

# Enforcement Policy for Environmental Services

August 2008

## 1. Background and underlying principles

Wychavon District Council's Environmental Services department has a wide range of statutory responsibilities and is required to set out how it will meet these responsibilities. We detail the full range of our activities in an annual Service On 8<sup>th</sup> January 2008 the Council agreed its approach to regulation and commitment to the Statutory Code of Practice for Regulators (referred to as the Compliance Code in this document). and fully supports the requirement that regulatory activities should be carried out in a way that is consistent, transparent, accountable, proportionate and targeted. This policy also aims to support our vision of Wychavon as “a safe, green, healthy and beautiful district that is a vibrant and creative place for everyone to live, work and visit.”

The ways in which we will achieve this are set out in this enforcement policy. The policy is divided into the following sections to reflect the requirements of the Compliance Code:

[Section 2 - Supporting economic progress](#)

[Section 3 - Risk assessment](#)

[Section 4 - Advice and Guidance](#)

[Section 5 – Inspections, investigations and other visits](#)

[Section 6 - Information requirements](#)

[Section 7 - Compliance and enforcement actions](#)

[Section 8 - Accountability](#)

In drafting this policy consideration has been given to, and officers will be expected to comply with, the following:

- Statutory requirements
- Statutory Code of Practice for Regulators (Compliance Code)
- Statutory Codes of Practice
- Home Office Guidelines
- The Code for Crown Prosecutors
- Human Rights, PACE and RIPA legislation and guidance
- Joint enforcement protocols agreed with partner organisations
- Internal procedures and policies as documented in our QA system

Throughout this document “businesses and others” refers to businesses of any sort, individuals and voluntary organisations, all of whom may be subject to regulation by Environmental Services.

## 2. Supporting economic progress

We will seek to support businesses and others by:

- Providing easily accessible and understandable information and advice relating to legal requirements and best practice, to existing and new businesses and others
- Considering the burdens that regulatory sanctions impose on individual businesses and others, and reducing the burden to the minimum level consistent with achieving compliance
- Regularly reviewing our approach to regulatory activities and interventions so as to remove unnecessary burdens

### **3. Risk assessment**

We will ensure that our resources are targeted where they will be most effective. This applies across all of our service areas – food safety, licensing, pollution control, flood alleviation, land drainage, health and safety at work etc.

No inspections will be carried out without a reason. We will follow national inspection programmes where appropriate including those developed by the Food Standards Agency, Health and Safety Executive and Defra.

Intelligence – led inspections may also be carried out, as will inspections as a result of a complaint or a request from the business operator or householder.

In the absence of nationally recognised inspection programmes we will give consideration to the following factors when considering the frequency and type of interventions we will employ:

- local policies and procedures (eg. Contaminated land inspection strategy)
- compliance history and potential future risks
- the existence of effective management systems
- evidence of recognised external accreditation
- management competence and willingness to comply

Details of our inspection programmes and other planned regulatory activities are held in service level procedures, plans and policies and will be made available, where appropriate, on our website.

### **4. Advice and guidance**

Where it is appropriate for us to do so, we will provide general information, advice and guidance to make it easier for all to understand and meet their legal responsibilities. It will be provided promptly, and in clear, concise and accessible language by officers in person, in writing and via our website. Where there are significant changes in legislation we will seek to provide information in the most direct way possible (eg by mailshot to those affected and/or via media campaigns).

Where appropriate advice exists in a variety of languages we will make these versions available or signpost their location to those who need them. Where the information is only available in English (eg a statutory notice or report) we will tell the recipient about the services available through Ethnic Access link.

When we offer guidance on compliance with the law we will distinguish between statutory requirements and guidance on best practice which go beyond the legal minimum.

Except in cases of immediate risk we will ensure that advice and guidance can be accessed without triggering enforcement action.

## **5. Inspections and other visits**

When developing our inspection programmes and procedures we will ensure that no inspection takes place without a reason. Inspections will result either as part of a risk based programme, as a result of intelligence received, a complaint or on request.

We will focus our efforts on those businesses and organisations where evidence shows that:

- one or more contraventions would lead to a serious risk, and
- there is a high likelihood of non-compliance

And where we find examples of good practice we will acknowledge it and where possible share the information with other organisations.

Where possible, we will work with other regulators to reduce inspection burdens and to share information to reduce risk.

## **6. Information requirements**

We will normally require only that information required by statute from businesses and others eg food registration, completed application forms and submission of appropriate returns.

Before requiring businesses and others to provide information beyond that required above we will consider the costs of providing that data and will balance the benefits of the data to us against the cost of providing it. We will also consider whether the information we require is already available from another source.

We will ensure that effective mechanisms are in place to share data (within the legal boundaries of data protection law) with other regulators so as to reduce the burden of providing such data. Where possible we will allow and facilitate electronic submission of data, minimise frequency of collection and request only data which is justified on the basis of risk.

## **7. Compliance and enforcement actions**

In seeking to ensure compliance with statutory requirements, there are a number of options we can take. The options are:

- to take informal action by offering information, advice and support, either face to face, or in writing;

- to take more formal action through the issue of verbal warnings, requests for action and the issue of letters warning of non-compliance to try to ensure that business proprietors and others do not, through lack of information or understanding, unnecessarily expose themselves to the possibility of formal action
- to use statutory notices to require compliance with the law. The statutory right of appeal against any notice served will be brought to the attention of the person served with the notice at the time of the service
- to issue fixed penalty notices in accordance with agreed policies and protocols and where there is adequate evidence to support a prosecution if a notice is not paid.

and as a last resort:

- to use simple cautions in order to deal quickly and simply with less serious offences, drive the less serious offences away from the courts and to reduce the likelihood of a repeat offence
- to prosecute. The decision to prosecute an offender will only be taken in more serious cases and the decision to prosecute will be taken by the Head of Environmental Services, in conjunction with the Head of Legal and Support Services.

The criteria to be considered before reaching a decision on the use of an appropriate enforcement action include:

- a) Does the action comply with statutory requirements, codes of practice and government guidance?
- b) Has all informal action (where appropriate) to resolve the issue been exhausted?
- c) Is there blatant disregard of responsibilities under the legislation?
- d) The seriousness of the offence
- e) The history of previous compliance with legal requirements
- f) The confidence in an individual's or company's ability to meet legal requirements and restore the harm caused by non-compliance (where appropriate)
- g) The likely results of non-compliance (is there any financial gain?)
- h) The risk/benefit to public health
- i) The likelihood of recurrence
- j) The risk of pollution of the environment or harm to health

We will seek to use the full range of enforcement options detailed above to:

- Aim to change the behaviour of offenders
- Aim to eliminate any financial gain or benefit from non-compliance
- Be responsive and consider what is appropriate for each combination of offender and offence, including the consideration of the effect of the stigma associated with criminal convictions
- Take action that is proportionate to the nature of the offence and the harm caused
- Aim to restore the harm caused by non-compliance where appropriate, and
- Aim to deter future non-compliance

When considering the appropriate level of action to take officers will take into account the following general advice and any sector specific decision making tools that are within our procedures (eg the EMM for health and safety contraventions).

### **INFORMAL ACTION**

Informal action to secure compliance with legislation includes advice, verbal warnings and requests for action, the use of letters and inspection reports. The circumstances when it is appropriate to consider using informal action are as follows:

- The act was not sufficiently serious to require formal action
- From past history, it can be reasonably expected that informal action will achieve compliance
- The result of non-compliance will not cause a significant risk to public health, safety, wellbeing or the environment
- Where informal action will be more effective than formal action

### **STATUTORY NOTICES**

Officers should consider the use of statutory notices, where statutorily required and / or where one or more of the following apply:

- There is/are significant contravention(s) of legislation
- There is a lack of confidence in a response to an informal approach
- There is a history of non-compliance with informal action
- There is evidence of little knowledge of statutory requirements
- The result of non-compliance could be potentially serious to public health, safety, wellbeing or the environment
- The relevant home/lead or primary authority has been consulted if appropriate

## **SIMPLE CAUTIONS**

Simple Cautions, where appropriate, will be issued in accordance with Home Office guidelines. A Simple Caution can only be issued where there is sufficient evidence to provide a realistic prospect of conviction but there are reasons why prosecution is felt to be inappropriate. Simple Cautions will only be used in accordance with agreed procedures (eg for a particular kind of offence) or where there are particular circumstances that justify the use of a caution rather than prosecution. In these cases the use of a Simple Caution will be authorised by the Head of Environmental Services in the same way that a prosecution is authorised.

Before issuing a Simple Caution, the Council must be satisfied that the offender has admitted to the offence in writing and has agreed to be cautioned.

Simple Cautions issued may be cited when considering any similar offences within three subsequent years.

## **PROSECUTION**

Circumstances likely to warrant prosecution may be characterised by one or more of the following:

- Where the offence involves a significant breach of the law such that public health, safety, wellbeing or the environment is or has been put at risk
- Where the alleged offence involves a failure by the suspected offender to correct an identified potential risk having been given the opportunity to comply with the lawful requirements of an authorised Officer
- Where the offence involves a failure to comply in full or in part with the requirements of a Statutory Notice (including the non-payment of a fixed-penalty notice)
- Where there is a history of similar offences related to risk to public health, safety, wellbeing or the environment.

### **8. Accountability**

We will set clear standards and targets for our service and publish them in the form of an annual Service Plan and a Service Charter. In setting the standards and targets we will take into account all feedback received from users of our service and the public. This can be in the form of unsolicited feedback (both complimentary and complaints) and solicited feedback as the result of satisfaction surveys.

Where appropriate we will consult with those affected before changing policies, procedures and plans, and will carry out any necessary impact assessments before making our decisions.

