



EAST RIDING
OF YORKSHIRE COUNCIL

PUBLIC PROTECTION ENFORCEMENT POLICY

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| Lead Directorate and service: | <u>Environment and Neighbourhood Services</u> Housing and Public Protection |
| Effective Date: | September 2015 |
| Date Reviewed: | |
| Date Due for Review: | September 2017 |
| Contact Officer: | Paul Abbott , Public Protection Group Manager |
| Contact Number: | 01482 396171 |
| Approved By: | The Council |

Introduction

This document is the enforcement policy for East Riding of Yorkshire Council's Public Protection Services. It sets out the key principles under which officers will seek to achieve compliance with the legislation enforced by these services. It will help to promote efficient and effective approaches to regulatory enforcement, which improve regulatory outcomes without imposing unnecessary burdens. In carrying out their duties, officers will adhere to the principles of good enforcement set out in the 'Regulators Code' and will have regard to or follow as necessary any relevant advice or guidance issued by appropriate authorities and other relevant corporate policies.

This policy supports the Council's corporate priorities of Safer Communities; Valuing Our Environment; Supporting Vulnerable People and A Well Managed Authority. This policy will be evaluated and reviewed biannually or in response to major legislative changes.

The policy applies to individuals and businesses.

Purposes

The main purposes of the Public Protection services are to protect public health, regulate the health safety and welfare of people at work, maintain a fair and safe trading environment for consumers and businesses, the appropriate issuing of licences, help reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in the East Riding of Yorkshire and to protect and improve the environment. We recognise that effective and well-targeted regulation is essential in achieving this. The legislation which this Policy is intended to apply is set out in the Annex.

Policy Statement

Public Protection will ensure legal compliance by:

- Helping and encouraging businesses and individuals to understand and comply with the law.
- By undertaking a risk based, intelligence led and graduated approach to enforcement.
- Responding proportionately to breaches of the law as outlined below.

Your Questions Answered:

1. When you are enforcing the law you cannot look at everything. How do you decide what you will look at?

We will allocate our resources where they will be most effective by assessing the risks due to non-compliance with the law. The risk factors include:

- The potential impact on residents, consumers and business in failing to meet legal requirements.
- The likelihood of non-compliance taking into account matters such as the past history, the systems the business has in place, management competence and willingness to comply.
- We may also respond to complaints and other sources of intelligence.

2. Who will visit premises?

- Authorised officers have the right to enter and inspect premises used for business purposes at all reasonable hours. This includes the right to demand and inspect documents. They do not have to make an appointment and will usually visit without notice.
- Authorised officers will also visit residential premises. Where necessary officers will obtain a warrant of entry from a Magistrate in order to ensure effective entry. Officers may also be accompanied by other enforcement agencies such as the Police where required.

3. What will they look for?

- Officers will concentrate on priority topics but will also deal with any other matters of evident concern when carrying out inspections and investigations.
- They will look for breaches of the law by inspecting the premises, observing activities and examining documentation and interviewing proprietors, managers and staff.
- They will assess the effectiveness of management in identifying hazards and in controlling the risks arising from activities.
- They will look for bad practices and provide advice and guidance on best practice.

4. How often will a business be visited?

- The frequency of visits will normally depend upon the potential risk posed by a business and/or its previous record.
- Other visits may occur as result of a complaint, intelligence or as part of a special project/survey. Receipt of a complaint will not automatically result in an investigation. Prioritisation criteria exist to target resources appropriately

5. What can I expect from the Officer?

- To be shown identification.
- To be treated courteously.

- To be able to discuss the inspection findings and to receive advice and guidance.
- To receive a report of the inspection detailing any breaches of the law, with a clear distinction being made between recommendations and any action necessary to comply with the law.
- To be given an appropriate timescale to take any action necessary to comply with the law.
- To be informed of any likely follow-up action.
- To be allowed to discuss any relevant circumstances before any formal enforcement action is taken, unless immediate action is considered by officers to be required.
- To be given reasons for immediate action at the time it is taken and to receive written confirmation within 10 working days.

In return we expect our officers to be treated with respect in working co-operatively with businesses and individuals.

6. What powers do Officers have and what action will they take if they find a breach of legislation?

- Officers can take samples and photographs and can ask questions, inspect records, and seize goods and documents. You must not obstruct these actions.
- Officers also have power to initiate test purchases for example, to ascertain if a business is selling products to under-age minors.

7. What action will they take if they find a breach of legislation?

Each case will be assessed on its merits; action taken will be proportionate and will not impose unnecessary burdens. A stepped or graduated approach will normally be taken. If breaches of the relevant legislation are found or conditions are found to be unsatisfactory, then one or more of the following actions could result, depending on officers' assessment of the situation.

(a) Informal Action

When?

- When there is no serious breach of legislation and/or when there is no actual damage to public health or safety or the environment.

How?

- By offering targeted, practical verbal and written advice and guidance.
- By giving verbal warnings, instructions and requests for action.
- By sending informal letters which include detailed remedial actions.

(b) Formal Enforcement Action

Formal enforcement action is likely to result where businesses or individuals deliberately, recklessly or persistently breach the law or licensing policies, or where the breach has caused or is likely to cause serious damage to public or consumer interests, or the environment. This does not exclude formal

enforcement action in other circumstances should it be considered appropriate. We will as a matter of principle consult with the Primary or Home Authority of a business before taking any formal enforcement action unless an issue is urgent.

Formal enforcement action includes the following:

(i) Service of an Improvement Notice

When?

When, in an inspector's opinion, legislation has been contravened and:

- There is a lack of confidence in management, or
- There is history of non-compliance with informal action, or
- Where conditions are serious and deteriorating and a prosecution may follow.

A Notice will specify what is wrong, what remedial action is necessary and give an appropriate timescale to take any action to comply with the law. It will also identify the necessary appeals procedure. Failure to comply with an Improvement Notice is a serious offence and is likely to lead to prosecution.

(ii) Service of a Prohibition Notice

When?

When, in an inspector's opinion there is a risk of serious personal injury or imminent risk to health.

These will specify what matters give rise to risk, what legislation has been contravened if any, and direct that the activity shall cease until the risk is removed. If the risk is imminent the Notice will take immediate effect and stop the activity at once. If not, for some health and safety and housing issues, the Prohibition Notice may be 'deferred' or 'suspended', stating that the activity must be stopped within a specified time or following a specified event. It will also identify the necessary appeals procedure.

(iii) Service of Any Other form of Statutory Notice

When?

When any legislation enforced by East Riding of Yorkshire Council permits or requires such service, which may be only to seek information.

Failure to comply with such a notice is a serious offence and is likely to lead to prosecution. Works may be carried out where a formal notice has not been complied with and the costs of such works recovered from the recipient of the notice

(iv) Alternative Enforcement Actions (such as Enterprise Act Undertakings)

When?

When permitted by statute certain legislation we enforce now enables a route for achieving compliance through the civil courts. This will normally involve a business or individual giving a written formal undertaking to either East Riding of Yorkshire Council or the County Court that they will stop a certain course of conduct. Any future breach of such an undertaking would be taken extremely seriously and may be considered as contempt of Court.

(v) Service of a Fixed Penalty Notice

When?

Only when legislation permits and has been breached. For example smoke free legislation dog fouling, littering, underage sales. These will detail the exact circumstances of the offence, and provide information regarding payments or how to request a court hearing.

(vi) Simple caution

When?

When conditions for prosecution are fulfilled, but:

- An immediate prosecution is not considered to be in the public interest, and
- The person admits the offence, and is prepared to accept a simple caution

(vii) Prosecution

When?

When, in the officer's opinion, an offence has been committed and there is sufficient evidence to initiate a prosecution, consideration will be given in addition to the Code for Crown Prosecutors to any other factors deemed necessary. These factors may include for example:

- The seriousness of the alleged offence.
- The history of the business or individual, including previous warnings.
- The willingness of the business or individual to prevent a recurrence of the problem and to co-operate with officers.

The final decision to prosecute offenders rests with the Head of East Riding of Yorkshire Council Legal Services, who will consider the policies and procedures in the Regulatory Compliance Code before giving authorisation to proceed with a formal prosecution.

(viii) Licensing Actions

When?

Some activities are licenced by the Council. Where there is evidence of a breach of licensing policy the issue may be dealt with either by specific functions delegated to officers or may be referred to the relevant committee of the Council in line with the provisions of the relevant policy.

8. Is there anything else you will take into consideration before taking enforcement action?

We will consider the impact that our regulatory activities may have on businesses or individuals, including consideration of costs, effectiveness and perceptions of fairness. References to costs and benefits include economic, social and environmental costs and benefits.

9. Are there any cases where this Enforcement Policy may not be followed?

This Policy does not purport to deal with all circumstances of all cases which may arise.

Any departure from this policy will be fully considered by the Head of Service before a final decision is taken unless there is a risk of injury or to health is likely to occur due to a delay in any decision being made. In cases of emergency or where any exceptional conditions prevail, the Head of Service may suspend any part of this policy where necessary to achieve the smooth running of the service and/or where there is risk of injury or to health of employees or any members of the public.

10. Who should I contact if I have questions about this policy?

The Council is always willing to listen to representations about its Policy from businesses, individuals and from consumer interest groups. Anyone wishing to make any such representations should contact the Public Protection Group Manager telephone 01482 887700.

Equalities

The East Riding of Yorkshire Council is committed to fulfilling its role with regard to the enforcement of legislation without discrimination in terms of colour, culture or ethnic origin, nationality, religion or belief, gender, disability, age, sexuality, geographical location or any other status. *Reference needed for the completion of an Equality Impact Assessment when completed*

Human Rights

The Council will at all times recognise and respond to its legal obligations with regard to equalities and the Human Rights Act 1998 in dealing with the enforcement of legislation.

Comments and Contacts

If you have any concerns regarding the actions of an officer in relation to your business please raise it with that officer in the first instance, and if you are not satisfied with the response contact the officer's manager

Service Specific Information

Some services are required to take into account other considerations when making enforcement decisions. These are outlined below.

Licensing

The Council has produced specific licensing policies

Health and Safety at Work

When enforcing the provisions of the Health and Safety at Work Etc Act 1974, the Council is required to follow the enforcement policy of the Health and Safety Executive (HSE). The National Local Authority Enforcement Code is given legal effect as HSE Guidance under S18 of the Act and as such the Council is duty bound to adhere to it. The code sets out the principles that the Council should follow to ensure a consistent, proportionate and targeted approach to regulation based on risk

Aim

The aim of the Council's Enforcement Policy with respect to health, safety and welfare is to ensure that duty holders manage and control risks effectively thus preventing harm. In particular our policy 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 in the circumstances set out later in this policy.

The Council believes in firm but fair enforcement of health and safety law in line with HSE's Enforcement Policy Statement (EPS). This is informed by the principles of proportionality in applying the law and securing compliance; consistency of approach, targeting of enforcement action, transparency about how we operate and what those regulated may expect, and accountability for our actions. These principles will apply both to enforcement in particular cases and to our management of enforcement activities as a whole

Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be appropriate, or to assist such claims.

Where circumstances warrant it and the evidence to support a case is available we will prosecute without prior warning or recourse to alternative sanctions.

Some circumstances may result in immediate prosecution such as:

- death was a result of a breach of the legislation;
- 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;
- a duty holders 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.

We will actively consider the management chain and the role played by individual directors and managers and take action against them where an inspection or investigation

reveals that an offence was committed with their consent or connivance or as a result of their neglect. Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.

As with prosecution, we will use discretion in deciding whether incidents, complaints or cases of ill health should be investigated. Indicative targets related to level of investigation are specified in the HSE Business plan approved by Central Government.

The Health and Safety Executive Board's priorities are used to target our activities and resources via our Health & Safety Regulatory Services Section Service Plan. To maintain a proportionate response most resources available for investigation will be devoted to the more serious circumstances. We will carry out a site investigation of a reportable work-related death, unless there are specific reasons for not doing so.

Annex

Major areas of legislation to which this policy is applicable, also includes all regulations, orders and byelaws made under this legislation (this list is not exhaustive)

Animal Health Act 1981
Animal Welfare Act 2006
Clean Air Act 1993
Clean Neighbourhoods and Environment Act 2005
Consumer Credit Act 1974
Consumer Protection Act 1987
Enterprise Act 2002
Environmental Protection Act 1990
Food Safety Act 1990
Health Act 2006
Health and Safety at Work Etc Act 1974
Housing Act 2004
Housing Act 1985
Pollution Prevention and Control Act 1999
Protection from Eviction Act 1977
Weights and Measures Act 1985

East Riding of Yorkshire Council will, on request, provide this document in Braille, audio or large print format. If English is not your first language and you would like a translation of this document into any other language, please telephone (01482) 393939.

Jesteśmy tu, by Tobie pomóc. Naszym celem jest udzielenie każdej osobie dostępu do naszych usług. Jeśli życzysz sobie tłumacza, prosimy zadzwonić na ten numer **0121 377 2880**