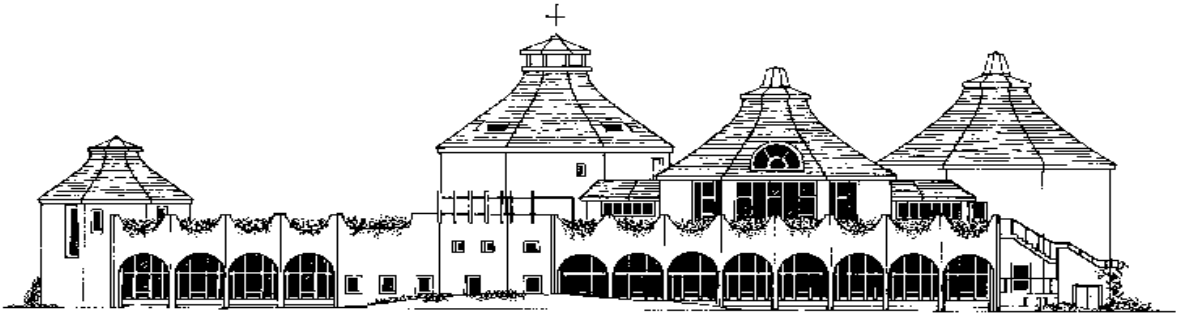


ENVIRONMENTAL HEALTH AND HOUSING DEPARTMENT



ENFORCEMENT POLICY

Approved by: Policy Committee

On: 11 September 2007

Previous Revisions: i) Revokes and replaces in full the Enforcement & Prosecution Policy agreed by the Policy Committee on 06/02/01; ii) Policy approved on 11/09/07 amended on 29/05/08 following Regulators' Compliance Code.

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ENVIRONMENTAL HEALTH AND HOUSING DEPARTMENT

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PART I

1.0 INTRODUCTION

- 1.1 The Environmental Health and Housing Departments aim is to maintain and improve where practicable the environment and the health, safety and welfare of the residents, visitors and the business community within the Mole Valley district, by fulfilling the duties delegated to it by the Council in an efficient, effective and caring manner. It will achieve this primarily through informal means, such as the provision of verbal advice and assistance, but also through formal enforcement action where necessary which may include prosecution.
- 1.2 The Departments regulatory functions are extensive. They include pollution control, food safety, health and safety, private sector housing conditions, licensing, pest control, animal welfare, private water supplies and welfare funerals.
- 1.3 The Department recognises that most individuals and businesses wish to comply with the law and will seek to assist and encourage them to do so.
- 1.4 The Department's staff work with other local authorities and regulators across the range of its services. Effective liaison arrangements will be maintained to attempt to ensure that there is coherent and consistent regulation.
- 1.5 The Department is committed to treating all customers fairly, irrespective of race, ethnicity, nationality, religion, gender, marital status, disability or age. This includes the provision on request of documents in alternative formats, such as other languages, large print, audio tape or Braille.
- 1.6 This Enforcement Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulators' Compliance Code (Statutory Code of Practice for Regulators, Department for Business Enterprise and Regulatory Reform).

In certain instances the Department may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

- 1.7 The Department will act in accordance with the Human Rights Act 1998.
- 1.8 The implementation and effectiveness of this Policy will be reviewed annually by the Department, but also when there are changes in law, statutory Codes of Practice, official guidance, or as a result of complaints about its use.
- 1.9 This Policy seeks to achieve a consistent approach to enforcement across all of the Departments activities. It sets out the general principles of good enforcement action and the more specific factors which will be taken into account when choosing the most appropriate action. In Parts II and III it sets out some more specific factors relevant to food safety and occupational health and safety enforcement respectively that will be applied alongside the general principles.

- 1.10 The full range of enforcement actions will always remain open to officers. Nothing in this Policy should be taken to mean or imply that formal actions are an indicator of an officer's performance.

2.0 ENFORCEMENT PURPOSE AND POWERS

2.1 Definition

'Enforcement' in the context of this Policy means the use of statutory powers to:

- Protect individuals or the environment from harm;
- Ensure that actions and activities are controlled so that relevant regulatory standards are attained and maintained;
- Ensure that appropriate actions are taken where statutory standards are breached;
- Seek appropriate sanctions for offences.

2.2 Powers Available

A selection of the enforcement powers available include the below. Other powers may exist or be introduced by new legislation.

- Verbal advice.
- Written warnings - a written warning is a notification by way of an informal letter or report that an offence has been committed. It will be recorded on file and will be referred to in determining future actions.
- Statutory notices or orders - these formal notices or orders may require, for example, the carrying out of works, or prohibit certain actions or the use of certain machinery, or exclude individuals from work or school.
- Carrying out of works in default of a notice. Default action may include seizures of equipment.
- Refusal, suspension, amendment or revocation of licences, registrations, approvals, etc.
- Fixed penalty notices used to offer a person the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty.
- Simple cautions - a simple caution is in writing and administered where the offence is admitted in appropriate circumstances. The caution is a serious matter and can be cited in future prosecutions.
- Prosecutions in Court.
- Injunctions for very serious matters where normal sanctions are not sufficient and circumstances dictate such intervention.
- Applications to a Court to prohibit a food business operator from managing a food business.

2.3 Use of Powers

The need for enforcement may stem from an individual incident such as an accident at work or complaint, or it may be uncovered as part of a programmed or reactive visit to a business. Where a situation occurs which requires enforcement action, the purpose of using the above powers will in the first instance be to take the action necessary to stop any harm to public health and safety and the environment from continuing, and to preventing future harm from occurring. Following on from this will be consideration as to whether further action is necessary.

2.4 Powers of Entry

Access to properties will normally be achieved using statutory powers of entry where available. Prior notice will normally only be given when appropriate or required by law, except if prior notice would be counterproductive, or it is anticipated that entry will be refused.

In appropriate circumstances, a formal Notice of Entry will be served or an application made to the Magistrates' Court for a warrant to enter, e.g. if access is refused or the premises is vacant.

Where appropriate the relevant parts of the Police and Criminal Evidence Act 1984 dealing with the searching of premises will be followed.

3.0 PRINCIPLES OF GOOD ENFORCEMENT PRACTICE

3.1 General

The Department recognises that most businesses and individuals want to comply with the law. We will, therefore, take care to help businesses and individuals meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly.

The Department believes in firm but fair regulation. Underlying the policy of firm but fair regulation are the principles of good enforcement set out in the Regulators' Compliance Code and Central/Local Government Concordat on Good Enforcement (which the Council has adopted). The principles of good enforcement are set out below.

3.2 Standards

The Department will draw up clear standards, in consultation with businesses and other relevant interested parties where appropriate, setting out the level of service and performance that customers can expect to receive. We will publish these standards and our annual performance against them. The standards will be available to businesses and others who are regulated.

3.3 Transparency

Information and advice will be provided in plain language on the rules that we apply and we will publish this as widely as possible. We will be open about how we set about our work, including any charges that we set. We will discuss general issues, specific compliance failures, or other problems with anyone experiencing difficulties.

We will help duty holders understand what is expected of them and what they should expect from us. We will make clear what the duty holder has to do, and if necessary what they do not have to do. We will do this by clearly distinguishing between legal requirements and recommendations in both verbal and written communications.

We will also ensure that employees, injured parties, complainants etc are kept informed about enforcement action that they have an interest in.

3.4 **Helpfulness**

We believe that prevention is better than cure and that we should work with individuals and businesses to advise and assist with compliance. We will provide a courteous, prompt and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number and will encourage customers to seek advice and information. We will ensure that services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

3.5 **Consistency**

The Department will carry out its duties in a fair, equitable and consistent manner. Whilst staff 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 through schemes such as those operated by the Local Authorities Coordinators of Regulatory Services (LACORS).

3.6 **Proportionality**

The Department will minimise the costs of compliance for duty holders 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, how far the duty holder has fallen short of what the law requires, the extent of the risks to people and the environment arising from the breach, and the attitude of the duty holder 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, where practicable without unnecessary expense.

3.7 **Targeting**

Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to, or pose a risk of, serious harm to the public's health or the environment, where the risks are least well controlled, or against deliberate disregard for the law. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.

The Department has systems for prioritising regulatory effort. They include the response to complaints from the public regarding specific incidents, the response to reported accidents, dangerous occurrences and occupational diseases, the assessment of the risks posed by certain activities, and the gathering of and acting on intelligence.

In the case of regulated commercial activities, management actions are important. Repeated incidents or breaches of regulatory requirements which are related may be an indication of an unwillingness to change behaviour, or an inability to achieve sufficient control, and may require a review of the regulatory requirements and the actions of the duty holder. A relatively low hazard activity which is poorly managed has potential for greater risk to health and safety than a higher hazard activity where proper control measures are in place. There are, however, high hazard activities which will receive regular visits so that the Department can be sure that the risks continue to be effectively managed.

3.8 **Accountability**

The Department recognises that that it is accountable to the public for its actions, so will provide a well publicised complaints procedure easily accessible to businesses, the public, employees and consumer groups. In cases where disputes cannot be

resolved, any further right of complaint or appeal will be explained (including to an external independent agency), with details of the process and the likely timescales involved.

4.0 PRINCIPLES OF GOOD ENFORCEMENT: PROCEDURES

- 4.1 Advice from an officer will be put clearly and simply and will normally be confirmed in writing, explaining what law has been contravened, what remedial work is necessary and over what timescale, and making sure that legal requirements are clearly distinguished from recommendations and best practice advice.
- 4.2 Those regulated entities that consistently achieve good levels of compliance will receive positive feedback and, where appropriate, a change in their risk rating (e.g. such that they are inspected less frequently).
- 4.3 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 environmental protection or to prevent evidence being destroyed).
- 4.4 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.
- 4.5 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).
- 4.6 A potential prosecution, based on available evidence and professional judgement, will be proposed by the investigating officer in conjunction with the relevant operational Principal Environmental Health Officer/team leader. This will then be authorised by the Head of Environmental Health and Housing who must be satisfied that the principles of this Policy have been adhered to before authorising a prosecution be initiated or simple caution offered.

Training, Competency & Authorisation of Officers

- 4.7 Only officers authorised by the Head of Environmental Health and Housing in accordance with any relevant documented procedure may undertake enforcement duties in accordance with the Council's scheme of delegation. The Head of Environmental Health will only authorise officers where satisfied with their level of qualification, training, experience and competence. This applies equally to those who are directly employed, to temporary staff, and to those employed by, or as, contractors.
- 4.8 All officers engaged in enforcement will be appropriately qualified, experienced and competent. Officers will receive such on-going training as necessary to maintain their competency and consistency in applying legislation, and also in dealing with conflict and difficult enforcement situations. Training will be prioritised within available resources and incorporated into each officer's performance appraisal.
- 4.9 Officers who undertake enforcement will be conversant with the provisions of the relevant legislation, including the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, and the Regulation of Investigatory Powers Act 2000.

5.0 SELECTION OF ENFORCEMENT OPTION

5.1 General

The seriousness of breaches can vary greatly from loss of life to breaches of an administrative nature e.g. failure to display a premises licence or register a food business. In reaching a decision on the most appropriate enforcement action, account will be taken of national published guidance, relevant professional guidance and all the relevant circumstances including the below.

5.2 The harm, disturbance or distress caused

The amount of damage done will usually vary according to the breach. The magnitude of the effect on individuals, the community and the environment will need to be gauged for each incident. In general, the greater the effect or potential effect, the greater the probability of prosecution.

5.3 Nature of the breach

Breaches that are so serious in their nature, or impact, will normally be dealt with by prosecution.

5.4 Intent

Breaches that are committed deliberately, recklessly, or for financial gain will normally be dealt with by prosecution. It may be appropriate to consider lesser enforcement action where the Department is satisfied that the breach was committed unintentionally, or was the result of a genuine mistake or a misunderstanding.

5.5 Previous History

Although the action to be taken will depend upon the circumstances of each case, consideration will be given to the type, seriousness, number and frequency of previous contraventions and enforcement actions.

5.6 Attitude of the Offender

Co-operation with the Department's officers, prompt reporting of the incident (where relevant), efforts at mitigating the consequences, willingness to prevent a recurrence, and assistance in investigations are all factors that will be taken into account when considering what level of enforcement action is appropriate for any particular case.

For example, prosecution is more likely to be pursued if the offender:

- i) disregarded previous advice or written guidance before the breach occurred;
- ii) obstructed investigations or delayed enforcement action;
- iii) made no attempt to minimise or rectify the effects or potential effects of the breach.

5.7 Deterrent Effect

Prosecution will normally be pursued if it is likely to be a necessary and effective way of preventing repetition of the breach by the offender. Prosecution will also normally be pursued if it would act as a deterrent to others against committing breaches which individually might be considered as minor, but which cumulatively over time or within a particular locality may have a more serious effect.

5.8 **Offenders Personal Circumstances**

A lesser form of action may be considered appropriate where there are exceptional relevant personal circumstances, e.g. where an offender is suffering from a serious illness, or the offender is a youth

5.9 **Foreseeability**

Where the possible consequences of actions or inactions were reasonably foreseeable, and no avoiding and/or preventative measures were taken, prosecution will normally result. Other enforcement action may be considered if the breach:

- i) Occurred in spite of preventative measures;
- ii) Could not have been reasonably foreseen;
- iii) Was the result of defective equipment which could not reasonably have been known or predicted;
- iv) Was caused by third party intervention which could not be guarded against.

The factors which apply and the weight to be attached to each will depend upon the particular circumstances of the case. Each case will be assessed individually.

6.0 **PROSECUTION**

6.1 **Purpose**

The Department recognises that the institution of a prosecution is a serious matter which should be initiated at the earliest opportunity but only after full consideration of the implications and consequences. It aims to punish wrongdoing, to avoid a recurrence and to act as a deterrent to others. It follows that it may be appropriate to use prosecution in conjunction with other available enforcement tools, for example, a prohibition notice requiring the operation to stop until certain requirements are met. Where the circumstances warrant it, prosecution without recourse to alternative sanctions will be pursued.

6.2 **Deciding to Prosecute**

Decisions about prosecutions will take account of the current edition of the Code for Crown Prosecutors. In particular the evidential test and the public interest test must both be met for a prosecution to be deemed the most appropriate enforcement action. The Department will work closely with the Council's Legal Services Department in the consideration of these two tests.

6.3 **The Evidential Test**

A prosecution will not be commenced or continued by the Department unless it is satisfied that there is sufficient admissible and reliable evidence that the offence has been committed and that there is a reasonable prospect of conviction.

In particular the factors below will be considered.

- i) The sufficiency of the evidence.
- ii) The likely cogency of any important witnesses, and their willingness to co-operate.
- iii) The alleged person/s or Company has been identified.
- iv) Any explanation offered by the suspect.
- v) The likelihood of the suspect being able to establish a statutory defence.

If the case does not pass this evidential test, it will not go ahead for prosecution, irrespective of any other factors.

6.4 **The Public Interest Test**

Where there is sufficient evidence, a prosecution will not be commenced or continued by the Department unless it is in the public interest to do so. A prosecution would normally proceed if the public interest factors in favour of prosecution outweigh those against, and where the evidential test is met. Unless the evidential test is satisfied, the public interest test is irrelevant.

Some common public interest factors in favour of prosecution include the below.

- The offence is serious.
- A conviction is likely to result in a significant penalty.
- Violence was threatened during the commission of the offence.
- There is evidence that the offence was premeditated.
- The offence was motivated by any form of discrimination.
- The defendant has a previous relevant conviction(s) or caution(s).
- There are grounds for believing the offence is likely to be repeated.
- The offence, although not serious in itself, is widespread in the area in which it was committed.
- A conviction is likely to result in a deterrent.

Some common public interest factors against prosecution include the below.

- The Court is likely to impose a nominal penalty.
- The offence was committed as a result of a genuine mistake or misunderstanding (although this must be balanced against the seriousness of the offence).
- The loss or harm was minor and was the result of a single incident.
- There has been a long delay between the offence and consideration of the evidence or the Court hearing unless:
 - The offence is serious;
 - The delay has been caused in part by the defendant;
 - The offence has only just come to light;
 - The complexity of the offence has meant there has been a long investigation.
- A prosecution is likely to have a very bad effect on the victim's physical or mental health.
- Whether any other action, such as issuing a simple caution, serving a statutory notice or prohibition would be more appropriate.
- 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.
- The defendant has put right the loss or harm caused (but a defendant will not avoid prosecution simply because he/she can pay compensation).

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

The final decision on prosecution will be made, in accordance with the Council's Scheme of Delegation, by the Head of Environmental Health and Housing.

6.5 **Typical Scenarios**

Where the evidential and public interest tests are met, the Department will normally prosecute in any of the scenarios below. This list is not exclusive and other scenarios not listed may normally result in prosecution too.

- 6.5.1 Incidents or breaches which have significant consequences for public health and/or safety, or the environment, or which have the potential for such consequences. The Department takes seriously such incidents or breaches.
- 6.5.2 Knowingly carrying out certain activities without a relevant licence/registration etc as it is a pre-requisite to successful regulation that those required to be regulated come within the appropriate licensing or registration system.
- 6.5.3 Excessive or persistent breaches of regulatory requirements in relation to the same or similar circumstances.
- 6.5.4 Failure to comply or to comply adequately with formal remedial requirements. It is unacceptable to ignore remedial requirements and unfair to those who do take action to comply.
- 6.5.5 Reckless disregard for recognised minimum legal standards of operating. It is in the interests of all that irresponsible operators are made to comply.
- 6.5.6 Failure to supply information without reasonable excuse, or knowingly or recklessly supplying false or misleading information. It is essential that lawful requests for information by the Department are complied with and that accurate information is always supplied to enable informed regulation to be exercised.
- 6.5.7 Obstruction of Department staff in carrying out their powers. The Department regards the obstruction of its staff while lawfully carrying out their duties as a serious matter.
- 6.5.8 A simple caution has been offered but the offender has refused to accept it.
- 6.5.9 There has been a repetition of a breach that was previously subject to a simple caution.

6.6 **Youth Offenders**

The Department is conscious that the stigma of a conviction can cause serious harm to the prospects of a youth or young adult. The age of the offender will be taken into account when his/her personal circumstances are considered (see 5.8). However, a prosecution will not be avoided just because of a defendant's age. The seriousness of the offence or the offender's past behaviour may, for example, make a prosecution necessary.

6.7 **Companies and Individuals**

Criminal proceedings will be taken against those persons responsible for the offence. Where a company is involved, it will be usual practice to prosecute the company where the offence resulted from the company's activities. However, the Department will also consider any part played in the offence by the officers of the company, including directors, managers and the company secretary. Action may also be taken against such officers (as well as the company) where it can be shown that the offence was committed with their consent or connivance, or was due to their neglect,

or they 'turned a blind eye' to the offence or the circumstances leading to it. In appropriate cases, the Department may consider seeking disqualification of directors.

6.8 Choice of Court

In cases of sufficient gravity, for example where serious harm to the public health or the environment has been caused, where circumstances allow, consideration will be given to requesting the Magistrates to refer the case to be heard or for sentencing to a higher court. The same factors as listed in 6.4 will be used, but including consideration of the sentencing powers of the Magistrates' Court.

6.9 Penalties

The Department will raise the awareness of the Court to the gravity of any environmental health offence placed before it and will encourage the Court to make full use of its powers of sentencing whether they be financial and/or custodial.

7.0 SIMPLE CAUTIONS

7.1 Purpose

Issuing a simple caution is an alternative to a prosecution. A caution is the written acceptance by an offender that he/she has committed an offence and may only be used where a prosecution could have properly been brought. Cautions will be used in accordance with the current edition of the Home Office guidance on the cautioning of offenders when they are considered to be more appropriate and at least as effective as a prosecution.

Persons who have previously received a caution will normally be dealt with by prosecution unless the subsequent offence is minor, simple or unrelated, or the caution was issued so many years previously as to not be considered relevant.

As with a prosecution, additional enforcement mechanisms may also be used in conjunction with a simple caution.

The purpose of a simple caution is to:

- i) Deal quickly and simply with less serious offences;
- ii) Divert less serious offences away from the Courts;
- iii) Reduce the chances of repeat offences.

The conditions below must be satisfied before a simple caution will be offered to an offender.

- i) The evidential test and public interest test for a prosecution must both be satisfied.
- ii) The suspected offender must admit the offence.
- iii) The suspected offender must understand the significance of a simple caution and give an informed consent to being cautioned; he/she must be made aware that a caution may be cited in Court in the event of future offending.

If the offender subsequently refuses to accept a simple caution, a prosecution will normally be instigated. Only in exceptional circumstances will alternative action be considered appropriate.

8.0 FIXED PENALTY NOTICES

Fixed penalty notices are provided for as an enforcement option under specific statutes, such as the Health Act 2006 and regulations made under it dealing with smoking in the workplace and public places. In determining whether to serve a fixed penalty notice the Department will have due regard to both the legislation and any relevant centrally issued guidance.

9.0 APPEALS

Individuals and businesses have a right of appeal against enforcement actions. Statutory appeal mechanisms exist (e.g. against statutory notices), the details of which will be given in writing when action is taken.

In addition the Department also has an informal disputes procedure, the details of which will be given in writing when action is taken. In all cases, except where immediate action is necessary, the person/Company against whom enforcement action is being taken will be given the opportunity to discuss the contravention and its resolution. Where immediate action is necessary, the reasons for the action will be given at the time and then confirmed in writing in most cases within 5 working days, and in all cases within 10 working days. Further, the Council has a published corporate complaints procedure that explains the action that can be pursued by a dissatisfied customer.

10.0 LIAISON WITH OTHER REGULATORS

Where the Department and another enforcement agency both have the power to prosecute, the Department will liaise with that other body, to ensure effective co-ordination, to avoid inconsistencies and any potential conflicts of interest, and to ensure that any proceedings instituted are for the most appropriate offence and taken by the most appropriate agency.

11.0 COSTS

The Department will always seek to recover as much of its enforcement costs as possible. Where the Department has carried out remedial works, it will seek to recover the full costs incurred from those originally responsible.

12.0 COMMUNICATION AND PUBLICITY

The Department will keep interested parties, particularly suspected offenders, complainants, injured persons, and witnesses informed of the progress of any enforcement action and notify them when the relevant action has been concluded.

The Department will consider drawing media attention to factual information about charges which have been laid before the Courts. Care will be taken to avoid any publicity which could prejudice a fair trial.

Consideration will also be given to publicising any conviction that may help serve as a deterrent to others.

The Department will also gather feedback from regulated entities on enforcement activity, including any forms used, by the use of customer feedback forms.

13.0 ENFORCEMENT IN PREMISES WHERE THE COUNCIL HAS AN INTEREST

The Department recognises that there are businesses in the district where the Council is both the duty holder and the enforcing authority. This particularly arises in businesses subject to food and health and safety legislation. More detail on this issue is in Parts II and III of this Policy.

14.0 ENFORCEMENT IN CROWN PREMISES

The general approach to enforcement in Crown premises will be the same as in non-Crown premises, except that statutory action will not be taken where the law does not permit the Crown to be criminally liable. Full consideration will be given to any national protocols on dealing with enforcement at Crown premises.

PART II

15.0 FOOD SAFETY ENFORCEMENT POLICY

15.1 General

It is the Council's policy to ensure that food and drink intended for sale for human consumption, which is produced, stored, distributed, handled or consumed within the Mole Valley district satisfies statutory food safety requirements. In addition, that food premises, practices and food business operators and handlers associated with that food and drink comply with statutory food hygiene requirements.

In determining whether to initiate enforcement action, officers will adhere to the general principles in Part I of this Policy, as well as the more specific principles in this part.

15.2 Enforcement Options

Authorised officers have a range of enforcement options including the below.

- Informal action
- Sampling, detaining and seizing food
- Hygiene improvement notices/improvement notices
- Remedial action notices
- Hygiene emergency prohibition notices/emergency prohibition notices
- Prosecutions
- Simple cautions
- Voluntary closure
- Hygiene prohibition orders

15.2.1 Informal Action

Informal action includes offering advice, verbal warnings and requests for action, the use of informal letters and self-duplicating records of visit, and the issuing of leaflets, guidance notes and booklets. Informal action may be appropriate in the circumstances below.

- Where the non-compliance does not involve a significant risk to public health.
- The issue is not serious enough to support formal action.
- Where from the individual's/business's past history it can reasonably be expected that informal action will achieve compliance.
- Confidence in the individual's/business's management is high.

Inspection reports will be issued following all inspections of food businesses. An inspection report may be a self-carbonating record of visit form left at the time of the visit, or a letter sent subsequently. Both verbal and written communications will clearly differentiate between legal requirements and recommendations. Written communications will in particular:

- Contain all information necessary to understand what work is required, why it is necessary, and when it needs to be completed by;
- Indicate the regulations contravened, measures necessary to comply, and that other means of achieving the same effect may be chosen; and
- Clearly indicate any recommendations of good hygiene practice to show that they are not a legal requirement.

Direct communications with multi site food businesses will normally be with the head office (unless the business has other nationally agreed arrangements) and in accordance with the Home Authority Principle. A copy will also be sent to the local site. Documents that are left with on site personnel will also be copied to the relevant head office or other address unless the business indicates otherwise.

15.2.2 Sampling, Detaining and Seizing Food

Sampling powers will be used both proactively in accordance with an annual sampling programme but also reactively, where appropriate, and at the discretion of the officer when at any food business. In taking samples officers will have full regard to the current edition of the Environmental Health and Housing Department's 'Food, Water and Environmental Sampling Policy'.

Detention powers will be used by authorised officers if there is good reason to suspect that food does not satisfy food safety requirements. Seizure powers will be used where there is clear evidence of such a failure. Careful judgement and consideration of the need to seek expert advice will always be exercised before using these powers, and guidance specified in the Food Law Code of Practice (England) will be followed.

Voluntary procedures to remove food that is not suitable for human consumption from the food chain may be used, either at the instigation of the person in charge of the food or at the suggestion of the authorised officer when the person in charge of the food agrees that the food is not suitable for human consumption.

15.2.3 Hygiene Improvement Notices/Improvement Notices

A Hygiene Improvement Notice/Improvement Notice will only be served by an authorised officer when one or more of the criteria below apply.

- There is a significant contravention of legislation.
- There is a lack of confidence in the food business operator to respond to an informal approach.
- There is a history of non-compliance with informal action.
- Standards are generally poor with little management awareness of statutory requirements.
- The consequences of non-compliance could be potentially serious to public health.
- Although there is an intention to prosecute, effective action is needed to remedy conditions that are serious or deteriorating.

Realistic time limits on notices will be set and agreed wherever possible with the food business operator. Officers will also discuss the specified works and will fully consider different solutions.

Where an officer receives a request for an extension to the expiry time of a notice because the food business operator has a genuine reason for not complying with the notice within the specified time, the factors below will be taken into account.

- The risk to public health which would arise if the extension was granted.
- The reason for the request.
- The remedy involved.
- The past record of co-operation of the food business operator.

- Any temporary action which the food business operator proposes to take in the meantime.

If the officer considers that the request for an extension of the time limit is reasonable, the officer will advise the food business operator in writing of the decision and any new time limits set. Requests for extensions of time limits to notices will only be possible if the request is made prior to expiry of the notice.

Non-compliance with a hygiene improvement notice/improvement notice will be deemed a serious offence. Once the time limit has expired, the necessary works will be checked as soon as possible. Failure to comply with a notice will be reported to the Head of Environmental Health and Housing to consider the case for a prosecution.

15.2.4 Remedial Action Notices

The same principles will be applied as in 15.2.3.

15.2.5 Hygiene Emergency Prohibition Notices/Emergency Prohibition Notices

Hygiene Emergency Prohibition Notices/Emergency Prohibition Notices will only be served by an authorised officer if the officer is satisfied that an imminent risk of injury to health exists in respect of a particular premises, equipment or a process and when one or more of the circumstances below apply.

- Where the consequences of not taking immediate and decisive action to protect public health would be unacceptable.
- The guidance criteria in the Food Law Code of Practice (England) concerning the conditions when prohibition may be appropriate are fulfilled.
- Where there is no confidence in the integrity of an unprompted offer made by a food business operator to voluntarily close premises or cease the use of any equipment, process or treatment associated with the imminent risk.
- Where a food business operator is unwilling to confirm in writing their unprompted offer of a voluntary prohibition.

15.2.6 Prosecutions

The decision to initiate a prosecution will be taken at the earliest opportunity and in accordance with Part I of this Policy.

Any relevant Home or Originating Authority and the Office of Fair Trading (where the offence is one that may be recorded on their Central Register of Convictions) will be advised in writing of the conviction.

15.2.7 Simple Cautions

The decision to issue a simple caution will be taken at the earliest opportunity and in accordance with Part I of this Policy.

Any relevant Home or Originating Authority and the Office of Fair Trading (where the offence is one that may be recorded on their Central Register of Convictions) will be advised in writing of any simple caution being accepted.

15.2.8 Voluntary Closure

Where any premises, process, treatment or equipment involves an imminent risk of injury to health and consideration is being given to emergency prohibition action, the

food business operator may offer to close voluntarily, but this will never be prompted by an officer.

In such cases, officers will consider whether there is any risk of the premises being reopened without their knowledge and/or agreement, and explain to the food business operator that by making the offer to close, they may be relinquishing their rights to compensation. Written confirmation of the food business operator's offer and an undertaking not to re-open without specific permission will be obtained. Frequent checks will subsequently be made on the premises to confirm that it has not reopened.

15.2.9 Hygiene Prohibition Orders/Prohibition Orders

Where there is a risk of injury to health, the Court may impose a hygiene prohibition order/prohibition order following certain prosecutions. In appropriate cases, officers will ensure that they carry out a second or subsequent inspection of the premises prior to a Court hearing. If the food business operator is convicted, and it is believed there is still a risk of injury to health, the attention of the Court will be drawn to the powers available to it to prohibit premises, equipment or persons.

15.3 Home and Originating Authorities

Any enforcement action will, where appropriate, have full regard to advice offered by the Home and/or Originating Authority for the food business.

15.4 Recording and Inspecting Food Businesses that are not Registered or Approved

Occasionally Officers will discover food businesses that are not registered or approved but which should be. In respect of businesses that are not registered and do not need approval these will be required to register as a food business, and incorporated in to the future inspection programme, normally to be inspected within 28 working days.

For those businesses that require approval (eg dairy products and meat products establishments) but have not been approved and are already trading, immediate enforcement action will be taken to ensure the prohibition of activities that require approval, until such time as the business has been inspected and the necessary approval issued.

15.5 Approach to Secondary Inspections

Food businesses that fail to comply with significant statutory requirements may be subject to a secondary inspection, i.e. a further inspection before the next programmed primary inspection. It will be at the discretion of the Officer who conducted the primary inspection whether to undertake a secondary inspection and within what timeframe. The factors that will be taken into account will include at least the below.

15.5.1 The seriousness of the contravention/s.

15.5.2 The number of contraventions which, taken together, may indicate ineffective management.

15.5.3 Whether a statutory notice setting a time period for compliance has been served.

15.6 Enforcement in Premises where the Council has an Interest

A potential conflict of interest may arise in premises for which the Council acts as enforcement authority and in which the Council also has a legal interest (e.g. as the food business operator). Where the Council has an interest as the food business operator the Department will ensure that the attention received is in accordance with the criteria applied to all other duty holders.

In such businesses, any breaches of food law that are identified by authorised officers will be brought to the attention of the relevant Head of Department in writing. Where a significant risk to health is identified or suspected (e.g. a food poisoning allegation) the Chief Executive will also be notified in writing without undue delay. Where the criteria in the Food Law Code of Practice (England) for notifying an incident to the Food Standards Agency are met, the matter will be notified in the usual manner.

Notwithstanding the above, any franchised/contract food business that operates within premises where the Council has an interest will be treated in exactly the same way as any other food business.

15.7 Food and Food Premises Complaint Investigations

In investigating food and food premises complaints, the Department will have full regard to the current edition of the 'Food and Food Premises Complaint Policy'.

PART III

16.0 OCCUPATIONAL HEALTH AND SAFETY ENFORCEMENT POLICY

16.1 General

It is the Council's policy to protect the health, safety and welfare of employees and others affected by business activities, mainly the public, within the Mole Valley district.

In determining whether to initiate enforcement action, officers will adhere to the general principles in Part I of this Policy, as well as the more specific principles in this part.

16.2 Enforcement Options

Authorised officers have a range of enforcement options including the below.

- Informal action
- Seizing equipment
- Improvement notices
- Prohibition notices
- Prosecutions
- Simple cautions

16.2.1 Informal Action

The same principles as in 15.2.1 will apply here too, except that direct communications with multi site businesses will normally be with the head office (unless the business has agreed other arrangements), and in accordance with the Lead Authority Principle and Large Organisations Partnership Project.

16.2.2 Seizing Equipment

Seizure and related powers will be used where appropriate to render harmless any article or substance which is believed to be a cause of imminent danger, or which could cause serious personal injury.

16.2.3 Improvement Notices

The same principles as in 15.2.3 will be applied to the service of Improvement Notices under health and safety legislation.

16.2.4 Prohibition Notices

Prohibition Notices will only be served by an authorised officer if the officer is satisfied that a serious risk of personal injury exists in respect of a particular premises, equipment or a process and when one or more of the circumstances below apply.

- Where the consequences of not taking immediate and decisive action to protect health and safety would be unacceptable.
- Where there is no confidence in the integrity of an unprompted offer made by a duty holder to voluntarily close premises or cease the use of any equipment, process or treatment associated with the serious risk.

- Where a duty holder is unwilling to confirm in writing their unprompted offer of a voluntary prohibition.

16.2.5 Prosecutions

The decision to initiate a prosecution will be taken at the earliest opportunity and in accordance with Part I of this Policy.

Any relevant Lead Authority, Large Organisations Partnership Project Account Manager and the Office of Fair Trading (where the offence is one that may be recorded on their Central Register of Convictions) will be advised in writing of the conviction.

16.2.6 Simple Cautions

The decision to issue a simple caution will be taken at the earliest opportunity and in accordance with Part I of this Policy.

Any relevant Lead Authority, Large Organisations Partnership Project Account Manager and the Office of Fair Trading (where the offence is one that may be recorded on their Central Register of Convictions) will be advised in writing of any simple caution being accepted.

16.3 Lead Authority Partnerships and the Large Organisations Partnership Project

Any enforcement action will, where appropriate, have full regard to advice offered by the Lead Authority for the business and/or Large Organisations Partnership Project Account Manager should one exist.

16.4 Enforcement Management Model

The Health and Safety Executive's Enforcement Management Model (EMM) will also be applied in accordance with the Department's internal procedure. The EMM provides a framework to assist making enforcement decisions and is intended to:

- i) Promote consistency of enforcement;
- ii) Promote proportionality and targeting by confirming the risk based criteria against which decisions are made;
- iii) Be a framework for making enforcement decisions transparent (i.e. so duty holders are clear what is expected of them and what they can expect from the Council);
- iv) Ensure that those who make decisions are accountable for them;
- v) Help inspectors assess their decisions in complex cases;
- vi) Allow peer review of enforcement action and guide less experienced inspectors and trainees in making enforcement decisions.

16.5 Approach to Secondary Inspections

The same principles will be applied as in 15.5.

16.6 Enforcement in Premises where the Council may hold an Interest

16.6.1 A potential conflict of interest arises in premises for which the Council acts as enforcement authority and in which the Council also has a legal interest.

16.6.2 Where the Council holds all responsibilities under health and safety law and it's appointed contractors or occupiers hold none, it would be inappropriate for the

Council to act as enforcing authority. In such cases responsibility will be transferred to the Health and Safety Executive (HSE).

- 16.6.3 Where day-to-day management, including health and safety, is passed to contractors or occupiers the Council can act as both owner of certain premises and enforcer even where it retains some health and safety responsibilities.

In cases where judgements about the Council's responsibilities are less clear, regard will be made to the Health and Safety Commission's Enforcement Policy on targeting of enforcement. Advice will also be sought from the Enforcement Liaison Officer at the HSE.

- 16.6.4 Notwithstanding the above, in premises where the Council has an interest the Department will:

- Carry out enforcement in accordance with this Enforcement Policy in exactly the same way as it does for all other premises;
- Ensure that the attention received is in accordance with the criteria applied to all other duty holders; and,
- Keep the HSE informed of any situations in which it might have an enforcement interest so that it may consider the extent of its involvement.

- 16.6.5 Where accidents or complaints are referred to the Council as enforcing authority in premises where the Council has a duty holder responsibility (for example food outlets within Council owned premises), and the cause/s of the accident or nature of the complaint are unclear, or may be attributable to a failing of the Council, the HSE will be contacted to seek advice on the approach to enforcement applying the principles of openness and transparency. In such cases the complainant and/or injured party will be kept fully informed.

16.7 **Death at Work**

- 16.7.1 Where there has been a breach of law leading to a work related death, consideration will be given to whether the circumstances of the case might justify a charge of manslaughter. The Department will liaise with the Police, the Coroners Service and the Crown Prosecution Service (CPS) in accordance with any nationally agreed protocol for such liaison. If evidence is found suggesting manslaughter the case will be passed on to the Police, or where appropriate the CPS. If the Police or the CPS decide not to pursue a manslaughter case, the Council may instead prosecute under appropriate health and safety legislation.

16.8 **Workplace Complaints and Incident Investigations**

- 16.8.1 In investigating workplace complaints and incident investigations, the Department will have full regard to the current edition of the 'Policy for Responding to Occupational Accidents, Dangerous Occurrences, Diseases and Health and Safety Workplace Complaints'.

16.9 **Consideration of Byelaws**

- 16.9.1 Application of the Policy in relation to acupuncture, tattooing, ear piercing, electrolysis and other invasive treatments requiring registration under local byelaws will be carried out in line with the principles of enforcement detailed in Part I.