

SHETLAND ISLANDS COUNCIL



ENVIRONMENTAL HEALTH SERVICE

ENFORCEMENT POLICY

**Shetland Islands Council
Infrastructure Services Department
Grantfield
Lerwick
Shetland**

Document Title	Enforcement Policy		
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1.0 Enforcement Policy

The Shetland Islands Council has adopted the 'Enforcement Concordat' which sets out the Council's commitment to the principals of good enforcement

This policy applies to the Environmental Health Section of the Environment and Building Service of the Infrastructure Department. The section will review the enforcement policy and procedures on an annual 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.

Environmental Health's goals are:

- ◇ the enforcement of statutory controls which protect public health, safety and the environment;
- ◇ the development and delivery of services and initiatives which protect and improve health and the environment, and move Shetland towards sustainable development;
- ◇ the monitoring and analysis of environmental and physical factors which indicate the condition of public health, safety and the environment; and
- ◇ the continuous improvement of services within a policy framework influenced by national and local priorities.

Environmental Health will adhere to the enforcement concordat which reads as follows:

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2.0 ENFORCEMENT CONCORDAT

PRINCIPLES OF GOOD ENFORCEMENT: POLICY AND PROCEDURES

This document sets out what business, and others being regulated, can expect from enforcement officers. It commits us to good enforcement policies and procedures. It may be supplemented by additional statements of enforcement policy.

The primary function of central and local government enforcement work is to protect the public, the environment, and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner, helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment. The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice, and safety.

We have therefore adopted the central and local government Concordat on Good Enforcement. Included in the term “enforcement” are advisory visits and assisting with compliance, as well as licensing and formal enforcement action. By adopting the concordat, we commit ourselves to the following policies and procedures, which contribute to best value, and will provide information to show that we are observing them:-

2.1 PRINCIPLES OF GOOD ENFORCEMENT: POLICY

◇ Standards

In consultation with business and other relevant interested parties, including technical experts, where appropriate we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

◇ Openness

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting

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businesses, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

◇ **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 unnecessary overlaps and time delays.

◇ **Complaints about service**

We will provide well publicised, effective and timely complaints procedures, easily accessible to businesses, the public, employees, and consumer groups. 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 will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will 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 Co-ordinating Body on Food and Trading Standards (LACORS) and the Local Authority National Type Approval Confederation (LANTAC).

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2.2 PRINCIPLES OF GOOD ENFORCEMENT: PROCEDURES

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, 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.

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).

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.

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).

3.0 PROCEDURES

3.1 Scope

These procedures include circumstances when officers administer or enforce any legislation enforced by Environmental Health. This includes enforcement visits, investigation of alleged offences, advice to businesses on enforcement issues, investigation of criminal complaints and sampling. It does not include advice on civil rights and obligations. 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:-

3.3 Environmental Health

- ◇ Food Standards/Safety
- ◇ Private Sector Housing
- ◇ Health and Safety
- ◇ Animal Health and Welfare
- ◇ Environmental Protection
- ◇ Public Health

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3.4 Detailed Procedures

Officers will only be allocated to tasks they are competent to perform. All staff participate in the Council's Employee Personal Development and Review Programme. This will ensure that officers are properly equipped to carry out their enforcement functions.

All commercial premises which are subject to inspection by the Environmental Health Section will be risk assessed for the purpose of targeting inspection visits.

Environmental Health will concentrate its efforts on high risk premises and on issues which adversely affect the health, safety and wellbeing of the community. Action will be focused on businesses who are negligent or intentionally infringe the law.

For Food Safety the visit frequencies are in accordance with Food Law Code of Practice (Scotland), Annex 5 and are as follows:

<u>Category</u>	<u>Inspection Rating</u>	<u>Minimum Frequency of Inspection</u>
A	92 or higher	at least every 6 months
B	72 to 91	at least every 12 months
C	42 to 71	at least every 18 months
D	31 to 41	at least every 2 years
E	0 to 30	Alternative enforcement strategy

For Food Standards, the visit frequency shall be in accordance with Food Law Code of Practice, Annex 5 and are as follows:

<u>Category</u>	<u>Points Range</u>	<u>Minimum Inspection Frequency</u>
A	101 to 180	At least every 12 months
B	46 to 100	At least every 24 months
C	0 to 45	Alternative enforcement strategy

For Health & Safety the locally determined target inspection frequencies are as follows:-

A	=	6 Months
B1	=	12 Months.
B2-4	=	2 Years
C	=	5 years

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3.5 Report on Enforcement Activity

The Services will report annually on the statutory performance indicators as set by the Audit Commission for Scotland. Environmental Health will report annually on the statutory performance indicators as detailed below:-

- ◇ Food Safety – Hygiene Inspections
Approved Premises
- ◇ Noise Complaints

Reports on enforcement activity will also be included in quarterly reports to members as part of the service plan updates.

When officers give advice to business, either during an enforcement visit etc. or when the business has requested advice, the officer will distinguish legal requirements from best practice advice. All Food Hygiene inspections will be reported in writing.

All instructions on legal requirements will be put in writing. The instructions will be legible, written in plain English and avoid the use of abbreviations and jargon. The services will prepare advisory leaflets for business. These will be distributed as required. Information will be provided in other languages as required.

Environmental Health will carry out a programme of planned inspections with a view to securing compliance with legislation. All 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. The authorised officer will offer any assistance to help businesses comply with statutory requirements, in addition to carrying out appropriate enforcement work.

Authorised officers are given various powers of entry, inspection and seizure under a variety of statutes. Persons should not attempt to stop an authorised officer who is properly exercising any of these powers, as such action constitutes an offence. In general an authorised officer can:-

- ◇ Enter any premises at all reasonable hours
- ◇ Inspect any goods, food or articles
- ◇ Take samples of any goods, food, articles or substances
- ◇ Buy or take any goods or food
- ◇ Inspect any documents, where an offence is suspected
- ◇ Seize, remove and detain food, articles, substances, goods and document, when it is believed that an offence has been committed
- ◇ Direct that premises, or anything within premises, are left undisturbed
- ◇ Take photographs, measurements and recordings.

In the course of an inspection, businesses can expect:-

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- ◇ To be shown all due courtesy.
- ◇ To be informed of the purpose of the visit.
- ◇ To be shown identification.
- ◇ To be given advice.
- ◇ To receive feedback on compliance levels.
- ◇ To be given guidance on what the law is.
- ◇ To be given advice on any action required to remedy any points of non-compliance.
- ◇ To receive reasonable time to take remedial action.
- ◇ To be told of procedures for appealing against any enforcement action taken.

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:-

- ◇ Significant contraventions resulting in real or potential danger to the public or persons at work.
- ◇ Previous correspondence on the issue or where there is a history of similar offences related to risk to public health.
- ◇ Wilful breach of legislation or failure to comply in full or in part with requirements of statutory notice.

The first type of action is a report or letter which is issued by the officer during a visit or following a visit. The report/letter will detail the problem and give advice or instructions on remedial action. A time limit may be specified.

Failure to comply with the first type of action may result in a formal warning being issued. It will state that any further contraventions may lead to a report to the Procurator Fiscal. It will be kept on record and will be included in any subsequent report.

For more serious matters statutory notices will be issued in accordance with the legislation and Codes of Practice under which they are issued. Failure to comply with a Notice will lead to a report being submitted to the Procurator Fiscal.

All statutory Notices, reports, letters, and formal warnings will be followed up.

Reports will be made to the Procurator Fiscal only when it is in the public interest. All reports will be referred to the Service Manager prior to submission to the Procurator Fiscal. Reports will be submitted within three months of the date the offence came to light, unless external factors make this impossible.

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

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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 Enforcement Decisions. These procedures are consistent with the principles contained in this policy.

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 should be seen as opportunities to identify possible weaknesses in service delivery. This is the first step towards making improvements. This information will be used to examine possible action to improve service provision. Where the complaint comes within the definition in the Council's Complaints procedure, that procedure will be followed.

The section will adhere to the Home Authority Principle of the Local Authority Co-ordinating Body on Food and Trading Standards (LACORS). The Home Authority Principal is designed to encourage efficiency, promote uniformity, reduce duplication and assist enterprises 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.
- ◇ Enterprises 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 affect the policies of an enterprise.
- ◇ Machinery exists for monitoring and resolving disputes in appropriate cases.

The Home Authority Principle applies to all food safety and food standards issues, and commands the support of local and central government, industry, trade and professional enforcement bodies. We are willing to offer this type of assistance to any trader who wishes to utilise our services at any time, free of charge. We are dedicated to a policy of achieving and maintaining a consistent, fair and balanced approach to making all decisions which concern enforcement action, including issuing informal advice or warnings and formal action, including prosecution.

To maintain this consistency we shall consider, and follow where appropriate, any guidance contained within:-

- ◇ The LACORS Home Authority Principle

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- ◇ LACORS Circulars
- ◇ Any current or future statutory codes of practice

We support the use of guidance contained in any relevant statutory codes of practice and any guidance issued by LACORS, but reserve the right to challenge such guidance as described below:-

Where we are considering any formal enforcement action which we know to be inconsistent with that adopted by other authorities, then the matter will be considered by the Service Manager, who will decide what action to take. If they are in any doubt then they shall refer the matter to the relevant local liaison groups and Chief Officers Group. Those groups will attempt to reach a consensus view which The Council will accept as binding. If no consensus can be reached we will refer the matter to the Local Authorities Co-ordinating Body on Food and Trading Standards (LACORS) to consider the issue to ensure consistent enforcement.

When we are considering any formal enforcement action which we believe to be contrary to any advice issued by a trader's Home Authority or Originating Authority then we shall discuss the matter with the relevant authority or authorities before taking action.

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.

3.6 Alternative Strategies

The Service will use Alternative Strategies to reduce the burden on businesses in line with the Better Regulation Agenda. These will include the use of questionnaires, guidance leaflets and premises specific or themed training programmes.

The Food Hygiene and Food Standards Officer Officer Guidance note on Alternative Strategies (attached as Appendix 1) will be applied.

Officers undertaking Health and Safety Inspections will identify the low risk premises in the programme, which can be addressed using an Alternative Strategy. Questionnaires sent will be specific to the issues arising in the premises and completed questionnaires will be responded to using leaflets and

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advisory letters. Where questionnaires are not returned or the completed questionnaires raises concerns an inspection will be carried out.

3.7 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

Officer guidance note on alternative strategy for inspection of low risk premises

- ◇ All premises that fall within the category E can be considered for an alternative to a formal inspection using the alternative strategy. The Lead EHO (food) will determine in consultation with the rest of the Food Team, which premises due for inspection will be addressed through an alternative strategy.
- ◇ An alternative strategy questionnaire to be sent to all the premises identified as due for inspection but to be addressed by an alternative strategy. This questionnaire will also cover the food safety inspection and the food standards inspection.
- ◇ The alternative strategy questionnaire will be sent out 1 month before the inspection is due.
- ◇ To explain the purpose of the questionnaire it will be sent with a cover letter.
 - The questionnaire should be returned within 14 days. To account for postage delays the time before action is required will be extended to 21 days from date sent.
- ◇ The information will be recorded on Flare by admin.
- ◇ Returned forms with complete information will be assessed by food safety officers. If no further information is required the premises will be assessed using the risk assessment form for food safety and food standards. (Appendix 3) which should be attached to the back of the completed questionnaire.
- ◇ If information is not complete the food safety officer will make contact by telephone and validate the information and complete the form. This is recorded in the section at the end of the questionnaire.
- ◇ If the questionnaire is not returned the food safety officer will visit and inspect the premises. This is classed as a verification visit and is recorded in the section at the end of the questionnaire.
- ◇ 10% of premises inspected by the alternative strategy will be visited and the information verified. The ones to be visited will be decided by the food safety team leader.
- ◇ If on assessment the premises changes to a higher category A, B, C, or D then they no longer fit into the alternative strategy and will be inspected in accordance with the normal inspection programme. These premises require a full inspection.

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- ◇ The information on the registration form will be checked to see if it is up to date and a new form sent if required.
- ◇ The inspection will be recorded in the front of the file as Alternative Strategy.
- ◇ The questionnaire and risk assessment sheet will be stapled together and sent to admin who should update the file. The information on when the next inspections are due to be filled in at the end of the questionnaire.

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