

Environment and Street Scene Directorate

Enforcement Policy



INTRODUCTION

The Environment and Street Scene Directorate provides a diverse range of services to a large customer base. The services are:

- Food Law Enforcement
- Health & Safety Law Enforcement
- Health Education
- Infectious Disease Control
- Animal Welfare
- Pest Control
- Air Quality
- Noise Control
- Public Health
- Street Scene Enforcement
- Safer Communities
- Land and Private Sector Drainage
- Contaminated Land
- Leisure Client Services
- Parking
- Waste Management
- Grounds Maintenance

Aims and Principles

We will uphold the human rights of all those we have dealings with.

We aim to safeguard and improve the health, safety and environment of our community by delivering a wide range of enforcement services in a fair and consistent way.

We have adopted the Government's Enforcement Concordat and fully support its principles of setting standards, being open, helpful, consistent, proportional and dealing with complaints effectively.

We understand the needs of our citizens and businesses and we will work closely with both groups to help them to comply with the law.

We will, when necessary, take firm action against those who commit serious offences, or those who consistently breach the law.

This policy has been written having regard to the Statutory Code of Practice for Regulators issued by the Department for Business Enterprise and Regulatory Reform (BERR).

Standards

We will set clear standards of service and performance so that everyone knows what to expect of us. Where appropriate, we will consult with our public, businesses and all other interested parties. We will publish our standards on our website and we will measure ourselves against those standards.

Openness

We will publish accessible information and advice in plain English. This will be available on our website and in leaflet form. Where necessary, we will translate relevant documents into languages other than English so that all sections of our community may have access to them. If requested to do so we will make information available in Braille or in an audio format.

We will be open about the way we do things, the way we set our charges and what we expect from the people we deal with. We will make ourselves available to talk to those in need of advice, at all reasonable times.

Helpfulness

Our aim is to help people to comply with the law, rather than catch them out whilst breaking it. We will be courteous at all times and expect the same in return. Our staff will identify themselves by name and all the people we deal with will be given a contact number to use in any future dealings with the Directorate.

In all our dealings we will try to work to our response time targets and in the most cost-effective way. All applications for approval of establishments, licences, registrations, etc., will be dealt with efficiently and promptly.

We will try, whenever we can, to bring together services so that unnecessary overlaps and time delays are avoided.

Complaints about our service

We have a well publicised and effective compliments and complaints procedure, which is easily accessible to businesses, the public, employees and consumer groups. In those cases where we cannot agree, any right of complaint or appeal you may have will be explained with details of the process and the likely time scales involved. A copy of the complaints procedure is available from us at our offices or on our website.

Proportionality

We will always make sure that any action taken by our Directorate is proportional to the risk present (see decision making below). So far as the law allows, we will take account of the circumstances of each case and the attitude of the offender and victim when considering action. We recognise that a key element of our activity is to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection. We will always endeavour to recover our expenses in relation to legal action from the offender.

Consistency

We will carry out our enforcement duties in a fair, even and consistent manner while exercising discretion in individual cases. We will adopt arrangements to promote consistency, including liaison with other enforcement authorities and agencies. We will ensure consistency among our officers through the use of effective management, training and development and wherever appropriate we will use standard letters and phrases.

Procedures

We will provide clear simple advice setting out the difference between legal requirements and best practice. Before formal enforcement action is taken, our officers will fully discuss alternative courses of action in order that points of difference may be resolved.

Where our officers consider that immediate action is necessary, they will give an explanation of why such action is required at the time and this will be confirmed in writing within 5 working days, unless legislation dictates a shorter period.

Where someone has a right of appeal against action taken by this Directorate, we will ensure that they get advice on the appeal mechanism and this will be clearly set out in writing at the time the action is taken.

Irrespective of whether or not a right of appeal to law exists, there is always the option of using the Council's own complaints procedure.

Decision Making

Prosecutions will only be authorised by the Director of Environment and Street Scene or the Assistant Director (Environment and Neighbourhoods).

As part of the decision making process others may be consulted. These may include scientific and legal advisors. The lead or primary authority will be consulted if applicable.

We recognise the importance of achieving and maintaining consistency when making decisions which concern enforcement action including prosecution. In coming to any decision we will consider, amongst other things the seriousness of the offence, the past history, the officer's confidence that remedial action will be taken, the consequences of non-compliance, the views of the victim and the likely effectiveness of the various enforcement options.

No decision on prosecution will be taken without making reference to the "Code for Crown Prosecutors".

Enforcement Options

Directorate officers who are authorised can enter and inspect premises, procure samples, examine records and processes, and issue formal notices and orders.

In general we will issue an inspection report to all businesses following all programmed inspections. If we think that a follow up letter is appropriate we will ensure that it contains all the information necessary to understand what work is required and why it is necessary.

In addition the letter will indicate the regulations contravened and the measures which will enable compliance with legal requirements and that other means of achieving the same effect may be chosen.

Furthermore, we will ensure that a clear distinction is made between a legal requirement and a recommendation.

Whether we are dealing with a business or an individual we will ensure that the action we propose is fully understood and confirmed in writing.

The outcome options open to us are:

- to take no action;
- to take informal action;
- to issue statutory notices, fixed penalty notices or orders;
- to revoke, suspend or change licences, licence conditions, registrations and prior approvals;
- to use formal cautions;
- to obtain Court injunctions;
- to prosecute;
- to undertake works in default and recover the costs;
- to seize and/or detain articles and materials;
- to agree Acceptable Behaviour Contracts; and/or
- to apply for Anti-Social Behaviour Orders.

Not all of the above options are available to every officer in every instance.

The outcome options are set out in more detail as follows.

Take no action

Where nothing is wrong or where a complaint is found to be unfounded no action will be taken.

Informal Action

Informal action to secure compliance with legislation includes offering advice, verbal warnings, the use of letters and the issue of inspection reports. We will use informal action in one or more of the following instances:

- the situation is not serious enough to warrant formal action;
- from past experience we think that informal action will achieve compliance with the law;
- confidence in the business's management is high;
- the consequences of not doing what we ask will not pose a significant risk to public health.

Statutory notices, fixed penalty notices or orders

Improvement Type Notices

We will only consider the issue of improvement notices where:

- there are significant contraventions of the legislation;
- we believe that there will not be an adequate response to an informal approach;
- there is a history of non-compliance following previous informal action;

- standards are generally poor with little awareness of statutory requirements;
- the consequences of non-compliance could be potentially serious to public health;
- although it is intended to prosecute action also needs to be taken as quickly as possible; and/or
- conditions that are serious or deteriorating need to be remedied quickly.

In certain instances we have a statutory duty to serve a notice if a nuisance exists.

We will follow all relevant guidance in statutory codes of practice and other guidance notes. Our officers will always:

- place realistic time limits on notices (usually agreed with the person on whom the notices is to served as achievable and appropriate);
- discuss the works that will be specified (if time allows); and
- fully consider the availability of other solutions.

In general we will take action in Court if statutory notices are not complied with.

Prohibition Type Notices

We will serve a prohibition notice which will have immediate effect in one or more of the following circumstances, where:

- an imminent risk of injury to health can be demonstrated. This might include evidence from relevant experts;
- there is no confidence in the integrity of an unprompted offer made by a person to voluntarily close premises or cease the use of any equipment, process or treatment associated with the imminent risk; and/or
- a person is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition.

We will only authorise officers to serve emergency prohibition notices if they are competent, fulfil the qualification requirement referred to in the relevant statutory code of practice and have considerable experience in enforcement activity.

Where emergency prohibition action involving chemical contamination is being considered we will seek medical or other expert advice before a final enforcement decision is taken. Where an emergency prohibition notice has been issued we may advise other authorities or bodies of any action.

Abatement Type Notices

Where there is a serious risk of pollution or risk to public health an abatement type notice may be served requiring that you stop doing something or prevent its recurrence.

Remediation Notices

In some cases where land is found to be contaminated we may serve a remediation notice to remove the contamination or deal with the risk to health caused by the contamination.

Where legislation requires it we will keep a register of notices served which will be available for public reference.

Fixed Penalty Notices (FPN) and Penalty Charge Notices (PCN)

Authorised officers have the power to issue fixed penalty notices and Penalty Charge Notices in accordance with the schedule of delegations provided to them. Depending on the seriousness of the offence it is our policy:

1. to issue a PCN immediately for parking offences, and a FPN for other serious cases (e.g. fly tipping, graffiti) or where the offending behaviour has been repeated;
2. in lesser cases to give a verbal warning and require corrective action;
3. to issue a FPN if no corrective action is taken.

Furthermore, it is our policy to pursue the recovery of all outstanding FPN and PCN debts.

To revoke, suspend or change licences, licence conditions, registrations and prior approvals

Authorised officers have the power to apply for revocation, suspension or a change to a licence, licence conditions, registrations or prior approval. However, you have the right of appeal against those decisions. In the first instance your appeal is to the Council's Licensing Sub-committee and if you remain dissatisfied with the outcome, to the Magistrates' Court.

Formal Cautions

Under some circumstances we may consider issuing a formal caution as an alternative to prosecution as outlined by Home Office Circular 016/2008.

The purpose of the formal caution is:

- to deal quickly and simply with less serious offences;
- to divert less serious offences away from the Courts;
- to reduce the chance of the offence being repeated.

To safeguard the suspected offender's interests, the following conditions must be fulfilled before a formal caution is administered:

- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction in Court;

- the suspected offender must admit the offence; and
- the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

The Director of Environment and Street Scene and the Assistant Director (Environment and Neighbourhoods) are authorised to issue formal cautions.

We consider the issue of a formal caution an alternative to prosecution, therefore should a formal caution be declined we will prosecute.

Should a formal caution be issued by us, other relevant bodies may be informed.

Court injunctions

In serious cases where urgent action is needed we may apply for an injunction. This a Court order which requires that action be taken or that an activity be stopped. Breaching an injunction is considered to be a contempt of Court and can lead to arrest and a prison sentence.

Prosecution

We regard prosecution as a very significant step and will in general restrict prosecution to those who blatantly disregard the law, refuse to achieve even the basic minimum legal requirement, often following previous contact us, or who put the others at serious risk.

We will consider prosecution when one or more of the following criteria exist:

- where the alleged offence involves a breach of the law such that public health is or has been put at risk;
- where the alleged offence involves a failure to correct an identified serious potential risk having been given a reasonable 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;
- where there is a history of similar offences giving rise to a risk to public health.

Before proceeding with a prosecution we will satisfy ourselves that an offence has been committed by an identifiable person or company, that there is relevant admissible and reliable evidence and that there is a realistic prospect of conviction.

Unless exceptional circumstances exist we will always prosecute for non payment of a penalty charge notice or fixed penalty notice.

When a decision is being taken on whether to prosecute the guidance contained in the relevant code of practice will be followed and factors which may be taken into consideration may include:

- the seriousness of the alleged offence;
- the previous history of the party concerned;
- the likelihood of the defendant being able to establish a due diligence defence;

- the likelihood of the defendant being able to establish a best available techniques not entailing excessive cost (BATNEEC) defence;
- the willingness of the party to prevent a recurrence of the problem;
- the probable public benefit of a prosecution and the importance of the case;
- whether other action such as issuing a formal caution in accordance with home office circular 59/1990 or an improvement notice or imposing a prohibition would be more appropriate or effective;
- the deterrent effect;
- personal circumstances;
- any explanation offered by the person who may be prosecuted.

We will always seek to recover the costs associated with a prosecution if the case is proven.

If we feel that it is in the public interest, we may advise other relevant bodies of the results of prosecutions.

Works in default and cost recovery

Where works required by a formal notice have not been carried out, are not likely to be carried out or where immediate works are necessary, we may carry out the work on behalf of the person whose duty it is to carry out the work and recover the cost of the works at a later date as a civil debt. In the case of private sector drainage this may mean recovering a proportion of the cost from a large number of people.

The rights of appeal under the relevant legislation are unaffected by this approach.

Seize and/or detain articles and materials

If during an inspection we come across something which poses an imminent danger or food which we consider to be unfit for human consumption we are empowered to seize or detain it while further investigations are carried out. If we have to take this course of action we will explain your rights under the legislation and tell you the course of action we propose.

Acceptable Behaviour Contracts

Acceptable Behaviour Contracts (ABCs) are written agreements between us and a person in which the person agrees not only to carry out a series of identifiable behaviours which have been defined as antisocial but also to undertake positive steps to correct their behaviour. When we propose an ABC we will consult with all relevant bodies and in the case of a young person, their parents.

Anti-Social Behaviour Orders

Anti-Social Behaviour Orders (ASBOs) are civil orders that exist to protect the public from behaviour that causes or is likely to cause harassment, alarm or distress. An order contains conditions prohibiting the offender from specific anti-social acts or entering defined areas and is effective for a minimum of two years. The orders are not criminal penalties and are not intended to punish the offender. When we apply to the Court for an ASBO we will consult with all the relevant bodies and parents if applicable.

Who will carry out inspections

Authorised Environment and Street Scene Officers have the right to enter and inspect premises at all reasonable times. Officers do not have to make an appointment and officers will usually visit without advance notice. This will enable officers to make a reasonable assessment of the premises and practices under normal operating circumstances.

Officers may take samples and photographs and may also inspect your records, however, you will not be required to give unnecessary information. It is a serious offence to obstruct an officer in the course of his or her duty. However, in the case of residential premises, you have the right to refuse entry unless twenty four hours notice has been given, in writing.

Where officers have a reasonable suspicion that entry may be refused or where giving notice of entry would defeat the object of the inspection, they can apply to a Magistrate for a warrant to enter the premises using reasonable force if necessary.

You are likely to meet Environment and Street Scene Officers in one of the following ways:

- during an inspection of your premises;
- when we are investigating a complaint;
- when you apply for a licence;
- whilst we are patrolling the district;
- when you seek our advice or assistance;

Inspections

From time to time we will need to carry out inspections of premises. Examples of the types of inspections we carry out include:

- food hygiene;
- sampling;
- health and safety;
- Environmental Protection Act authorised processes;
- animal welfare;
- licensing enforcement;
- drainage;
- infectious disease;
- nuisance;
- drinking water quality;
- contaminated land;
- planning application consultations;
- waste (compliance with legislation);
- pest control etc.

This list is not exhaustive.

The time taken for an inspection will vary depending on the size, nature and extent of your premises and businesses. We will use a system of comprehensive risk assessment to concentrate to resources in the areas that need them most. We will not carry out an inspection without a good reason.

At the end of the inspection the officer's findings will be discussed with you and you will receive a report form or a letter shortly afterwards.

You can always expect us to be courteous and we will always show you our identification

Complaint investigation policy

This section refers to complaints given to us to investigate and not complaints about our service.

When we receive a complaint we will check that it relates to an area of work for which this Directorate has responsibility. Where this is not the case we will refer it to the appropriate Directorate and advise the complainant accordingly.

When deciding whether to investigate a complaint we will give consideration to whether there is sufficient information to be able to carry out a meaningful investigation. This may not always be the case when an anonymous complaint is received.

An investigation may be carried out in a number of ways. In some cases, a telephone call may be sufficient whilst other complaints will require an inspection. Where an inspection is carried out following a complaint it is likely to concentrate on a particular area of concern rather than a full inspection.

The complainant's details will always remain confidential, although, if we can, we will tell you what is being complained about. The complainant will be kept informed of the progress of the complaint investigation. The person or premises which is the subject of the complaint will be advised of any action that they may need to take. They will also be notified when the complaint investigation is over.

Food Sampling policy

Sampling of foods may be carried out for the following reasons:

- National, regional and local co-ordinated programmes.
- Complaint investigations
- Investigations into food poisoning incidents
- As part of a routine inspection
- Process monitoring
- Special local projects

Samples may be taken either formally and informally. When the results may be used for enforcement purposes, samples will always be taken formally. This means that the sample will be taken using sterile equipment and the handling of the sample during transit and at the laboratory will be controlled and documented. In general, routine food

sampling, in accordance with the agreed sampling programme, will be carried out informally.

We will contribute to the sampling programme agreed annually by the Essex Environmental Health Management Group Food Group. Samples will usually be procured from as many different premises as possible. However, in the case of food safety concerns or previous poor sampling results, repeat samples may be taken.

In the event of unforeseen circumstances occurring, the agreed sampling programme may be changed, e.g. a food safety emergency.

Where the results of an examination of an informal sample show the food item to be unsatisfactory or unacceptable, further formal samples may be taken. These results may then be used in formal action, e.g. prosecution, improvement notice etc.

All samples (formal and informal) will be sent to an accredited laboratory.

Although we are able to “take” samples we will always offer to pay for a sample. In all cases, the sampling officer will issue a receipt. Where the quantity or frequency of sampling is likely to give rise to significant financial consequences for the owner of the food, an ex gratia payment may be made if the samples are not purchased. In certain circumstances, it may be appropriate to purchase the samples anonymously. In other circumstances, it will be necessary for the enforcement officers to identify themselves for example in some of the national and regional projects which require additional information relating to the operation of the food business.

Licensing

When you contact us seeking a licence, an inspection may take place in order to establish the suitability of the premises or vehicle and to determine if any works are necessary. The inspection may not necessarily be undertaken by an officer of Environment and Street Scene Directorate but by someone working on our behalf e.g. a Vet, Mechanic or a Building Control Surveyor.

Seeking Our Advice

If you do not understand anything that we send to you after an inspection, or if you need advice on any other matter please contact us. We will not charge you for any advice given. It is our preference, if possible, to avoid recourse to the law by helping you to comply with the rules and regulations that apply to you,

Food Hazard Warnings

Occasionally we will contact food businesses regarding a food hazard warning which has been issued nationally. This will usually be by telephone or may sometimes be by letter. In these instances we will be seeking your urgent co-operation in removing a product from sale. However, should you refuse we may have no alternative but to take formal action and seize the offending material.

In General

All information gained by us during our inspections and conversations with you are treated confidentially. However we cannot control information available in the public forum such as the Magistrates' Court. From time to time we receive requests for information under the Freedom of Information Act, in those instances we will ensure that any information issued is appropriately anonymised in accordance with the requirements of the legislation.

We will target our resources primarily on those whose activities give rise to the most serious risk or where the hazards are least well controlled. We will endeavour to ensure that action is focused on those who are responsible for the risk and who are best placed to control it.

In some situations there will be a shared enforcement role (e.g. with Essex County Council Trading Standards). In these cases the appropriate authorities will be consulted/informed of our actions.

We will seek to prevent breaches of the law by the application of this policy and we will carry out all legal action in accordance with current statutes, codes of practice and other recommendations and guidelines of relevant bodies.

Following our inspections a percentage of the people we have had dealings with will be sent a form to fill in which gives them the opportunity to tell us what they felt about the inspection. The sample will be calculated using the Governments published national indicator 182.

We will always treat every case equally and fairly, however if you feel that we have failed, you are at liberty to use the Council's complaints procedure, a copy of which is available on request.

If you have any complaint or comment, favourable or otherwise concerning our work please contact the Director of Environment and Street Scene or the Assistant Director (Environment and Neighbourhoods) in order that we can improve our service by constantly reviewing its effectiveness.

You may discuss this or any other document which the Council publishes by writing to us at: Epping Forest DC, Civic Offices, High Street, Epping, Essex, CM16 4BZ, or by telephoning 01992 564000.

This policy has been developed in consultation with our internal and external partners

Internal Partners

EFDC Overview and Scrutiny Committee

EFDC Safer, Cleaner, Greener Scrutiny Standing Panel

EFDC Corporate Executive Forum,

EFDC Management Board,

EFDC members,

Officers within the this and other Directorates.

External Partners

Essex Environmental Health Management Group

Essex Police.

Essex Fire and Rescue.

Local Parish/Town Councils.

Epping Forest Primary Care Trust.

Chamber of Commerce.

Conservators of Epping Forest.

Health and Safety Executive.

Food Standards Agency.

Environment Agency.

Fifty local businesses chosen at random from the environmental health database.

Epping Forest Local Strategic Partnership

Epping Forest District Safer Communities Partnership

The policy will be reviewed annually and more often if legislation dictates.

The policy incorporates the food sampling and complaint investigation policies and forms a part of the strategic approach to the environment and street scene.

Useful links

Epping Forest District Council

<http://www.eppingforestdc.gov.uk>

Statutory Code of Practice for Regulators issued by the Department for Business Enterprise and Regulatory Reform (BERR):

<http://www.berr.gov.uk/files/file45019.pdf>

Code for Crown Prosecutors

www.cps.gov.uk/Publications/docs/code2004english.pdf

Home Office Circular 016/2008

<http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2008/016-2008/>