

Sheffield City Council
Environmental Regulation
Enforcement Policy

1. INTRODUCTION

1.1 This document sets out what business and others being regulated can expect from Sheffield City Council's Environmental Regulation Service and their enforcement officers. The following services are included:

- Environmental Protection
- Sheffield Trading Standards
- The Health Protection Service (comprising of the Food and Health and Safety teams)
- Environmental Services / Pest control

1.2 It commits the services to good enforcement practice with effective procedures and clear policies when delivering the council priorities:

- **Standing up for Sheffield**
- **Supporting and protecting communities**
- **Focussing on jobs**
- **Business friendly**

1.3 The Environmental Regulation Service aim is to **'To protect the health and wellbeing of local residents, visitors and consumers, support those we regulate comply and grow and provide a fair trading environment for business'**.

1.4 This document has been prepared with regard to the current principal legislation and statutory guidance including:

- The Regulatory Enforcement and Sanctions Act 2008 (The RES Act).
- Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 SI665/2009 (The CRE Enforcement Order).
- Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009 SI670/2009 (The CRE LBRO Order).
- Legislative and Regulatory Reform Act 2006 (LRRRA).

- Legislative and Regulatory Reform (Regulatory Functions) Order 2007
- The Regulators Code (RC).

1.5 The RES Act mentioned above, established The Local Better Regulation Office (LBRO). It also imposed upon Regulation and Enforcement a duty to: (a) have regard to any guidance given to a Local Authority by LBRO, (b) a duty to comply with guidance where we are directed to do so by LBRO, and (c) a duty to have regard to any list of enforcement priorities published by LBRO. We are committed to doing so.

1.6 The LRRRA, Part 2, requires us also to have regard to the Principles of Good Regulation 1 (1 we recognise that our regulatory activities should be carried out in a way which is: (i) proportionate, (ii) accountable, (iii) consistent, (iv) transparent, and (v) targeted to situations which need action) when we exercise a regulatory function; which for Local Authorities includes: environmental health, trading standards and licensing. We have had regard to the RC in the preparation of this policy.

1.7 This Policy has also been prepared having regard to: The Enforcement Concordat: Good Practice Guide for England and Wales and the Principles of Good Enforcement: Standards; Openness; Helpfulness; Complaints; Proportionality and Consistency. The Human Rights Act 1988; and The Code for Crown Prosecutors

1.8 Environmental Regulation's primary function is to achieve regulatory compliance in order to protect the public, legitimate business, the environment and groups such as consumers and workers. However, we reserve the right to take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so.

1.9 We recognise that prevention is better than cure, but where it becomes necessary to take formal enforcement action against a business, or member of the public, we will do so. There is a wide range of tools available to us as an enforcement agency. The actions we may take include:

- (a) No action;
- (b) Informal Action and Advice;
- (c) Fixed Penalty Notices;
- (d) Penalty Charge Notices;
- (e) Formal Notice;
- (f) Forfeiture Proceedings;
- (g) Seizure of goods/equipment;
- (h) Injunctive Actions and other Civil Sanctions;

- (i) Refusal/Suspension/Revocation of a licence;
- (j) Simple Caution;
- (k) Prosecution;
- (l) Proceeds of Crime Applications.

1.10 When considering formal enforcement action, our services will where appropriate and where reasonably practicable, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This paragraph does not apply where immediate action is required to prevent or respond to a breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

1.11 If you are a business operating in more than one Local Authority and you have chosen to have a registered Primary Authority Partnership under The RES Act we will, where required, comply with the agreement provisions for enforcement and notify your Primary Authority of the enforcement action we propose to take. We may under that Act also refer the matter to LBRO if appropriate.

2. LEGAL STATUS OF THIS ENFORCEMENT POLICY

2.1 This policy is intended to provide guidance for Enforcement Officers, businesses, consumers and the public and ensures we follow national guidelines on enforcement.

3. SCOPE AND MEANING OF 'ENFORCEMENT'

3.1 This Policy applies to all the legislation enforced by Enforcement Officers with delegated enforcement powers employed by the Environmental Regulation Service either directly or indirectly.

3.2 'Enforcement' includes any criminal or civil action taken by Enforcement Officers aimed at ensuring that individuals or businesses comply with the law.

3.3 For the purposes of The RES Act the term 'enforcement action has been given a general statutory definition, which is:

- (a) action to secure compliance with a restriction, requirement or condition in relation to a breach or supposed breach;
- (b) action taken in connection with imposing a sanction for an act or omission; and
- (c) action taken in connection with a statutory remedy for an act or omission.

3.4 A list of specific 'enforcement actions' is provided in section 2 of the CRE Enforcement Order, which applies to Part 2 of The RES Act and the Primary Authority Scheme.

This means that if: you are a business or organisation registered with the Primary Authority scheme; we are proposing to take action against you, and that action is one of those listed then, unless one of the permitted exceptions applies, we will be required to contact your Primary Authority and give notice of the enforcement action we propose to take against you.

3.5 By this document Environmental Regulation intends to enable Enforcement Officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations. We will also aim to ensure our Enforcement Officers interpret and apply their legal requirements and enforcement policies consistently and fairly.

3.6 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published. Court results may be placed on our website.

4. HOW TO OBTAIN A COPY OF THE POLICY OR MAKE COMMENTS

4.1 This Policy is available on the Sheffield City Council website.

If you would like a paper copy of the Policy and/or you would like to comment on the Policy, please contact us by:

(A) E-mailing: healthprotection@sheffield.gov.uk

(B) Writing to the Head of Environmental Regulation at 2-10 Carbrook hall Road, Sheffield, S9, 2DB.

(C) Telephoning 0114 273 6282

5. GENERAL PRINCIPLES

5.1 Our principles are informed by The Regulators' Code, the Enforcement Concordat and the guidance of LBRO as to how to apply these documents.

5.2 Prevention is better than cure and our role, therefore, involves actively working with businesses to advise on, and assist with compliance. However, where it becomes necessary to take formal enforcement action against a business, or member of the public, we will do so.

5.3 Where we consider that formal enforcement action is necessary each case will be considered on its own merits.

5.4 However, there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the Regulators Code:

- Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
- Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
- Regulators should base their regulatory activities on risk and at each stage of their decision making.
- Regulators should share information about compliance and risk
- Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
- Regulators should ensure that their approach to their regulatory activities is transparent.

5.5 In accordance with the Regulators Code, the approach of Regulation and Enforcement to the sanctions and penalties available to it will

aim to:

- (a) change the behaviour of the offender;
- (b) change attitudes in society to offences which may not be serious in themselves, but which are widespread;
- (c) eliminate any financial gain or benefit from non-compliance;
- (d) be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- (e) be proportionate to the nature of the offence and the harm caused;
- (f) restore the harm caused by regulatory non-compliance, where appropriate; and
- (g) deter future non-compliance.

For more information about the Regulators Code, visit

<http://www.bis.gov.uk/brdo/regulators-code/regulators-code-publicationstools>

5.6 All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.

5.7 We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take formal action. This may include actual harm or loss or the impact on the well being of the individual or potential or actual harm to the environment.

5.8 Sheffield City Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

5.9 All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the statutory powers of the officer and all other relevant legislation, including but not limited to the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and the Criminal Justice and Police Act 2001, and in accordance with any formal procedures and codes of practice made under this legislation in so far as they relate to our enforcement powers and responsibilities.

5.10 This 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 and Regulators 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.

6. NOTIFYING ALLEGED OFFENDERS

6.1 If we receive information [for example from a complainant] that may lead to formal enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.

6.2 During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.

7. ENFORCEMENT ACTION

7.1 An overview of the enforcement actions available

7.1.1 There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that may be considered are shown below:

- (a) No action.
- (b) Informal Action and Advice.
- (c) Fixed penalty Notices.
- (d) Penalty Charge Notices.
- (e) Formal Notice.
- (f) Forfeiture Proceedings.
- (g) Seizure of goods/equipment.
- (h) Injunctive Actions and other Civil Sanctions.
- (i) Refusal/revocation of a licence.
- (j) Simple Caution.
- (k) Prosecution.
- (l) Proceeds of Crime Applications.
- (M) Closure of premises.
- (N) Orders (such as under the Anti-social Behaviour, Crime and Policing Act 2014).

7.1.2 The order in which the enforcement actions are listed above is not necessarily in absolute order of escalating seriousness relative to each other. We reserve the right to escalate our level of enforcement action, having regard to the criteria in paragraph 7.2 of this policy.

7.2 Deciding what level of action is appropriate

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

- (a) The seriousness of the compliance failure.
- (b) The past and current performance of any business and/or individual concerned.
- (c) Any obstruction on the part of the offender.
- (d) The risks being controlled.
- (e) Statutory guidance.
- (f) Codes of Practice.

(g) Any legal advice.

(h) Policies and priorities of Government, Sheffield City Council, community assemblies and the licensing committee.

(i) A person's age in relation to young people (termed 'juveniles') aged under 18.

(J) Whether there are serious and or imminent risks to health and where there are issues affecting or threatening a number of households where more formal area based action may be appropriate rather than piecemeal informal warnings. Such a response may require us to service notices without prior warning when a rapid response to protect public health is required (e.g. on accumulations or pest control problems affecting a wider area where co-ordinated timely action may be required).

7.2.2 Certain enforcement action, such as the decision to Caution and/or the decision to prosecute, is further and specifically informed by those matters set out below at paragraphs 7.13 and 7.14.

7.3 An explanation of the enforcement action options

7.3.1 No Action

7.3.2 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 Sheffield City Council outweighs the detrimental impact of the contravention on the community.

A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where the offender is elderly and frail or is suffering from mental health issues or serious ill health, and formal action would seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.

7.4 Informal Action and Advice

7.4.1 For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the noncompliance.

7.4.2 Sometimes we will advise offenders about 'good practice', but we will clearly distinguish between what they must do to comply with the law and what is advice only.

7.4.3 Failure to comply could result in an escalation of enforcement action.

7.5 Fixed Penalty Notices

7.5.1 Certain offences are subject to fixed penalty notices where prescribed by legislation. They are recognised as a low-level enforcement tool and enable a defendant to avoid a criminal record by “buying off” their liability to a prosecution for the original offence. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning.

7.6 Penalty Charge Notices

7.6.1 Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN may result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

7.7 Failure to accept a FPN and/or a PCN

7.7.1 In circumstances where a person or body corporate fails to accept or pay a FPN, then in order to maintain the integrity of these legislative regimes, Regulatory Services will consider an escalation of enforcement action. This will include consideration of a prosecution for the original offence under the primary legislation.

7.7.2 In circumstances where a person or body corporate fails to accept or pay a PCN, then in order to maintain the integrity of this legislative regime, we will consider an escalation of enforcement action. This will include consideration of civil action to recover the debt.

7.7.3 A failure to pay a FPN or PCN is a material consideration for the purposes of deciding whether a prosecution will be taken or civil debt recovery commenced.

7.8 Formal Notice

7.8.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, take into account the seriousness of the contravention, the implications of the noncompliance and the appeal period for that notice.

7.8.2 All notices issued will include details of any applicable Appeals Procedures.

7.8.3 Certain types of notice allow works to be carried out at default. This means that if a notice is not complied with [a breach of the notice] we may carry out any necessary works to satisfy the requirements of the notice ourselves.

Where the law allows, we may then charge the person/business served with the notice for any cost we incur in carrying out the work.

7.9 Forfeiture Proceedings

7.9.1 This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the Magistrates Courts.

7.10 Seizure

7.10.1 Certain legislation enables authorised Enforcement Officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt.

7.11 Injunctive Actions and other Civil Sanctions

7.11.1 In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with repeat offenders; dangerous circumstances; or consumer/ environmental/public health detriment. The Antisocial Behaviour, Crime and Policing Act 2014 has introduced a number of injunctive and other new powers.

7.11.2 Action

Under the Enterprise Act 2002; proceedings may be brought where an individual or organization has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

- (a) Informal undertakings.
- (b) Formal undertakings.
- (c) Interim Orders.
- (d) Court Orders.
- (e) Contempt Proceedings.

7.11.3 Anti Social Behaviour. Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, following liaison with the other relevant council departments and the police, a lead agency will take appropriate action to stop the activity.

7.12 Suspension and Revocation of a Licence

7.12. 1. Licensing Act 2003 – where it is deemed appropriate and in accordance with the general principles contained in this policy, Officers from Environmental Regulation will seek a review of a licence before the licensing committee to protect public safety. Officers may also provide evidence for and as part of licensing hearings.

7.13 Simple Caution

7.13.1 In appropriate circumstances, where a prosecution would otherwise be justified, a Simple Caution may be administered with the consent of the offender.

7.13.2 A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

7.13.3 For a Simple Caution to be issued a number of criteria must be satisfied:

- (a) Sufficient evidence must be available to prove the case.
- (b) The offender must admit the offence.
- (c) It must be in the public interest to use a Simple Caution.
- (d) The offender must be 18 years or over.

For details on the Home Office guidance (Circular 30/2005) visit:

<http://www.homeoffice.gov.uk/>

7.13.4 We will also take into account whether the offender has received a simple caution within the last 2 years when determining whether a simple caution is appropriate for any subsequent offending.

7.13.5 If during the time the Simple Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

7.13.6 The refusal of an offender to be cautioned does not preclude the matter being passed for prosecution. In fact, any such failure will be a material consideration when deciding whether the offender should then be prosecuted for that offence.

7.14 Prosecution

7.14.1 In circumstances where none of the other forms of enforcement action are considered appropriate a prosecution will be considered and may ensue.

7.14.2 When deciding whether to prosecute Regulation and Enforcement applies The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

7.14.3 The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases.

7.14.4 The Code for Crown Prosecutors has two tests:

- Is there enough evidence against the defendant? When deciding whether there is enough evidence to prosecute, we must consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each defendant.
- Is it in the public interest for the service to bring the case to court?

A prosecution will usually take place unless the public interest factors against prosecution clearly outweigh those in favour of prosecution. For a copy of the Code for Crown Prosecutors visit:

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

7.15 Proceeds of Crime Applications

7.15.1 The services either through its own Enforcement Officers or in cooperation with the Police may make application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender. Relevant officers of SCC may also seize cash. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof.

7.16 Closure and orders

7.16.1 There are a number of new powers to close premises and issue orders (such as 'Public Spaces Protection Orders', contained within the Anti-social Behaviour, Crime and Policing Act 2014. The Home office has issued Statutory guidance for frontline professionals on these new powers and SCC will follow that guidance.

<https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>

8. DECISIONS ON ENFORCEMENT ACTION

8.1 Decisions about the most appropriate enforcement action to be taken are based upon those matters set out in Section 7 above.

8.2 Where appropriate, decisions about what enforcement action to take may involve consultation between:

- (a) Investigating Officer(s).
- (b) Senior managers from the services.
- (c) SCC Solicitors.
- (d) Chair of the City Council's Licensing committee.

8.3 The decision to prosecute a case will be taken by those with authority to do so in accordance with the Sheffield City Council Scheme of Delegations.

9. PRIMARY AUTHORITY PARTNERSHIP SCHEME AND ITS ENFORCEMENT PROVISIONS

9.1 When we have come to the decision to take enforcement action against you and:

- (1) You are a business operating in more than one Local Authority and you have chosen to have a registered Primary Authority Partnership under The RES Act; and
- (2) The enforcement action we propose to take is covered by the definition of enforcement action for the purposes of Part 2 of The RES Act. We will, where required to do so by that Act, comply with the agreement provisions for enforcement and notify your Primary Authority of the action we propose to take.

9.2 Your Primary Authority has the right to object to our proposed action in which circumstances either they or we may refer the matter to LBRDO.

10. LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES

10.1 In addition to the duties imposed upon us by The RES Act in respect of cooperating and working with Primary Authorities and the LBRDO; we will, where appropriate, cooperate and coordinate with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.

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

10.3 We will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:

(a) Government Agencies.

(b) Police Forces.

(c) Fire Authorities.

(d) Statutory undertakers.

(e) Other Local Authorities.

11. CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES

11.1 We undertake enforcement on behalf of the public at large and not just in the interests of any particular individual or group.

However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decisions.

12. PROTECTION OF HUMAN RIGHTS

12.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

13. REVIEW OF THE ENFORCEMENT POLICY

13.1 This Policy will be reviewed at least every 2 years or more frequently if required.

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