



## ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

### 1. AIM OF THE POLICY

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 Code.

### 2. PURPOSE OF THIS ENFORCEMENT POLICY

The purpose of this Enforcement Policy is to detail the process all officers will use when deciding what action to take when carrying out their statutory duties on behalf of the Environmental Health Service of Mid Sussex District Council, referred to in this Policy as "the Service".

#### 2.1 The main areas of work covered by this Enforcement Policy are:

**Food Safety:** including inspections of food businesses, sampling of food stuffs, infectious disease control, seizure and detention of unfit food, and investigation of consumer complaints about food and food premises.

**Health and Safety:** enforcement in premises allocated by law to the local authority such as offices, shops, warehouses, catering establishments, hotels and hostels, places of religious worship, leisure centres, places used for child care or playgroups.

**Licensing:** determining applications for licences and registrations such as alcohol, Regulated entertainments, private hire activities and hackney carriages, night cafes, animal welfare, caravan and camp sites, skin piercing, scrap metal, and gambling, and ensuring that conditions are being met.

**Noise control:** investigating and taking enforcement action to deal with noise from residential, commercial and industrial premises and noise in the street, such as loud music, barking dogs, intruder alarms and construction site noise.

**Pollution matters:** investigating and taking enforcement action to deal with complaints about drainage, rubbish, bonfires, odours and pest control. Monitoring air quality and permitting certain industrial processes under the Environmental Permitting Regulations. Dealing with contaminated land.

**Private Sector Housing :** investigating and taking enforcement action in response to complaints about housing conditions in all housing tenures under Part 1 of the Housing Act 2004. The licensing of houses in multiple occupation, the Housing Act 2004 and compliance with the Management of Houses in Multiple Occupation (England) Regulations 2006.

### 3. PRINCIPLES UNDERPINNING ENFORCEMENT ACTION

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 Regulators' Code.

3.1 Our enforcement activity will be:

- **Proportionate** – Enforcement action will be proportionate and reflect the nature, scale and seriousness of any breach or non-compliance.

- **Fair and objective** – Enforcement action will be based on the individual circumstances of the case, taking all available facts into account. Officers will carry out investigations with a balanced and open mind.

- **Transparent** – Enforcement action will be undertaken in accordance with clearly defined policies and procedures that are readily available. All communications will be easy to understand, with clear reasons being given for any enforcement action taken.

- **Consistent** – Enforcement action will be undertaken and monitored within the Service to ensure consistency in the interpretation and enforcement of legislation, work with other regulatory agencies and to share and develop good practice.

- **Accountable** – Enforcement action will be undertaken in a responsible manner that has a clear purpose.

3.2 While it is understood that it is primarily the responsibility of individuals and businesses to ensure compliance with relevant legislation, the Council will help them, where possible, to understand their legal responsibilities. The aim of the Council is to secure compliance with the legislation, which it will do by making the most efficient use of the Council's resources.

3.3 This Policy supports and supplements specific guidance on enforcement action contained in statutory Codes of Practice, Government guidelines, approved industry guides, co-ordinating bodies such as the Office for Product Safety & Standards (part of the Department for Business, Energy & Industrial Strategy) and other approved sources.

3.4 All officers have individual responsibility for complying with the Enforcement Policy and must use the most appropriate legislation. Only officers authorised by Assistant Director Communities may undertake enforcement duties. The Assistant Director Communities will only authorise officers when satisfied with their level of qualification, training and experience. Newly appointed or transferred officers will also be assessed for competency and referred for training where necessary.

4. **POWER, DUTIES AND RESPONSIBILITIES OF THE COUNCIL INCLUDING OFFICER DELEGATIONS**

Environmental Health and Licensing accept they have an important role in discharging a wide range of statutory duties and do this by way of adopting and following a detailed Constitution and associated Scheme of Officer Delegation. This can be viewed on the MSDC website.

## 5. TYPES OF INTERVENTION AND ENFORCEMENT CARRIED OUT BY ENVIRONMENTAL HEALTH & LICENSING

The Service has a range of interventions and enforcement actions available that enable effective monitoring of activities subject to regulatory control and appropriate actions to secure compliance.

- 5.1 **Planned Inspections, Interventions and Surveillance Programmes** – These form an important and fundamental part of the Service’s monitoring regime to ensure we meet our statutory duties with respect to our environmental health and wider public protection responsibilities.
  - 5.1.1 Planned inspections will be based on the requirements set out by Government and its relevant departments and agencies, and we will have close regard to any relevant codes of practice, statutory guidance and advice issued by them. For example, the Food Standards Agency’s Food Law Code of Practice and the Health and Safety Executive’s National Local Authority Enforcement Code.
  - 5.1.2 When conducting enforcement visits, officers will make their identity known. They will carry and show their formal written authorisation when requested.
- 5.2 **Service Requests** – Service requests may be received from various sources including employers, residents, visitors, workers and consumers. The Service aims to respond to all service requests within five working days of receipt. The nature of the service request will determine the follow up actions necessary in terms of the priority, speed of those actions and resources deployed. They also provide a useful form of intelligence that can help to determine future planned inspections and intervention programmes.
- 4.3 **Statutory Notifications and Other Wider Intelligence Sources** – This may be where information is provided by other Council services, other local authorities or partners such as Trading Standards, Police, Fire and Rescue, UK Health Security Agency (UKHSA), Health and Safety Executive, Food Standards Agency, local businesses and residents. Enforcement agencies may be directly notified about matters such as serious workplace accidents and incidents, food product safety alerts and recalls, and food poisoning incidents.
- 5.4 **Primary Authority Partnership Scheme** – Primary Authority Partnerships (PAP) are statutorily based (Regulatory and Enforcement Sanctions Act 2008) and have a key aim to secure regulatory compliance standards across a wide range of regulatory activities in a consistent and proportionate manner. Fundamental to the scheme are partnerships between businesses who trade across more than one local authority boundary and the local authority regulator, normally (but not exclusively), where the business’s head office is based or primary production takes place.
  - 5.4.1 There is also provision as part of the partnership agreement for the Primary Authority to produce an inspection plan that includes where enforcement authorities should target any inspection or planned intervention. As an enforcement authority we are required to have regard to any agreed inspection plans and focus our inspection and subsequent actions towards those aspects specifically identified requiring attention in the agreed inspection plan.

## 6. ENFORCEMENT OF NON-COMPLIANT ACTIVITIES

In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- The seriousness of compliance failure.
- The business's/individual's past performance and current practice.
- The risks being controlled.
- Legal, official or professional guidance.
- The priorities of the Council.
- The capacity of the individual where they may be suffering with a mental disorder.

6.1 Where the law has been contravened there are a range of enforcement options available to seek compliance with the law. Under normal circumstances a process of escalation will be used until compliance is reached. Exceptions would be where there is a serious risk to public safety or the environment, or the offences have been committed deliberately or negligently, or involve deception, or where there is a significant financial impact of the action.

6.2 No Action – In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision to take no action may also be taken where formal enforcement is inappropriate in the circumstances, e.g. where a trader has ceased to trade or the offender is elderly and frail and formal action would seriously damage their wellbeing. In such cases we will advise the offender and complainant of the reasons for taking no action.

6.3 Informal Verbal or Written Advice – For minor breaches we may only give verbal or written warnings or advice. We will clearly identify any contraventions and advise how to correct them along with a compliance deadline. This timescale will be reasonable and take into account the implications of non-compliance.

6.4 Financial Penalty– Some legislation offers the use of a financial penalty as an alternative to taking an offender to court. They are available for a range of offences and can avoid the defendant having a criminal record. Where legislation permits an offence to be dealt with by way of a financial penalty, we may choose to do so some of the legislation that permits the use of financial penalties includes:

- Health Act 2006 for smoke-free offences.
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
- Anti-social Behaviour Crime and Policing Act 2014.
- The Housing Act 2004.

A Financial penalty is an overarching description, as the principle is described in legislation in many ways including a Fixed Penalty Notice, civil penalty or a penalty charge. The penalty also varies from below £100 up to £30,000.

6.5 Formal enforcement notices & orders – Some of our powers allow notices to be served requiring the recipient to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances

relating to health, public safety, environmental damage or nuisance demand. In other circumstances the time allowed will be reasonable, take into account the seriousness of the contravention and the implications of non-compliance.

- 6.5.1 Notices may require work actions to be taken or work to be done in which case the notice shall be of sufficient detail to inform the recipient of what is required.
- 6.5.2 All notices issued will include details of any applicable appeals procedures.
- 6.6 Works in Default – Some legislation such as the Housing Act 2004, Environmental Protection Act 1990 etc. makes provision for the Council to carry out the works to a property where the person responsible has failed to comply with a notice.
- 6.6.1 Works in default can be carried out either instead of a prosecution or in addition to a prosecution. There is also the ability for the Service to re-charge for the works in some cases.
- 6.6.2 In deciding whether works in default is an option, we must consider the imminent risk to health and safety and whether undue delay would put the occupier, visitors or the public at increased risk. It must also consider whether there are finances in place to carry out the work and what the minimum works required would be to remove the risk.
- 6.7 Simple/Formal Caution – A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction. For a Simple/Formal Caution to be issued a number of criteria must be satisfied:
- Sufficient evidence must be available to prove the case.
  - The offender must admit the offence.
  - It must be in the public interest to use a Simple/Formal Caution.
  - The offender must be 18 years or over.
- 6.7.1 If the offender commits a further offence, it may influence our decision to take a prosecution. If during the time the Simple/Formal Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, it may be cited in court, and this may influence the severity of the sentence that the court imposes.
- 6.7.2 Details of all cautions issued are a matter of public record.
- 6.8 Prosecution – A prosecution will normally be undertaken where the individual or organisation carries out one or more of the following actions:
- Deliberately, negligently or persistently breaches the law, likely to cause material loss or harm to others.
  - Deliberately or persistently ignores written warnings or formal notices.
  - Endangers, the health, safety or wellbeing of people, animals or the environment.
  - Assaults or obstructs an officer in the course of their duties.
- 6.9 Determining Whether a Simple Caution or Prosecution is Viable and Appropriate – Two 'tests' will be applied to determine whether a Prosecution or Simple Caution is viable and appropriate. The officers will follow guidance set by the Crown Prosecution Service when applying the tests. A Simple Caution

or Prosecution will only be progressed when the case has passed both the evidential test and the public interest test.

- 6.9.1 The Evidential Test – We must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply.
- 6.9.2 The Public Interest Test – The public interest will be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. A serious offence would also include the failure to comply with a Statutory Notice. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect.
- 6.10 Non-compliance with Licence Conditions – Licences are issued with specific conditions depending on the type of licence. All conditions on licences must be complied with and officers will check compliance with the conditions that are attached to the licence. Breaches of licence conditions will be investigated in line with the relevant legislation that the licence has been issued and relevant policies where applicable.

## **7. OTHER FACTORS CONSIDERED WHEN USING ENFORCEMENT POWERS**

- 7.1 Liaison with other regulatory bodies and enforcement agencies – Where appropriate, enforcement activities within Environmental Health and Licensing will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.
- 7.1.1 Where a Primary Authority has been established under the provisions of the Regulatory Enforcement and Sanctions Act 2008, the Council will consult with the Primary Authority and any enforcement plan and instigate action in accordance with their advice. If we do not agree with the Primary Authority, we will liaise with Office for Product Safety and Standards, which is part of the Department for Business, Energy & Industrial Strategy.
- 7.1.2 Where an enforcement matter affects a wide geographical area beyond the District boundary or involves enforcement by one or more local authority or organisation, where appropriate, all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.
- 7.1.3 The Service will share intelligence relating to wider regulatory matters (in accordance with the provisions of the General Data Protection Regulations 2018) with other regulatory bodies and enforcement agencies, including:
- Government Agencies
  - Police Forces
  - Fire Authorities
  - Local Authorities
- 7.1.4 Where an enforcement matter relates to an individual with a mental illness, those involved in the care and treatment of the individual shall be contacted

such as social services, housing providers, community psychiatric nurses, GPs and other agencies. The aim is to deal with the individual appropriately and to determine their capacity. Enforcement action will usually be a tool of last resort.

- 7.2 Power of Entry – Environmental Health and Licensing staff are provided with specific powers of entry by a wide range of legislation. This gives them a right to legally enter defined premises, such as businesses, vehicles or land for specific purposes. Powers of entry include enabling our officers to undertake inspections and investigations for a wide range of regulatory responsibilities including food safety, health and safety, environmental protection, housing legislation, safety of buildings in addition to dealing with emergencies or searching for evidence during those investigations.
- 7.2.1 Often, the power to enter is accompanied by what are known as ‘associated powers’, which set out what our officers are allowed to do once they have entered the premises. This might, for instance, include conducting a search, seizing relevant items or collecting samples.
- 7.2.2 In certain cases, for example under Housing Act legislation, where entry is required to a residential property, then a period of notice is usually required to be given to the owner or occupier of the property before entry can be gained.
- 7.2.3 Officers also have the option to obtain a warrant from a magistrate and enter, at any time and by force if necessary, to ascertain if an offence has been committed, to gather evidence or to undertake emergency remedial works or works in default.
- 7.3 Police and Criminal Evidence Act (PACE) 1984 – MSDC will have close regard to the requirements set out in the Police and Criminal Evidence Act and any amendments and current codes relevant to our regulatory enforcement responsibilities. This includes investigation of relevant offences, powers of entry in the course of discharging statutory duties, taking samples to help in gaining necessary evidence and interviewing those suspected of committing offences.
- 7.4 Regulation and Investigatory Powers Act (RIPA) 2000 – The Act regulates the powers of public bodies to carry out surveillance and investigation, including the interception of communications, and we will ensure we use our powers in accordance with the Council’s RIPA policy.
- 7.5 Protection of Human Rights – This Policy and all associated enforcement decisions are subject to the provisions of the Human Rights Act 1998. In particular, due regard will be given to the following:
- Right to a fair trial.
  - Right to respect for private and family life, home and correspondence.
- 7.6 Equality and Diversity – The enforcement activities covered by this Enforcement Policy will align with and meet the equality policies and objectives adopted by the Council. We will aim to effectively support and promote access to our enforcement services recognising the diversity of the communities we serve and ensure that residents and businesses are treated equally and fairly through the delivery of our services.
- 7.7 Local Land Charge Register – Notices served under some of the legislation that we enforce will be placed on the local land charges register.

**8. COMPLAINTS AGAINST THE SERVICE**

If any person is unhappy with the action taken or information or advice given by officers of the Council or believe they have not received fair or consistent treatment as outlined in this Policy, they will be given the opportunity to discuss the matter with the Assistant Director Communities. Officers approached with such a request will refer them to the Assistant Director Communities, who will listen to their complaints, consider whether the Enforcement Policy has been breached in this instance and give a reply in writing. This is without prejudice to any formal appeal mechanism. If the problem cannot be resolved, the person will be informed of the Council's complaints procedure.

**9. REVIEW OF THE ENFORCEMENT POLICY**

This Policy, and the consequences and effectiveness of our enforcement action, will be reviewed every 5 years or as appropriate.