

**Environmental Health Services**

**HEALTH AND SAFETY  
ENFORCEMENT POLICY**

**JULY 2009**

# HEALTH AND SAFETY ENFORCEMENT POLICY

## 1. INTRODUCTION

- 1.1. It is Ryedale District Council's policy to take all necessary steps to ensure that workplaces within its jurisdiction are maintained and operated in such a manner that the health and safety of persons working at or resorting to the workplace is not compromised or otherwise prejudiced.
- 1.2. This policy has been developed having regard to current health and safety guidance, the HSE Strategic Plan and in recognition of Section 18 guidance in relation to the standard of enforcement. The policy also recognised the central and local government Concordat on Food Enforcement and the Regulators Compliance Code, which forms a central part of the government's better regulation agenda.
- 1.3. This policy is subject to review annually and at any other time when circumstances require its amendment.
- 1.4. In the enforcement of health and safety law the Council will have regard to the principles of proportionality in applying the law and securing compliance, consistency of approach, targeting of enforcement action and transparency about how the Council operates and what those subject to regulation may expect.
- 1.5. The main concern of the Council is the prevention of accidents and ill health. In endeavouring to achieve this, the Council's enforcement officers will seek to help businesses improve their management of health and safety by providing appropriate advice.
- 1.6. This policy recognises and supports the importance of the Local Authority Partnership Scheme.
- 1.7. The policy is based on a commitment to work in consultation, liaison or, where relevant in partnership with the Council's other service areas and other enforcement agencies to provide a co-ordinated service.

## 2. DELEGATION TO OFFICERS

- 2.1. Decisions about health and safety enforcement are delegated to officers of the Council as follows:

### 2.1.1 Head of Environment

- appointment and/or authorisation of officers to exercise statutory functions;
- exercise powers of entry;

- service of notices, exercise of powers in default and recovery of expenses;
- in consultation with the Council Solicitor, the institution of legal proceedings

In the absence of the Head of Environment this duty will be undertaken by Health and Environment Manager or the Principal Environmental Health Officer.

#### 2.1.2 **Council Solicitor**

- To institute and prosecute on behalf of appointed officers of the Council proceedings in respect of any offence against any health and safety legislation which the Council is authorised to enforce.

#### 2.1.3 **Authorised Officers**

As authorised according to their individual qualifications and experience the exercise of the powers contained within the Health and Safety at Work etc. Act 1974

Section 20 (Powers of Inspectors);  
 Section 21 (Improvement Notices);  
 Section 22 (Prohibition Notices);  
 Section 25 (Power to deal with Imminent Dangers)

- 2.2. Any enforcement decision which may be required and which does not fall within the limits of this policy shall be taken by the Health and Environment Manager or Principal Environmental Health Officer in consultation with the Council Solicitor.

### **3. ENFORCEMENT OPTIONS**

- 3.1. Having due regard to all relevant information and evidence the following options be considered:

- a) to take no action;
- b) to take informal action;
- c) to make use of statutory notices;
- d) to use simple cautions;
- e) to use seizure and detention powers; and
- f) to prosecute.

#### 3.1.1 **No Action**

This course of action is appropriate where, in the officer's opinion, all relevant statutes and guidelines have been satisfactorily complied with.

### 3.1.2 Informal Action

Informal action is action that will, in the officer's opinion, secure compliance with legislation, which includes the offer of advice, verbal warnings, letters and reports.

Informal action will be recommended where:

- the act or omission is not serious enough to warrant formal action;
- the previous record of the business/individual is such that it would be reasonable to expect compliance through informal action;
- confidence in the business management is high;
- the risk to health and safety as a result of non-compliance is not significant; and
- there are special circumstances involving volunteer workers where formal action would be counter productive.

When taking informal action the officer should:

- give all necessary information to the proprietor/manager to understand what is required to remedy contraventions and why the action is necessary;
- indicate the legislation contravened and make clear that compliance may usually be achieved by a variety of means not necessarily those suggested by the officer;
- make clear the difference between legal requirements and recommendations of good health and safety practice.

When verbal advice is given it will if requested, be confirmed in writing. Notwithstanding a written report will be issued following all programmed inspections.

### 3.1.3 Statutory Notices

#### a) Improvement Notices

- i The use of Improvement Notices which in general will be related to perceived health and safety risks will only be served by Authorised Officers and will be issued when any of the following are evident:
  - there are significant contraventions of health and safety legislation that are not rectified at the time of inspection;
  - where there is a risk of ill health or injury but not so as to warrant a prohibition notice; and

- there is a lack of confidence in the ability or will of the business to respond to informal action;
  - there is a previous history of non-compliance following informal action;
  - standards are generally poor and there is low management awareness.
- ii Authorised Officers will prior to service attempt to agree realistic compliance times on Improvement Notices with nominated persons authorised to speak on behalf of the business.
- iii Authorised Officers will withdraw notices (upon written request) at their discretion if and when they have been satisfactorily complied with within the time limits specified in the notice.
- iv Authorised Officers will only extend time limits on notices (upon written request) at their discretion provided that the notices have not already expired.
- v Failure to comply with an Improvement Notice will normally result in the implementation of court proceedings.
- vi Where there is a Lead Authority Partnership in existence with a business that may be subject to an Improvement Notice, the guidance from the HSE (Health and Safety Executive) and HELA (Health and Safety Executive/Local Authority Enforcement Liaison Committee) should be followed to ensure effective liaison.
- vii In using Improvement Notices due regard must be taken of the Health and Safety at Work etc. Act 1974, relevant Codes of Practice, HSE and HELA guidelines and PACE procedures.

b) Prohibition Notices

- i The use of Prohibition Notices which in general will be related to perceived health and safety risks should only be considered where any of the following criteria apply:
  - the consequence of not issuing a Prohibition Notice immediately would present risk of serious personal injury to those working at or resorting to the workplace;

- the serious risk can be demonstrated. This might involve evidence from relevant experts such as public analysts, specialist officers from the Health and Safety Executive and other accredited specialists;
  - there is no confidence in the proprietors integrity even when an unsolicited offer to cease using the premises/equipment/process/treatment has been voluntarily offered; and
  - the risk is not only one of traumatic (acute) injury but also where the risk is from a long term health hazard of a cumulative nature which will ultimately contribute to damage to health.
- ii Failure to comply with a Prohibition Notice will generally result in court proceedings being implemented.
- iii Where there is a Lead Authority Partnership in existence with a business that may be subject to a Prohibition Notice the guidance from the HSE and HELA should be followed.
- iv When issuing Prohibition Notices due regard must be taken of the Health and Safety at Work etc. Act 1974, relevant Codes of Practice, HSE and HELA guidelines and PACE procedures must be followed.
- v Before issuing Prohibition Notices authorised officers will where it is reasonably practicable to do so, discuss the situation with an experienced authorised colleague and take their views into account.
- vi Non-compliance with a Prohibition Notice will normally result in the implementation of court proceedings.

### 3.14 **Statutory Action – Simple Cautions**

- i The issue of a Simple Caution will be considered as an alternative to a prosecution and may be considered as an option in order to:
  - deal quickly and simply with less serious offences but where formal action is still considered appropriate;
  - divert less serious offences away from the courts; and
  - reduce the chances of repeat offences by offenders.
- ii A Simple Caution will only be administered when the circumstances of the offence meet the criteria identified in

the Home Office Circular 016/2008 and any relevant HSE and HELA guidance.

- iii In order to safeguard the suspected offender and in the interest of fairness and justice, officers should ensure that the following conditions are fulfilled before a Simple Caution is issued.
  - there must be sufficient evidence of the suspected offender's guilt at a level which would give a realistic prospect of conviction in court proceedings.
  - the suspected offender must be prepared to admit the offence.
- iv Where there is insufficient evidence to prosecute a suspected offender the officer should be aware that the conditions for issuing a Simple Caution will not be satisfied and in consequence no attempt to issue a Simple Caution should be made. There is no legal requirement to compel anyone to accept a Simple Caution and no attempt at coercion should be made.
- v When a suspected offender declines to accept a Simple Caution, consideration will be given to the institution of legal proceedings.
- vi The cautioning officer duly authorised by Ryedale District Council is the Head of Legal Services.
- vii Where there is a Lead Authority Partnership in existence with a business that may be subject to a Simple Caution the relevant guidance from the HSE and HELA should be followed to ensure effective liaison.

### 3.15 **Statutory Action – Seizure And Detention**

- i Articles or substances will only be seized or detained when they pose a perceived significant risk to the health and safety of those persons who come into contact with them.
- ii When articles or substances are seized or detained they shall be secured in such a manner that renders them safe and prevents them being interfered with.
- iii Only properly authorised officers will take possession or detain or seize articles or substances.
- iv In seizing or detaining articles or substances due regard must be taken of the guidance issued by the HSE and HELA and all relevant Codes of Practice

- v Where there is a Lead Authority Partnership in existence with a business that may be subject to the seizure or detention of articles or substances appropriate guidance from the HSE and HELA will be followed to ensure effective liaison.

### 3.16 **Statutory Action – Prosecution**

- i Following an investigation or other regulatory contact a recommendation to prosecute will normally apply where one or more of the following circumstances apply:
  - death was a result of a breach of the legislation;
  - the gravity of the 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 a 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 breach of an appropriate licence; and
  - 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.
- ii Before a prosecution proceeds the Health and Environment Manager and/or the Principal Environmental Health Officer should consider the evidence provided by the authorised officer. They should be satisfied that there is relevant, admissible substantiated and reliable evidence that the offence has been committed by an identifiable body.
- iii There must be a realistic prospect of conviction.
- iv Due regard must be had to the current Code for Crown Prosecutors issued by the Crown Prosecution Service and any relevant Codes of Practice.
- v A range of other factors given in relevant guidance should be considered by the Authorised Officer before recommending prosecution. These include:
  - the seriousness of the alleged offence:
    - the risk to the health and safety of people working at or resorting to the workplace;
    - identifiable victims;

- failure to comply either in full or in part with the requirements of a statutory notice; and
  - disregard of health and safety requirements for financial reward.
- the previous history of the defendant:
    - offences following a history of similar offences; and
    - failure to respond positively to previous warnings.
  - the likelihood of the defendant being able to establish a credible defence;
  - the reliability of any witness;
  - the willingness of the defendant to prevent a recurrence of the problem;
  - the public benefit of the prosecution;
  - whether other actions such as the issuing of Improvement or Prohibition Notices would be more appropriate; and
  - the consideration of any explanation offered by a company or suspected offender.
- vi Only appropriately authorised officers shall institute proceedings and once a decision to prosecute has been taken, the matter and all relevant documents should be referred to the Head of Legal Services without delay.
- vii Where there is a Lead Authority Partnership in existence with a business that may be subject to prosecution, the guidance from the HSE and HELA should be followed to ensure effective liaison.

#### **4. WORKERS REPRESENTATIVES**

- 4.1. If employees of a business have a duly elected workers representative(s) then they should be informed of any relevant enforcement decisions.

#### **5. ADMINISTRATIVE ARRANGEMENTS**

- 5.1. In the event of any complaints about health and safety enforcement the Authority's Complaints Procedure lays down the guidelines that will be followed as a result of any complaint. A copy is available upon request and is given to all persons complaining about the service they have received.
- 5.2. All reasonable assistance and guidance consistent with natural justice will be offered to those persons who chose to appeal against notices and prosecutions.

- 5.3. Any disclosure of information shall be in accordance with LAC 62/1 (Health and Safety Executive's Policy in the disclosure of health and safety information) and any other relevant legislation.
- 5.4. Where any review of this policy involves significant changes those changes will be subject to public consultation and any subsequent amendments to the policy will be considered in light of any relevant comments received. Following the completion of any review the document will be placed on the Council's website and made available to anyone requesting a copy.
- 5.5. Whenever there are departures from the policy the Health and Environment Manager and/or the Principal Environmental Health Officer will provide a report detailing the reasons for the departure and that in turn will be submitted to the next available Community Services and Licensing Committee.