



## Environmental Health Service

### Enforcement Policy Statement

Ryedale District Council's Enforcement Policy sets out the key principles under which the Environmental Health Services authorised officers will seek to achieve compliance with the enforcement of legislation. In carrying out their inspections and investigations officers will adhere to the principles of good enforcement and regulation set out in the 'Statutory Code of Practice for Regulators' and all other relevant codes of good practice. This includes the Enforcement Concordat, which still applies to those regulatory functions that the Code does not apply to. This Policy may be supplemented by additional statements of enforcement policy.

#### INTRODUCTION

The Environmental Health Service forms part of the Health and Environment Service. The main mission of the Environmental Health Service is to protect and enhance public health and the environment by achieving excellence in the delivery of environmental health services.

We are fully committed to the Hampton Principles and the Governments Regulatory Compliance Code. We will work in partnership with businesses and other stakeholders in order to provide effective, efficient, proportionate, targeted, transparent and accountable regulation and enforcement that is essential in promoting fairness and economic progress but without increasing unnecessary burdens.

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.

Effective and efficient regulation and enforcement depends upon people's willingness to abide by the law and we believe that most businesses and individuals want to do just that. We will adopt a positive and proactive approach towards ensuring compliance by:

- Giving advice and encouraging businesses and individuals to understand and meet the requirements of regulation and enforcement.
- Responding proportionately to breaches of the law.

We will interpret and apply the law and its enforcement requirements consistently and fairly and where needed liaise with other regulatory services or enforcement agencies to provide a coordinated service.

In complying with the Hampton Principles and the Regulatory Compliance Code we are committed to the following;

#### **Economic Progress**

We will consider the impact that our regulatory activities may have on businesses, including consideration of costs, effectiveness and perceptions of fairness. We will only adopt a particular approach if the benefits justify the costs and in doing so will endeavour to keep any perceived burdens to a minimum. Where practical, we will take particular care to work with small businesses, voluntary and community organisations to allow them to meet legal obligations without unnecessary expense.

(References to costs and benefits include economic, social and environmental costs and benefits).

### **Risk Assessment**

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, potential future risks, the systems the business has in place, recognised external accreditation, management competence and willingness to comply.

### **Advice and Guidance**

We recognise that prevention is better than cure and will actively work with business and residents to advise on and assist with, compliance with the law.

In doing this we will ensure that:

- Legal requirements are made available and communicated in writing when appropriate.
- The information we provide will be in clear, concise and accessible language. Advice will be confirmed in writing where necessary.
- We will clearly distinguish between legal requirements and guidance aimed at improvements above minimum standards.

### **Inspections and Other Visits**

All inspections and other visits to businesses will be undertaken after consideration of the risk the business poses if it fails to comply with the law, where the business has requested advice or where relevant intelligence suggests that an inspection or visit is appropriate.

- Where we carry out inspections we will give feedback to the business on what the officer has found; this will include positive feedback to encourage and reinforce good practice.
- Where practicable we will co-ordinate inspections with other regulators to minimise the burden on businesses.

- Random inspection will be undertaken where government guidelines require us to do so. A small amount of random inspection may also be undertaken to test our risk assessments or the effectiveness of any action we have taken.

### **Information Requirements**

We will only ask businesses for information that is necessary after considering the cost and benefit to obtaining the information. Where possible we will share this information with our partners (taking account of data protection) to prevent the need for providing the information more than once.

### **Compliance and Enforcement Actions**

We recognise that most businesses and individuals wish to comply with the law, however firm action will be taken against those who flout the law or act irresponsibly.

We will carry out all of our enforcement duties, including taking formal enforcement action, in a fair, equitable and consistent manner. Whilst officers exercise judgement in individual cases, we will have arrangements in place to promote consistency including liaison with other agencies and authorities.

The Service will endeavour to secure compliance and where appropriate, raise standards, by means of informal action, advice and education wherever possible. However, where such action is inappropriate, or has failed, then formal action using all powers available under statute will be used to protect the public and secure compliance with the law.

Formal enforcement action will also be considered and may be taken where advice has been ignored.

Where formal enforcement action is necessary, we will consider the most appropriate course of action (from the range of sanctions and penalties available) with the intention of: -

- Aiming to change the behaviour of the offender
- Aiming to eliminate any financial gain or benefit from non-compliance
- Being responsive and considering what is appropriate for the particular offender and issue involved, including punishment and the public stigma that may be associated with a criminal conviction.
- Being proportionate to the nature of the offence and harm caused
- Aiming to restore the harm caused by non-compliance
- Aiming to deter future non-compliance.

Before formal enforcement action is taken:

- When appropriate, there will be an opportunity to discuss the circumstances of the case, unless immediate action is required to prevent or respond to a serious breach or where to do so is likely to defeat the purpose of the proposed enforcement action e.g. to prevent the destruction of evidence or

there is an imminent risk to the environment or health and safety. This discussion will usually follow an interview under caution if a prosecution is being considered.

- Where immediate formal enforcement action is taken, which will usually be the service of a written notice, reasons for such action will be given at the time (if possible) and confirmed in writing usually within 5 days and in all cases within 10 working days. Where a **statutory notice** is served, that notice will be taken as constituting a written explanation and confirmation.
- Where there are rights of appeal against formal enforcement action, notification of the appeal mechanism will be clearly set out in writing at the time the action is taken.
- Clear reasons will be given for any formal enforcement action taken, and confirmed in writing.

For the purposes of this policy 'formal enforcement action' includes serving a legal notice (e.g. an improvement, suspension, prohibition, fixed penalty or abatement notice), the seizure of goods, the seeking of an injunction, the issue of a 'formal' written caution and prosecution. In cases involving food safety and the issue of legal notices and voluntary closure of premises we will follow guidance set out in the appropriate Food Standards Agency Food Law Code of Practice.

Prosecution will be considered where there has been a serious lack of compliance. Prosecutions will not be used as a punitive response to minor breaches of the legislation. If the formal enforcement action being considered is a prosecution we will also consider a number of additional factors in line with the Code for Crown Prosecutors and any other nationally recognised guidance such as the Enforcement Management Model published by the Health and Safety Executive These factors may include the following:

- The seriousness of the alleged offence
- The history of the party concerned
- The willingness of the business or the individual to prevent a recurrence of the problem and co-operate with officers
- Whether it is in the public interest to prosecute
- The realistic prospect of conviction
- Whether any other action (including other means of formal enforcement action) would be more appropriate or effective
- The views of any complainant and other persons with an interest in prosecution.

These factors are NOT listed in order of significance. The rating of the various factors will vary with each situation under consideration.

## **Accountability**

We will be accountable for the efficiency and effectiveness of our activities, while remaining independent in the decisions we take.

- We shall provide businesses and individuals with effective consultation and opportunities for feedback on our service.
- Officers will be courteous, fair and efficient at all times, and will identify themselves by name.
- Any complaints about the way you have been treated will follow Ryedale District Council's complaints procedure, which is easily accessible to all service users, and explains how to make a complaint and the timescales involved. A copy of the complaints procedure can be obtained from Ryedale District Council, Ryedale House, Malton, North Yorkshire YO17 7HH, by telephoning 01653 600666 or via our website at [www.ryedale.gov.uk](http://www.ryedale.gov.uk).

## **Equality and Diversity**

The Council is committed to ensuring that it meets, and where possible exceeds its requirements under the Equalities Act 2010. Officers will have regard to the Council's Equality Scheme in all circumstances. All enforcement actions must be taken in accordance with this policy and Officers must ensure that no person is discriminated against, by virtue of the instigation of any such action, because of their racial background, gender, sexual persuasion, age or any disability of a physical or mental nature.

In ensuring that no inadvertent discrimination takes place when taking action under this Policy, a number of matters must be taken into account. These matters must be taken into consideration where there are clear communication difficulties due to the natural language of any person or any disability that impairs speech, sight or hearing. When dealing with the public (referred to here as the recipient), the following must be taken into account:

The Officer must have regard for the cultural and/or religious background of the recipient. Their own background may influence their perception of any formal or legal requests being made of them. Officers in all such cases must ensure that education is used to bring about the necessary compliance rather than enforcement. However, where the educational approach fails, this Policy will need to be followed.

Officer must check that the recipient has understood what has been discussed with them. If it is clear that English is not their first language the officer must ensure that they understand what is required of them. If in doubt, suggest that someone is found to interpret for them. If this is not possible it may be possible to provide an interpreter for a later interview/discussion. Remember that a number of leaflets and other explanatory information is available in a range of languages.

If writing or serving a legal notice the officer will must ensure that they can understand written English. If in doubt, an officer will verbally explain the requirements of any letter or notice. In this case the matters set out above must be considered.

If the recipient clearly has impaired hearing, sight or speech an officer will write out any requirements for them. If it is uncertain that any requirements have been understood, it may be possible to provide a “signer” for the deaf or a large print or Braille copy of the information you need them to understand.

### **Application of our enforcement policy**

All officers will have regard to this document when making enforcement decisions.

**Any departure from this policy must be exceptional, capable of justification and be fully considered by the Health and Environment Manager before a final decision is taken. This proviso shall not apply where 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 chief executive may suspend any part of this policy where necessary to achieve effective running of the service and/or where there is a risk of injury or to health of employees or any members of the public.**

### **Review**

This document will be subject to a review every three years with additional reviews as and when required. Improvements will be made if there are any changes in legislation or in local needs.

If you have any comments please contact the Health and Environment Manager by calling 01653 600666 or by writing to Environmental Health Service, Ryedale District Council, PO Box 67, Ryedale House, Old Malton Road, Malton YO17 7ZG or email to envhealth@ryedale.gov.uk

## **THIS INFORMATION IS AVAILABLE IN ALTERNATIVE FORMATS AND LANGUAGES ON REQUEST**

### **Relevant Links**

Enforcement Concordat

<http://www.berr.gov.uk/bre/inspection-enforcement/implementing-principles/regulatory-compliance-code/enforcement/page46822.html>

Legislative and Regulatory Reform Act 2006

[http://www.legislation.gov.uk/acts/acts2006/pdf/ukpga\\_en.pdf](http://www.legislation.gov.uk/acts/acts2006/pdf/ukpga_en.pdf)

Legislative and Regulatory Reform (Regulatory Functions) Order 2007

[http://www.opis.gov.uk/si/si2007/uksi\\_20073544\\_en\\_1](http://www.opis.gov.uk/si/si2007/uksi_20073544_en_1)

Regulators' Compliance Code Statutory Code of Practice for Regulators

<http://www.berr.gov.uk/files/file45019.pdf>

