

Environmental Health  
Services

**LOCAL AIR POLLUTION CONTROL  
ENFORCEMENT POLICY**

*NOVEMBER 2005*

## ***LOCAL AIR POLLUTION CONTROL ENFORCEMENT POLICY***

### **1. INTRODUCTION**

- 1.1 Under Part I of the Environmental Protection Act 1990 (EPA), this Authority is responsible for the implementation of Local Air Pollution Control (LAPC). This entails the regulation of so called Part B processes for the control of emissions to air. Under the Pollution Prevention and Control Act 1999 (PPCA), the Authority is responsible for the implementation of the Local Authority Pollution Prevention and Control (LAPPC) regime, which is gradually replacing LAPC. This involves the regulation of so called Part B installations (mostly former Part B processes) for the control of emissions to air. Additionally, the Authority is responsible under PPCA for implementing the Local Authority Integrated Pollution Prevention and Control regime (LA-IPPC) under which so called Part A2 Installations are regulated for the control of emissions to all environmental media.
- 1.2 It is the Council's policy to secure compliance with the provisions of the Pollution Prevention Control Act 1999 and Part I of the Environmental Protection Act 1990 (hereafter referred to as the Acts), in an efficient and effective manner in which enforcement action is proportionate to the risks such action seeks to control.
- 1.3 This policy will be achieved by promoting awareness of the requirements of the Acts, preventing breaches of the law by giving advice to businesses, where possible, and by using enforcement powers where appropriate.
- 1.4 Enforcement decisions ensuing because of such action will be taken in accordance with the Services **Code of Practice on Enforcement** and this policy will have regard to health hazards or risks of environmental pollution that may result because of failures to observe requirements of the Acts. Liaison will be maintained with other regulators where there is a wider regulatory interest.
- 1.5 ***Enforcement Concordat***

***All decisions to which the policy refers shall be taken in accordance with the Council's Code of Practice on Enforcement, which incorporates and is to be read in conjunction with Central and Local Government Concordat on Good Enforcement which was adopted by the Council on 23<sup>rd</sup> April 1998.***

***This document should be read in conjunction with the Concordat and The Code for Crown Prosecutors.***

### **2. DELEGATION TO OFFICERS**

- 2.1 Decisions about enforcement of the Acts are delegated to officers of the Council as follows: -

2.1.1 Environmental Health Manager

- Appointment of suitably qualified persons as authorised officers for the purposes of exercising enforcement powers under the Pollution Prevention and Control Act 1999 and Part I of the Environmental Protection Act 1990 and;
- Service of Enforcement, Prohibition, Suspension and Revocation Notices in accordance with the provisions of the Acts.

2.1.2 Council Solicitor

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

2.1.3 Authorised Officers

As authorised in accordance with their individual qualifications and experience the exercise of the powers of Inspectors contained in section 108 and 109 of the Environment Act, 1995.

- 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 Environmental Health Manager (or Principle Environmental Health Officer in his absence) in consultation with the Chief Executive and Chairman of the Community Services and Licensing Committee.

3. ***ENFORCEMENT OPTIONS***

- 3.1 The choices for action to ensure compliance with the provisions of the Act are as follows:
- to take no action;
  - to take informal action;
  - to use statutory notices;
  - to use formal cautions;
  - to prosecute.
- 3.2 In order to achieve and maintain consistency, decisions about enforcement will be taken having regard to the Process Guidance Notes issued by the Secretary of State and any other relevant guidance.
- 3.3 In all cases where advice is offered, whether verbal or written, there will be a clear distinction between matters necessary to meet legal requirements and those that are recommended as good practice.
- 3.4 The circumstances under which the various enforcement actions may be taken are described in the following sections of this policy.

- 3.5 Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (wherever possible, this advice will be issued with the enforcement notice).

#### 4. ***INFORMAL ACTION***

- 4.1 Informal action includes verbal warnings or requests for action and the use of letters.
- 4.2 The enforcement of LAPPC, LAPC, and LA-IPPC differs from a number of other local authority enforcement areas in that its principal component is prior permitting or authorisation.
- 4.3 The Council recognises that this demands a special relationship between itself and industry to ensure that the complex procedure of permitting, compliance with conditions and the submission of proposals for altering and upgrading prescribed installations are achieved efficiently and effectively
- 4.4 For this reason authorised officers will seek to raise awareness about the need to comply with the Act. This will be achieved by individual contact with businesses requiring permitting/authorisation under the Acts with the objective of preventing the need for formal action by ensuring operators have a clear understanding of what is required of them.
- 4.5 Where possible authorised officers will warn business of imminent breaches of requirements and their implications. When verbal advice is given it will, if requested, be confirmed in writing.
- 4.6 Authorised officers will give advice to operators to ensure so far as possible that issues are resolved prior to the formal stages of making an application for permitting, authorisation or variation, or before submitting proposals for upgrading.

#### 5. ***FORMAL ACTION***

- 5.1 In deciding whether to institute formal action authorised officers will have regard to:-
- i) the severity of any breach of legislation and in particular whether there is a risk of serious pollution of the environment or harm to health;
  - ii) the attitude and general record of the operator;
  - iii) the robustness of systems in place to ensure compliance;
  - iv) the likelihood of compliance being achieved by informal means.
- 5.2 Where non-compliance with the provisions of the Acts does not involve a risk of serious pollution or harm to health, authorised officers may, having taken the

above factors into account, seek to achieve a remedy by informal means subject to an agreed timescale.

## 6. ***ENFORCEMENT NOTICES***

- 6.1 Enforcement Notice procedures will be considered where an authorisation is being contravened, or is likely to be contravened and one or more of the following apply:-
- i) an informal action does not produce an appropriate response
  - ii) remedial work does not progress satisfactorily within an agreed timescale
  - iii) failure to operate a process in accordance with the conditions of an authorisation creates a risk of pollution or harm to health.
- 6.2 The Prohibition Notice/Suspension Notice procedure will be considered where, in the opinion of the Environmental Health Manager, an authorised process is being carried on in a manner that involves **an imminent risk of serious pollution of the environment**. This applies whether or not the operator has breached a permit condition.
- 6.3 In deciding whether to serve Enforcement Notices, Prohibition Notices or Suspension Notices, regard will be had to any direction given by the Secretary of State, and any relevant guidance.
- 6.4 Revocation Notices may be appropriate where exhaustive use of other enforcement tools has failed to protect the environment properly.

## 7. ***PROSECUTION***

- 7.1 Prosecution will be considered when one or more of the following circumstances apply:
- there is a risk of serious pollution of the environment or harm to health;
  - there is a blatant disregard of responsibilities under the Acts;
  - the offence is of such gravity that other forms of action are inappropriate.
- 7.2 The decision to refer matters to the Council's Solicitor for prosecution will be taken by the Environmental Health Manager who will consider all relevant evidence and information.
- 7.3 In deciding whether to prosecute the following matters will be taken into consideration:
- the gravity of the offence;

- the previous history of the offender and their attitude to the offence under consideration;
  - whether the evidence provides a realistic prospect of conviction
  - whether there has been a blatant disregard for the law or reckless disregard for the environment
  - whether it is in the public interest that the matter should be brought to court.
- 7.4 Consideration will also be given to the Council's preventative role in which prosecution may be used as a way to draw attention to the need for compliance and the maintenance of good standards.
- 7.5 In coming to a decision on the various matters referred to above, regard will be had to the guidance set out in the current edition of the Code for Crown Prosecutors.

## 8. ***FORMAL CAUTION***

- 8.1 The issue of a formal caution will be considered as an alternative to prosecution in accordance with Home Office Circular 18/1994.
- 8.2 Formal caution will be administered by the Council Solicitor.
- 8.3 The decision to refer matters to the Council Solicitor for formal cautions will be taken by the Environmental Health Manager who will consider all relevant evidence and information.
- 8.4 In order to safeguard the offender's interests the following conditions must be met before a caution can be administered:
- there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction;
  - the offender must admit the offence;
  - the offender must understand the significance of a caution and give informed consent.
- 8.5 In deciding whether a formal caution is appropriate the following factors will be taken into account:
- the nature of the offence;
  - the likely penalty if an offender was convicted by a court;
  - the offender's age and state of health;
  - previous history of compliance authorisation/permit requirements;

- the offender's attitude towards the offence including practical expressions of regret.
- 8.6 Where the offer of a formal caution is refused, alternative enforcement action will be considered by the Environmental Health Manager. All relevant evidence and information will again be considered.
- 8.7 In most cases refusal of a formal caution will result in a referral for prosecution.