



# **Environmental Health**

## **Enforcement Policy**

**(Reviewed Feb 2018)**

# Environmental Health Enforcement Policy

## ***Purpose of Enforcement***

### ***Aims and Principles***

- Environmental Health exists to maintain and improve standards relating to food safety, health and safety at work, environmental protection, including contaminated land, public health, private water supplies, housing and animal health and welfare, so that the quality of life of those living, working and visiting Moray is enhanced.
- Environmental Health will provide effective efficient advice and services to the public, commercial sector and other internal and external agencies on all matters for which it has a statutory responsibility.
- Environmental Health will eliminate unnecessary enforcement activity that impacts on responsible business and will implement the Government's regulatory reforms.
- Environmental Health will promote sustained compliance with the law, ensure that duty holders take action to deal immediately with serious breaches of the law, and hold to account those who breach legal requirements which may include recommending prosecution or serving statutory notices.
- Environmental Health will through advice given to legitimate businesses, particularly during start up, the adoption of a fair treatment policy, promoting good business that than stifling entrepreneurial activities. To enable this businesses must behave ethically, engage early and openly with regulators and strive to comply.

### ***Scottish Regulators' Strategic Code of Practice***

Environmental Health will endeavour to comply with the requirements of the regulators code in all enforcement matters as it exemplifies best practice and identifies the need for regulatory services to adopt a positive and proactive approach towards ensuring compliance. This will be undertaken by:

- Adopting a positive enabling approach by helping and encouraging businesses and individuals to understand and comply with the law;
- Ensuring proportionality when dealing with breaches of the law
- Use risk assessments, intelligence and evidence to target resources to the areas that require them most
- Ensure effective two way communication with those that are regulated
- Adopt an educationary approach with a robust and effective enforcement when required
- Ensure the policies are transparent, accountable, consistent, proportionate and targeted.
- Pursuing continuous improvement in regulatory practice based on the principles of better regulation.

### ***Openness***

We will provide information and advice in plain language. We will be open about how we do our work, including any charges made. We will take account of businesses, consumers, workforce representatives' and other stakeholders' views.

### ***Helpfulness***

We believe that prevention is better than cure and that our role therefore involves actively working with businesses, especially small and medium sized businesses, to advise on and

assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us, and we will encourage businesses to seek advice/information from us. Applications for approval of establishments, licences, registrations, etc., will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise overlaps and time delays.

### ***Complaints about service***

We have an effective and timely complaints procedure. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

### ***Proportionality***

We will minimise the costs of compliance for businesses by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action. We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

### ***Consistency***

We carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies using the 'Home Authority' principle operated by the Local Authorities Co-ordinators of Regulatory Services (LACORS).

### ***Enforcement Procedures***

#### ***Scope***

1. These procedures cover the administration and enforcement of Environmental Health legislation; including enforcement visits, investigation of alleged offences, advice to businesses, investigation of criminal complaints, and sampling. It does not include advice on civil rights and obligations.

#### ***General***

2. We will ensure that enforcement activities are focused primarily on those areas that give rise to the most serious risk or where compliance is least well controlled. Enforcement will also take due account of local and national priorities and we will use intelligence gathered from complaints received, results of previous enforcement activity and information received from other agencies and sources.

#### ***Staff Competence***

3. Officers only take on tasks they are competent to perform. All staff participate in the Council's Employee Review and Development Programme. This ensures that officers are properly equipped to carry out their enforcement functions.

## **Advice**

4. Advice on Environmental Health issues will be made available to stakeholders on request. Information is also available on the Moray Council website <http://www.moray.gov.uk>

## **Risk Assessment/Intelligence/Evidence**

5. Business premises will be risk assessed in accordance with the relevant premises risk assessment schemes.

Food businesses with low risk food premises will be subject to an Alternative Enforcement Strategy Questionnaire and for health and safety at work purposes in accordance with the Health and Safety Executive/Local Authorities Enforcement Liaison Committee (HELA) Circular "Advice to Local Authorities on Intervention Programmes and an Inspection Rating System".

Environmental Health will implement Health and Safety inspections and other interventions in accordance with guidance on inspection ratings and inspection frequencies and the focused inspection of premises as part of the national and local projects to improve health and safety.

Farm inspections will be conducted in accordance with the relevant frequency as determined by the relevant risk assessment scheme.

Nuisance complaints will be investigated promptly to determine whether a statutory nuisance exists and appropriate action will be instigated. The complainants will also be provided with details of how to apply to the District Court for an Order under the Civic Government (Scotland) Act 1982 where the evidence is assessed on the balance of probabilities.

Housing standards visits will be carried out upon receipt of complaints or requests. Verbal warnings, letters, notices and orders will be issued where a risk to health has been identified.

The identification of contaminated land under Part IIA of the Environmental Act 1990 will give principal priority to protecting human health but will also give priority to the water environment and designated eco-systems as well as the prevention of damage to property. Environmental Health will inspect the area for Contaminated Land and where found, secure appropriate remediation in accordance with the Scottish Government's Guidance Paper SE/2006/44.

## **Service Standards and Performance Reporting**

6. Statutory Performance Indicator information is available via the Moray Council website or in the Council's corporate public performance report.

## **Planned Inspections**

7. Environmental Health will carry out a programme of planned inspections/interventions based on risk except for the first visit. Business will not generally be given advance notice that a visit is to take place unless the purpose of the visit is to examine

documentation. Officers offer advice and assistance to help businesses comply with statutory requirements during inspection visits.

8. Officers are given powers of entry, inspection and seizure under a variety of statutes. Persons should not attempt to stop an officer who is properly exercising any of these powers, as such action may be an offence. In general an authorised officer can:-
  - (a) Enter any premises at all reasonable hours
  - (b) Inspect any goods, food, articles, premises or land.
  - (c) Take samples of any goods, food, articles or substances
  - (d) Inspect any documents, where an offence is suspected
  - (e) Seize, remove and detain food, articles, substances, goods and documents, when it is believed that an offence has been committed
  - (f) Direct that premises, or anything within premises, are left undisturbed
  - (g) Take photographs, measurements and recordings.
  
9. In the course of an inspection, businesses can expect:-
  - (a) To be shown all due courtesy
  - (b) To be informed of the purpose of the visit
  - (c) To be shown photo identification
  - (d) To be given advice
  - (e) To receive feedback on compliance levels
  - (f) To be given guidance on what the law is
  - (g) To be given advice on any action required to remedy any points of non-compliance
  - (h) To receive reasonable time to take remedial action
  - (i) To be told of procedures for appealing against any enforcement action taken.

### ***Enforcement Action***

10. Enforcement action includes reports, letters, statutory notices, formal warnings, and reports to the Procurator Fiscal. Action taken will be proportionate to the scale of the identified problem and to other relevant factors, including:-
  - (a) The public interest.
  - (b) Significant contraventions resulting in real or potential danger to the public or persons at work.
  - (c) Previous correspondence on the issue, or where there is a history of similar contraventions.
  - (d) Detriment to consumer rights.
  - (e) Detriment to business rights: eg intellectual property rights.
  - (f) Wilful breach of legislation or failure to comply in full or in part with requirements of statutory notice.
  
11. Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or to prevent evidence being destroyed).
  
12. Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing, in most cases within 5 working days, and in all cases within 10 working days.

13. Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).
14. Advice from an officer will be put clearly and simply and will be generally confirmed in writing, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.
15. All statutory notices, reports, letters, and formal warnings will be followed up to ensure required remedial action is taken.
16. Environmental Health will use discretion when considering making a report to the Procurator Fiscal and will only do so when it is in the public interest and meets the evidential test. All reports will be referred to the Service Manager prior to submission to the Procurator Fiscal. Reports will be submitted within four months of the date the offence came to light, unless external factors make this impossible.

### ***Complaints about the Service***

17. Where a business, or other member of the public, makes a complaint or expresses dissatisfaction with the service, the officer receiving the complaint will notify the Service Manager as soon as possible. The complainant will be advised of the option of referring the matter to the Service Manager. On receipt of a complaint, the Service Manager will review all relevant facts and report the findings to the complainant. Complaints and expressions of dissatisfaction are seen as opportunities to improve service delivery. The Council's Complaints procedure will be followed.

### ***Home Authority Principle***

18. The section will adhere to the Home Authority Principle which encourages efficiency, promotes uniformity, reduces duplication and assists enterprises to comply with the law. It ensures that:-
  - (a) Local authorities place special emphasis on the surveillance of goods and services originating in their areas.
  - (b) Enterprises are able to depend upon a specific home authority for preventative guidance and advice.
  - (c) Enforcing authorities liaise with the relevant home authority on issues which affect the policies of an enterprise.
  - (d) Machinery exists for monitoring and resolving disputes in appropriate cases.
19. The Environmental Health Section will adhere to the Lead Authority Partnership Scheme in relation to Health and Safety at Work enforcement.

The Lead Authority Partnership Scheme is a means of improving consistency in the way local authorities enforce health and safety in companies which have outlets in a number of local authority areas.

The Environmental Health Section, as enforcing authority, will liaise with the lead authority on company-wide issues and will consult with the lead authority before taking formal enforcement action.

### ***Liaison with Other Enforcement Agencies***

- 20 Where appropriate, enforcement authorities within the various regulatory services will be co-ordinated with other enforcement authorities and local authorities to maximise the effectiveness of any enforcement activity

Environmental Health will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies

### ***Publicity***

- 21 This policy will be made widely available to trade bodies and others who may have an interest. It will be published on the Council's Internet pages. The policy will be reviewed in the light of any comments and feedback received.

### ***Internal and External References***

20. Reference should be made to and cognisance taken of the following documents.
- The Moray Council Food Enforcement Service Delivery Plan.
  - The Moray Council Enforcement Decision Procedures (Food Safety)
  - The Moray Council Health and Safety Enforcement Policy
  - The Moray Council "Approach to Contaminated Land" and "Contaminated Land Part IIA Inspection Strategy (Appendix A)"
  - The Food Standards Scotland Food Law Code of Practice.
  - The Health and Safety Executive's National Local Authority Enforcement Code.
  - Crown Office and Procurator Fiscal Service Guidance for Specialist Reporting Agencies Secure Web Site Applications.
  - The Scottish Executive Paper SE/2006/44; Environmental Protection Act 1990: Part IIA: Contaminated Land: Statutory Guidance; Edition 2.