PUBLIC PROTECTION DIVISION ENFORCEMENT POLICY

General Statement

- 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 BDRO (Better Regulation Delivery Office) Regulators Code.
- In certain instances we may conclude that a provision in the Regulators Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Regulators Code will be properly reasoned, based on material evidence and documented.
- The objective of this policy is to detail for businesses and other service users what they may expect from enforcement officers and the decision making framework which Public Protection will apply in deciding what, if any, of its powers to exercise in enforcing the provisions of the law.

Policy

Hull City Councils Public Protection Division

- Has regard to the BDRO Regulators Code and will help and encourage regulated entities and individuals to understand and meet legal requirements more easily; and respond proportionately to regulatory breaches.
- Takes into account guidance set out in the Code for Crown Prosecutors and any specific enforcement guidance from Government and national enforcement agencies
- Recognises where there is a shared enforcement role with other departments, authorities and enforcement bodies; and has in place arrangements to promote co-operation and consistency.
- Uses a risk based, intelligence lead and graduated approach to enforcement

Application

- This policy applies to individuals and businesses
- The policy will be evaluated and reviewed in response to major legislative changes
- The major pieces of legislation to which this policy applies are listed in the annex
What this Policy means in practice:

1. Who will visit premises?

- Authorised officers generally have the right to enter and inspect premises used for business purposes at all reasonable hours. They do not have to make an appointment and will usually visit without notice.
- If they do not have the right of entry you will be given appropriate notice.
- Authorised officers will also visit residential premises. They do not have a right of entry without giving written notice and if refused they can seek a warrant from a Magistrate.
- Officers may be accompanied by other enforcement agencies and persons authorised to assist in an investigation.

2. What will they look for?

- Officers will concentrate on activities that pose the greatest risk or are the subject of complaint but will also deal with any other matters of evident concern when carrying out inspections and investigations.
- They will look for breaches of the law by inspecting the premises, observing activities, examining documentation and interviewing proprietors, managers and staff.
- They will assess the effectiveness of management in identifying hazards and in controlling the risks arising from activities.
- They will look for bad practices and provide advice and guidance on best practice.

3. How often will a business be visited?

- The frequency of visits will normally depend upon the potential risk posed by a business and/or its previous record.
- Other visits may occur as result of a complaint, intelligence or as part of a special project/survey. Receipt of a complaint will not automatically result in a visit; these will be prioritised based on risk.
4. What can I expect from the Officer?

- To be shown identification.
- To be treated courteously.
- To be able to discuss the officer's findings and to receive advice and guidance.
- To receive a report of the officer's findings detailing any breaches of the law, with a clear distinction being made between recommendations and any action necessary to comply with the law.
- To be given an appropriate timescale to take any action necessary to comply with the law.
- To be informed of any likely follow-up action.
- To be allowed to discuss any relevant circumstances before any formal enforcement action is taken, unless immediate action is required.
- To be given reasons for immediate action at the time it is taken and to receive written confirmation within 10 working days.
- To be notified in writing of any rights of appeal against formal action.

In return we expect our officers to be treated with respect in working co-operatively with businesses and individuals.

5. What powers can officers use to carry out inspections and investigations?

- Officers can carry out examinations and investigations; take measurements, photographs and samples.
- Detain or take away food, defective equipment, goods and articles or cause them to be made safe if they are an imminent danger.
- Officers may seize any goods or documentation following a breach in the law, if they believe it may be needed as evidence.
- You will be given an official receipt for anything taken away.
- They can require information and take statements from people they believe can help with an investigation. Suspects will be appropriately cautioned.
- Officers also have power to carry out surveillance and other types of information gathering in accordance with the Regulation of Investigatory Powers Act 2000.
6. What action can they take if they find a breach of legislation?

Each case will be assessed on its merits. If breaches of the relevant legislation are found or conditions are found to be unsatisfactory, then one or more of the following actions could result, depending on officers' assessment of the situation.

(a) Informal Action

When?
- When there is no serious breach of legislation and/or when there is no actual damage or risk to public health, safety or the environment.

How?
- By offering targeted, practical verbal or written advice and guidance.
- By giving verbal warnings, instructions and requests for action.
- By sending informal letters which include detailed remedial actions and advice

(b) Formal Enforcement Action

Formal enforcement action is likely to result where businesses or individuals deliberately, recklessly or persistently breach the law, or where the breach has caused or is likely to cause serious damage to public, consumer interests, or the environment.

Formal enforcement action includes the following:

(i) Service of an Improvement Notice

When?
- When, in an officer's opinion, legislation has been contravened.
- The Notice will specify what the offence is, what remedial action is necessary and give an appropriate timescale to take any remedial action.
- The necessary appeals procedure will be identified with the notice.
• Failure to comply with an Improvement Notice is a serious offence and is likely to lead to prosecution.

(ii) Service of a Prohibition Notice

When?
• When, in an officer’s opinion there is a risk of serious personal injury or imminent risk to health.

• The notice will specify what matters give rise to risk, what legislation has been contravened if any, and direct that the activity shall cease until the risk is removed, this can include closure of premises.

• If the risk is imminent the Notice will take immediate effect and stop the activity at once. It maybe deferred or suspended in other instances.

• The necessary appeals procedure will be identified with the notice

(iii) Service of Other Forms of Statutory Notice including Abatement Notices

When?
• When, in an officer’s opinion, legislation has been contravened or information is required

• Failure to comply with such a notice is a serious offence and is likely to lead to prosecution. In some instances further action may also result such as carrying out remedial work in default, or seizure of noise making equipment.

• The necessary appeals procedure will be identified with the notice

(iv) By seizing food, dangerous articles or substances

When?
• When in an officer’s opinion, food, an article or substance is a cause of imminent danger or serious personal injury.

• If appropriate, a sample will be taken and a portion left with a responsible person.

• The article, substance or food maybe rendered harmless by any method, including destruction.
• A written report notice or certificate will be prepared and signed by the officer explaining why the action was taken.

(v) Alternative Enforcement Actions (such as Enterprise Act Undertakings)

When?

• Certain legislation now enables a route for achieving compliance through the civil courts. This will normally involve a business or individual giving a written formal undertaking to either Hull City Council or the County Court that they will stop a certain course of conduct. Any future breach of such an undertaking would be taken extremely seriously and may be considered as contempt of Court.

(v) Service of a Fixed Penalty Notice

When?

• Only when legislation permits and this has been breached. For example smoke free legislation, underage sales.

• The Notice will detail the exact circumstances of the offence, and provide information regarding payments or how to request a court hearing.

(vi) Simple caution

When?

When conditions for prosecution are fulfilled, but:

• An immediate prosecution is not considered to be in the public interest, and
- The person admits the offence, and is prepared to accept a simple caution

(Vii) Prosecution

When?

When, in the officer’s opinion, an offence has been committed and there is sufficient evidence to initiate a prosecution, they will take into account a number of factors in accordance with the Code for Crown Prosecutors before deciding to recommend a prosecution. These factors may include for example:

- The seriousness of the alleged offence.
- The history of the business or individual, including previous warnings.
- The willingness of the business or individual to prevent a recurrence of the problem and to co-operate with officers.

The final decision to authorise a simple caution or prosecution rests with the Director of Public Health and Adult Services, who will consider the evidence in each case against this policy before signing an officer authorisation.

7. What rights of appeal are there against Statutory Notices or other formal action?

- You will be notified in writing of any rights of appeal against formal action including the service of a statutory notice at the time the action is taken

8. What if I do not agree with the action taken and want to complain?

- Contact the Officers Manager stating why you do not agree and any proposed alternative action OR
- Contact the Hull City Councils Customer Feedback team by calling 01482 300300 or visit www.hullcc.gov.uk

Equalities

Hull City Council is committed to fulfilling its role with regard to the enforcement of legislation without discrimination in terms of colour, culture or ethnic origin, nationality, religion or belief, gender, disability, age, sexuality, geographical location or any other status.
Human Rights

The Council will at all times recognise and respond to its legal obligations with regard to equalities and the Human Rights Act 1998 in dealing with the enforcement of legislation.

Annex

Major areas of legislation to which this policy is applicable are listed below, this also includes all regulations, orders and byelaws made under this legislation (this list is not exhaustive)

Animal Health Act 1981
Animal Welfare Act 2006
Business Protection From Misleading Marketing Regulations 2008
Clean Air Act 1993
Companies Act 2006
Consumer Credit Act 1974
Consumer Protection Act 1987
Consumer Protection from Unfair Trading Regulations 2008
Copyright Designs and Patents Act 1988
Enterprise Act 2002
Environmental Protection Act 1990
Food Safety Act 1990
Fraud Act 2006
Health Act 2006
Health and Safety at Work Etc Act 1974
Licensing Act 2003
Pollution Prevention and Control Act 1999
Trade Marks Act 1994
Video Recordings Act 1984
Weights and Measures Act 1985