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**Maidstone Environmental Health Service**

ENFORCEMENT POLICY

Version number	V2	Author	Peter Lincoln & Nollaig Hallihan
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## 1.0 INTRODUCTION

- 1.1 This document sets out the Enforcement Policy for the Environmental Health Service for Maidstone Borough Council.
- 1.2 This policy will also be adopted for Swale and Tunbridge Wells Borough Council's following their democratic processes. At such time the name of the policy will be changed to 'Mid Kent Environmental Health Enforcement Policy'. This will not change the content of the policy.
- 1.3 It must be read in conjunction with any Corporate Enforcement Policy in place at the relevant Council for the individual case. Documents are based on the principles of:
- Proportionality
  - accountability
  - Consistency
  - Transparency
  - Targeting of enforcement action
- 1.4 All decisions to prosecute will be taken in accordance with the "Code for Crown Prosecutors", and this policy recognise the Central and Local Government Concordat on Good Enforcement (Enforcement Concordat).
- 1.5 To improve consistency of enforcement standards, the following will be carried out:
- Ensure that all officers are aware of this and any Corporate Enforcement Policy;
  - Ensure that all officers have adequate training in the aspects of enforcement relevant to their role;
  - Ensure Officers have regard to national and local guidance and co-ordination arrangements including:
    - Statutory Codes of Practice
    - Health and Safety Executive guidance
    - Department for Business Innovation & Skills Guidance, Including the Statutory Code of Practice for Regulators.
    - Appropriate British Standards, e.g. BS 4142, BS 5228, BS 8233
  - A commitment to Kent wide auditing of practices and procedures.

## 2.0 PURPOSE AND METHODS OF ENFORCEMENT

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2.1 The purpose of enforcement is to secure compliance with legal requirements.

2.2 The Food and Safety Team(s) is responsible for the enforcement of the following functions :

- Food Safety and Hygiene
- Imported food
- Health and Safety at Work
- Smokefree and public health functions
- Infectious Disease control
- Animal welfare (if applicable)

2.3 The Environmental Protection Team(s) are responsible for the enforcement of a number of functions including preventative consultations and reactive functions:

- Statutory nuisance
- Air Quality
- Noise
- Environmental Permitting
- Private Water Supplies
- Water Industries Act 1991
- Statutory consultee for Planning and Licensing Service

2.4 There are a wide variety of enforcement actions available within these areas of responsibility;

- Advice and guidance
- Written warning
- Statutory notices
- Seizure
- Refusal/revocation of approval
- Fixed Penalty Notice
- Simple Caution
- Prosecution.
- Works in Default
- Injunction

## 2.5 Advice/Education

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For minor breaches of the law, verbal advice will be given, including a deadline for compliance. Continued non-compliance will result in escalation through the stepped approach in the policy. When advice about 'good practice' is given, team members will clearly distinguish between this and legal requirements.

## 2.6 Warning Letter

For significant breaches of the law, a warning letter/report will be sent to the appropriate person/organisation. Within the letter, legal requirements and recommendations will be clearly distinguished. Where the recipient of a letter disagrees with any requirement, there is a "right of appeal" to the relevant Team Leader.

A reasonable date for compliance will also be stated. Failure to comply could result in a Statutory Notice being served or more severe enforcement action being taken e.g. prosecution; withdrawal of licence.

## 2.7 Statutory Notice

Continued non-compliance may be dealt with by more formal means of securing compliance such as food hygiene, health and safety and environmental protection matters. Notices are available to deal with food hygiene, health and safety and environmental protection contraventions.

Hygiene Emergency Prohibition Notices (food) or Prohibition Notices (health and safety) require contravening activities to cease immediately, and may close all or part of a premise. These are used where there is a serious and imminent risk to safety or health.

Hygiene Emergency Prohibition Notices (food) must be confirmed by a Magistrates Court within 3 days of service.

Hygiene Improvement Notices (food) or Improvement Notices (health and safety) are served to correct specific contraventions of the legislation, and specify a compliance date.

In both cases, the Notice must state what provision is being contravened, and what 'works' are necessary in order to comply with it.

Failure to comply with a Notice is an offence and may result in prosecution (see 2.12 below).

Environmental Protection notices are served for contraventions of appropriate legislation e.g. for the existence of a statutory nuisance. An appeal may be made up to 21 days following service of notice..

As above, failure to comply with such a notice is an offence, for which a prosecution may result subject to processes identified in paragraph 4.3.

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**All Notices issued will include details of the appeals procedure.**

Notices will be served in circumstances where there are serious contraventions, or where there has been a continuing failure to comply with legal requirements e.g. failure to comply with the requirements of a warning letter. The appeal period for each notice is referred to in the notice itself or the accompanying letter.

**2.8 Seizure**

Certain legislation enables authorised officers to seize goods or equipment. This would include unsafe food or dangerous pieces of work equipment, noise generating equipment etc. Receipts will be issued to the person from whom the goods are seized. Where the law requires, seized goods will be taken before a Magistrate e.g. unfit food.

**2.9 Refusal / Revocation of Approval**

Certain food businesses manufacturing or handling high risk food products require approval to allow these foods to be sold.

For the approval to be refused or revoked, one or more of the following criteria must be met:

- Failure to comply with legal requirements
- Have ignored written warnings or statutory notices
- Are producing unsafe food products likely to harm human health
- Obstructing an officer undertaking their duties

**2.10 Fixed Penalty Notices**

These can only be used in respect of certain legislation such as the Health Act 2006 or the Anti-Social Behaviour Crime and Policing Act 2014, for example where an individual is smoking within an enclosed workplace or public place, or “no smoking” signage is not displayed.

**2.11 Simple Caution**

Used in cases where a prosecution could be brought but there are significant mitigating factors. For a simple caution to be issued there must be:-

- Sufficient evidence that an offence has been committed, and;
- The offender must admit the offence, and agree to be cautioned.

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## 2.12 Prosecution

The decision to prosecute is outlined in paragraph 4. A prosecution will normally be brought where an individual / organisation meets one or more of the following criteria:

- Deliberately or persistently breaching legal requirements, likely to cause significant material loss or harm to others
- Have ignored written warnings or statutory notices
- Endangered, to a significant degree, the health, safety or well-being of people.
- Assaulted or obstructed an officer in the course of their duties

## 2.13 Works in Default

Under certain legislation there are circumstances where the local authority can choose to carry out works in default and recover the cost from the occupier or owner. For example where;

- It is in the public interest to carry out the work
- There has been a failure to carry out work required by a statutory notice
- Immediate action is required

## 2.14 Injunction

Used in where behaviour is likely to cause serious harm to victims and communities. Or where an individual has engaged or threatens to engage in conduct likely to cause nuisance or annoyance.

## 3.0 GENERAL PRINCIPLES

- 3.1 Each case is unique and will be considered on its own merits, in-line with this Enforcement Policy.
- 3.2 Enforcement officers must be fair and objective. Individual views about issues such as ethnic or national origin, sex, religious beliefs, political views or sexual orientation of any suspect, victim, or witness must not influence decisions.
- 3.3 During enforcement investigations, individuals / organisations will be kept informed of progress. This will include notifying them as soon as possible of any enforcement action, unless this would impede an investigation.
- 3.4 In every investigation officers will follow the requirements of the Police and Criminal Evidence Act 1984, the Regulation of Investigatory Powers Act 2000, and associated legislation, statutory guidance and Codes.

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3.5 Both the Evidence Test and the Public Interest Test in the Code for Crown Prosecutors will be considered to determine whether a prosecution or simple caution is viable and appropriate. Mid Kent Legal Services will advise on the appropriate action in line with processes in paragraph 4.

3.6 Commercial organisations may enter into a partnership with a local authority relating to food hygiene and / or health and safety matters.

Before service of notice, simple caution, or prosecution, officers must check whether a Home (food), Lead (health and safety), or Primary Authority partnership exists. Where the arrangement is in operation, the officer must contact the local authority to discuss the issues and proposed action, unless the action is taken in an emergency or because of imminent risk. Account must be taken of the views of the Home, Lead or Primary Authority, and the Team Leader must be informed.

Where a Hygiene Emergency Prohibition Notice (food) or Prohibition Notice (health and safety) is served, it may not have been possible or appropriate to have consulted with the Home, Lead, or Primary Authority, due to the urgent nature of the matters involved. However, the Home, Lead, or Primary Authority must be contacted as soon as possible.

3.7 The Department for Business, Innovation & Skills statutory Code of Practice for Regulators has been considered when writing this Policy.

#### **4.0 DECIDING ON ENFORCEMENT ACTION TO BE TAKEN**

4.1 For less serious infringements the case officer will decide upon the most appropriate course of action. This will include enforcement action up to and including the service notices.

4.2 The case officer's decision will be based upon professional judgement, legal guidelines, statutory codes of practice, guidance. Advice and confirmation can be obtained from colleagues and the Team Leader.

4.3 For more serious enforcement action consultation with the Team Leader must be obtained. This would include service of Hygiene Emergency Prohibition Notices (food), Prohibition Notices (health and safety), refusal / revocation of licences / approvals. Where the is unavailable, the Environmental Health Manager or other senior manager will be consulted.

4.4 For simple caution and prosecution sign off for the case file by the Head of Service will be required

4.5 In the case of service of Hygiene Emergency Prohibition Notices (food) and Prohibition Notice (health and safety), agreement of the Food and Safety Team Leader may not be possible where there is an imminent and serious risk to safety or health.

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4.6 In the case of a work related death, the case officer must inform and liaise with Kent Police in accordance with the protocol 'Work Related Deaths: A protocol for liaison'. This may result in a joint investigation. Where Kent Police/Crown Prosecution Service decides not to pursue a manslaughter case, consideration will be given to a health and safety prosecution, in-line with this policy.

## 5.0 Authorisation of Officers

5.1 Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. A list of authorisations and delegated responsibility is held by each Team Leader and reviewed through the appraisal process. Officers will also have sufficient training and understanding of this enforcement policy to ensure a consistent approach to their duties. Officers are required to show their authorisations on demand.

5.2 Officers dealing with the public will identify which service area they represent.

## 6.0 REVIEW OF POLICY

6.1 This policy will be reviewed bi-annually or when changes in legislation or guidance make this necessary.

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