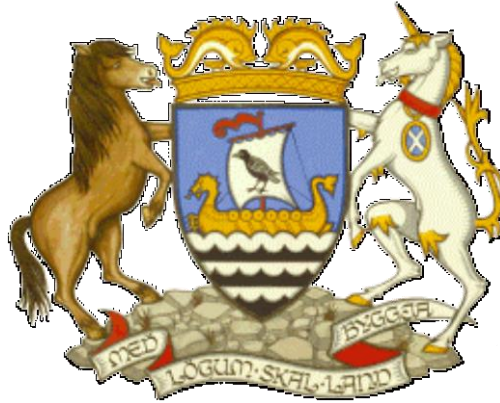


# SHETLAND ISLANDS COUNCIL



## ENVIRONMENTAL HEALTH SERVICE

## ENFORCEMENT POLICY

Document Title	Enforcement Policy		
Version	7.1	Date	April 2019

<b>Document Information</b>			
Document Name/Description			
Version Number <i>e.g. V1.1</i>		Version 7.1	
Author		Patti Dinsdale	
Lead Officer/Manager		John Smith	
Final Approval Date		06-12-2017	
Approved by – <i>Council/Committee/Group/Manager</i>		Policy and Resources Committee	
Review Frequency		3 years or when significant changes required	
Date of next planned review start		April 2020	
<b>Summary of changes to document</b>			
<b>Date</b>	<b>Version updated</b>	<b>New version number</b>	<b>Brief description of changes</b>
11/04/19	Version 7	Version 7.1	Checked legislation, grammar and syntax, updated lost hyperlinks to guidance documents. Also change in Lead Officer and new EHO – HAL.

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## 1.0 General Principles

### 1.1 Scope and Goals

This policy applies to the Environmental Health Service of the Infrastructure Services Department. The Environmental Health Service will review the enforcement policy on a 3-yearly basis, or more frequently if circumstances dictate. Reviews will take into account statutory requirements and feedback from service users. The Environmental Health Service aims to enhance the quality of life in Shetland by protecting and improving the communities' health and environment.

The main aim of Environmental Health is:

***' To protect and enhance, through the application of statute, the health, welfare, environment and safety of the people of Shetland and those using services obtained from within Shetland'.***

Our goals are to:

- Ensure that regulated persons take action immediately to deal with serious risks
- Promote and achieve sustained compliance by regulated persons
- Treat all regulated persons fairly
- Be helpful to regulated persons who wish to comply
- Support those who comply by targeting those who don't , in particular by taking firm action against those who flout the law or act irresponsibly
- Protect the public in a way which does not stifle enterprise, hinder economic progress or place unnecessary burdens on businesses.
- Communicate this policy effectively to those people who are affected by it.

### 1.2 Principles of Good Enforcement:

Shetland Islands Council (SIC) has adopted the following principles of good enforcement:

- Openness – we will provide information, as far as legislation permits, and advice in plain language. We are open about how we do our work and take account of stakeholders' views, where possible.
- Helpfulness – we believe that prevention is better than cure and work with businesses, especially small and medium sized businesses, to advise and assist with compliance.
- Proportionality – We 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 take account of the circumstances of the case and the attitude of the business or individual when considering action. We take particular care to work with small businesses and voluntary/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 officers are expected to exercise their professional judgement in individual cases, we have arrangements in place to promote consistency, including effective

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arrangements for liaison with other authorities and enforcement agencies using the 'Home Authority Principle'.

- Complaints – about service – SIC has a formal corporate complaints procedure. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with concise details of the process and the timescales involved.

## 2.0 Guidance Documents

2.1 Enforcement taken by the Environmental Health Service will be in line with this policy, which has been developed taking into account the following guidance:

### **Scottish Regulators Strategic Code of Practice (January 2015 – currently under review)**

The Strategic Code of Practice has been developed with and by both regulators and stakeholders and requires regulatory functions to be exercised in accordance with the principles of better regulation. The Code is made under section 5 of the Regulatory Reform (Scotland) Act 2014 (The Act). The Code works alongside the UK Regulators' Code (April 2014)

The current Code of Practice can be found [here](#).

## 2.2 Health and Safety Executive Enforcement Policy Statement (October 2015)

SIC Environmental Health Service follows the Health & Safety Executive's Enforcement Policy Statement in matters of Health and Safety.

The full statement can be found [here](#).

## 2.3 Health and Safety Enforcement Management Model (version 3.2 April amended October 2013)

SIC Health Service follows the Health & Safety Executive's Enforcement Management Model in matters of Health and Safety.

The full model can be found [here](#).

## 2.4 Food Standards Scotland: Food Law Code of Practice (Scotland) 31<sup>st</sup> January 2019, Human Rights Act 1998 and Equality Act

SIC Environmental Health Service follows the Food Standards Scotland Food Law Code of Practice (Scotland) in matters of Food Safety and Food Standards.

The current full code can be found [here](#).

In addition, regulatory functions must conform with the Human Rights Act 1998 and Equality Act 2010.

## 2.5 Home Authority and Primary Authority Principles

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## Home Authority Principle

The principle of the Home Authority is designed to encourage efficiency, promote uniformity, reduce duplication and assist business to comply with the law. It seeks to ensure that:

- Local Authorities place special emphasis on the surveillance of goods and services originating in their areas.
- Businesses are able to depend upon a specific Home Authority for preventative guidance and advice.
- Enforcing authorities liaise with the relevant Home Authority on issues, which effect the policies of an enterprise.

The service is willing to offer this type of assistance to any business to which we are the Home Authority.

## Primary Authority Principle

The Primary Authority Partnership principle is designed to encourage efficiency, promote uniformity, reduce duplication and assist enterprises to comply with the law. It is jointly governed by the Trading Standards Institute (TSI); Chartered Institute of Environmental Health (CIEH); Department for Business, Innovation and Skills (BIS) and Food Authorities. The Primary Authority scheme in relation to food does not extend to Scotland; however, Scottish Food Authorities should treat a Primary Authority as if they were the Home Authority as per the Food Law Code of Practice (Scotland).

## 3.0 PROCEDURES

### 3.1 Scope

The purpose of this Enforcement Policy is to ensure that enforcement decisions are always reasonable, proportionate, risk-based, consistent with good practice and transparent, whilst ensuring that the public is adequately protected. Each case is unique and must be considered on its own merits. This document describes the principles upon which our enforcement approach is based. This Enforcement Policy will be applied in the Council's own premises where the Environmental Health Service has responsibility for enforcement of relevant legislation.

### 3.2 Background

Environmental Health is charged with administering a wide range of legislation under the following headings:

- Food Standards/Safety
- Private Sector Housing
- Occupational Health and Safety
- Animal Health and Welfare
- Environmental Protection
- Public Health
- Civic Government Licensing
- Alcohol Licensing Standards

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### 3.3 Detailed Procedures

Officers are appointed and authorised to act under specified legislation, as detailed on their ID card and accompanying schedule of Regulations and legislative instruments. In some cases, an Officer's authority may be limited in scope and in others, proof of competence, in terms of relevant qualifications, experience and/or CPD, will be a pre-requisite to authorisation. The Council's Employee Review and Development process will be used to assess competency of officers and determine ongoing professional development requirements to maintain or develop their capacity for enforcement of the relevant legislation.

Environmental Health carry out planned programmes of inspections with a view to securing compliance with legislation. Businesses are liable to be visited by an Authorised Officer to determine whether the law is being complied with. Businesses will not generally be given advance notice that a visit is to take place, unless a domestic premises or the circumstances require an appointment to be made.

Environmental Health will concentrate its efforts on high-risk premises and on issues, which adversely affect the health, safety and wellbeing of the community.

For Food Safety the visit frequencies are in accordance with the Food Law Code of Practice details in point 2.4 above.

Priority planning in relation to Health and Safety interventions is carried out in line with [Setting priorities and targeting interventions - HSE and LAs Working together - HSE – LAC 67/2 \(Revision 8\)](#) – current version.

### 3.4 Enforcement Principles

Wherever possible, officers will seek to find solutions that are arrived at by agreement and co-operation.

Enforcement action is only one tool in a package of measures, which the Environmental Health Services can deploy often in partnership with others, to achieve positive outcomes for Shetland Islands environment, economy and communities. Where there is non-compliance our experience is that most of those we regulate respond to our advice and guidance and come into compliance. Many are also increasingly recognizing the value of compliance and good practice in delivering outcomes not just for themselves but also for the environment, the economy and the local community. In view of this, advice and guidance will continue to be our main route to securing compliance. However, there will be circumstances where it is appropriate for us to take formal enforcement action. Where appropriate, we will also liaise with other authorities to ensure compliance and to play our part in combatting wider criminality (e.g. Police Scotland; Crown Office and Procurator Fiscal Service; Food Standards Scotland; Health & Safety Executive; SEPA, other Local Authorities; Revenue Scotland; HM Revenue & Customs; Immigration Service etc).

Authorised Officers have powers of entry, inspection and seizure under Statute. In general, an authorised officer can:

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- Enter Business premises at all reasonable hours
- Enter premises where there is a reason to suspect an offence is being committed
- Inspect any premises
- Inspect any goods
- Take samples of any goods
- Purchase any goods
- Inspect any relevant documents and make copies
- Seize and detain any goods and documents when it is believed that an offence has been committed
- Prohibit activities/processes
- Question any person in pursuance of their duties

Business and individuals should expect to:

- Be shown all due courtesy
- Be informed of the purpose of the visit
- Be shown identification if requested
- Be given advice and guidance
- Receive feedback on compliance levels
- Be given guidance on the law
- Be given advice on any action required to remedy any points of non-compliance
- Receive reasonable time to take remedial action where appropriate
- Be informed of procedures for appealing against any enforcement action where appropriate

There are a number of enforcement actions available to an officer and the appropriate action will be dependent on the circumstances. The Service applies an educative approach and only moves to formal action where informal action does not ensure compliance with legislation.

To ensure that food law enforcement is carried out in line with the relevant food safety legislation and Codes of Practice (as required by the Food Standards Agency Framework Agreement), this authority has developed procedures on Interventions. These procedures are consistent with the principles contained in this policy.

The Health and Safety Executive Enforcement Management Model will be used to assist in enforcement decisions relating to Health and Safety.

The following pages identify the actions, which can be taken by Enforcement Officers and the consideration officers take in relation to each action.

## 1. No Action required

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. A decision to take no action must be recorded and must take into account the overall implications of the contravention. See Appendix 1 – reasons for deviating from Enforcement Policy.

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## 2. Informal Action

Informal action includes verbal advice and advisory letters/inspection reports. This type of action will be used to resolve minor offences or technical infringements, which are capable of immediate resolution and are unlikely to be repeated.

Considerations:

- The act or omission is not serious enough to warrant formal action.
- The history or risk assessment of the business does not support the need to take formal enforcement action.
- There is sufficient confidence in the proprietor, manager or other agent of the business to ensure that all matters will be corrected.
- Consequences of non-compliance do not pose a significant risk to consumers, the general public, health, and safety or the environment.

Informal action may be given by verbal instruction and the officer will indicate a reasonable timescale for corrective action. Verbal advice will be recorded on premises or complaint records. Advisory Letters/Inspection Reports will be kept on file and will be followed up to ensure that remedial action has been undertaken.

Advisory Letters/Inspection Reports will give clear and precise legislative advice to recipients and will contain timescales for compliance where appropriate.

Written information given to businesses/individuals will:

- Contain all information necessary to allow recipients to understand what is required and why it is necessary.
- Indicate the legislation, which is being contravened and give guidance on compliance with legal requirements and the timescale for rectification.
- Clearly indicate where guidance is purely recommendations, i.e. a code of practice requirement as opposed to a legal obligation.
- Indicate that other means of achieving the same effect may be chosen.

## 3. Formal Action

- Statutory Notices
- Fixed Penalty Notices
- Written Warning
- Report to the Procurator Fiscal

Considerations:

- Informal action has been unsuccessful or ignored
- Risk assessments suggests that formal action should be undertaken.
- There is a lack of confidence in the proprietor, manager, or other agent of the business to ensure that matters will be corrected.
- The general public, consumers, health and safety and/or the environment are at risk due to the contravention.

### Statutory Notices

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Statutory Notices may be issued where:

- There is a significant and serious alleged contravention of legislation
- The consequences of non-compliance with the legislation and the notice could potentially endanger the health, safety or well-being of people, animals or the environment.
- Guidance criteria concerning issue of Notice specified in relevant Statutory Codes of Practice is fulfilled.
- A statutory nuisance exists.
- A person has failed to respond informally to resolve a statutory nuisance.
- There are significant contraventions of legislation.
- There is lack of confidence in the individual or management to respond to an informal approach.
- There is a history of non-compliance with 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, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

Enforcement Officers will place realistic timescales on Notices (including at least any statutory minimal time periods, where necessary) for rectification of the alleged breach and will ensure that the business or individual is made aware of their rights of appeal, the appeal mechanisms and the consequences of not complying with a Statutory Notice.

### **Fixed Penalty Notices**

Environmental Health can issue a range of Fixed Penalty Notices (FPNs) when an offence has been committed. FPNs for littering, dog fouling or smoking in an enclosed public space, will be issued whenever an authorised Officer witnesses an offence or has reason to believe an offence has been committed. The only exceptions will be when Officers have been tasked with an engagement activity and the issue of an FPN will be detrimental to the Officer's capacity to engage. If the offender is under 16, a Fixed Penalty Notice will not be issued but the individual will receive a formal warning letter about the offence and will be invited to attend an education programme as an alternative to the FPN. In these specific circumstances only, will an educative approach be applied. In all other circumstances, officers will respond to the offence by issue of a FPN.

Where there is evidence that there is failure to comply with an Abatement Notice to address a Statutory Nuisance under the Environmental Protection Act 1990 officers can use their powers to issue FPNs. The circumstances, severity, remedy and environmental damage or public health and safety will dictate if multiple fixed penalty notices (up to three) are issued. However further breaches may be dealt with instead by preparing a Formal Written Warning or Report to the Procurator Fiscal.

### **Formal Written Warnings**

Formal Written Warnings can be used where a breach of legislation has been identified where it is not considered in the Public Interest to pursue a prosecution. The decision not to seek to prosecute will be fully documented. They will be entered on record and

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followed up to ensure that remedial action has been taken. Clear and precise timescales will be contained within the warning.

A Formal Written Warning regarding breaches of legislation will be issued after consultation between the Team Leader - Environmental Health and the Executive Manager Environmental Services. A written warning will be presented by the Team Leader Environmental Health and Officers at a face-to-face meeting with the individual or business operator.

The formal written warning will contain the following:

- The addressee (the legal person responsible for the alleged offence)
- The date, the place and nature of the alleged offence
- The alleged breach of the legislation specifying the Act, Regulation or Order with the section, Regulation or article number.

Formal Written Warnings will be used as evidence of a history of non-compliance where a report to the procurator fiscal is being prepared

### **Report to the Procurator Fiscal**

The decision to report to the Procurator Fiscal is a significant one and in general this decision will be taken where:

- There has been a blatant and/or a deliberate disregard for the law.
- There has been refusal to achieve even the basic minimum legal requirements.
- The alleged infringement could seriously endanger the health, safety or wellbeing of people, animals or the environment.
- The business or individual has been involved in the deliberate or persistent breach of their legal obligations (disregarding warnings and/or formal notices) in circumstances, which have caused or were likely to cause ill health, material loss or prejudice to others.
- It can be demonstrated that the alleged infringement caused or is likely to cause substantial loss or prejudice to others through negligence or gross carelessness. The alleged infringement is fraudulent.
- The alleged infringement involved obstruction of an Enforcement Officer carrying out his/her duties.
- Where there is a history of a similar offence.

Before a report to the Procurator Fiscal is prepared, the Investigating Officer and Team Leader – Environmental Health must be satisfied that there is relevant, admissible, corroborated and reliable evidence that an offence has been committed by an identifiable person or a company. There must be a realistic prospect of conviction.

When an Officer is preparing a Report, all relevant evidence and information will be considered and included in the Report to enable a consistent, fair and objective decision to be made.

The Crown Office document “Reports to the Procurator Fiscal – A Guide for Non-Police Reporting Agencies” (seventh edition 2006) will be followed.

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Reports will be submitted within three months of the date the offence came to light, unless external factors make this impossible.

### **3.5 Alternative Strategies**

The Service will use alternative strategies to reduce the burden on lower risk and better performing businesses. These will include the use of questionnaires, guidance leaflets, sampling and premises specific or themed training programmes.

### **3.6 Review**

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.

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Appendix 1 – Reasons for deviating from Enforcement Policy

Person/Premises –
Location
Summary of matters which require enforcement action
Summary of matters including corrective actions, which would suggest the enforcement activity outlined in the Policy was inappropriate in this instance
Agreed Course of action between the Operational Officer/Team Leader – Environmental Health/Executive Manager – Environmental Services
<p>Officer.....signed.....</p> <p>..</p> <p>Job Title.....</p> <p>Manager.....signed.....</p> <p>.....</p> <p>Job Title.....</p> <p>Date.....</p>