



HEALTH AND SAFETY ENFORCEMENT POLICY

ISSUE 2

HEALTH AND SAFETY ENFORCEMENT POLICY

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INTRODUCTION

This document sets out what business and others being regulated can expect from Harborough District Council's Health and Safety enforcement officers. It commits the Council to good enforcement policies and procedures. It lays down the generalised policy of the Council based on the principles of good enforcement contained in the Enforcement Concordat, produced by Central Government and the Statutory Code of Practice for Regulators (Regulators' Code) produced by the Department for Business Enterprise & Regulatory Reform. This document should be read in conjunction with the Council's General Enforcement Policy.

The Council takes into account advice contained in the Code for Crown Prosecutors, and endeavours to ensure that it supplements the advice outlined in specific enforcement guidance from other sources, including the Health and Safety Commissions Enforcement Policy Statement and the Regulators' Code.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. Harborough District Council is committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense, while only intervening where there is a clear case for protection. All citizens will reap the benefits of this policy through better information, choice and safety.

1.0 GENERAL BACKGROUND

- 1.1 This Policy Statement is based on the Council's aim to protect the health, safety and welfare of people at work, and to safeguard others, principally members of the public, who may be exposed to risks from the way that work is carried out on premises which are the Council's enforcement responsibility.
- 1.2 The purpose of this document is to state the Council's general policy with respect to health and safety law enforcement; following the principles contained within the Cabinet Office's Enforcement Concordat, the Health and Safety Commission's Enforcement Policy Statement, the Health & Safety Executives National Local Authority Enforcement Code and other relevant guidance documents.
- 1.3 The Policy is based on the principles of:
- **openness** (about our policies and procedures)
 - **clear standards** (our performance and levels of service),
 - **proportionality** (to secure compliance),
 - **consistency** (of our approach),
 - **targeting** (of enforcement action),
 - **transparency** (of our methods and organisation)
 - **accountability** (for our actions).
- 1.4 This Council being a signatory to the Cabinet offices 'Enforcement Concordat' will draw clear standards in relation to the level of service and performance the public, employers, employees and businesses can expect to receive. The standards will be made available (upon request) to employers, businesses and others who are regulated by the Council.
- 1.5 This Council will put into place adequate arrangements and procedures for enforcement by complying with the National Local Authority Enforcement Code – Health and Safety at Work issued under section 18(4)(b) of the Health & Safety at Work etc. Act 1974. This Council will also follow the guidance issued to local authorities by the Health and Safety Commission in its Enforcement Policy Statement.
- 1.6 This Council is committed to preventing accidents and ill health, in premises for which it is the enforcing authority, of employees, members of the public and others who have cause to resort to the premises.
- 1.7 This Council will only enforce health and safety within its field of responsibility, that is:
- (a) Activities/premises being within the Councils geographical boundary which are so stipulated in the Health and Safety (Enforcing Authority) Regulations 1998 (as amended)
 - (b) Activities/premises locally agreed with the Health and Safety Executive.
 - (c) Activities/premises which fall within the memorandum of understanding to the flexible warranting scheme (local agreement between local authority officers and HSE inspectors).
- 1.8 The emphasis of enforcement will be primarily focussed upon health and safety risks, the attitude of employers/businesses/owners and/or the seriousness of any contravention of health and safety standards.

- 1.9 The Council will work with employers/businesses/proprietors to achieve legislative compliance, through inspection, education and the provision of advice and information as appropriate.
- 1.10 The policy will be fully documented and reviewed on a regular basis, at least once every 5 years or sooner if there is a major change or development in health and safety legislation or guidance.
- 1.11 Any departure from the policy will be exceptional, capable of justification by the officer and should only be undertaken once their manager has been informed; unless there is a serious and imminent risk of accident or injury.
- 1.12 This authority is committed to providing ready access to those wishing to appeal (where an appeal mechanism is provided) or complain about any enforcement action.

2.0 PRINCIPLES OF ENFORCEMENT

2.1 Proportionality

2.1.1 Proportionality means ensuring interventions and enforcement are related to the relative level of health and safety risks, including the potential or actual harm, or to the seriousness of any breach of the law. Action taken by the Council to achieve compliance will be proportionate to any risks to health and safety or to the seriousness of any breach, which includes any actual or potential harm arising out of a breach of law.

2.1.2 Some health and safety duties are specific and absolute. Others require action so far as is reasonably practicable. We will apply the principle of proportionality where discretion can be applied.

2.1.3 Deciding what is reasonably practicable to control risks involves the exercise of judgment. In the final analysis, it is for the courts to determine what is reasonably practicable in a particular case. Where exercising our judgment we will, when considering protective measures taken by them, take account of the degree of risk on the one hand, and on the other the cost, whether in money, time or trouble, involved in the measures necessary to avert the risk. The Enforcement Management Model will be applied to assist decision making.

2.1.4 Proportionality will be achieved by having trained and competent officers who can exercise professional judgement to differentiate between different levels of risk or harm; decide how far short a business has fallen from managing the risks; and apply proportionate decision making.

2.2 Targeting

2.2.1 Targeting means making sure that contacts are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it whether employers, or others.

2.2.2 The Council has a risk-based intervention plan focussed on tackling specific risks. The Council reserves unannounced proactive inspection only for the

activities and sectors published by the HSE or where intelligence suggests risks are not being effectively managed. The Council uses national and local intelligence to inform priorities.

2.2.3 Enforcement action will be directed against duty holders who may be employers in relation to workers or others exposed to risk, the self-employed, the owner of the premises or the supplier of the equipment. Where several duty holders have responsibilities we will take action against those who are primarily in breach.

2.2.4 When our inspectors issue improvement or prohibition notices or in exceptional circumstances issue formal cautions or prosecute, we will ensure that a senior officer at the duty holders head office is also notified.

2.3 Consistency

2.3.1 Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

2.3.2 Duty holders managing similar risks can expect a consistent approach from the Council to targeting; the advice tendered; the use of enforcement notices etc; decisions on whether to prosecute; and in the response to incidents.

2.3.3 In practice consistency is not a simple matter. Our enforcement officers are faced with many variables: the severity of the hazard, the attitude and competence of management, the duty holder's accident history. Decisions on enforcement action are discretionary, involving judgment by the officer. The Council has arrangements in place to promote consistency in the exercise of discretion, and these include applying the Enforcement Management Model, peer review, liaison arrangements with the other enforcing authorities and the Health and Safety Executive.

2.4 Transparency

2.4.1 Transparency means helping duty holders to understand what is expected of them and what they should expect from us. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

2.4.2 It also involves us in having arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements have regard to legal constraints and requirements.

2.4.3 We will tell you what to expect when an inspector calls and what your rights are.

- When inspectors offer duty holders information, or advice, face to face or in writing, including any warning, they will tell the duty holder what to do to comply with the law, and explain why. If asked Inspectors will confirm any advice in writing and distinguish legal requirements from best practice advice
- In the case of improvement notices, the inspector will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why, and by when;

- In the case of a prohibition notice, the notice will explain why the prohibition is necessary.

2.5 Accountability

- 2.5.1 Regulators are accountable to government, citizens and the Courts for their actions. This means that we have policies and standards (such as the four enforcement principles above) against which we can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.
- 2.5.2 If the duty holder does not agree with an Officers judgement or decision they can discuss the matter with the Officer or their supervisor in the first instance.
- 2.5.3 The Council has a complaints procedure. Where a notice is served there is a right of appeal to an Employment Tribunal.
- 2.5.4 This enforcement policy is available to view on the Council website. A paper copy can be requested.

3.0 COMMUNICATION, LIAISON AND PARTNERSHIPS

- 3.1 This Council will ensure that effective and efficient channels of communication and working links are maintained and developed with businesses, statutory bodies, trade organisations and associations, professional institutions, the Health and Safety Executive, and other Leicestershire local authorities.
- 3.2 This Council will provide businesses with clear and jargon-free information and advice on how to comply with current health and safety legislation and standards including reference to nationally available material on the HSE website. The Council will exercise the principles of transparency and openness in relation to health and safety matters.
- 3.3 This Council supports the Health and Safety Executive / Local Authority Liaison Committee (HELTA) in its role of liaising between local authorities and the Health and Safety Executive to ensure that a co-ordinated and progressive approach to health and safety takes place.
- 3.4 To secure health and safety compliance, this Council will take part in national and local initiatives depending upon the resources available.
- 3.5 To raise health and safety standards within small firms, this Authority will identify, assess and disseminate information about both local and national initiatives depending on resources available.
- 3.6 This Council will work in partnership with the Health and Safety Executive, Primary and Lead Authorities and other Leicestershire local authorities to ensure consistency of approach.

4.0 AUTHORISATION AND INDEMNIFICATION OF OFFICERS

The purpose of this section is to state the authority's policy with respect to:-

- a) Identification of officers appointed and authorised to take enforcement action.
 - b) Identification of the designation of the persons who may authorise a prosecution under the Health and Safety at Work etc. Act 1974 and other associated legislation.
 - c) Indemnification of officers authorised to take enforcement and prosecution action.
- 4.1 Any enforcement action under the Health and Safety at Work etc. Act 1974 and associated legislation will be initiated by competent enforcement officers (who have been duly authorised in writing by the Authority) following HSC guidance [Ref. HSC (G) 2(Rev)].
 - 4.2 Only officers authorised by the Authority under Sections 21 to 26 of the Health and Safety at Work etc. Act 1974 will serve improvement and prohibition notices.
 - 4.3 Where, through upholding the principles outlined in the policy document, a prosecution is necessary, the following officer may authorise such action:-

Head of Legal & Democratic Services
 - 4.4 The following designated Officers will also be consulted as part of the prosecution decision making process:-

Relevant Corporate Director or Head of Service.
Regulatory Services Manager
 - 4.5 Other officers may be consulted including external advisors / experts where appropriate.
 - 4.6 The designated Officer who is responsible for authorising a prosecution is aware of the limits of their delegated powers by reference to the Councils Constitution, Statutory Codes of Practice and any other forms of guidance, including the principles set out in this policy.
 - 4.7 Only officers who have been authorised by the Council to issue Improvement Notices will do so. Only an authorised officer who has personally witnessed the contravention(s) will sign the notice.
 - 4.8 Only officers who have been authorised by the Council to issue Prohibition Notices will do so. Only an authorised officer who has personally witnessed the contravention(s) will sign the notice.
 - 4.9 The Council will indemnify authorised officers against all damages and costs or expenses awarded against them provided they acted honestly, within their powers and not against instructions/procedures.
 - 4.10 Only authorised officers that have been indemnified by the Council will take enforcement action and exercise their statutory powers.
 - 4.11 Where this policy is followed and an authorised officer considers legal proceedings is the most appropriate course of action, then they should consult with their line manager. If the manager is of the same opinion then agreement of the appropriate Designated Officer should be gained before any further

action is taken. The Legal Services Section should be then contacted immediately to discuss the offences and to commence legal proceedings.

4.12 This Council's policy in relation to prosecutions is detailed in Section 6 of this document.

5.0 INVESTIGATIONS

5.1 Investigations are undertaken in order to determine:

- The circumstances which gave rise to the risk/potential risk
- Whether action has been taken or needs to be taken to prevent a recurrence of the risk and to secure compliance with the law;
- Lessons to be learnt and to influence the law and guidance;
- What response is appropriate to a breach of the law.

5.2 As with prosecution, this Council has discretion in deciding whether to investigate incidents, cases of ill health and complaints. To maintain a proportionate response most resources available for investigation are devoted to the more serious circumstances.

5.3 In selecting which complaints or reports of incidents, injury or ill health to investigate and in deciding the level of resources to be used, this Authority will take account of the following factors:

- The severity and scale of potential or actual harm;
- The seriousness of any breach of the law;
- Knowledge of the duty holder's past health and safety performance;
- The enforcement priorities;
- The practicality of achieving results;
- The wider relevance of the event, including serious public concern.

5.4 Officers will keep all service customers informed on the progress of the investigation into their complaint and upon the final results of the case at its conclusion.

5.5 Decisions on enforcement action, especially with respect to the issue of Simple Cautions or to prosecute must be taken in a timely manner upon the conclusion of the investigation. These enforcement decisions should be communicated to the affected parties without undue delay.

5.6 The Commercial Team Leader will monitor Officer's workloads, investigations being conducted and compliance with timescales.

5.7 Where a decision to prosecute has been taken, regular monitoring of the case will be made by the Regulatory Services Manager to ensure there is no undue delay in concluding the case, although following the issue of proceedings the progress of the case through the courts is a matter for Her Majesty's Courts and Tribunal Service.

6.0 ENFORCEMENT OPTIONS & PROSECUTIONS

6.1 This Council believes in firm but fair enforcement of health and safety legislation. The purpose of enforcement is to:

- Ensure that dutyholders take action to deal immediately with serious risks;
 - Promote and achieve sustained compliance;
 - Ensure that dutyholders who breach health and safety requirements, and directors and managers, who fail in their responsibilities, may be held to account.
- 6.2 Authorised Officers have a range of tools at their disposal in seeking to secure compliance with the law. Most actions are of an informal nature such as providing information, verbal advice and/or support which are confirmed in writing as necessary. Formal action (serving notices, issuing simple cautions and prosecutions) is reserved for more serious matters that can not be remedied informally.
- 6.3 The Enforcement Management Model (EMM) provides the Council with a framework for making enforcement decisions. It captures the issues inspectors consider when exercising their professional judgement and reflects the process by which enforcement decisions are reached. When considering the issuing of statutory notices, simple cautions or prosecution, all officers from this Council will apply the EMM principles (as outlined in HELA Circular 22/18) to promote consistency of approach. A record of the EMM will be made for all cases where a simple caution or prosecution is recommended by the officer.
- 6.4 Enforcement options that are available, having considered all relevant information and evidence are:-
- None
 - Informal action (advice, education etc.)
 - Issue Improvement notices
 - Issue Prohibition notices
 - Issue Simple Cautions
 - Prosecution
- 6.5 Informal Action
- Informal action can take the form of advice, a verbal warning or a request for action, in the following circumstances: -
- 6.5.1 Where an act, omission or contravention is not serious enough to warrant formal enforcement action; and
- 6.5.2 Previous history in terms of the management of health and safety would suggest that informal action will achieve compliance; and
- 6.5.3 Confidence in the organisation, business, owner or occupier is high.
- 6.5.4 All verbal warnings, advice or requests for action, at the time of the inspection or as a result of any subsequent conversations, meetings or visits, that raise additional matters, will be confirmed in writing.
- 6.5.5 Where informal action is taken, legal requirements and recommendations will be clearly differentiated.

6.6 Improvement Notices

Improvement notices will be issued when one or more of the criteria below apply: -

- 6.6.1 Where one or more significant health and safety contraventions has occurred and they are likely to continue or to be repeated.
- 6.6.2 The business/proprietor has a history of non-compliance.
- 6.6.3 Standards are generally poor and the business/proprietor has little awareness or appreciation of their legal duties or of statutory requirements.
- 6.6.4 Effective action needs to be taken to remedy conditions that are serious and deteriorating.
- 6.6.5 Where there is a risk of ill health or injury, but not so as to warrant a prohibition notice.

6.7 Prohibition Notices

As a general rule Prohibition Notices will only be considered in the following circumstance:

- 6.7.1 When an officer is of the opinion that an activity (or activities) carried on at a premises involves or may involve a risk of serious personal injury. The number of people affected by the risk is not relevant.
- 6.7.2 Whilst the risk does not have to be imminent before an immediate prohibition notice can be served; such notices will generally only be served where the risk of serious personal injury is such as to require action to be taken without delay to control that risk.
- 6.7.3 Immediate prohibition notices may be served not only where the risk is one of traumatic (acute) injury, but also where the risk is from a long term health hazard of a cumulative nature which may ultimately contribute to damage to health.
- 6.7.4 Deferred prohibition notices may be served when a greater risk would result if that activity was stopped immediately.
- 6.7.5 All improvement and prohibition notices served will be placed on the Authority's public register if they relate to matters of a public concern. This is a requirement of the Environment and Safety Information Act 1988.

6.8 Simple Cautions

6.8.1 The aim of a Simple Caution is to: -

- a) Deal quickly and simply with less serious offenders;
- b) Divert them from unnecessary appearance in the criminal courts; and/or
- c) Reduce the chances of their re-offending.

6.8.2 It is the policy of this Council that: -

- a) A person will only receive a Simple Caution when the circumstances of the offence meet the criteria identified in Home Office Circular 016/2008 and any subsequent issued guidance.
- b) The Simple Caution will be administered by the "Cautioning Officer". Normally the Simple Caution will be administered in person by the "Cautioning Officer" the investigating officer may also be present.

In *exceptional* circumstances the Simple Caution may be administered by post.

- c) The offender will be advised in writing of the proposal to issue a Simple Caution.
- d) The Simple Caution will be in writing using the prescribed form. Two copies of the form will be signed by the person receiving the caution; each copy will then be signed by the person administering the Caution. One of the copies will then be issued to the person receiving the Caution.
- e) Where the offender refuses to accept a Simple Caution or fails to return the signed copies within 14 days, legal proceedings will be instituted.

6.9 Prosecution

6.9.1 Detailed below are the criteria that the Council will take into account when considering legal proceedings.

6.9.2 The Council has discretion whether or not to prosecute for an offence and the decision to prosecute is based on the particular circumstances of each individual case. The criteria for prosecution must, in general, be related to risk or the seriousness of the offence, rather than being a punitive response to minor technical regulatory transgressions. All factors in the relevant Codes of Practice must be taken into account.

6.9.3 The decision to prosecute will have regard to the evidential and public interest tests set down in the Code for Crown Prosecutors. In all cases, a prosecution will only go ahead if there is sufficient evidence to provide a realistic prospect of conviction AND the prosecution would be in the public interest.

6.9.4 Following the application of the two tests (in paragraph 5.9.3), the Council will normally prosecute where following an investigation or other regulatory contact, one of more of the following circumstances apply:

- Death was a result of a breach of the legislation; (NOTE: Health and Safety sentencing guidelines regard death resulting from a criminal act as an aggravating feature of the offence. If there is sufficient evidence that the breach caused the death, this Authority considers that normally such cases should be brought before the court. However, there will be occasions where the public interest does not require a

prosecution, depending on the nature of the breach and the surrounding circumstances of the death.)

- The gravity of the alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants prosecution;
- There has been reckless disregard of health and safety requirements;
- There have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- Work has been carried out without or in serious non-compliance with an appropriate licence;
- A dutyholder's standard of managing health and safety is found to be far below what is required by health and safety law giving rise to significant risk of actual or potential harm;
- There has been a failure to comply with an improvement or prohibition notice;
- There has been a repetition of a breach that was subject to a simple caution;
- Where false information has been supplied wilfully, or there has been an intention to deceive, in relation to a matter which gives rise to significant risk;
- Inspectors have been intentionally obstructed in the lawful course of their duties.

6.9.5 This Council will also consider prosecution, where, following an investigation or other regulatory contact, the following circumstances apply.

- Where it is appropriate in the circumstances to draw general attention to the need for compliance with and maintenance of the standards required by law, and conviction may deter others from similar failures to comply with the law.
- Where a breach giving rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

6.9.6 Where inspectors are assaulted we will also seek police assistance with a view to seeking the prosecution of offenders.

6.10 Prosecution: Individuals

6.10.1 Subject to the above this Authority will identify and prosecute individuals if we consider that a conviction is warranted and can be secured.

In addition where the alleged offender is an incorporated body e.g. a limited company or limited partnership, the Authority will actively consider the

management chain and the role played by individual directors and managers to establish whether the offence was committed with the consent, or connivance of the directors or managers or whether it arose from negligence on the part of the director or managers.

In respect of directors and managers the following criteria will be considered:

- Whether the matter is clearly one over which the manager or director concerned had effective control.
- Whether the manager or director had personal knowledge of the circumstances surrounding the event that merits prosecution, although not necessarily personally aware of the matters at fault.
- Whether the manager or director failed to take obvious steps to prevent the event that is the subject of the proposed prosecution.
- Whether the manager or director received previous advice or warning of their responsibilities in relation to the type of act or omission in question.
- Where management is shared between two or more levels of managers, against whom it is possible to take proceedings. Only exceptionally should the more junior levels of management be prosecuted without similar action being taken against senior management.

6.10.2 This Council will, where appropriate; seek disqualification of directors under provisions contained in the Company Directors Disqualification Act 1986 by referring relevant matters to the correct enforcing authority.

6.11 Prosecutions: Action by Courts

6.11.1 Many offences referred for prosecution will be heard in a Magistrates Court. However, certain offences are classed as triable either way offences and can be tried summarily in a Magistrates Court or on indictment in a Crown Court

6.11.2 In the first instance all cases commence in the Magistrates Court. Where an offence is `either way` and the defendant pleads guilty the facts will be heard. If the Magistrates determine that their sentencing powers are insufficient to deal with the offence they may refer the matter to Crown Court for sentencing.

6.11.3 Where a defendant facing an either way offence indicates that he would plead not guilty if the matter were to proceed to trial, then the Prosecutor and the accused are asked in turn which appears to be more suitable, summary trial or trial on indictment. When determining the Prosecutor's recommendation the Enforcement Officer and the Prosecutor will consider:

- The gravity of the offence;
- The adequacy or otherwise of the powers of the summary court to punish the offence;

- The record of the offender;
- The magnitude of the risk; and
- Any circumstances causing particularly great public alarm.

6.11.4 The Magistrates then decide which mode of trial appears more suitable, having regard to the nature of the case, whether the circumstances make the offence one of a serious character, and whether their powers would be adequate.

6.11.5 Where the Magistrates determine that the case can be tried in their Court, the accused can still elect to be tried in the Crown Court. Likewise where the defendant elects trial in the Magistrates Court, the court may if it considers the matter so serious elect for the matter to be heard at the Crown Court.

6.11.6 This Authority will in cases of sufficient seriousness indicate to the magistrates that the offence is so serious that it should be heard or any sentence administered by the Crown Court.

6.12 Prosecution: Death at Work

6.12.1 Where there has been a breach of the law leading to a work-related death, this Authority at an early stage, will consider whether the circumstances justify a charge of manslaughter or corporate manslaughter.

6.12.2 If the evidence suggests manslaughter, then this Authority will refer the matter to the Police or where appropriate the Crown Prosecution Service. If no action is taken by the Police/Crown Prosecution Service then the Authority may consider a health and safety prosecution where appropriate.

6.12.3 In all instances of work related deaths this Authority will follow the principles outlined in '*Work Related Deaths – A Protocol For Liaison* when responding to work-related deaths.

7.0 LEAD / PRIMARY AUTHORITY

7.1 The Health and Safety Executive (HSE) established the Lead Authority Partnership Scheme (LAPS) in 1991. Its aims are to:

- Improve safety management systems of organisations with multiple outlets that are subject to local authority regulation
- Promote the consistency of health and safety enforcement for such organisations

7.2 Where there is a Lead Authority Partnership in existence with a company where enforcement action is taken; then copies of letters, notices and other relevant matters will be sent to that Authority for their information/action.

7.3 A Primary Authority Partnership allows businesses to form a statutory partnership with a single local authority, providing access to assured advice on compliance which must be respected by local regulators. It also allows for co-ordination of inspection and enforcement activity. Where there is a Primary Authority Partnership in existence with a company, contact will be made with the Authority once enforcement action is being considered.

- 7.4 Harborough District Council recognises the status of the Primary Authority Partnership scheme, made under the Regulatory Enforcement and Sanctions Act 2008, administered by the Better Regulation Delivery Office (BRDO).
- 7.5 Section 28 of the RES Act requires an enforcing authority that wishes to take enforcement action against a business which has a primary authority, to first notify the primary authority of the proposed action. Enforcement action is widely defined for the purposes of the Act by the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009, as amended.
- 7.6 Statutory guidance on the scheme requires that the notification of proposed enforcement action by the enforcing authority:
- should be made via the Primary Authority Register;
 - should be itemised, where multiple enforcement actions are being proposed; and
 - should include specified details. These are set out in the statutory guidance and in the notification template on the Primary Authority Register.
- 7.7 The statutory guidance also requires that, when making a notification, an enforcing authority should ensure that, during the five working days following the notification, it is able to respond to requests from the primary authority for further information or clarification.
- 7.8 The Primary Authority has 5 working days to decide if objects or not to the proposed enforcement action. If the Primary Authority or Regulated Business objects, they are entitled to refer the matter to BRDO for consideration within 28 days. BRDO determinations must be adhered to.
- 7.9 The legislation recognises that there will be times when the need to act swiftly is critical and it allows for notification to the primary authority to be retrospective in certain defined circumstances. In brief, this applies for:
- prohibition notices under specified health and safety legislation;
 - enforcement action that is required urgently to avoid a significant risk of harm to human health, the environment or the financial interests of consumers.
- 8.0 Enforcement in Premises where the Council may hold an Interest
- 8.1 A potential conflict of interest arises in premises for which the Council acts as enforcement authority and in which the Council also has a legal interest.
- 8.2 Where the Council holds all responsibilities under health and safety law and it's appointed contractors or occupiers hold none, it would be inappropriate for the Council to act as enforcing authority. In such cases responsibility will be transferred to the Health and Safety Executive (HSE).
- 8.3 Where day-to-day management, including health and safety, is passed to contractors or occupiers the Council can act as both owner of certain premises and enforcer even where it retains some health and safety responsibilities. In cases where judgements about the Council's responsibilities are less clear, regard will be made to the Health and Safety Commission's Enforcement Policy on targeting of enforcement. Advice will also be sought from the Enforcement Liaison Officer at the HSE.

- 8.4 Notwithstanding the above, in premises where the Council has an interest the Department will:
- Carry out enforcement in accordance with this Enforcement Policy in exactly the same way as it does for all other premises;
 - Ensure that the attention received is in accordance with the criteria applied to all other duty holders; and,
 - Keep the HSE informed of any situations in which it might have an enforcement interest so that it may consider the extent of its involvement.
- 8.5 Where accidents or complaints are referred to the Council as enforcing authority in premises where the Council has a duty holder responsibility , and the cause/s of the accident or nature of the complaint are unclear, or may be attributable to a failing of the Council, the HSE will be contacted to seek advice on the approach to enforcement applying the principles of openness and transparency. In such cases the complainant and/or injured party will be kept fully informed.

Document History

Issue	Approval Date	Approved By
1		
2	May 2016	Portfolio Holder for Environment and Regulation