

Spelthorne Borough Council	QUALITY POLICY MANUAL	Section A3 Item 1
ENVIRONMENTAL HEALTH & BUILDING CONTROL - ENFORCEMENT POLICY		
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ENVIRONMENTAL HEALTH & BUILDING CONTROL - ENFORCEMENT POLICY

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1.0 Introduction

- 1.1 Spelthorne Borough Council aims to secure compliance with the law. Fair and effective enforcement is essential to protect the health, safety and welfare interests of the residents, visitors, businesses and employees, of Spelthorne Borough Council. Even in a small case, a decision about enforcement action may have serious implications for all involved, for example: - the general public, businesses, victims, witnesses and defendants. Environmental Health & Building Control Services applies this policy so that it can make fair, balanced and consistent decisions about enforcement.
- 1.2 This Policy is designed to make sure that everyone knows the principles that the Environmental Health & Building Control Service shall apply when carrying out enforcement work. By applying the same principles, everyone involved in the process is helping to treat stakeholders fairly but effectively.

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1.3 We recognise that most individuals, businesses and other groups want to comply with the law. Our aim is to deliver regulatory and enforcement functions in an enabling and supportive style, helping businesses and others meet their legal duty without unnecessary expense. However, we will take firm action, including prosecution where appropriate.

2.0 Approval

2.1 This policy was approved by the Executive Committee of Spelthorne Borough Council on the 17 July 2007, Committee Minute Reference: 1195

3.0 Scope

3.1 This policy applies to all legislation enforced by the Environmental Health & Building Control Services.

3.2 Enforcement, in the context of this policy, includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action such as prosecution, and includes, for example, the inspection of premises for the purpose of checking compliance with relevant acts and regulations, and the provision of advice to assist duty holders to achieve compliance. The term "duty holder" has a wide meaning and applies to those persons on whom the law places duties (eg: employers, the self-employed, employees and others).

3.3 In relation to most areas of Environmental Health and Building Control legislation, the choice of action will be based on an assessment of the risk that the contravention poses to the health, safety or welfare of the public and/or employees, and/or the environment and will take into account the full range of enforcement options available under the relevant legislation.

3.4 In 1998 the Government decided to adopt a new approach to enforcement based on co-operation between enforcers and those subject to enforcement. Representatives of business, the voluntary sector, the enforcement community and consumer groups were closely involved in the development of the "Enforcement Concordat". The Concordat is a non-statutory code that describes for businesses and others what they can expect from enforcement officers. Central and local enforcement bodies commit themselves voluntarily to its principles and procedures. The full text of the Concordat can be found on the Department of Trade and Industry website -----

Spelthorne Borough Council have adopted the Enforcement Concordat. A full list of the organisations that have adopted the Concordat can be obtained by e-mailing Rachel.Mallaband@dti.gsi.gov.uk or telephone on 0114 279 4320.

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3.5 We believe that prevention is better than cure and that we should actively work with businesses, consumers and other groups to advise and assist with compliance. We wish to undertake our regulatory and enforcement facilities fairly and without bias. We also wish to minimise bureaucracy and red tape, provide help to those who need it, but take firm action against people who flout the law.

4.0 Access to the Policy

4.1 The Enforcement Policy is available on the Council's web site www.spelthorne.gov.uk and in hardcopy at the Council's offices. It can be ordered by telephoning 01784 446291, e-mailing:- environmental.health.commercial@spelthorne.gov.uk or writing to the Head of Environmental Health & Building Control Services, Spelthorne Borough Council, Council Offices, Knowle Green, Staines, Middlesex, TW18 1XB. The Enforcement Concordat is available through the same channels.

4.2 On request, this policy will be made available on tape, in Braille, large type, or in a language other than English.

4.3 Spelthorne Borough Council's Environmental Health & Building Control Services has produced a leaflet entitled "Enforcement Policy - Advice to Businesses", which provides basic information about the enforcement policy, and the range of enforcement actions available to enforcement officers. This leaflet is given out routinely by all officers, to proprietors/managers of commercial premises when carrying out inspections, and is available on the on the Council's web site www.spelthorne.gov.uk and in hardcopy at the Council's offices. It can be ordered by telephoning 01784 446291, emailing environmental.health.commercial@spelthorne.gov.uk or writing to the Head of Environmental Health & Building Control Services, Spelthorne Borough Council Offices, Knowle Green, Staines, Middlesex, TW18 1XB.

5.0 General Principles of Enforcement

5.1 Service Standards

We will:

- consult businesses and other interested parties on our enforcement policy
- ensure that those who live and work in Spelthorne have a clear understanding of our enforcement policy
- draw up clear standards setting out the level of service and performance the public and business people can expect to receive
- publish these standards and our annual performance against them

5.2 Openness

We will:-

- provide information and advice in plain language on the rules we apply
- be open about how we set about our work, including any charges that we set
- discuss general issues and specific compliance failings on problems with anyone experiencing difficulties
- provide an opportunity to discuss the circumstances of a case and, if possible, resolve points of difference before enforcement action is taken (unless immediate action is required)
- give an explanation of why immediate action is required (unless issues of sensitivity, legal privilege, or privacy are involved)
- give advice on the rights of appeal against formal action
- officers will be fair, independent and objective in all respects

5.3 Helpfulness

We will:

- actively work with individuals, businesses, especially small and medium sized businesses, and other groups to advise on and assist with compliance
- provide a courteous and efficient service and our staff will identify themselves by name
- provide a contact point and telephone number for further dealings with us and we will encourage individuals, businesses and other groups to seek advice / information from us
- deal with applications for licences, registrations and consents in accordance with service standards
- ensure that wherever practicable our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays
- provide translation and interpretation facilities as may be necessary

5.4 Complaints about Service

We will:

- make effective use of our corporate complaints procedure which is well publicised and easily accessible to businesses, the public, employees and consumer groups
- explain any right of complaint or appeal where disputes cannot be resolved, with details of the process and the likely time-scale involved.

5.5 Environmental Health & Building Control Services staff must be fair, independent and objective. They must not let any personal views about issues such as ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender influence their decisions. They must not be affected by improper or undue pressure from any source.

5.6 The Environmental Health & Building Control Service is a public authority for the purposes of the Human Rights Act 1998. Environmental Health & Building Control Services staff must apply the principles of the European Convention on Human Rights in accordance with the Act..

5.7 Each case is unique and must be considered on its own merits. There are however, general principles that apply in the way each case must be approached. These are laid out in this Enforcement Policy and in the Enforcement Concordat to which the Council has adopted.

5.8 Enforcement of legislation should take into account the principles of:- Proportionality, Transparency and Targeting when applying the law and securing compliance; and a consistency of approach to enforcement: -

- Proportionality means relating enforcement action to the risks (in this policy, 'risk' is defined broadly to include a source of possible harm, the likelihood of that harm occurring and the severity of any harm). The action taken by Environmental Health & Building Control Services to achieve compliance with the law should be proportionate to any risks to health and safety and to the seriousness of any breach.

We will:

- minimise the costs of compliance for businesses and others by ensuring that any action reflects the risks involved, as far as the law allows
- take account of the circumstances of the case, the findings and the attitude/actions of the individual or organisation when considering action

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- take particular care to work with individuals, small businesses, voluntary and community organisations so that they can meet wherever possible their legal obligation without unnecessary expense
- confirm in writing, as appropriate, any actions necessary to comply with the law

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

We will:

- carry out our duties in a fair, equitable and consistent manner
- carry out enforcement work in a balanced way by applying discretion, and professional judgement wherever appropriate, and taking a common sense approach to the evaluation of risk in each situation.
- have arrangements in place to promote and monitor consistency, including effective arrangements for liaison with other authorities and enforcement bodies.
- Transparency: Transparency means helping duty holders to understand what is expected of them and what they should expect from the enforcing authority.

It also means making clear to duty holders not only what they have to do, but also where it is relevant, what they don't. This means distinguishing between "statutory requirements" which are their legal obligations, and "recommendations" which is generally advice or guidance given in terms of what is desirable but not compulsory.

When writing to duty holders regarding food safety and health and safety issues all officers shall distinguish clearly between legal "requirements" and "recommendations" of good practice.

In order that duty holders know what to expect when an inspector calls and what rights of complaint are open to them, all business proprietors/managers are provided with the Spelthorne leaflet entitled "Enforcement Policy – Advice to Businesses". Follow up letters to businesses also provide contact details of the Environmental Health Manager.

- Targeting: Targeting means making sure that visits/inspections carried out are targeted primarily on those activities or premises that give rise to the most serious risks or where hazards are least well controlled, and that action is focused on the duty holder.

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6.0 Training, Competency and Authorisation

6.1 Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Authorised officers will also have sufficient training and understanding of the departmental policies and procedures to ensure a consistent approach to service delivery. The Head of Service will maintain a list of current authorisations.

6.2 Officers who undertake criminal investigations will be conversant with the provisions of the Police and Criminal Evidence Act, 1984, the Criminal Procedure and Investigations Act, 1996 and the Regulation of Investigatory Powers Act 2000.

7.0 Deciding the action to take

7.1. Based upon the Code for Crown Prosecutors there are two issues to determine. The first is what level of enforcement action to take. The second is that, if the first decision is to take formal enforcement action, is that action viable and appropriate. There are two stages in determining whether formal enforcement action is viable and appropriate:

- Stage 1: the evidential test,
- Stage 2: the public interest test.

7.1.1 If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does meet the evidential test, the Head of Service, and the legal services section will decide if formal enforcement action is needed in the public interest. The second stage is the public interest test.

7.1.2 Environmental Health & Building Control Services will only start, and continue, with formal enforcement action when the case has passed both tests. Paragraphs 7.2 to 7.5 below, detail how this policy applies to the consideration of taking a prosecution. The principles outlined apply equally to the other types of formal enforcement action that are available.

7.1.3 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Head of Service and the legal services section must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

7.2 The Evidential Test

7.2.1 The Head of Service, and legal services must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the

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law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if satisfied it is sure of a defendant's guilt.

7.2.2 When deciding whether there is enough evidence to prosecute, the Head of Service, and legal services must consider whether the evidence can be used, is reliable and will be admissible as evidence in a court of law.

7.3 The Public Interest Test

7.3.1 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution, which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.

7.3.2 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Head of Service and Legal Services must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

7.3.3 The Head of Service and Legal Services must balance factors for and against prosecution carefully and fairly. Public interest factors which can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

Detailed below are some of the common public interest factors, which can generally be taken into account, both for and against prosecution, and are not exhaustive. The factors that apply will depend on the facts in each case.

7.4 Some common public interest factors in favour of prosecution.

7.4.1 The more serious the offence, the more likely it is considered that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

- A conviction is likely to result in a significant sentence;
- The offence was committed against a person serving the public, e.g. an officer was obstructed whilst attempting to carry out his/her duties;
- The Defendant was in a position of authority or trust;
- The evidence shows that the defendant was a ringleader or an organiser in the offence;

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- There is evidence that the offence was premeditated;
- There is evidence that the offence was carried out by a group;
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal damage or disturbance;
- The offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, disability(physical or mental), religious beliefs, political views or sexual preference, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- There is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
- The Defendant's previous convictions or cautions are relevant to the present offence;
- The Defendant is alleged to have committed the offence whilst under an order of the court;
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct; or
- The offence, although not serious in itself, is widespread in the area where it was committed.

Where inspectors are assaulted, enforcing authorities will seek police assistance, with a view to seeking the prosecution of offenders.

7.5 Some common public interest factors against prosecution

7.5.1 A prosecution is less likely to be needed if: -

- the court is likely to impose a very small or nominal penalty;
- the Defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution;
- the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- there has been a long delay between the offence taking place and the date of the trial, unless:
 - the offence is serious;
 - the delay has been caused in part by the Defendant;
 - the offence has only recently come to light; or
 - the complexity of the offence has meant that there has been a long investigation;
- a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;

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- the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.

8.0 What level of enforcement action to take

8.1 Enforcement action can be one, or a number, of the following actions: -

- Prosecution
- Closure powers
- Review, variation, suspension and/or Revocation of licence or permits
- Seizure
- Works in default
- Formal Caution
- Formal Notice
- Fixed penalty notices
- Informal Notice (written warning and advice)
- Informal verbal warning and advice
- Revisit of premises
- No action

Not all legislation covered by the Service have access to each of the above mentioned enforcement actions. For example, there are no current powers available to officers under the Licensing Act 2003 to serve formal notices such as Improvement or Prohibition notices.

All of the enforcement options available in each area of the Service's work are listed in Appendices 3, 4, 5, 6, 7, 8, 9 and 10, i.e. Food hygiene; health and safety; Licensing; Housing; Statutory Nuisance; Land Contamination; Pollution prevention and control; and Building Control, respectively.

A glossary of each enforcement action option term is explained in **Appendix 1**.

9.0 Liaison

9.1 The enforcement services (eg: noise pollution, licensing etc) within the Environmental Health & Building Control Services section will co-ordinate their enforcement activity to maximise the effective enforcement of any matters that are related to more than one of the services.

9.2 Where an enforcement matter affects a wide geographical area beyond the District's boundaries, or involves enforcement by one or more other local authorities or organisations (e.g.: Fire Authority, Police, Trading Standards etc); all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

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9.3 Where appropriate the matter will be discussed with relevant 'Home Authorities', 'Lead Authorities', Surrey Chief Officers or the relevant liaison study group before proceeding.

9.4 Monitoring shall be carried out by the Environmental Health & Building Control Services Managers to ensure that appropriate and full liaison is being undertaken.

10.0 Offences

10.1 The Head of Service, in conjunction with the Council's Legal Services, should select cases which:

- reflect the seriousness of the offence(s),
- give the court adequate sentencing powers,
- pass the evidential and public interest tests, and
- enable the offence(s) to be presented in a clear and simple way.

11.0 Considering the views of those affected by offences

11.1 Environmental Health and Building Control Services undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test (see section 7 above) the consequences for those affected by the offence, of the decision whether or not, and how to take enforcement action, and any views expressed by those affected will be taken into account.

11.2 Those people affected by the offence will be told about any decision that makes a significant difference to the case in which they are involved.

12.0 The interests of the District's customers

12.1 Where particular local circumstances dictate, enforcement activity will, where practicable, take account of those circumstances to minimise any adverse effects of enforcement activity on legitimate businesses and individuals.

12.2 When practicable and beneficial to local businesses, standards of competitors will be monitored.

13.0 Re-starting a prosecution

13.1 People should be able to rely on enforcement decisions taken by the Head of Service. Normally, if a suspect or defendant is advised that there will not be a prosecution, or that the enforcement action has been stopped, that will normally be the end of the matter and the case will not start again.

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Occasionally there are special reasons why enforcement action will re-start, particularly if the case is serious. These reasons include:

- rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand,
- cases which are stopped so that more evidence, which is likely to become available in the fairly near future, can be collected and prepared. In these cases, the defendant will be told that the enforcement action may well start again,
- cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.

14.0 Enforcement Policy implementation

- 14.1 Officers must abide by the relevant enforcement policy when making all enforcement decisions. Any departure from the policy must be exceptional, capable of justification and be fully considered by the Head of Service before a decision is taken, unless it is considered that there is sufficient risk in delaying the decision, under which circumstances the officer must take the most appropriate course of action, as they see fit.
- 14.2 Should any departure from the policy result in an officer considering taking enforcement action that may be inconsistent with action being taken by other authorities then this will be discussed with an Environmental Health Manager and the Head of Service. Where appropriate the matter will be discussed with relevant home authorities, lead authorities, LACORS, Surrey Chief Officers or the relevant study group before proceeding.
- 14.3 Scheduled internal performance review meetings will be undertaken to ensure that all enforcement activity is carried out in accordance with this policy.
- 14.4 Instances of non-compliance with this policy will be recorded and reported to the Head of Environmental Health and Building Control Services, who will instigate appropriate action.

15.0 Guidance Documents

- 15.1 This policy takes account of all the relevant parts of the Code for Crown Prosecutors.
- 15.2 This policy takes into account various guidance and Approved Codes of Practice issued by Central Government departments, and outside agencies such as the Health and Safety Executive, Food Standards Agency, LACORS, etc. These documents are specifically referred to within the text.
- 15.3 This policy takes account of Home Office Circular 30/2005.

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15.4 This policy takes account of The Human Rights Act 1998.

15.5 This policy takes account of The Regulation of Investigatory Powers Act 2000.

16.0 Further Information

The Code for Crown Prosecutors - (The Code) is issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985. It sets out the basic principles Crown Prosecutors should follow when they make case decisions. It is a public document, and although it is written for members of the Crown Prosecution Service, it is widely used by others to understand the way in which Crown Prosecutors make decisions.

The Code for Crown Prosecutors can be downloaded on the crown prosecution Website at: www.cps.gov.uk/victims_witnesses/code.htm

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Appendix 1

Glossary of enforcement action options terms

(1) Prosecution

This involves the offender(s) being summoned, by this Council, to a criminal court to answer a charge(s) for a breach(es) of legislation enforced by this department.

When consideration is given to prosecute regard shall be taken of the guidance contained within the Code for Crown Prosecutors, this Enforcement Policy, applicable Acts and Regulations, and relevant guidance produced by governmental agencies (such as the Health and Safety Executive, Food Standards Agency, Environment Agency, or specific government department).

Officers must exercise their discretion in deciding whether to initiate a prosecution. Prosecution without prior warning and recourse to alternative sanctions may be appropriate in certain circumstances.

In terms of the public interest the list of factors stated in section 7.4.1 of this policy will be taken into account when making a decision.

For non payment of certain licence fees, or where the Council have not received payment of costs for carrying out works to remove a serious imminent risk or remedy pollution, it will pursue debts through the appropriate court.

(2) Closure powers

The powers to close certain premises, both commercial and domestic, or prohibit processes, are available to authorised officers under various legislation enforced by the department. This option is taken when there is a serious and imminent risk to health or safety to the occupants, neighbouring premises' occupants, employees' customers or visitors.

Decisions of this nature will be based on the professional judgement of authorised officers and relevant legislation and government guidance.

(3) Review, variation, suspension and/or revocation off licences or permits

These powers are contained in legislation where local authorities issue licences or permits to businesses. Examples include the Licensing Act 2003, Gambling Act 2005, Pollution Prevention and Control Regulations 1999 and Local Government (Miscellaneous) Provisions) Acts 1982 and 1976.

In terms of making a decision to review, vary, suspend or revoke licences/permits, one or more of the following **non exhaustive criteria** will be used:

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- (a) The Operator or personal licence holder has been convicted of a relevant offence(s).
- (b) The potential for considerable harm.
- (c) The seriousness of the offence(s).
- (d) The history of compliance of the offender(s), i.e. apparent reckless disregard to the law, persistent poor standards, repeated breaches, etc.
- (e) A person/organisation has been engaged in fraudulent activity.
- (f) The operation is no longer being managed by a technically competent person.
- (g) Failure of the operator, licence holder, to pay the Council any annual or subsistence fee.
- (h) Where a licensed premises has been temporarily closed by the Police or Council for related reasons.
- (i) Where a successful prosecution has been obtained for a breach (es) of licence condition(s).

(4) Seizure powers

Authorised officers do have powers to formally seize items, such as food, and equipment (including musical systems) which will or could cause an imminent risk to health, safety or a nuisance to any person(s).

Decisions of this nature will be based on the professional judgement of authorised officers and relevant legislation and government guidance.

We will always give full details of our actions to the offender(s) when we exercise this power .

(5) Works in default

This power exists where an authorised officer considers a relevant and serious issue requires urgent work to be carried out. This can occur in relation to statutory nuisances, actual or imminent risks of serious environmental pollution, or serious housing defects where non-compliance exists and persists.

(6) Formal cautions

This option is used as a final warning and as an alternative to prosecution. It derives from guidance issued by the Home Office (Circular 30/2005). For a formal caution to be issued the following criteria must be satisfied:

- (a) Sufficient evidence must be available to prove the case.
- (b) The offender must admit the offence.
- (c) The offender must agree to be cautioned.
- (d) The offence must not have been committed by the offender before.

A record of the caution will be sent to the Office of Fair Trading, and where appropriate the Local Authorities Co-ordinators of Regulatory Services (LACORS). It will be kept on file for 5 years. If the offender commits a further offence, the formal

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caution may influence our decision to take a prosecution. If during the time the caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England or Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

(7) Formal notices

Formal or legal notices are available to use in most Environmental Health legislation. They are served to require offenders to cease contravening their statutory duties, either contained in the relevant piece of law, or conditions imposed on any licence or permit issued to them. Some notices allow an offender a reasonable length of time to remedy the contravention(s). Other notices may require a business or process to cease trading or operating immediately where there is an imminent risk to health, safety, or environmental pollution to employees, members of the public, etc.

(8) Fixed penalty notices

Fixed penalty notices (FPNs) exist in areas like noise and smoke free legislation. In the former they can be served if a nuisance exists, in lieu of a prosecution.

They are legal notices served on a business or individual in relation to observed contraventions of noise or smoke free law by the authorised officer. FPNs require the offender to pay a financial penalty to the Council as an alternative to being prosecuted.

(9) Informal notices (written warning)

For some contraventions we will send the offender a firm but polite letter clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in a formal notice(s) being served or more severe enforcement action being taken, depending on the seriousness of the breach(es).

The time allowed must be reasonable, but must also take into account the implications of the contravention(s) in respect of the legislation being enforced.

(10) Informal verbal warning

For minor breaches of legislation we verbally advise the offender clearly identifying the contravention(s), giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the implications of the contravention in respect of the legislation being enforced.

This course of action will only be appropriate where the breach is not serious; the past history is good and/or the consequences of non-compliance do not pose a significant risk.

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(11) Revisits

Following the service of a Formal Notice, we shall revisit the premises to check compliance has been achieved.

Following the service of an Informal Notice the investigating officer shall use their professional judgement to follow up the matter and depending upon the legislative implications of the contravention, and the perceived likely response of the offender, shall where necessary revisit the premises to check compliance has been achieved.

Following the provision of verbal warning and advice, the investigating officer shall use their professional judgement to follow up the matter, and depending upon the legislative implications of the contravention, and the perceived likely response of the offender, shall where necessary revisit the premises to check compliance has been achieved.

(12) No action

In exceptional circumstances, contraventions may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their well being. A decision to take no action must be recorded in writing and must take into account the legislative implications of the contravention.

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Appendix 2

Food Hygiene Enforcement Action Options

Appointment of officers

Under food legislation, Spelthorne Borough Council appoints the following inspectors to enforce the specified Acts and regulations:

- (1) Lee O'Neil, Head of Environmental Health and Building Control Services – relevant provisions of the Public Health (Control of Disease) Act 1984 and associated regulations; Food and Environmental Protection Act 1985, section 3; Food Safety Act 1990, Sections 9,10,12,29, 30 and 32; Food Hygiene (England) Regulations 2006, regulations 6, 8, 9, 12, 13, 14 and 27; Official Feed and Food Controls (England) Regulations 2006.
- (2) Jonathan Bramley, Environmental Health Manager (Commercial) – as in (1) above.
- (3) Elizabeth England, Senior Environmental Health Officer – as in (1) above, but **excluding** section 3 of the Food and Environmental Protection Act 1985.
- (4) Fidelma Harding, Environmental Health Officer – as in (3) above.
- (5) Goga Sheppard, Food and Safety Officer/Environmental Health Officer – as in (4) above, but **excluding** the following: section 12 of the Food Safety Act 1990; regulation 8 of the Food Hygiene (England) Regulations 2006.
- (6) Tracey Willmott-French, Environmental Health Manager (Residential and Pollution) – as in (5) above.
- (7) Leslie Spearpoint, Senior Environmental Health Officer – as in (6) above, but also **excluding** section 10 of the Food Safety Act 1990; and regulations 6 and 9 of the Food Hygiene (England) Regulations 2006.
- (8) Susan Turp, Senior Environmental Health Officer – as in (7) above.
- (9) Angela Kemp, Environmental Health Technical Officer – as in (7) above, but also **excluding** section 9 of the Food Safety Act 1990 and Regulation 27 of the Food Hygiene (England) Regulations 2006.
- (10) Alex Pang, Environmental Health Technical Officer – as in (9) above.
- (11) Any other officer as delegated in writing by the Head of Environmental Health and Building Control Services to perform the functions as specified in such delegations.

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The range of enforcement action options available includes:

- (a) Prosecution
- (b) Closure powers
- (c) Seizure
- (d) Formal cautions
- (e) Formal notices
- (f) Informal notices
- (g) Informal verbal warnings
- (h) Revisits
- (i) No action

Appendix 3

Health and Safety Enforcement Action Options

Appointment of officers

Under Section 19 of the Health and Safety at Work etc. Act 1974, Spelthorne Borough Council appoints the following inspectors to enforce the specified sections of the Act:

- (1) Lee O'Neil, Head of Environmental Health and Building Control Services – Sections 20 (paragraphs a, b, c, d, e, f, g, h, i, j, k, l, m), 21, 22, 23, 25 and 38 inclusive. All relevant provisions of Smoke free legislation.
- (2) Jonathan Bramley, Environmental Health Manager (Commercial) – as in (1) above.
- (3) Elizabeth England, Senior Environmental Health Officer – as in (1) above.
- (4) Stuart Mann, Health and Safety Officer – as in (1) above.
- (5) Fidelma Harding, Environmental Health Officer – as in (1) above.
- (6) Tracey Willmott-French, Environmental Health Manager (Residential and Pollution) – Sections 20 (paragraphs a, b, c, d, e, f, g, h, i, j, k, l, m) 21, 22 and 25 only. All relevant provisions of Smoke free legislation.
- (7) Leslie Spearpoint, Senior Environmental Health Officer – as in (6) above, but **excluding** sections 21, 22, 23 and 25 of the Health and Safety at Work etc. Act 1974.
- (8) Susan Turp, Senior Environmental Health Officer – as in (7) above.

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- (9) Goga Sheppard, Food and Safety Officer/Environmental Health Officer – as in (1) above.
- (10) Dawn Morrison, Licensing Manager, as in (7) above.
- (11) Angela Kemp, Environmental Health Technical Officer, as in (7) above.
- (12) Alex Pang, Environmental Health Technical Officer, as in (7) above.
- (13) Gemma Dean, Licensing Enforcement Officer – as in (7) above.
- (14) David Packham, Licensing Enforcement Officer – as in (7) above.
- (15) Any other officer as delegated in writing by the Head of Environmental Health and Building Control Services to perform the functions as specified in such delegations.

The range of enforcement action options available includes:

- (a) Prosecution
- (b) Closure powers
- (c) Seizure
- (d) Formal cautions
- (e) Formal notices
- (f) Fixed penalty notices (under smoke free legislation)
- (g) Informal notices
- (h) Informal verbal warnings
- (i) Revisits
- (j) No action

Fixed Penalty Notices (FPNs) – Smoke free legislation

An authorised officer, who has reason to believe that a person has committed an offence in relation to smoking in smoke free premises, or not displaying the required signage, can issue a FPN. There is no FPN available for failing to control smoking.

FPNs offer a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a fixed penalty charge within the time period specified in the notice.

If the penalty is paid in accordance with the penalty notice then no proceedings for the offence can be brought.

In relation to the offence of failing to display the required signage a FPN will generally be issued where there is a history of non –compliance or where guidance and a previous warning has been given.

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In relation to the offence of smoking in a smoke free premises a FPN will generally be issued to a person smoking where the premises concerned have demonstrated that they have taken **all** reasonable steps to prevent smoking, including displaying the required signage. Notwithstanding the above where an individual persists in smoking, having received a verbal or written warning from an authorised officer, then a FPN may be issued without consideration as to the precautions taken by the premises to prevent smoking.

Death at Work

Where there has been a breach of the law leading to a work related death, officers must consider whether the circumstances of the case might justify a charge of manslaughter.

To ensure that decisions on investigation and prosecution are closely co-ordinated following a work-related death, the HSE, the Association of Chief Police Officers (ACPO), Local Government Association, LACORS and the Crown Prosecution Service (CPS) have jointly agreed and published "Work-related deaths: A protocol for liaison". We must therefore take account of the protocol when responding to work-related deaths.

In which case, officers shall liaise with the Police, Coroners and Crown Prosecution Service (CPS), and if they find evidence suggesting manslaughter, pass it on to the police. If the Police or the CPS decide not to pursue a manslaughter case, the officer will normally bring a health and safety prosecution in accordance with the HSC Enforcement Policy

Appendix 4

Licensing Enforcement Action Options

This Appendix relates to enforcement options available to authorised officers under the Licensing Act 2003, Gambling Act 2005, and Local Government (Miscellaneous) Provisions Acts of 1976 (taxi, and private hire driver and vehicle licences), 1982 ("special treatment" licences), Street and House to House Collection licensing, and various animal welfare legislation.

Appointment of officers

Under various licensing legislation, Spelthorne Borough Council appoints the following inspectors to enforce the Acts and regulations.

- (1) Lee O'Neil, Head of Environmental Health and Building Control Services – all relevant licensing legislation referred to in the Council's Scheme of Delegation.

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- (2) Jonathan Bramley, Environmental Health Manager (Commercial) – All relevant provisions of the Animal Welfare Act 2006 and other relevant animal licensing legislation.
- (3) Elizabeth England, Senior Environmental Health Officer – as in (2) above.
- (4) Fidelma Harding, Environmental Health Officer – as in (2) above.
- (5) Goga Sheppard, Food and Safety Officer/Environmental Health Officer – as in (2) above.
- (6) Tracey Willmott-French, Environmental Health Manager (Residential and Pollution) – as in (2) above.
- (7) Leslie Spearpoint, Senior Environmental Health Officer – as in (2) above.
- (8) Susan Turp, Senior Environmental Health Officer – as in (2) above.
- (9) Olivia Flint, Principal Pollution Control Officer – as in (2) above.
- (10) Gemma Dean, Licensing Enforcement Officer as in (2) above.

The range of licensing enforcement action options available includes:

- (a) Prosecution
- (b) Closure powers
- (c) Review, variation, suspension or revocation of licence/permit
- (d) Formal cautions
- (e) Informal notices
- (f) Informal verbal warnings
- (g) Revisits
- (h) No action

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Appendix 5

Housing Enforcement Action Options

Spelthorne Borough Council appoints the following inspectors to enforce the Housing Act 2004, specified Acts and Regulations:

Appointment of Inspectors

- (1) Lee O'Neil, Head of Environmental Health and Building Control Services.
- (2) Tracey Willmott-French, Environmental Health Manager (Residential and Pollution).
- (3) Leslie Spearpoint, Senior Environmental Health Officer.
- (4) Susan Turp, Senior Environmental Health Officer.
- (5) Any other officer as delegated in writing by the Head of Environmental Health and Building Control Services to perform the functions as specified in such delegations.
- (6) Alan Coombes, Technical Officer.
- (7) Alex Pang, Environmental Health Technical Officer.
- (8) Angela Kemp, Environmental Health Technical Officer.
- (9) Jonathan Bramley, Environmental Health Manager (Commercial).
- (10) Elizabeth England, Senior Environmental Health Officer.
- (11) Fidelma Harding, Environmental Health Officer.
- (12) Goga Sheppard, Food and Safety Officer/Environmental Health Officer.

The range of enforcement action options available includes:

- (a) Prosecution
- (b) Closure powers
- (c) Works in default
- (d) Formal cautions
- (e) Formal notices
- (f) Informal notices
- (g) Informal verbal warnings
- (h) Revisits
- (i) No action

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Appendix 6

Statutory Nuisance Enforcement Action Options

Appointment of Inspectors

- (1) Lee O'Neil, Head of Environmental Health and Building Control Services – Environmental Protection Act 1990, sections 79, 80 and 81; Building Act 1980, section 76; Clean Neighbourhoods and Environment Act 2005, sections 101 and 102; Public Health Act 1939, sections 141,259 and 268; Mines and Quarries Act 1954, section 151; Noise Act 1996.
- (2) Tracey Willmott-French, Environmental Health Manager (Residential and Pollution) – as in (1) above.
- (3) Leslie Spearpoint, Senior Environmental Health Officer – as in (1) above.
- (4) Susan Turp, Senior Environmental Health Officer – as in (1) above.
- (5) Jonathan Bramley, Environmental Health Manager (Commercial) – as in (1) above.
- (6) Elizabeth England, Senior Environmental Health Officer, as in (1) above.
- (7) Any other officer as delegated in writing by the Head of Environmental Health and Building Control Services to perform the functions as specified in such delegations.
- (8) Fidelma Harding, Environmental Health Officer, as in (1) above.
- (9) Goga Sheppard, Food and Safety Officer/Environmental Health Officer, as in (1) above.
- (10) Alan Coombes, Technical Officer, as in (1) above.
- (11) Alex Pang, Environmental Health Technical Officer, as in (1) above.
- (12) Olivia Flint, Principal Pollution Officer, as in (1) above.
- (13) Fleur-Louise Fielding, Pollution Control Officer, as in (1) above.
- (14) Elizabeth Strutt, Pollution Control Officer, as in (1) above.
- (15) Angela Kemp, Environmental Health Technical Officer, as in (1) above.

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The range of enforcement action options available includes:

- (a) Prosecution
- (b) Closure powers
- (c) Seizure
- (d) Works in default
- (e) Formal cautions
- (f) Formal notices
- (g) Fixed penalty notices
- (h) Informal notices
- (i) Informal verbal warnings
- (j) Revisits
- (k) No action

Appendix 7

Land contamination Enforcement Action Options

This appendix relates to enforcement options available to authorised officers under Sections 78A to 78YC (inclusive) of Part IIA of the Environmental Protection Act 1990 and Regulations made under it; the Environment Act 1995; and the Law of Property Act 1925.

APPOINTMENT OF INSPECTORS

For the purpose of carrying into effect relevant statutory provisions in respect of its pollution control functions, Spelthorne Borough Council appoints the inspectors named below. In carrying out these functions the named inspectors are authorised to exercise the powers as specified below:

1. Lee O'Neil, Head of Environmental Health and Building Control Services – Environmental Protection Act 1990, Part IIA (as amended by the Environment Act 1995), Sections 78; and the Environment Act 1995 - Sections 108 and 109.
2. Tracey Willmott-French, Environmental Health Manager (Residential and Pollution) – the Environment Act 1995 – Sections 108 and 109.
3. Olivia Flint, Principal Pollution Control Officer – as in (2) above
4. Fleur Fielding, Pollution Control Officer – as in (2) above
5. Elizabeth Strutt, Pollution Control Officer – as in (2) above

The range of enforcement action options available includes:

- (a) Prosecution

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- (b) Formal cautions
- (c) Formal notices
- (d) Informal notices
- (e) Informal verbal warnings
- (f) Revisits
- (g) No action

Appendix 8

Pollution Control Enforcement Action Options

This appendix relates to enforcement options available to authorised officers under the Pollution Prevention and Control Act 1999 and Regulations made under it, and the Environmental Protection Act 1990 and Regulations made under it. Provisions relating to enforcement options applicable to Part IIA of the Environmental Protection Act 1990 are detailed within appendix 8.

APPOINTMENT OF OFFICERS

For the purpose of carrying into effect relevant statutory provisions in respect of its pollution control functions, Spelthorne Borough Council appoints the inspectors named below. In carrying out these functions the named inspectors are authorised to exercise the powers as specified below:

1. Lee O'Neil, Head of Environmental Health and Building Control Services – the Environment Act 1995 - Sections 108 and 109; the Pollution Prevention and Control Regulations 2000 – Regulations 7, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26,
2. Tracey Willmott-French, Environmental Health Manager (Residential and Pollution) – Environment Act 1995 - Sections 108 and 109; the Pollution Prevention and Control Regulations 2000 – Regulations 7, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24 and 25 ;
3. Olivia Flint, Principal Pollution Control Officer – as in (2) above
4. Fleur Fielding, Pollution Control Officer – as in (2) above
5. Elizabeth Strutt, Pollution Control Officer – as in (2) above
6. Leslie Spearpoint, Senior Environmental Health Officer – as in (2) above.
7. Susan Turp, Senior Environmental Health Officer – as in (2) above.
8. Jonathan Bramley, Environmental Health Manager (Commercial) – as in (2) above.
9. Elizabeth England, Senior Environmental Health Officer – as in (2) above.

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10. Any other officer as delegated in writing by the Head of Environmental Health and Building Control Services to perform the functions as specified in such delegations.

11. Fidelma Harding, Environmental Health Officer – as in (2) above.

12. Goga Sheppard, Food and Safety Officer/Environmental Health Officer – as in (2) above.

The range of pollution control enforcement action options available includes:

- (a) Prosecution
- (b) Review, variation, suspension and revocation of licence/permit
- (c) Works in default
- (d) Formal cautions
- (e) Formal notices
- (f) Informal notices
- (g) Informal verbal warnings
- (h) Revisits
- (i) No action

Appendix 9

Building Control Enforcement Action Options

Scope and objectives

To detect contraventions, record them and ensure compliance with the requirements of the Building Act 1984, Building Regulations 2000 (as amended), and associated legislation. This will be done in an equitable, practical and consistent manner.

Responsibilities

All Building Control staff are responsible for recording any reports received of contraventions / breaches of the Building Regulations and, where necessary, passing them to the Senior Building Control Surveyor within 6 working days for appropriate action if not resolved within that time.

All staff detecting contraventions are responsible for:

- recording them
- notifying the appropriate person of the contravention (owner, builder, etc.)
- recommending enforcement action where considered necessary
- preparing evidence and attending court if required

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The Technical Support staff are responsible for inputting data onto the computer system.

The Senior Building Control Surveyor, in liaison with the Head of Environmental Health and Building Control, is responsible for:-

- determining the need for formal enforcement action
- monitoring and maintaining records of unauthorised works / contraventions

The Head of Environmental Health and Building Control is responsible for authorising the formal Enforcement action in line with Standing Orders.

Documents required to be prepared and produced in support of enforcement action

- application case file
- evidence such as correspondence, photographs, witness statements, etc.
- site inspection records (either hand written or computer records)
- record sheet detailing contravention
- copy of enforcement notice
- record of service of enforcement notice
- all correspondence

Dealing with contraventions

On identification or on report of unauthorised work, building Control staff will:-

- check records to ascertain whether valid Building Regulations application has been received
- investigate the matter to determine if contravention has occurred
- if necessary advise the appropriate person (owner, builder, etc.) of the contravention and issue formal caution
- advise senior Building Control Surveyor of contravention to enable evaluation of appropriate measures
- prepare file (if required) and record all details on computer

The Senior Building Control Surveyor determines the course of action, i.e. whether informal / formal enforcement action is necessary. If informal action is required the report is passed to the relevant Building Control Surveyor for action. Where formal action is determined appropriate the matter is referred to the Head of Environmental Health and Building Control.

If informal action is appropriate:

- the Building control Surveyor writes to the person concerned requesting rectification works and submission of all necessary supporting details

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- the information is passed to the technical support staff for recording on computer system

If formal action is required:

In line with Standing Orders the information is passed to the Legal Section with a request for legal action. The Chief Executive's and Solicitor's procedure is then followed. The file is passed to the technical support staff for recording on computer system.

Contraventions

Minor contraventions

A minor contravention occurs when work which is subject of a formal application:-

- is not carried out in accordance with Building Regulations requirements
- is carried out incorrectly

When a Building Control Surveyor is made aware of, or observes minor contraventions on site:

- the appropriate person on site is advised of contravention
- an agreed time period is given to the appropriate person to resolve the matter
- the details are recorded on the site inspection record
- if the contravention has not been satisfactorily attended to by the expiry of the agreed time the matter is passed to the Senior Building Control Surveyor for appropriate action

Major contraventions

A major contravention occurs when work that has been subject of a formal application:-

- has not been rectified in accordance with Building Regulations requirements, or
- cannot be inspected due to lack of or inadequate notice having been given of works, or
- requires extensive alteration to achieve compliance

A major contravention may also occur where works have been carried out without a formal application having been submitted and:-

- works are at an advanced stage
- aspects of the works have been permanently covered prior to having been inspected
- works do not achieve compliance with the requirements of the Building Regulations and result in the means of escape provision and / or the structural integrity being obviously inadequate

When a Building Control Surveyor is made aware of major contraventions he / she shall:-

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- inform the relevant person (owner, builder, etc.) of the contravention and formally caution that person
- record all relevant details using hand written notes, thereafter signing and dating the notes.

On return to the office the Building Control Surveyor discusses the matter with the Senior Building Control Surveyor and, if appropriate, prepares an enforcement notice for serving on the relevant person, giving an appropriate period for rectification based on the severity of the contravention.

The enforcement notice and any necessary documents are produced by the technical support staff and are submitted to the Senior Building Control Surveyor for authorisation.

The enforcement notice is reviewed by the Senior Building Control Surveyor and if all details are in order, the notice is signed and dispatched to the offender, either by registered / recorded post or served by hand.

A copy of the notice is placed in the case file and the date entered on the site inspection record. The technical support staff record a reminder in the progress filing system for further action. If no corrective action is taken by the offender within the specified period the Building Control Surveyor will:-

- consult with the Senior Building control Surveyor on a further course of action
- if legal action is necessary, in line with Standing Orders, pass the file to the Legal section for enforcement action to be instigated under the Chief Executive's and Solicitor's rules
- update the case file after which the technical support staff will update the computer records.

Court proceedings

Should matters progress to Court, each Building Control Surveyor will attend as required by the Chief Executive and Solicitor. All findings / rulings will be recorded on the site inspection record.

Follow up enforcement action will be taken as necessary, on further advise / instruction from Solicitor. All details will be recorded on the site inspection record.

Filing

On satisfactory resolution of the case, the following additional information is retained in the case file:-

- all correspondence
- copy of enforcement notice
- copies of all evidence and witness statements
- details of Court action (if appropriate)

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Ultimately the case file is returned and retained within main case file system.

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