

ENVIRONMENTAL HEALTH SERVICE



General Enforcement Policy

**Food Safety
Health and Safety
Infectious Disease Control
Sampling and Analysis
Licensing**

King's Court
Chapel Street
King's Lynn
Norfolk
PE30 1EX

Telephone No. 01553 616661

Fax: 01553 775142

Email: environmental.health@west-norfolk.gov.uk

www.west-norfolk.gov.uk

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ENVIRONMENTAL HEALTH SERVICE ENFORCEMENT POLICY

1 Introduction

The Borough Council of King's Lynn and West Norfolk is committed to ensuring consistent and fair regulation of its statutory functions. This was demonstrated when the authority signed up to the '*Central/Local Government Concordat on Good Enforcement*' developed by the Cabinet Office (see Appendix 2). The Committee Report adopting the above Concordat can be found at P + R 160 12th April 2000; further ratified by the Council Business Board on 11th July 2001, and Full Council on 26th July 2001.

This Policy relates to the Corporate Enforcement Policy that explains in general terms the approach adopted by the Council when carrying out its duty to enforce a wide range of legislation (see www.west-norfolk.gov.uk). It allows for individual Service Area Policies to be developed including the Environmental Health Enforcement Policy.

Central to this Enforcement Policy is the provision of a courteous and efficient service and a reliance on co-operation rather than coercion.

This document complies with relevant guidance issued by the Local Authorities Co-ordinating Body on Regulatory Standards (LACORS) and the Health and Safety Commission (HSC) and other Codes of Practice and Guidance Documents. It specifically takes into account the '*Crown Prosecution Service: Code for Crown Prosecutors*' and codes issued under the Police and Criminal Evidence Act 1984 (PACE) (see Appendix 1).

2. Aim of the Enforcement Policy

The object of this Policy is to facilitate efficient and effective enforcement of Environmental Health legislation without placing an unnecessary burden on business or individuals.

The aim is that enforcement will be:

Proportionate:

Action taken or required to achieve compliance will be in proportion to the seriousness of the breach and the risk to health, safety or the environment. The cost of compliance will be carefully considered against what is reasonably practicable, in order to ensure that unwarranted expense is not incurred.

Consistent:

Enforcement duties will be carried out through firm but fair use of the Authority's influence and regulatory powers. In order to achieve consistency, arrangements are in place to encourage discussion and compare enforcement decisions both within the Authority and externally, through liaison with other Local Authorities and enforcement bodies.

Transparent:

The procedures that are followed to enforce legislation and the way in which complaints are dealt with will be open. Publications such as this Policy Statement and other literature will be expressed in plain language and made easily available to all. The same principle of openness, simplicity and clarity will also apply to all written correspondence, and verbally, when giving advice, dealing with enquiries or discussing any issues.

Targeted:

Enforcement action will be targeted at those situations that give rise to the more serious risks or least well-controlled risks. In addition to levels of risk, such factors as frequency and seriousness of accidents, new legislation, national campaigns, public concerns, etc., will also determine priorities for enforcement activity.

(See Appendix 2)

3. Enforcement Activity, Authorisations and Competencies

The term 'enforcement action' includes the full range of customer contact and associated activity from educational and advisory work through to informal letters, service of Statutory Notices, and formal action through the judicial system.

The Environmental Health Service has a duty to enforce a wide range of statutes relating to the protection of the public health and safety, quality of life and maintenance of the environment. The activities falling within the scope of this policy include:

Food Safety; Food and Water Sampling and Analysis; Infectious Disease Control; Health and Safety at Work; Licensing.
(See Appendix 4)

The Council will ensure that these services are flexible and responsive to needs in order to be equally accessible to all its citizens, and ensure that all service users are treated equally and dealt with fairly. This includes appropriate training of officers.

All Enforcement Officers will be formally authorised in accordance with the Council's Scheme of Delegation. The level of authorisation of each officer will be determined by their qualifications, training, experience and competence having regard to any relevant national guidelines.

Enforcement Officers, dependent on the details specified in their Authorisations, may initiate enforcement actions of various types. Officers will only act within the limits of their Authorisations and will be fully informed of the designations of other officers. Relevant line managers will be consulted whenever an officer is considering action beyond the limits of his/her Authorisation.

The Council supports the principle of continuing professional development and will ensure that all officers are given the necessary in-post supervision and training to maintain up to date knowledge, skills and competence.

(see Appendix 1)

4. Shared or Complementary Enforcement Role

There are a number of external bodies as well as sections of the Council where a shared or complementary enforcement role might occur. These include the Health and Safety Executive (HSE), Food Standards Agency (FSA), Trading Standards, Police, Fire Service, Environment Agency, Department of Work and Pensions, Customs and Excise, Inland Revenue, English Nature, Commission for Social Care Inspection, OFSTED, and other Local Authorities (LAs). From within the Council this includes Environmental Protection, Housing, Revenues and Benefits, Legal Services, Planning and Building Control and Tourism and Leisure.

Every effort will be made to contact other bodies/sections that may have their work impacted upon by the work of the Environmental Health Service. Our action will not compromise that of other bodies/sections and appropriate courses of action will be agreed. This could include joint visits and agreement to only enforce specific areas of legislation.

Where memorandums of understanding, service agreements, joint protocols and similar have been signed up to by the Council these will be followed whenever possible; any considered departures from these must be referred to the relevant line manager.

When a local business is part of a larger organisation, which is involved in a Lead or Home Authority Partnership Scheme, the Lead/Home Authority will be consulted before formal enforcement action is taken – unless there is a requirement for immediate action because of imminent danger to health, safety or the environment. Appropriate Lead, Home or Originating Authorities will always be consulted where necessary in other circumstances e.g. food complaint, accident investigation or consideration of formal action.

5. Statutory and Other Notifications

When statutory and non-statutory notifications are received they will be processed and dealt with according to the specific legal requirement and/or guidance issued.

Registers will be kept up to date e.g. Food Register and Cooling Towers Register. Public registers will be made readily available to the public on request e.g. Food Register and Environment and Safety Information Act Register.

Notifications will be dealt with confidentially as required, particularly those relating to infectious disease/food poisoning and accidents.

6. Enforcement Action Categories

There are a variety of enforcement actions available to achieve compliance with Environmental Health legislation. Not all actions are available in all circumstances.

Available actions include:

No Action.

Informal Action: Educational information/advice
Verbal advice/notification of contraventions
Written advice/notification of contraventions
Issuing copies of Inspection Report Forms
Informal sampling
Voluntary closure
Voluntary surrender

Formal Action:

Service of Notices - Improvement Notices
Prohibition Notices/Orders

Formal sampling
Seizure/detention/
destruction of- Foodstuffs
Articles/Equipment

Formal Cautions
Prosecution
Issuing/varying/
suspending/revoking - Licences
Prior Approvals
Registrations

High Court Injunction

(See Appendix 3)

7. Choice of Enforcement Action

The choice of appropriate enforcement action will be guided by the general aim of using the lowest level of action consistent with achieving efficient and effective compliance with legislation, and securing adequate protection of the public interest in health, safety and the environment.

There is a clear need to demonstrate that decisions regarding enforcement action are taken in an objective and responsible way in order that both business and public have confidence in the fairness of those decisions. It is, therefore, important that no irrelevant matters are taken into account when determining what action should be taken.

Factors that will be taken into account in deciding the appropriate enforcement action to take in any specific circumstance include:

- Seriousness of the breach
- Track record of non-compliance/confidence in management
- Continued risk to health, safety or the environment
- Public expectation

- Consequences of non-compliance
- Likely effectiveness of enforcement options
- Legislative requirements
- Any guidance issued nationally or locally
- Any significant local factors
- The need to consult or liaise with other enforcers (whether internal or external)

8. No Action

No action will only be appropriate where there are no contraventions of relevant legislation or only technical, minor or inconsequential breaches. Here the officer considers that it is not necessary to give further advice or recommendations as to best practice.

9. Informal Enforcement Action

Informal enforcement action will be taken by the Case Officer.

The Case Officer will choose between taking no action or informal action in the form of verbal advice and requirements or written advice and requirements in the form of a letter, schedule or inspection report. Also included in this category is informal sampling of foods and waters; educational information/advice through mail shots, talks, courses, and leaflets/booklets; and provision of information via the Council's website, press releases and similar.

The Officer, when taking informal action, will explain clearly what needs to be done, why, and by when. He/she will make sure that legal requirements are *always* distinguished from 'best practice' advice. Where legal requirements are contravened the Case Officer will indicate the Regulations contravened, measures that will enable compliance and that other means to achieve the same effect may be chosen. He/she will also ensure the appropriate business rights written guidance has been issued.

The Section is responsible for implementing programmes of informal sampling for food, water, shellfish and environmental (surface contact) samples. Most of these are analysed in the Council's own microbiology laboratory. Some water samples go elsewhere for chemical analysis. When such sampling is undertaken the case officer will explain clearly his/her proposed action(s), the reasons for this and what is required of the business/householder. He/she will also explain the mechanisms for notification of results and follow-up action, if required. Where follow-up action is taken this is usually by way of (a) further informal sample(s) and/or inspection of premises. Where matters cannot be resolved through the informal route Formal Sampling may have to be undertaken (see Section 11 and Appendix 2).

Included in Informal Actions are written warnings or informal notices where contraventions are found which are of a more significant nature. Here the Case Officer will take follow up action within agreed timescales and such actions should be readily identifiable.

Also included are circumstances where food businesses failing to meet statutory requirements voluntarily close down, temporarily or permanently.

Additionally circumstances where foodstuffs failing to meet statutory requirements are voluntarily surrendered to the Council for appropriate destruction.

Circumstances in which informal action is appropriate include:

- The consequences of non-compliance for the time being are acceptable, e.g. minor matters or the time period allowed to achieve compliance does not present a risk to public health or safety.
- The act or omission is not serious enough to warrant formal action.
- The individual or Company's past history suggest that informal action will achieve compliance.
- Confidence in the individual or management's ability to correct a defect within the required timeframe is high.
- Standards are generally good, suggesting a high level of awareness of statutory responsibilities.
- Immediate co-operation of the individual, or Company is forthcoming to resolve matters that would otherwise have to be dealt with formally e.g. voluntary closure.

There may occasionally be circumstances in which a written informal action may be more effective than formal action, even when some of the above criteria are not met. This may apply to businesses associated with voluntary organisations using volunteers rather than paid employees. In such circumstances the action must be consistent with section 18 below i.e. departures from policy.

(See Appendix 3)

10. Formal Enforcement Action

Before formal enforcement action is taken, an opportunity will be provided to discuss the issues, unless immediate action is required to protect against an imminent threat to health, safety or the environment, or to prevent evidence being destroyed.

If immediate action is considered necessary a written explanation will follow as soon as possible stating why immediate rather than another course of action has been chosen, and the consequences of failing to remedy the situation.

Rights of appeal will be explained whenever formal action is taken.

(See Section 16 and Appendix 3)

11. Service of Formal Notices, Formal Sampling and Seizure /Detention /Destruction

The above formal actions will be by an appropriately Authorised Officer within the Council's Scheme of Delegation. In many circumstances this is the Case Officer. However, except where the urgency of the situation makes it impracticable, no formal action will be taken until the relevant line manager

has reviewed the circumstances of the case. The officer undertaking the formal action must witness the contravention(s)/potential contravention(s) and sufficient evidence will be gathered to justify the formal action.

Where a Notice includes a time period for compliance this must be realistic. Consideration will be given to any representations from the potential recipient of the Notice regarding what would be deemed a 'reasonable time'. Alternative means of compliance will be considered where appropriate.

Written information will be provided with the Notice on the consequences of non-compliance, including the possibility of prosecution.

Circumstances that would indicate that the service of a Formal Notice would be appropriate action include, for each type:

Improvement Type Notices

- The consequences of non-compliance could be potentially serious to public health or safety.
- There are significant contraventions of legislation.
- There is a lack of confidence in the successful outcome of an informal approach.
- There is a history of non-compliance with informal action.
- Standards are generally poor with little management awareness of statutory requirements.
- Effective action needs to be taken quickly in order to remedy conditions that are serious or deteriorating.

Prohibition Type Notices/Orders

- The consequences of not taking immediate and decisive action to protect health or safety would be unacceptable.
- An imminent risk of injury or to health can be demonstrated.
- The proprietor of the business is unwilling to voluntarily close all or part of the premises, or cease to use any equipment, process or treatment, associated with imminent risk.
- The requirements of the relevant guidance or statutory Codes of Practice regarding the use of such Notices are fulfilled.

Formal Sampling

Formal Sampling of foodstuffs may need to take place in the following circumstances:

- Where legal proceedings could result e.g. prosecution for non-compliance with hygienic requirements.
- Where foodstuffs are formally detained or seized.
- Where foodstuff complaints are being investigated.
- Where food poisoning outbreaks are being investigated.
- Where follow-up food samples are taken.

Here the Council's Formal Sampling Procedure will be followed as laid down in current Council Procedures (see Appendix 2).

Seizure/Detention/Destruction

Foodstuffs or articles/equipment in the workplace may occasionally be the subject of formal action. Circumstances where this may be appropriate include:

- Where there is imminent risk to health and/or safety.
- Where foodstuffs fail to meet food safety requirements.
- Where legal proceedings could result e.g. prosecution for non-compliance with health and safety requirements.
- Where danger to health or safety has been caused or is likely to be caused.
- Where food poisoning outbreaks are being investigated.

In such cases legislative requirements, Council procedures and relevant guidance (including Codes of Practice) will be followed.

12. Formal Cautions

Formal Cautions are an alternative to prosecution in certain circumstances. The 'Cautioning Officer' for Environmental Health matters is the Head of Environmental Health.

The Council will at all times follow guidance issued by the Home Office on the use of Formal Cautions. In particular the suspected offender's interests must be safeguarded.

Circumstances in which consideration will be given to the issue of a Formal Caution include:

- Where there is sufficient evidence to establish the offence, and the offender has admitted the offence and agreed to it being dealt with by a Formal Caution.
- Where it will deal simply and quickly with (a) less serious offence(s).
- Where there is no continuing offence or risk to health, safety or the environment.
- Where it will avoid resources being diverted into the Courts for less serious offences.
- Where it will reduce the chances of repeat offences.
- Where there have not been previous Formal Cautions for similar offences.
- Where previous informal action has failed to secure compliance.

Where a person/organisation declines the offer of a Formal Caution the matter will be referred to the Head of Legal Services for a prosecution. Formal Cautions will be registered with the Central Register of Convictions at the Office of Fair Trading.

(See Appendix 3)

13. Prosecution

Before recommending prosecution there will be a Case Conference to involve the Head of Environmental Health, Section Manager and Case Officer, which will review the case in line with the '*Crown Prosecution Service Code for Crown Prosecutors*'. The case will be subject to the 'evidential test' – (is there a realistic prospect of conviction?) – and the 'public interest test' (balancing the possible 'for' and 'against' factors which may exist) as detailed in the Code. The advice of the Council's Legal Services Section will be taken regarding the 'evidential test'. The decision to initiate court proceedings will be taken by the Head of Environmental Health following consultation with the Head of Legal Services.

The circumstances in which prosecution may be appropriate include:

- Where the offence has resulted in ill health or loss of life, damage to the environment, or there is an imminent risk of either of these occurring.
- Where the alleged offence involves a flagrant breach of the law, such that public health, safety or the environment have been put at risk.
- Where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial, and the law abiding are placed at a disadvantage to those who disregard it.
- Where the alleged offence involves a failure to correct an identified and serious risk, after the offender has been given a reasonable opportunity to comply with the lawful requirements of an Enforcement Officer.
- Where the offence involves the failure to comply in full or in part with the requirements of a Statutory Notice.
- Where there is a history of similar offences related to risk to public health.
- Where a Formal Caution is considered inappropriate including where having used for a similar previous offence.

In considering whether a prosecution should proceed, the Head of Environmental Health will be satisfied that:

- Legal authority exists for the proposed course of action.
- There is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company.
- There will be a realistic prospect of conviction (a prima facie case based upon the first impression) is not enough. However prosecution will not be avoided solely because the case is difficult and a conviction is not absolutely certain).
- Prosecution is reasonable in terms of cost, likely outcome and appropriateness to the offence.
- It is in the public interest to prosecute.
- All the requirements of Police And Criminal Evidence Act and the Criminal Procedures and Investigations Act have been met.

In the some cases e.g. accidents and food borne diseases, there is a possibility of a charge of manslaughter being made; following legal advice the matter will be referred to the Crown Prosecution Service.

Enforcement action may be taken against employees in addition to organisations/owners (including managers, company officers etc). In certain circumstances proceedings against an employee may be appropriate if there is evidence of negligence on their behalf. In such cases consultation with workers' representatives will be undertaken prior to any decision to prosecute. Prosecution will be considered only if the employee has been either warned in writing before (either by an Officer or by the business), or if the employer/proprietor can demonstrate that he/she has taken all reasonably practicable steps to ensure compliance with the law and the offence by the employee was flagrant.

Where possible, and if appropriate, suspected offenders will be invited to offer an explanation, for example by attending a PACE interview, before prosecution decisions are made.

Once a decision to prosecute has been taken the matter will be referred, without delay, to the Head of Legal Services for legal proceedings to be initiated.

14. Issuing/Varying/Suspending/Revoking/Reviewing Licences and Prior Approvals

Environmental Health Licences and Approvals will be either be issued by:

- the Officer to whom authority is delegated by the Council; normally the Head of Environmental Health,
- or
- in the case of contested or controversial applications referred to the Council's Licensing Committee for determination as deemed appropriate.

All applications will be dealt with efficiently and promptly, in accordance with appropriate procedures, standards and timescales.

Licences and Approvals will be refused, varied, suspended or revoked by:

- the Council's Licensing Committee,
- or
- the Officer to whom authority is delegated by the Council; normally the Head of Environmental Health

as appropriate, after consideration of all relevant evidence, and following appropriate procedures.

Where an application for a Review of a Premises Licence/Club Premises Certificate is received from a responsible authority or interested party, the matter will be, provided the application is a relevant representation, dealt with in accordance with current legal requirements.

15. High Court Injunction

Situations may occasionally arise where immediate formal action is necessary to prevent an incident or event taking place and existing powers are not adequate to deal with the situation e.g. unlicensed event. Here the Council could apply for a High Court Injunction to provide an immediate solution to the problem.

In any instances where this action is being considered the Council's Heads of Environmental Health and Legal Services and all relevant Council Members will be consulted immediately. Such action will also take into consideration those with a shared or complimentary enforcement role in accordance with paragraph 4 above.

16. Complaints and Appeals

It is important that those affected by enforcement decisions have an opportunity to complain or appeal against those decisions. There will always be an opportunity to discuss the matter with the relevant line manager or Head of Service. This is without prejudice to any formal appeals mechanism or to the Council's Complaints Procedure.

Where the enforcement action taken is formal, the law usually provides the opportunity for appeal. When issuing Notices or refusing, varying, suspending or revoking Licences and Approvals, dutyholders will be provided with a form with which to lodge an appeal, and/or written information explaining:

- How to appeal.
- Where and within what period an appeal may be brought.
- That any remedial action required by an Improvement Notice will be suspended while an appeal is pending.
- That the business can apply to an Industrial Tribunal for a health and safety Prohibition Notice to be suspended pending the outcome of the appeal.

17. Information to Employees or their Representatives

The Law requires that employers have arrangements in place for consulting and informing employees or their representatives about health and safety matters.

An Enforcement Officer may meet or communicate, orally or in writing, with employees or their representatives, for the purpose of keeping them informed about matters affecting their health, safety and welfare. The information will be related to the workplace or activity taking place there, and action that the Officer has taken or proposes to take.

The sort of information that will be provided includes:

- A copy of the Enforcement Officer's Inspection Report.
- Matters that an Officer considers to be of serious concern.
- Details of any enforcement action taken.

- An intention to prosecute the business (but not before the dutyholder is informed).

Officers will ensure that the appropriate employee information is provided.

18. Particular Interests of Businesses and Consumers

The Council's Environmental Health Service will:

- Actively work with Business and Consumer groups to advise and assist with compliance.
- Organise courses, presentations and seminars on new Environmental Health legislation and other relevant issues for local business e.g. food hygiene courses.
- Support and take an active part in any appropriate business partnership or meetings with Business.
- Discuss issues or problems of compliance with anyone experiencing difficulties.
- Encourage business and consumer groups to seek advice or information from the Environmental Health Service.
- Ensure that this Enforcement Policy is readily available to business and consumer Groups, and that their comments and advice will be taken into account when this Policy is reviewed.
- Establish clear standards defining the level of service and performance that the public and business people can expect to receive.
- Make provision for those who experience language or learning difficulties or who are disabled, to be given information/services in an appropriate format, including literature in an appropriate language and translation services where relevant.
- Seek feedback from stakeholders on the services being provided e.g. satisfaction surveys and evaluation forms.

19. Council Owned and/or Run Premises

Where Officers need to seek compliance with requirements in premises owned by the Council and/or in situations where the Council is itself the proprietor, breaches of legislation will be brought to the attention of all those responsible. Significant food safety breaches will be brought to the attention of the Council's Chief Executive in the following circumstances:

- Structural matters where the Council has ownership of the premises and not the business.
- All matters where the Council is the proprietor.

20. Implementation, Compliance and Departures from Policy

Officers within Environmental Health will, when making decisions, abide by this Policy and must be fully acquainted with its requirements. Arrangements will be made to bring all relevant Officers up to date with the contents, requirements and implications of this Policy.

In implementing the Policy, regard will be had to the advice contained in relevant Codes of Practice and Guidance especially those listed in Appendix 1, and to the Principles of Good Enforcement detailed in the Enforcement Concordat in Appendix 2.

Recipients of enforcement action by Environmental Health Staff can reasonably expect:

- Enforcement Officers to be qualified and trained for the duties they are undertaking.
- The Enforcement Officer to identify him/her self as necessary, and produce identity and authorisation if required.
- Enforcement Officers to deal with all issues in confidence and in particular not to reveal specific details about a complainant's identity to those being complained about; also not to reveal non-enforcement related information about business to third parties.
- At the end of a visit, the Enforcement Officer to discuss with the business or individual what further action, if any, they are going to take. A copy of the Inspection Report will be provided if required.
- A clear distinction to *always* be made between recommendations that advise on good practice and requirements to meet legal obligations. Explanation to be given for requirements.
- Any action taken to be consistent with this Enforcement Policy.

Compliance with this Enforcement Policy will be monitored and reported on quarterly. Any departure from this policy must be exceptional, capable of justification and fully considered by the relevant line manager before the decision is taken; this is unless it is considered there is significant risk in delaying the decision. Any departures from policy will be appropriately documented including the reasons for the departure.

The Environmental Health Service will develop and maintain management systems to monitor the quality and nature of enforcement activities undertaken so as to ensure, as far as is reasonably practicable, a uniform and consistent approach; this includes between authorities e.g. audits.

20. Endorsement and Review

This Enforcement Policy was formally endorsed by Members of the Council on 30th June 2005 at Full Council. This followed a period of consultation with a number of stakeholders.

The Policy will be reviewed and amended as necessary, particularly in response to new legislation, guidance or codes of practice. Updates and amendments will be approved in accordance with Council procedures and stakeholders will be consulted as necessary.

APPENDIX 1

CODES OF PRACTICE, GUIDANCE DOCUMENTS AND SIMILAR

- Better Regulation Unit, Cabinet Office. *Enforcement Concordant* (1998).
- Crown Prosecution Service. *The Code for Crown Prosecutors* (November 2004).
- Police and Criminal Evidence Act 1984 (and Codes issued thereunder). London: The Stationery Office (1984).
- Health and Safety Commission (HSC). *Enforcement Procedures – Guidance for Local Authority Inspectors* (1998).
- Health and Safety Commission (HSC). *What to expect when a Health & Safety Inspector Calls* (HSC)(1998).
- Health and Safety Executive (HSE). *Enforcement Handbook* (1998).
- Health and Safety Executive/Local Authorities Enforcement Liaison Committee (HELA). *Advice to Local Authorities on Intervention Programmes and an Inspection Rating System*. LAC 67/1 revision 3 (July 2004).
- Health and Safety Executive/Local Authorities Enforcement Liaison Committee (HELA). Choice of appropriate enforcement procedure LAC 22/1 REV (2000).
- Health and Safety Executive/Local Authorities Enforcement Liaison Committee (HELA). Health and Safety at Work: Revised Section 18 Guidance for Local Authorities. LAC 23/17 October 2001.
- Health and Safety Executive/Local Authorities Enforcement Liaison Committee (HELA). Enforcement Management Model (EMM) – Introduction and Training Arrangements for Local Authorities. LAC 22/18 July 2003.
- Human Rights Act 1998. London: The Stationery Office (1998).
- Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS). *Guidance on Food Safety Enforcement Policies* (1994) and *Enforcement Concordat* (1998).
- Food Standards Agency. *Food Safety Act 1990 Code of Practice and Food Safety Act 1990 Practice Guidance (October 2004) especially Sections 3 of both the Code and Practice Guidance ‘General Enforcement’*
- Food Standards Agency. *Food Law Inspections and Your Business* (February 2002) FSA/0431/1104.
- Borough Council Environmental Health Food Safety Procedures – EH.FS series (updated 2005).

- Environmental Health Laboratory, Department User Manual – Issue Number 2.
- Environmental Health Food Sampling Policy. December 2004.
- Licensing Act 2003: Enforcement Protocol signed between Norfolk Councils, Norfolk Constabulary, Norfolk Fire and Rescue Service, Crown Prosecution Service, Customs & Excise, Norfolk Trading Standards, and Marine & Coastal Authority: draft 2004.
- Environmental Health Service Plan 2005/2006.
- Borough Council Officer Scheme of Delegation. April 2002.
- Borough Council of King's Lynn and West Norfolk, Corporate Statement.
- Borough Council of King's Lynn and West Norfolk, Corporate Enforcement Policy.
- Regulation of Investigatory Powers Act 2000 (and Codes of Practice issued thereunder). London: The Stationery Office (2000).
- Criminal Procedures and Investigations Act 1996. London: The Stationery Office (1996).
- Freedom of Information Act 2000 - Borough Council Procedures 2004.
- Data Protection Act 1998. London: The Stationery Office (1998).

APPENDIX 2

ENFORCEMENT CONCORDAT

The Principles of Good Enforcement:

Policy and Procedures

This document sets out what business and others being regulated can expect from enforcement officers. It commits us to good enforcement policies and procedures. It may be supplemented by additional statements of enforcement policy.

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. We are 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 business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice and safety.

We have therefore adopted the central and local government Concordat on Good Enforcement. Included in the term 'enforcement' are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the concordat we commit ourselves to the following policies and procedures, which contribute to best value, and will provide information to show that we are observing them.

Principles of Good Enforcement:

Policy

OPENNESS

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

HELPFULNESS

We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly. from us. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

PROPORTIONALITY

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

CONSISTENCY

We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS) and the Local Authority National Type Approval Confederation (LANTAC).

STANDARDS

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

COMPLAINTS ABOUT SERVICE

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Principles of Good Enforcement:

Procedures

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

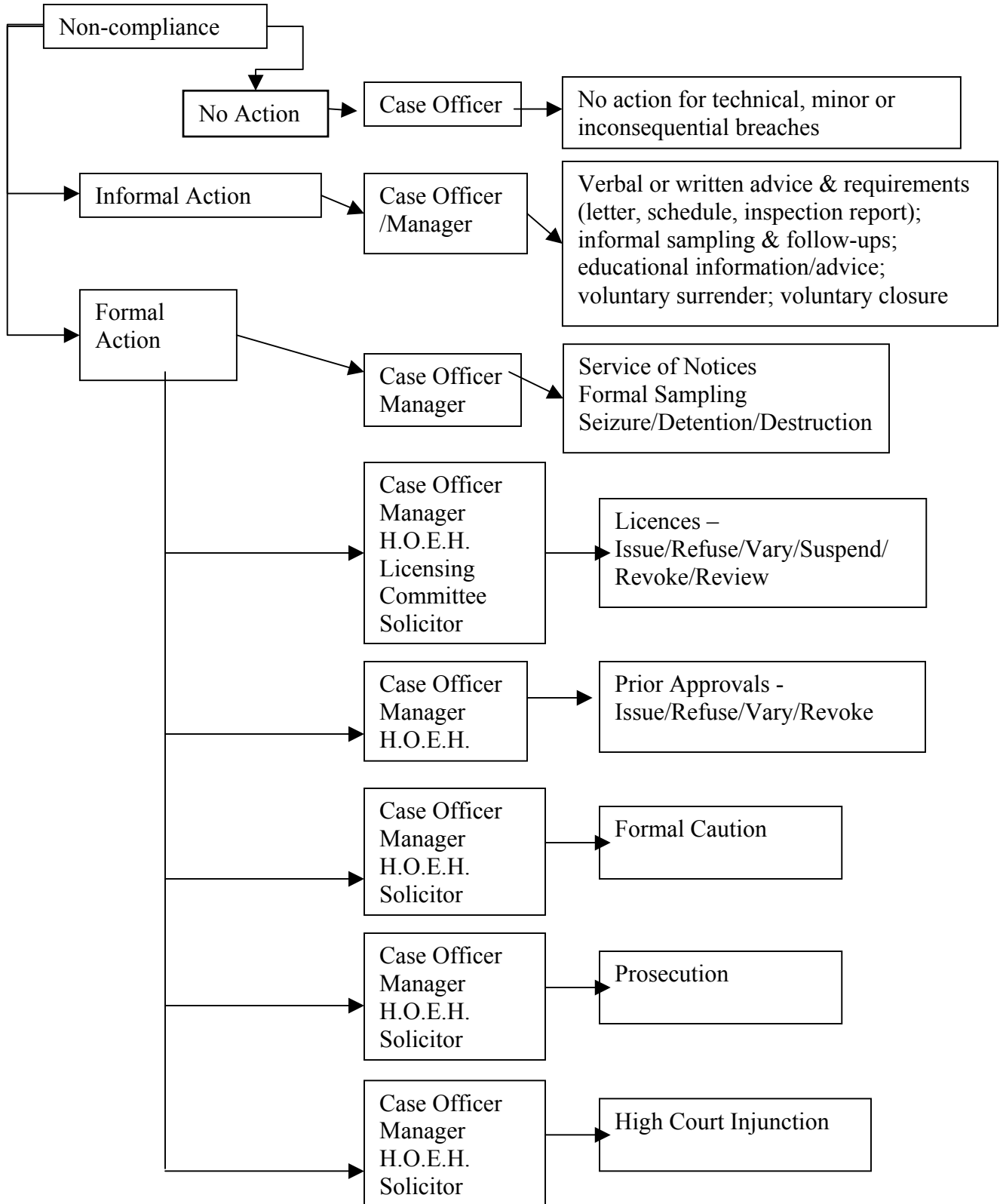
Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

March 1998
Better Regulation Unit,
Cabinet Office,
Horse Guards Road
London

APPENDIX 3

SUMMARY OF AVAILABLE ENFORCEMENT ACTIONS



APPENDIX 4

SUMMARY OF LEGISLATION ENFORCED BY THE ENVIRONMENTAL HEALTH SERVICE

- Food Safety Act 1990 and associated Regulations and Orders e.g. Food Safety (General Food Hygiene) Regulations 1995.
- Health and Safety at Work etc. Act 1974 and associated Regulations and Orders e.g. Management of Health and Safety at Work Regulations 1999.
- Licensing Act 2003.
- Local Government (Miscellaneous Provisions) Acts 1976 and 1982 and associated Bye-laws.
- Sunday Trading Act 1994.
- Caravan Sites and Control of Development Act 1960.
- European Communities Act 1972 and associated Regulations e.g. Products of Animal Origin (Third Country Imports)(England) Regulations 2003 (as amended).
- Food and Environmental Protection Act 1985.
- Offices, Shops and Railway Premises Act 1963.
- Local Government Act 1972.
- Public Health (Control of Disease) Act 1984 and associated Regulations e.g. Public Health (Infectious Diseases) Regulations 1988.
- Prevention of Damage by Pests Act 1949.
- Scrap Metal Dealers Act 1964.
- Sea Fisheries (Shellfish Act) 1967.
- Public Health Acts 1936 and 1961.
- Game Act 1831.
- Water Industries Act 1991 and associated Regulations e.g. Private Water Supplies Regulations 1991.