means more than a suspicion. Were a notice served on the basis that an event is likely to cause a statutory nuisance then the Council must be prepared and able to convince a court that an event would do so. The Council will have regard to the merits of each case which will include a consideration of previous conduct by the person who might receive the notice, the quality of the evidence that is presented and assuming that the activity proceeded, whether it would constitute a statutory nuisance having regard to the factors referred to above. Hearsay and unfounded accusations will not generally be acted upon.

In connection with statutory nuisances arising on premises, the abatement notice is served upon the person responsible for the statutory nuisance or in some circumstances the owner or occupier..

Where a statutory noise nuisance arises in the street from vehicles, machinery and equipment, then an abatement notice can be served on the registered keeper of the vehicle, or the driver. Where plant and machinery are involved the abatement notice is normally served on the operator.

The abatement notice will state what is expected of the recipient and the time-scales in which the notice including any works must be complied with. It will also give details of how to make a formal appeal to the appropriate Court.

The period in which the notice must be complied with will vary with each case. The Council through its officers expertise will set reasonable time-scales for compliance. Factors that affect the officers' decision making in relation to time-scales will include parameters such as the following:

- Ease of solution: A shorter compliance period is likely to be specified where the action required to abate the statutory nuisance is simple, for example the reduction of the volume of a stereo in noise cases. Conversely where matters are complex, for example an engineering solution needs to be designed, fabricated and commissioned, a longer period will be permitted.
- Effects are widespread: Where numerous premises are affected, time-scales for compliance are likely to be reduced.
- Effects upon health: If the effect of a statutory nuisance is likely to be injurious to health, the compliance period is likely to be reduced.
- Conduct of the person causing the nuisance: Where the person causing the statutory nuisance has knowledge of the effects upon others and has chosen not to take action to prevent these, time-scales are not likely to be reduced.

(2) Breach of Notice

Where a notice is not complied with the Council may either undertake whatever is necessary to secure compliance with the notice or instigate legal proceedings. Both options may proceed in parallel.

(3) Securing compliance with the notice

Where an abatement notice is breached, the Council may undertake works in default to abate the statutory nuisance or prevent its occurrence or recurrence. Where entry to land that is temporarily unoccupied is required to undertake works, a warrant will be obtained from the magistrates court. Warrants will also be sought where entry to land is unreasonably refused; or refusal is apprehended or application for entry would defeat the object of the entry.

In the case where works in default may be executed without entry to the structure of the building, for example, with a misfiring audible intruder alarm, a warrant will be obtained if one of the criteria in the previous paragraph is met. In this way the Council protects the rights of the individual who, if absent, cannot make representation concerning the potential damage to the property or trespass and privacy.

In the case of noise emitted from vehicles, machinery and equipment in the street, no warrant is required to effect entry or open them.

Following entry to premises, vehicles, machinery or equipment, they will be left at least as secure as they were prior to entry.

As well as undertaking works in default, it is possible for the Council, to enter premises under warrant and seize equipment for the purpose of abating a statutory noise nuisance. The Council will retain the equipment for 28 days or where the equipment is related to prosecution proceedings, until that matter has finally been decided by the courts.

(4) Prosecution Proceedings

In determining if a case should proceed to prosecution the Council will have regard to the matters contained in the code for crown prosecutors.

Following seizure and successful prosecution the Council may choose to apply for a forfeiture order. A forfeiture order denies the original owner any right over the equipment that was seized. In deciding whether to apply for a forfeiture order, officers will consider factors that include, the owners previous conduct, the circumstances surrounding the case, the value of the equipment, the financial and other effects upon the offender of it's removal and the effectiveness of this both as a deterrent to the offender and others, as well as a remedy.

(5) Cost Recovery

The Council will undertake to recover all reasonable costs that are incurred

- as a result of a prosecution following a breach of notice; and
- in all work undertaken to remedy the statutory nuisance; and
- for the storage of seized equipment; and
- for the disposal of equipment subject to a forfeiture order.

6.3.6 Licensing Act 2003

6.3.6.1 Introduction

The Licensing Act gave Local Authorities the responsibility as Licensing Authority for the sale and supply of alcohol regulated entertainment and late night refreshment. The Act also gave the power to 'Responsible Authorities' to make representations about, and request reviews of, Premises Licences and Club certificates

Environmental Protection is defined under Sec 13(4)(e) the Act as such a Responsible Authority

The Act specifies the matters to which representations and requests for reviews can be made. These are defined under Sec 4(2) as the Licensing Objectives and are

- The prevention of crime and disorder
- Public Safety
- The prevention of public nuisance
- The protection of children from harm

6.3.6.2 Representations

Environmental Protection as a 'responsible Authority' may make representations if they feel that one or more of the Licensing objectives would be breached (This is most likely to be the prevention of Public Nuisance). A sub committee will hear such representations. If there are any agreed conditions during mediation with the applicant these will need to be confirmed by the sub committee

6.3.6.3 Review of Licences and Club Certificates

Section 51–53 of the Act deal with reviews for premises licences and 87-89 for the review of club certificates.

The processes for both is the same and gives the responsible Authorities the right to request reviews (Sections 51(1) and 87(1)(b)).

(Sec 51(1) Where a premises licence has effect, an interested party or a responsible authority may apply to the relevant licensing authority for a review of the licence.

Sec 87(1) Where a club holds a club premises certificate-

- (a) an interested party,
- (b) a responsible authority, or
- (c) a member of the club,

may apply to the relevant licensing authority for a review of the certificate.)

Any application that does not relate to the one or more of the licensing objectives must be rejected by the licensing authority as not relevant.

Therefore legally if a premise holds a Premises Licence or a club holds a Club Premises certificate a review can be applied for but the grounds for the review must relate to the Licensing Objectives However consideration should be given to the guidance issued under sec 182 by the Secretary of State (see below)

6.3.6.4 Guidance on Reviews

The Department of Culture Media and Sport has issued guidance under Sec 182 of the Act paragraphs 5.99 -5.111 deal with Reviews the following extracts are of particular note

- **5.100 At any stage, following the grant of a premises licence, a responsible authority,, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives. Officers of the local authority who are specified as responsible authorities under the 2003 Act, such as environmental health officers, may however request reviews on any matter which relates to the promotion of one or more of the licensing objectives.**
- **5.101 Representations made by a department of the local authority which is a responsible authority should be treated by the licensing authority in precisely the same way that they would treat representations made by any other body or individual.**
- **5.102 In every case, the representation must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right.....**
- **5.103 It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims. It is therefore equally important that reviews are not used to drive a wedge between these groups in a way that would undermine the benefits of cooperation. It would therefore be good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. It is expected that a failure to respond to such warnings would lead to a decision to request a review.**
- **5.105 It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, the Secretary of State recommends that more than one review originating from an**

interested party should not be permitted within a period of twelve months on similar grounds save in compelling circumstances or where it arises following a closure order.

- 5.108 *The licensing authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where responsible authorities like the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to concerns, licensing authorities should not merely repeat that approach.*

6.3.6.5 Regulations that apply to Reviews

Regulations 16 and 20 of the **Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005** require applications to be in a prescribed form and contain specific information.

Regulation 29 requires that copies of applications be sent to the Licence holder and all responsible authorities.

If the Licensing Authority accepts the application as ‘relevant ‘ then a hearing must be held and the **Licensing Act 2003 (Hearings) Regulations 2005** will apply to this

6.3.6.6 Outcomes of Reviews Relating to Premises Licence

Sec 52(3) The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (**if any**) as it considers necessary for the promotion of the licensing objectives.

Sec 52 (4) The steps are

- (a) to **modify the conditions** of the licence;
- (b) to **exclude a licensable activity** from the scope of the licence;
- (c) to **remove the designated premises supervisor**;
- (d) to **suspend the licence** for a period not exceeding three months;
- (e) to **revoke** the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition added.

Relating to Club Premises certificates

Sec 88(3) The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (**if any**) as it considers necessary for the promotion of the licensing objectives.

Sec 52 (4) The steps are

- (a) to **modify the conditions** of the certificate;
- (b) to **exclude a qualifying club activity** from the scope of the licence;
- (d) to **suspend the licence** for a period not exceeding three months;
- (e) to **revoke** the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition added.

6.3.6.6 Offences

Part 7 of the Licensing Act 2003 specifies the offences under the act these are

- 136 Unauthorised licensable activities
- 137 Exposing alcohol for unauthorised sale
- 138 Keeping alcohol on premises for unauthorised sale etc.
- 139 Defence of due diligence
- 140 Allowing disorderly conduct on licensed premises etc.
- 141 Sale of alcohol to a person who is drunk
- 142 Obtaining alcohol for a person who is drunk
- 143 Failure to leave licensed premises etc.
- 144 Keeping of smuggled goods
- 145 Unaccompanied children prohibited from certain premises
- 146 Sale of alcohol to children
- 147 Allowing the sale of alcohol to children
- 148 Sale of liqueur confectionery to children under 16
- 149 Purchase of alcohol by or on behalf of children
- 150 Consumption of alcohol by children
- 151 Delivering alcohol to children
- 152 Sending a child to obtain alcohol
- 153 Prohibition of unsupervised sales by children
- 154 Enforcement role for weights and measures authorities
- 155 Confiscation of sealed containers of alcohol
- 156 Prohibition on sale of alcohol on moving vehicles
- 157 Power to prohibit sale of alcohol on trains
- 158 False statements made for the purposes of this Act

Dependant on the particular offence proceedings can be instituted by

- The Licensing Authority
- DPP
- Trading Standards
- The Police

6.3.6.8 Unauthorised licensable activities

The main offence under sec 136 of Unauthorised licensable activities is a strict liability offence (subject to the defence of due diligence under sec139)

Sec136 Unauthorised licensable activities

(1) A person commits an offence if-

(a) **he carries on or attempts to carry on a licensable activity** on or from any premises otherwise than under and in accordance with an authorisation, or

(b) **he knowingly allows** a licensable activity to be so carried on.

(2) Where the licensable activity in question is the provision of regulated entertainment, **a person does not commit an offence under this section if his only involvement in the provision of the entertainment is** that he-

(a) performs in a play

(b) participates as a sportsman in an indoor sporting event,

- (c) boxes or wrestles in a boxing or wrestling entertainment,
- (d) performs live music,
- (e) plays recorded music,
- (f) performs dance, or
- (g) does something coming within paragraph 2(1)(h) of Schedule 1 (entertainment similar to music, dance, etc.).

(3) Subsection (2) is to be construed in accordance with Part 3 of Schedule 1

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term **not exceeding six months or to a fine not exceeding £20,000, or to both.**

(5) In this Part "authorisation" means-

- (a) a premises licence,**
- (b) a club premises certificate, or**
- (c) a temporary event notice in respect of which the conditions of section 98(2) to (4) are satisfied.**

Sec139 Defence of due diligence

(1) In proceedings against a person for an offence to which subsection (2) applies, **it is a defence** that-

- (a) his act was due to a mistake, or to reliance on information given to him, or to an act or omission by another person, or to some other cause beyond his control, and**
- (b) he took all reasonable precautions and exercised all due diligence to avoid committing the offence.**

(2) This subsection applies to an offence under-

- (a) section 136(1)(a) (carrying on unauthorised licensable activity),
- (b) section 137 (exposing alcohol for unauthorised sale), or
- (c) section 138 (keeping alcohol on premises for unauthorised sale).

6.4 General

6.4.1 Working with Other Agencies

Liaison with other agencies such as

- the Police
- the Reigate and Banstead Housing Trust
- the Environment Agency
- Dept Environment Food and Rural Affairs
- Government Office for the South East
- Other Local Authorities
- Other Council Departments

will be carried out whenever appropriate.

**Environmental Health and Housing Services
Enforcement Policy
Prosecution / Formal Caution Verification Scoring Scheme**

Appendix 1

Criterion	Score	Total
*Risk to Health or Safety		
No risk to health safety or animal welfare	1	
Risk to health or safety possible, but unlikely	10	
Cause minor ill effect, potential for more serious effect in more vulnerable groups or Significant breaches of legislation/failure to return requisition	15	
Identified or potential serious risk to health safety or animal welfare	20	
*Previous History		
No previous history with the Local Authority	0	
Have reacted to previous advice, change usually effective	4	
Do not react to advice, change not always effective, confidence in management is moderate	8	
Compliance with advice is low, confidence in management/licensee is low	12	
Failure to respond to previous advice	16	
*Ability of Witnesses		
Witness would rather not attend court but might be persuaded	1	
Witness would require witness summons to attend	2	
Witness willing to attend but may not be effective under cross examination	3	
Witness willing to attend and will be effective	4	
*Willingness to Prevent Recurrence		
Steps taken to prevent recurrence, confidence that these steps will be effective	2	
Steps taken to prevent recurrence, doubts that these will be effective	4	
Steps promised to prevent recurrence but confidence is low that promise will be fulfilled	6	
Not willing to prevent recurrence, no confidence that the person/proprietor/licensee is capable of preventing recurrence	8	
*Probable Public Benefit		
Penalty / publicity will have very limited value	1	
Penalty / publicity will ensure improvement in the case in question	2	
Penalty / publicity will prevent other similar offences	3	
*Explanation Offered by Defendant		
Explanation satisfactory, factors appear to have been beyond defendant's control	3	
Explanation shows that prevention was possible but that necessary steps had not been taken	6	
Explanation poor, blatant failure to control circumstances leading to offence	9	
No Explanation offered, wilful disregard for public health	12	
Total Score		
*Officer to apply one score from each section.		
The total score will determine the course of action to be taken.		
Decision	Score	
Take action within the Policy	0-23	
Proceed to Prosecution / Formal Caution	24-63	

Recommendation of Investigating Officer

***Informal / Formal Action**

Signed Date

Decision of Section Head

***Agree / Disagree**

Signed Date

***Delete as applicable**

Environmental Health and Housing Services Enforcement Policy

Appendix 2

Prosecute / Formal Caution Decision Matrix

The decision to prosecute or to offer a formal caution should be made using the following two-stage process.

Stage 1

Criterion	Prosecute	Offer Caution
Is the offence serious?	Yes	No
Is the offender old or infirm?	No	Yes
Has the offender a previous history of offending?	Yes	No
Is the offender willing to prevent a recurrence of the problem?	No	Yes
Would prosecution be in the public interest?	Yes	No
Has the offender offered a reasonable explanation?	No	Yes

Ring the appropriate response to each criterion and total the number of rings in each column. The total number of rings will influence the decision.

Stage 2

Is the use of a formal caution appropriate given the circumstances of the case?	No	Yes
---	----	-----

Recommendation of Investigating Officer

Formal Caution / Prosecute*

Signed Date

Decision of Section Head

Agree / Disagree*

Signed Date

*Delete as applicable

**Criteria for selection for investigation of RIDDOR notifications
(except gas incidents reported under Reg 6(1) & 6(2))**

Where an incident is subject to notification by the quickest practicable means i.e. all dangerous occurrences, diseases and incidents resulting in fatalities and major injuries, whether reportable or not, the selection criteria in section A&B will be applied. All incidents that met the selection criteria of sections A or B will be selected for investigation unless any of the disqualifications apply.

If there is an accident connected with work (including an act of physical violence) which results in an injured persons being absent from work or unable to do the full range of their normal duties for more than three days, the selection criteria in sections B and C will apply, taking other preventive work i.e. routine inspections, into account.

Where there is a recent history of similar events then this could influence a decision to investigate in opposing ways:

- That the previous similar incident was investigated, no enforcement action was appropriate, as this notification adds nothing new an investigation will not be undertaken.
- The notification appears to indicate that the duty holder has not taken adequate action in response to the investigation

Reports of incidents may also be selected for investigation because they contribute to national priority programmes e.g. HELA Priorities.

Whether an incident is selected for investigation or not the decision will be recorded.

Where an accident meets the criteria but cannot be investigated due to inadequate resources/other priorities the Head of Environmental Health Services (HEHS) will be advised. The HEHS will either agree or overrule the decision not to investigate.

Where an investigation is impractical or there are no practicable precautions available for risk reduction the papers will be filed and retained for at least three years. There is no requirement for further consideration by the HEHS.

(A) Defined circumstances

Fatalities

1. All fatalities as a result of an accident arising out of or in connection with work activities. This specifically excludes suicides and deaths from natural causes or adult trespass.

Major Injuries

2. The following RIDDOR-defined major injuries to all persons, including non-employees, irrespective of cause:

- all amputations of digit(s) past the first joint;
- amputation of hand/arm or foot/leg;
- serious multiple fractures (more than one bone, not including wrist or ankle);
- crush injuries leading to internal organ damage (e.g. ruptured spleen);
- head injuries involving loss of consciousness;
- burns and scalds greater than 10% of the surface area of the body;
- permanent blinding of one or both eyes;
- any degree of scalping;
- asphyxiations.

3. All incidents which result in a RIDDOR-defined major injury in the following categories:
- workplace transport incidents;
 - electrical incidents;
 - falls from a height of greater than 2m;
 - any incident which arose out of working in a confined space.

Diseases

4. All reports of cases of disease that meet the criteria of reportability under RIDDOR, except those arising from circumstances/situations which have already been investigated.

(B) Circumstances requiring judgement as to seriousness

Public concern

1. All incidents likely to give rise to serious public concern. This reflects the views of the public at large not just those of an individual. Give particular consideration to incidents involving children, vulnerable adults, and multiple casualties where the outcome or potential outcome or breach is serious.

Breach of health and safety law

2. Any incident where there is likely to have been a serious breach of health and safety law. Note: A serious breach of the law is one where, in accordance with HSE's Enforcement Management Model (EMM), the national enforcement expectation would determine a notice or a prosecution. This model is currently being tested for use by LAs in the future.

(C) Circumstances allowing discretionary selection

1. Any incident where the investigation contributes to an HSC Priority Programme e.g. Manual Handling.
2. Any incident which involves new process or plant which could enhance knowledge.
3. Training of inspectors.

Disqualifying criteria

4. Consider the following circumstances in relation to incidents notifiable by quickest practicable means and diseases:

- inadequate resources due to other priorities - in this circumstance the incident must be referred to the HEHS.
- impracticability of investigation, e.g. unavailability of witnesses or evidence or disproportionate effort would be required.
- no reasonably practicable precautions available for risk reduction.

Approved Amendments to the Environmental Health and Housing Services Enforcement Policy

Amendment Number	Approved By	Date Approved	Parts Amended	Date Amended	Amended By
1	Ian Tucker	12/5/2003	1.1,1.6,3.1,3.2,3.4,3.5,3.7, 4.4,5.1,6.3.5.	12/5/2003	Peter Mott
2	Sue Ash	30/6/2004	5.7.4.2	1/7/2004	Peter Mott
3	Ian Tucker	30/3/06	1.2,1.4,1.6,1.8,1.10,2.6,2.7, 2.8,3.2, 3.4,3.7,3.8,4.2,4.3,4.4,4.5, 6.3	19/04/2006	Peter Mott
4	Ian Tucker	30/3/2007.	4.2.2,4.2.3	30/03/2007	Peter Mott
5	Kevin Hetherington	28/6/2007	Whole of Part 5	3/07/2007.	Peter Mott Peter Mott
6	Ian Tucker	20/4/2008	Parts relating to Cautions	28/4/2008	
7	Ian Tucker	11/11/2008	Insets into part 1 Relations to RES Act	18/11/2008	Peter Mott
8	Kevin Hetherington	21/04/2010	Part 5 amendments to Grants information ;change of officer titles and grammatical corrections	04/06/2010	Peter Mott