



**South Hams
District Council**

The South Hams Approach to Enforcement

General application

1. The South Hams District Council Service has extensive statutory responsibilities relating to environmental health, licensing, waste management, environmental protection, planning, building control and benefit payments. We seek to ensure that we enforce our statutory responsibilities to ensure that businesses and individuals comply with the law, in a fair, even-handed and proportionate manner. In doing so, we seek to comply with the European Convention on Human Rights. Where there is a shared responsibility for enforcement with other agencies, effective liaison will take place to ensure that the most appropriate enforcing authority takes action and the most appropriate enforcement action is taken.
2. In support of our policy of Social Inclusion we will make sure that Officers are aware of the potential problems of comprehension where English is not a first language and appropriate steps will be taken in such cases.
3. Due to the diverse range of statutory responsibilities undertaken by the Council, this policy of our approach to enforcement will be supplemented by individual enforcement policies specific to a particular discipline eg food safety or car parking. These individual policies will embrace the general principles contained within this document. The Council has agreed to the principles contained within the 'Enforcement Concordat'.
4. The Council uses a variety of approaches in order to secure legal compliance. These include:
 - informal options of education, advice, information and guidance both in writing and personally, the use of mailshots and 'informal' letters requiring action.
 - formal options of statutory notice, fixed penalty notices, seizure, withdrawal of licence, imposition of licence conditions, simple cautions and prosecution.
5. In determining the nature of enforcement action, the Council will take into account national guidance, including:
 - Criminal Procedure and Investigations Act 1996 (CPIA);
 - The Code for Crown Prosecutors (available from: The Crown Prosecution Service, Information Branch, 50 Ludgate Hill, London, EC4M 7EX, Tel: 020 7796 8000);
 - Police & Criminal Evidence Act 1984 (PACE), and associated Codes
 - Procedure and guidance notes within each team;

- The Enforcement Concordat and any relevant codes of practice under the Regulatory Reform Act 2001;
 - Statutory Code of Practice for Regulators, December 2007: Department of Business Enterprise and Regulatory Reform;
 - Codes of Practice issued by the Food Standards Agency, Department of Environment Food and Rural Affairs (Defra), Health and Safety Commission (HSC), Local Authorities Co-ordinators of Regulatory Services, (LACORS), and also relevant internal procedural and policy documents;
 - Legislative and Regulatory Reform Act 2006
 - Regulatory Enforcement and Sanctions Act 2008.
6. 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 Regulator's Compliance 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.

Enforcement Principles

7. Underlying a policy of firm but fair regulation the following principles will be fulfilled:
- Proportionality - any action that we take will relate to the seriousness of the risk to health, or safety of persons or the environment and to the seriousness of any breach of law. Where possible, the cost of remedy as well as the degree of risk will be considered.
 - Accountability – our policies will be clear and accessible and we will operate a fair and effective complaints procedure. Our staff will be courteous and efficient in their work.
 - Consistency - we will endeavour to take a similar approach in similar circumstances to achieve similar ends. Where required by Government departments, we will adopt a quality monitoring regime for officers undertaking inspection work. We will participate with other local authorities in auditing each other's work to ensure consistency and we will follow national codes of practice and guidance where these are available. We will put into place internal procedural documents to promote consistency and fairness.
 - Transparency - The Council will help those with a legal duty to comply with the law and advise what the law requires of them and make clear what needs to be done. We will distinguish clearly between legal requirements and advice or guidance about what is desirable but not compulsory. We will make clear to people the powers of officers and what they can expect.
 - Targeting - Enforcement efforts will take into account those activities posing the greatest risk and specific problem areas or activities having a history of poor or non-compliance.
 - Although our primary aim is to safeguard the public we also wish to support the Council's priority of 'Creating the conditions for the growth and maintenance of quality economic activity'. We will achieve this by providing advice and assistance to business on reducing their risk liability in our areas

of statutory enforcement. We will also, where appropriate, direct businesses to other agencies.

Approach to Enforcement

8. We will strive to ensure that enforcement decisions are fair and consistent. In coming to any decision we will consider the seriousness of the offence, relevant past history, confidence in the person or business, the consequences of non-compliance and the likely effectiveness of various enforcement options. We will ensure that people are not subject to unnecessary burdens and that any requirements are proportionate to risk. We will also ensure that our resources are targeted where they are most likely to be effective whilst having regard to national and local guidance. Whilst 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 and having regard to minimising burdens on businesses. Our enforcement work will, where necessary, take account of the need to carry out visits out of normal working hours in order to detect breaches of the law and to protect consumers.
9. Minor breaches of legislation. Where a minor breach of the law has occurred we will try to deal informally with the matter and will therefore advise the person responsible what needs to be done to comply. When requested, written confirmation will be given and this will identify those matters which are legal requirements and those which are recommendations for good practice. No further action will normally be taken by the Council when the person responsible is prepared to put things right in a reasonable timescale, and does so.
10. Serious breaches of legislation. The Council prefers to secure compliance with legislation by a process of education and encouragement and will therefore confirm what action is needed to rectify breaches of legislation. It will sometimes be necessary for more formal action to be taken. This may involve the service of a Statutory Notice which states what must be done and gives dates for completion. Such Notices will normally only be served when:
 - There has been a serious breach of the law or
 - There is a serious risk to health, safety or the environment or
 - The Council itself has a statutory duty to serve notice or
 - An informal approach has not been successful
11. Where legislation requires us, we will give prior written warning of our intention to serve notice. We will, where required, consult with other Authorities before taking enforcement action.
12. Should we decide to take immediate action, such as service of an improvement notice, a prohibition notice or the seizure of articles, we will write and explain why this was necessary.

13. Fixed Penalty Notices may be issued when an offence is witnessed. Failure to pay the penalty within the prescribed period will result in prosecution for the incident. Repeated offences are likely to result in prosecution.
14. Prosecution. Although, as a general principle, the Council views prosecution as a last resort, on occasions it will be necessary for businesses and individuals to be prosecuted. This will only happen when:
 - there is a history of non-compliance, or
 - an informal approach has failed to resolve the problem, or
 - there is a serious risk to safety, the environment or health, or
 - there has been a flagrant disregard of the law or failure to comply with a notice, or
 - the alleged offence is so serious that other forms of action would be inappropriate, and
 - where it is in the public interest.
15. When considering prosecution we will have regard to all available information and discuss matters with those affected to ensure that a fair, consistent and objective decision is made. We will consider the Crown Prosecution Service Guide – ‘The Code for Crown Prosecutors’ and, in particular, review the following:
 - the seriousness of the offence
 - the previous history and willingness to prevent a repetition
 - any explanation given
 - the public benefit
 - legal advice.
16. Cautions. A Caution is an alternative to prosecution which is designed to deal quickly with less serious offences, avoid unnecessary Court appearances and reduce the likelihood of re-offending. When we are satisfied that an offence has been committed and satisfied that the public interest would be best served by using this alternative, the offender may be given the option of accepting a Formal Caution. The implications of a Caution, including the fact that it will be referred to should another offence be committed, will be clearly explained in all cases before request of a signature. Should the offer of a Caution be declined, the Council will consider to take further formal action in accordance with this policy.

Appeals and Complaints Against the Service

17. Formal appeals are available either to the relevant Court or to a Tribunal. Once a legal notice has been served or a decision to prosecute has been taken, it will not be possible to use the informal appeals mechanism. However, in such cases, information will be given on how to appeal formally.
18. Informal appeals or complaints against the service will be taken seriously. The complainant will be treated with courtesy and the complaint will be investigated fully and promptly in accordance with the Council’s adopted complaints procedure.

Comments on our Enforcement Policy

19. We strive to ensure that our enforcement policy is clear, open and helpful. We welcome comments from our customers on whether this policy meets those objectives. If you wish to comment on anything associated with this policy please e-mail: customer.services@southhams.gov.uk write to us at: South Hams District Council, Follaton House, Plymouth Road, Totnes, Devon, TQ9 5NE.
20. All our publications are available in alternative formats, such as large print or a language other than English. Please contact us on 01803 861123 or e-mail enquiries@southhams.gov.uk.
21. An Equality Impact Assessment of this policy was completed in August 2008.
22. The following sections relate to specific enforcement policies relating to individual services that the Council provides. These policies exist, either due to the unique nature of the enforcement work being undertaken or by some other requirement to have a specific policy.

Environmental Health

23. The Environmental Health Service is required to produce a number of service-specific enforcement policies such as relating to food safety and health and safety at work. These policies will follow the general principles outlined in this policy but will provide in more detail what action will be taken in certain situations.
24. Many types of licence are issued by the Environmental Health Service. Minor breaches of licence conditions will usually be dealt with informally, at least on the first occasion. Enforcement of legislation relating to licensing and registration activities will follow the same general principles.
25. The Environmental Health Service maintains its own Enforcement Policies.

Environmental Services

26. The Environment Services section has in place a number of policies that support the management of waste. The policies outline the rules attached to how waste processes are managed and underpin the council's statutory obligations. The policies do not describe possible likely outcomes if policies are not followed but just the rules of engagement.
27. In addition to the management of waste the section also manages dogs, abandoned vehicles, pannier markets, ferry and both on and off street car parking. Each one of these activities will have underpinning policies. Some will have operational policy and some policy set by other agencies. In all cases the process of implementing policy will follow the same or similar guidance as prescribed within this report.
28. Environmental Services maintains its own Enforcement Policy.

Planning

29. There are a number of enforcement powers available to the Council as a Local planning authority. Some breaches of planning control are statutory offences, others become so only after failure to comply with Enforcement Notices. Government maintains that planning enforcement should remain informal, flexible and discretionary. Consequently, the approach of planning enforcement action will be to seek to provide the opportunity for transgressors to fall in line with policy and the law through negotiation, but to take formal measures when this is unsuccessful or where it is in the public interest.

30. The Planning Service has its own Enforcement Policy

Building Control

31. The Building Control Service operates under a partnership arrangement with a number of other authorities and as such has its own Enforcement Policy.

Benefits payments

32. The Benefits service has no separate Enforcement Policy.

