



South Hams
District Council

HEALTH AND SAFETY ENFORCEMENT POLICY

SOUTH HAMS DISTRICT COUNCIL
ENVIRONMENTAL HEALTH SERVICE
HEALTH AND SAFETY ENFORCEMENT POLICY

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1.0 Introduction

- 1.1 It is this Council's aim to improve the well-being of the people of South Hams and as such actively promote and maintain good standards of health and safety for people working within the District and members of the public who visit places of work so that they can do so without risks to their health or safety.
- 1.2 The Council has a duty to act as an enforcing authority under Section 18 of the Health and Safety at Work etc. Act 1974 (HASAWA or the 'Act'). In particular the following elements are essential for an LA to adequately discharge its duty as an enforcing authority. LA's must have : -
- a clear published statement of enforcement policy and practice;
 - a system for prioritised planned inspection activity according to hazard and risk, and consistent with any advice given by the Health and Safety Executive and Local Authorities Enforcement Liaison Committee (HELA);
 - a service plan detailing the LA's priorities and its aims and objectives for the enforcement of health and safety based on the FIT3 campaign;
 - the capacity to investigate workplace accidents and to respond to complaints by employees and others against allegations of health and safety failures;
 - arrangements for benchmarking performance with peer LAs;
 - provision of a trained and competent inspectorate, and
 - arrangements for liaison and co-operation in respect of the Lead Authority Partnership Scheme.
- 1.3 The Council will ensure that as an enforcing authority, it will make adequate arrangements for the enforcement of health and safety within its area of enforcement responsibility as is required under Sec18 of HASAWA.
- 1.4 This policy has been produced to ensure that the Council's health and safety inspectors give a high quality service to local employers, the self employed, employees and members of the public and that the Council is seen to be effective, fair and consistent in discharging its duties.
- 1.5 This policy incorporates the principles of the Enforcement Concordat which the Council has formally adopted, which relates to transparency, proportionality, consistency and helpfulness. It also reflects the general enforcement policy for the Environmental Health Service.
- 1.6 The Council is aware of its own health and safety responsibilities. Inspectors of the Council will, in carrying out the duties covered by this policy, operate in accordance with the Council's own safety policy and follow safe working practices. Risk assessments will be made of all significant areas of work carried out by inspectors, overseen by the Head of Environmental Health and/or the Divisional Environmental Health Officer in accordance with the Management of Health and Safety at Work Regulations 1999.

- 1.7 This policy will be reviewed periodically and the arrangements of which are contained within Section 8.
- 1.8 The Council endorses the continued use of this document as a tool for enforcement and authorises the Head of Environmental Health to maintain and amend it regularly to reflect changing requirements of enforcement work. Any changes that require major policy revision or those requiring additional resources must be reported to the relevant Member forum.

2.0 Approaches to Enforcement

2.1 Legal Duties

- 2.1.1 The Council's approach to enforcement reflects its responsibilities under HASAWA and the range of powers available. The type of premises and activities where the Council enforces the Act and associated legislation is determined by the Health and Safety (Enforcing Authority) Regulations 1998.
- 2.1.2 The Council considers that the primary responsibility for ensuring health and safety in the workplace lies with those who create the risks. In particular, employers need to recognise their responsibility for managing health and safety.

2.2 Co-operation with Employers

- 2.2.1 The Council views co-operation with employers and others who have duties under HASAWA as the best way of achieving compliance with the law.

2.3 Standards to which the Council Works

- 2.3.1 The Council recognises the importance of Approved Codes of Practice (ACoP) and other guidance issued under the Act and will use the ACoPs and guidance as the basis of the standards to be expected of employers and other persons.
- 2.3.2 The Council will abide by the Health and Safety Commission's mandatory guidance (Section 18 Guidance) issued under Section 18 of HASAWA.
- 2.3.3. The Council supports the approach to enforcement by local authorities as developed by the Health and Safety Executive/Local Authority Enforcement Liaison statement.
- 2.3.4 Advice for inspectors on enforcement procedures is issued by the HSE/Local Authorities Enforcement Liaison Committee (HELA). The Council will follow the guidance in HELA Circulars and will ensure that all relevant new and revised circulars are brought to the attention of all inspectors.
- 2.3.5 By virtue of the Enforcement Concordat, the Council accepts the need to satisfy the following criteria throughout this policy and associated enforcement work.

- **Procedures** Our procedures provide that the advice given by our Officers will be clear and, if necessary, in writing. Distinction will always be made between what must be done in order to comply and what is recommended.
- **Standards** The standards that the Department sets out to achieve in its enforcement policy will be published and made available to businesses and the public.
- **Transparency** We will be clear, fair and open in our dealings, including providing details of any drawbacks which may be involved in complying with the legislation.
- **Helpfulness** Our Officers will be helpful at all times. Businesses and individuals will be actively encouraged to seek advice and information about the Council's enforcement role.
- **Proportionality** Where enforcement options exist, the one that is selected will be proportional to the risk to health and safety of any person or the harm to the environment.
- **Consistency** As far as possible, we will be consistent in our enforcement actions, after taking account of the risks, the attitude of those involved and any history of compliance, whether positive or negative.
- **Complaints Procedure** A procedure will be followed ensuring that those who wish to complain about enforcement standards will receive a proper hearing of their grievances.

2.4 Principal Areas of Health and Safety at Work and Targets for Action

2.4.1 Inspection of Premises

2.4.1.1 The Council aims to visit all premises over which it has enforcement responsibility at a frequency based on the level of risk at each premises or as required to support specific initiatives such as the FIT3 campaign.

2.4.1.2 The Council will use a priority planning system for inspections based on the recommendations in HELA Circular 67/1 revised.

2.4.2 Accident/Dangerous Occurrence Investigations

2.4.2.1 All accident/dangerous occurrence reports received will be examined and further investigations made in accordance with the Council's accident investigation procedure.

2.4.3 Complaints

2.4.3.1 Complaints about health and safety conditions will be assessed and investigated as required in accordance with Council's complaint and advice request procedure.

2.4.3.2 The Council will not normally reveal the identity of a complainant relating to complaints of health and safety at work without the permission of that person or when statutorily required to do so.

2.4.3.3 Complaints relating to a Council service will be investigated in accordance with the Council's complaints procedure.

2.4.4 Health and Safety at Work Advice

2.4.4.1 Advice will be given to employers, the self-employed, employees and members of the public and will be dealt with in accordance with the Council's complaint and advice request procedure.

2.4.5 Health and Safety Statistics

2.4.5.1 The Council will submit an annual return to the Health and Safety Executive on Form LAE 1 as soon as practicable after the end of June each year. In addition, interim reports may also be submitted on a quarterly basis which the Council will endeavour to complete.

3.0 Inspectors

3.1 Appointment of Inspectors

3.1.1 The Council will use inspectors who are competent to carry out the health and safety enforcement work required and will appoint a Lead Officer to coordinate work and represent the Council on health and safety enforcement matters.

3.1.2 The Council will ensure that inspectors appointed to exercise all or any of the specified powers of HASAWA, meet the relevant standards of competence. These standards of competence are those contained within the Section 18 guidance further supported within the Council's policy and procedure relating to competence and appointment of inspectors.

3.1.3 A documented assessment of the competency of all appointed inspectors will be maintained.

3.1.4 Each inspector carrying out duties under HASAWA will be individually appointed by the Council to a level according to experience, qualifications and training.

3.1.5 At the time of appointment each inspector will be issued with an Instrument of Appointment as required by Section 19 of HASAWA.

3.1.6 When carrying out their inspection duties, inspectors must always be able to produce their Instrument of Appointment, or a duly authenticated copy on request.

3.2 Quality Monitoring

3.2.1 Procedures will be maintained to monitor the quality of service and consistency by: -

- scrutinising inspection reports, letters, notices and checking files,
- by peer review exercises, joint inspections and,
- by carrying out customer service surveys from time to time.

3.3 Training of Inspectors

3.3.1 All inspectors will need to keep themselves fully acquainted with the requirements of this policy, new legislation and guidance. Any training requirements will be considered on appointment to health and safety duties and as part of the ongoing appraisal process throughout the year. The Council will ensure the inspectors receive the necessary training relating to the premises or processes encountered. Inspectors will also be aware of the potential problems of comprehension where English is not a first language.

3.4 Commitment to the Enforcement Policy

3.4.1 All inspectors appointed to carry out health and safety inspections and other health and safety work will be expected to abide by the contents of this policy and other procedures referred to. Any departure from the policy must be exceptional, capable of justification and with the consent of the Divisional Environmental Health Officer (Commercial) or the Environmental Health Manager (EHM)

4.0 Methods of Enforcement

4.1 Principles of Good Enforcement

4.1.1 When enforcing health and safety legislation inspectors will:

- a) Explain clearly what needs to be done, why, and if necessary, by when and confirmed on an on-site report and if necessary followed up in writing within 10 working days making sure that legal requirements are clearly distinguished from recommendations.
- b) Advice given during advisory visits will only be confirmed in writing on request, again making sure that legal requirements are clearly distinguished from recommendations.
- c) Provide an opportunity to discuss the issues before formal action is taken, for example, before serving an improvement notice.
- d) Explain in writing why immediate action is considered necessary (i.e. why immediate rather than another course of action) and the consequences of failing to remedy the situation. However, when issuing an immediate prohibition notice on-site, only a verbal, clear explanation will be required. However, a confirmation letter will be sent within 3 working days.
- e) Explain rights of appeal when formal notices are issued.

Inspections

4.1.2 At the end of an inspection, inspectors will discuss with the business what further action, if any, they are going to take and an on-site report will be issued and signed by the inspector and a representative of the business.

4.1.3 Arrangements will also be made for providing appropriate information to employees or their representatives on matters affecting their health, safety or welfare and the action proposed.

Letters/Reports of Inspections

4.1.4 Correspondence will be sent within 10 working days but, if for any reason it will be longer, then the inspector will inform the business when it can be expected. Correspondence should make the status of advice clear and determine,

- statutory requirements clearly distinguished from recommendations;
- what needs to be done, why and if necessary the time scale for completion;
- and the relevant legislation will be clearly stated.

Where a recognised trade union exists on the premises, then a copy of all relevant correspondence, including formal notices will be given to the representative.

Improvement Notices

4.1.5 The procedures for the issue of formal notices are contained within the Council's procedure for issuing formal notices.

4.1.6 Before issuing an improvement notice, inspectors will discuss with the business what the breaches of law are, the action which will be needed to comply and appropriate timescales for completion of work. The business will be given the opportunity to discuss the issues with the inspector before formal action is taken and, if possible, resolve points of difference. During this process, account will be taken of any potential language difficulties.

4.1.7 Unless under exceptional circumstances, photographs and other supporting evidence will always be required to justify the issuing of improvement notices and maintain enforcement continuity.

Prohibition Notices

4.1.8 Where a decision is made to issue a prohibition notice, it will be discussed with the most senior representative of the business at the time and the employer's views will be taken into account. The Inspector will consider any potential language difficulties at this time. Where the notice is issued on-site, the inspector will provide a written explanation of the reasons for the action within 3 working days. Prohibition notices which are not prepared on-site must be issued without delay.

4.1.9 Where actions to seize and render safe are carried out, inspectors must leave a completed 'Notice of Taking Possession and Detaining' notice as required under Section 20/25 of HASAWA, listing the items/actions taken. If the taking of items is for the purposes of examination by an outside agency, then the inspector will

send a written response to the person from whom the article was seized etc. within 10 working days from the receipt of the results of examination.

4.1.10 Unless under exceptional circumstances, photographs and other supporting evidence will always be required to justify the issuing of prohibition notices and maintain enforcement continuity.

Appeals

4.1.11 Inspectors will give the business on the service of an improvement notice or prohibition notice written information on the appeal provisions (ETS19) explaining how, where and within what period an appeal may be brought; that the requests of an improvement notice are suspended while an appeal is pending; and that the business can apply to an Employment Tribunal for a prohibition notice to be withdrawn pending the outcome of an appeal.

4.2. Enforcement Options

4.2.1 The methods of enforcement action open to the Council are:

a) Informal, including:

- (i) verbal advice;
- (ii) letters requesting a person to take action; and
- (iii) by providing published guidance e.g. HSE booklets

b) Formal, including:

- (iv) improvement or prohibition notice and/or;
- (v) prosecution and
- (vi) formal cautions

4.3 Choice of Enforcement Method

4.3.1 Enforcement will be proportional to the risk involved and will normally be stepped in its approach. The emphasis will be placed on situations where there is an identifiable risk of injury if corrective action is not taken. The choice of enforcement will always be supported by the outcome of the Enforcement Management Model.

4.3.2 Compliance will normally be sought from employers by informal action through letters and advice. Formal enforcement through improvement or prohibition notices will generally be reserved for the more serious situations that pose a significant risk to the health, safety and welfare of persons at work and other people affected by their actions and where an informal approach has failed.

4.3.3 In any situation which requires action to ensure compliance with the law, the inspector will assess the degree of risk. The seriousness of the decision as to which method of enforcement is appropriate must always be governed by the circumstances of that situation. The employer's general attitude to health and

safety will be taken into account. If, however, the business regularly fails to comply or has no effective organisation for health and safety, formal enforcement may be necessary.

4.3.4 Inspectors must be satisfied that the use of informal action in any situation will not produce a lower standard of compliance with HASAWA and its related legislation than the use of statutory procedures.

4.4 Prosecutions

4.4.1 The Council will use its discretion in deciding whether to initiate a prosecution. Other approaches to enforcement can often promote health and safety more effectively but, where the circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may be appropriate.

4.4.2 The Council will consider prosecution when:

- it is appropriate as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, particularly where there would be a normal expectation that a prosecution would be taken or where, through the conviction of offenders, others may be deterred from similar failures to comply with the law; or
- there is judged to have been potential for considerable harm arising from breach; or
- the gravity of the offence, taken together with the general record and approach of the offender warrants it, for example, apparent reckless disregard for standards, repeated breaches including history of non compliance, persistent poor standards etc. Account will be taken of any potential language difficulties when assessing the general approach of the offender.

The decision to prosecute also will take account the criteria set down in the Crown Prosecution Service guidance and confirmed by the Enforcement Management Model.

4.4.3 Death at Work - where there has been a breach of the law leading to a work-related death, the Council as enforcing authority will consider whether the circumstances of the case might justify a charge of manslaughter. Liaison will take place with the Police and the Crown Prosecution Service. Any evidence of manslaughter will be passed to the Police or CPS as appropriate and HSE guidance followed.

4.4.4 Any failure of a person to comply with a formal improvement or prohibition notice will normally result in a prosecution being taken by the Council although the reasons for non compliance will be taken into consideration.

4.4.5 In certain situations, it may be necessary to consider taking action by both prosecution and notice procedures. This would include situations where a prosecution will not necessarily prevent the continuation of a contravention.

4.5 Formal Cautions

4.5.1 The Council will consider the use of formal cautions as an alternative to a prosecution provided that certain criteria are met. The Council will make it clear to the offender that they do not have to accept the offer of a formal caution nor will pressure be applied for them to do so.

4.5.2 The purposes of formal cautions are : -

- To deal quickly and simply with less serious offences;
- To divert less serious offences away from the courts; and
- To reduce the likelihood of repeat offences.

4.5.3 The criteria which must be met includes: -

- there must be sufficient evidence to give a realistic prospect of a conviction;
- the offender must understand the significance of a formal caution and must provide informal consent; and
- the offender must admit the offence.

4.5.4 A formal caution must not be used where there is insufficient evidence to secure a realistic prospect of a conviction nor where the offender does not admit the offence. In cases where the offender does not admit the offence then prosecution must be considered.

4.5.5 The Head of the Legal Section with the agreement of the Head of Environmental Health is authorised by the Council to issue formal cautions.

4.6 Interviewing Witnesses/Police and Criminal Evidence Act 1984 (PACE)

4.6.1 During any investigation, interviews are likely to be informal in the first instance with a view to gathering information to enable the Inspector to determine whether further investigations are necessary. The most effective way of gaining precise information in the initial stages of an investigation is by carrying out a Section 20 interview, where the interviewee has a legal obligation to provide truthful answers to the questions given by the inspector. If, during any initial interview, it becomes evident that the interviewee has committed an offence, the Section 20 interview will normally cease and the interviewee may be cautioned and the most up to date PACE code applied before proceeding using the relevant interview record forms. Alternatively contemporaneous notes may be made in the inspector's notebook and if possible, countersigned by the interviewee.

4.7 Ensuring Consistency of Enforcement

4.7.1 In the event of there being possible inconsistencies between proposed enforcement action of this Council and that adopted by other authorities, the

matter will be raised at the Chief Officers' Health and Safety Sub-Group and/or with the Enforcement Liaison Officer of the HSE (ELO).

- 4.7.2 Similar action to the above will be taken if inspectors of this Council feel it necessary to take action which is a significant departure from the content of Approved Codes of Practice or HSE Guidance documents etc.

5.0 Liaison with other Enforcing Authorities

5.1 Liaison with the Health and Safety Executive

- 5.1.1 This Council will consult where appropriate and maintain good working relationships with the Health and Safety Executive and, in particular, with the nominated ELO.
- 5.1.2 At an operational level, inspectors will liaise with the ELO who will give practicable enforcement advice and provide access to specialist and technical advice available within the HSE including occupational health specialists, analytical services and the provision of expert advice.
- 5.1.3 Where it is necessary to transfer enforcement responsibility for a premises from this Council to HSE or vice versa, the procedure is set out within HELA guidance. The business will be notified in writing of such a change.
- 5.1.4 The Council will participate with the HSE in joint initiatives for training of staff and inspection of premises as found necessary.

5.2 Liaison with the Employment Medical Advisory Services (EMAS)

- 5.2.1 EMAS is a branch of the HSE, which exists to provide advice on occupational health matters. Inspectors will use its services where appropriate and can contact EMAS direct for general advice. In cases where the advice is needed in connection with enforcement action, contact with EMAS is to be made via the ELO.

5.3 Liaison with Other Local Authorities

- 5.3.1 When an inspector is dealing with an organisation for which there is a Lead Authority, that authority will be contacted in respect of any issue involving the national health and safety organisation and policy of the company.
- 5.3.2 Copies of any letters, notices and accident reports will be sent to the relevant lead authority.
- 5.3.3 A lead authority will be contacted whenever prosecution is being considered.
- 5.3.4 Details of lead authority partnerships are published in HELA Circulars and are listed under "Lead Authority" in the index.
- 5.3.5 All projects identified under the FIT3 programme will be discussed at the health and safety sub group and all agreed projects, wherever possible the work will be coordinated and implemented by all Devon authorities simultaneously.

5.4 Liaison with the Fire Authority

- 5.4.1 Where issues of fire safety and, in particular, where any breach of the Regulatory Reform (Fire Safety) Order 2005 has been noted during an inspection, the Devon Fire and Rescue Service will be informed.

6.0 Indemnification of Inspectors

- 6.1 Section 26 of the Health and Safety at Work etc. Act 1974 requires Local Authorities to indemnify their inspectors appointed under that Act under specified circumstances. It is the policy of this Council to indemnify all inspectors appointed under the Act against the whole of any damages and costs or expenses which may be involved provided that the Council is satisfied that the inspector honestly believed that the act complained of was within his/her powers and that his/her duty as an inspector did not wilfully act against instructions.

7.0 Grievance

- 7.1 The Council has adopted a formal complaints procedure available to any stakeholders who are aggrieved by any action taken by any appointed inspector. This procedure is available on the Council's website and will be made available on request.

8.0 Review

- 8.1 The policy will be reviewed annually or when significant changes in legislation or guidance is published.
- 8.2 The HSC Annual Report of Health & Safety in the Local Authority enforced sector will be examined with a view to reviewing existing procedures to ascertain if changes or special initiatives i.e. HELA Strategy etc are needed because of trends in accident statistics or similar factors.

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