Environmental Services

Enforcement Policy

January 2016

If you need this information in another language or format, please contact us to discuss how we can best meet your needs.
Phone: 0303 123 1015
Email: equalities@southlanarkshire.gov.uk
1. **Environmental Services enforcement aims**

Environmental Services comprises of Environmental Health and Consumer and Trading Standards who exercise a wide range of regulatory, enforcement and statutory functions on behalf of the Council.

The aim of Environmental Services is:

“To protect and enhance, through the application of statute, the health, welfare, environment, safety, and trading market-place of the people of South Lanarkshire and those using services obtained from within South Lanarkshire.”

We aim 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, and
- 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.

2. **Introduction to our enforcement policy**

The purpose of this policy is to ensure that Environmental Services’ staff, those we regulate and other stakeholders are aware of the general intent and principles underpinning our approach to enforcement action.

This Policy will help to ensure that Environmental Services focus their regulatory functions towards achieving their stated aims and objectives whilst conforming with the Human Rights Act 1998, the Regulation of Investigatory Powers (Scotland) Act 2000, the Cabinet Office Enforcement Concordat, the Scottish Regulators’ Strategic Code of Practice and South Lanarkshire Councils Equal Opportunities Policy.

The Policy enables Environmental Services to target their efforts and be open and accountable for their performance against their stated aims. It also ensures that enforcement action is fair, consistent and which will be clearly explained. We will use comprehensive risk assessment and local/national intelligence sources to concentrate resources to the areas that they are needed most.

Enforcement action is only one tool in a package of measures which Environmental Services can deploy, often in partnership with others, to achieve positive outcomes for South Lanarkshire’s 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 recognising 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 combating wider criminality (e.g. Police, Crown Office and Procurator Fiscal Service, Health & Safety Executive, SEPA, other Local Authorities, Revenue Scotland, HM Revenue & Customs).
3. **Our enforcement policy**

Our statutory purpose is to protect and improve the health, safety and the environment of the people of South Lanarkshire and to promote and contribute to the maintenance of a safe, fair and equitable trading environment; and so far as not inconsistent with that, to contribute to improving the wellbeing of people in South Lanarkshire, and achieving sustainable economic growth. Enforcement action will be carried out in that context as part of a broader, evidence-based approach to regulation.

The intent behind enforcement action we do take will be to:

- promote compliance as the normal behaviour
- secure compliance and change the behaviour
- stop non-compliance or reduce the risk of harm arising from the non-compliance to an acceptable level
- ensure restoration and remediation of the environment where possible

The form of enforcement action, alone or in combination, which we utilise will differ depending on the particular nature of the non-compliance, the harm caused and the history of the responsible person in question, including any wider criminality. We are therefore not restricted to taking the least formal enforcement action in the first instance.

We will also consider what immediate action is needed to protect public health and safety, consumers, legitimate businesses and the environment.

Given the focus on behavioural change we will place an emphasis not just on stopping the offending and securing compliance but also on deterring future non-compliance, including supporting and promoting compliant businesses.

Our approach to enforcement will be underpinned by the five principles of better regulation i.e. **proportionality, accountability, consistency, transparency and targeting** plus a sixth principle of taking a **timely** approach. These principles in the context of enforcement are described in more detail in Appendix 1 to this enforcement policy.

This enforcement policy also aligns with the intent of the Scottish Regulators' **Strategic Code of Practice**. Our approach to inspections is detailed in Appendix 2 to this document.

The types of enforcement action that can be taken are summarised in Appendix 3 of this document. Further detail of how we will implement enforcement action is also set out in our Enforcement Guidance.

4. **South Lanarkshire Council equal opportunity policy statement**

We are committed to achieving equal opportunities in all our activities and responsibilities. This means ensuring that services, facilities and employment opportunities are accessible and receptive as the values and the diversity of needs within the community. In meeting this commitment, we will aim to prevent as well as eliminate any form of unfair discrimination that occurs in the workplace, in service delivery, or within the community. We also aim to provide quality services which users (and potential users) can access freely without prejudice discrimination or harassment.
In line with the Councils Policy, this Enforcement Policy can be made available in Braille, alternative languages and audiotape formats upon request. Requests can be made to Environmental Services by e-mail to slc_environmental_services@southlanarkshire.gcsx.gov.uk or by telephone on 0303123 1015 or in writing to the Environmental Services Manager, Montrose House, 154 Montrose Crescent, Hamilton ML3 6LB.

5. Enforcement arrangements
Who decides what enforcement action is taken?
Decisions about the most appropriate course of enforcement action will be taken based upon professional judgement, legal guidelines, statutory codes of practice and Crown Office guidance. The policy is essentially built around a process of “escalation”, which will vary depending on individual circumstances.

Where appropriate, decisions about enforcement action will involve discussion between, or approval from:

(a) Enforcement officer(s);
(b) Team Leaders/Divisional Officers/ Environmental Services manager
(c) Solicitors from Legal Services

In reaching enforcement decisions officers will consider all the relevant facts, evidence and circumstances. Divisional Officers/ team leaders will ensure that the requirements of the policy are being applied by enforcement officers.

Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, age, gender or gender identity, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.

6. Complaint process
South Lanarkshire Council 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.

7. Deviation from enforcement policy and monitoring
Where an officer feels that enforcement action out with the scope of the policy is required in order to protect the health, safety or wellbeing of people, animals or the environment then this will be discussed with the Divisional Officer/ Environmental Services manager. The outcome of this discussion will be recorded on the form in Appendix 4 of this document.

8. Liaison with other enforcement agencies
Where appropriate, enforcement activities within the various regulatory services will be co-ordinated with other enforcement agencies and local authorities to maximise the effectiveness of any enforcement activities.

Where an enforcement matter concerns a business or person(s) outwith the boundaries of South Lanarkshire Council, or involves enforcement action by one or more other local authorities or agencies, where appropriate, all relevant authorities and agencies will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.
Environmental Services will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, where appropriate. The sharing of information will be in accordance with data protection requirements.

9. **Recovery of costs**
   Where the consequences of enforcement activity leads to additional costs being incurred by South Lanarkshire Council, it will seek to recover these costs as appropriate from the individual or business responsible.

10. **Council approval of policy**
    The Environmental Services Manager will ensure that this policy document and any subsequent significant changes are agreed by Council. Changes to the enforcement guidance appendices will not require approval by Council. This reflects the need to be able to apply nationally agreed legislative powers within the general policy framework.

11. **Review of the enforcement policy**
    The enforcement policy will be reviewed by Environmental Services annually or, more frequently, when external changes dictate.

    We will *consult* regulated persons generally about the way we go about our work and we will carry out regular satisfaction surveys of those who have received a service from or been inspected by Environmental Health or Trading Standards.
Appendix 1 - Enforcement Principles

Proportionality
We will normally seek to use a type of enforcement action that is proportionate to the significance of the offence, the level of harm, the impact on communities or the level of financial benefit arising from the offending. We will apply any relevant Guidelines when deciding on the type of enforcement action to take. For the most serious offending, we will normally submit a report to the Crown Office and Procurator Fiscal Service (COPFS) for consideration of prosecution.

Consistency
We aim to ensure there is a consistency of approach to enforcement by taking a consistent approach to decision making. However, because we consider the individual circumstances of each case when taking enforcement action, particularly where we are aiming to change behaviour, the enforcement action we take will depend on those case-specific circumstances. The enforcement action we take in relation to one situation in order to change their behaviour may be different to the enforcement action we take in relation to another. Officers of Environmental Services in addition to operating to the principles contained in this Enforcement Policy will also take into account relevant Codes of Practice, Good Practice Guidance and Legislative Guidance.

Accountability
All enforcement decisions made by us are made with an appropriate level of oversight within the organisation. We will record decisions to take enforcement action and retain records of all enforcement action taken by us, including advice and guidance. There are usually legislative arrangements in place for appeals against enforcement action taken by us. We are also accountable to government and national regulators in respect of enforcement action taken.

Transparency
If we take enforcement action, we will specify in writing what the non-compliance is and, where appropriate, anything that needs to be done to achieve compliance, together with a timescale. We will also, where appropriate, explain the consequences of non-compliance, and any arrangements that are in place to appeal against our decision to take enforcement action. We will publicise where we use enforcement action with more significant consequences, such as successful prosecutions resulting from reports we make to COPFS, fixed penalties, and enforcement undertakings, where we are permitted to do so. Where permitted, we may publicise the use of enforcement action in other circumstances to achieve specific outcomes. All Authorised Officers within Environmental Services are required to adhere to the Enforcement Policy and will conduct themselves in such a manner as to be courteous, responsive and open regarding all decisions, which are made.

Targeting
We will use different types of enforcement action, as part of an evidence-based and intelligence-led approach to regulation, to achieve positive outcomes related to the protection and improvement of the environment and the wellbeing of South Lanarkshire communities (including tackling wider criminality). Where enforcement action is required we will use the enforcement action(s) that is most appropriate at achieving these outcomes, without being restricted to less formal enforcement action in the first instance.

Timely application
We will endeavour to take appropriate enforcement action at the earliest practicable time to respond to non-compliance or harm before it becomes chronic or persistent or established as a behaviour and, where possible, to achieve a lasting solution. We will normally allow an appropriate period of time to comply, but will not normally delay enforcement action while non-compliance continues or there has been a blatant disregard of the legislation.
Appendix 2 - Approach to inspection

Proactive programmes

We will use the principles of risk assessment by taking into consideration the *likelihood* of non-compliance and the *impact* of non-compliance. We will use these principles to determine the frequency of inspection, and we will consider those principles when arranging other visits, for example to take samples and carry out projects.

We will use standard widely-used risk assessment schemes such as those produced by national regulators or professional bodies. Regulated persons will generally be assessed as being high, medium or low risk. The assessment is generally based on the risk which the activity presents, the complexity of the legislation, the size and type of organisation, and the confidence which we have in the ability of the regulated person to comply based on our knowledge of their control systems and previous compliance levels. On request, we will explain to any regulated person why we have assigned them a particular risk rating.

Our experience shows that lower risk entities do still occasionally fail to comply with the law. We will therefore carry out a small element of random inspection but only where the burdens have been minimised. Typically we will use alternative enforcement strategy interventions for lower risk activities.

We will try to be considerate in the *timing of our visits* but we would ask regulated persons to understand that it would be neither practical nor effective to give advance notice of our visits except in limited circumstances or where we are required to by statute e.g. at domestic premises, Consumer Rights Act 2015, etc.

Routine/planned inspection visits

All businesses are liable to be visited by an Officer to determine if the law is being complied with.

The Scheduling of these visits will be dependent upon risk assessment and subsequent priority planning.

Businesses will not generally be given advance notice of a visit. Re-visit inspections will be carried out as and when appropriate.

During a routine/planned inspection visit the Officer where necessary, will offer advice to assist businesses and individuals in meeting their obligations, in addition to carrying out the appropriate regulatory and enforcement work.

Officers have powers of entry, inspection and seizure under Statute and will carry appropriate identity and authorisation cards.

In general an officer can:

- Enter 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
• 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 as required
• Be given advice if requested
• 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

Return/re-visit inspections

Re-visit inspections will generally take place under the following circumstances:

• To monitor action taken on remedial work required during a planned inspection visit
• To check compliance with a statutory notice or other notice
• To check progress on action required within a specified time period
• When requested by a trader or individual

The expectations of businesses and individuals in terms of conduct of officers, remains the same as it does for Routine/Planned Inspection Visits.

Consistency

We will aim to ensure that anyone who is regulated by us is treated consistently on each occasion, and consistently with other regulated persons. Consistency is not the same as uniformity; it means taking a similar approach in similar circumstances to achieve similar ends. We will do this by monitoring the enforcement action taken by our officers, and by training our officers.

We fully support the ‘home authority’ and ‘primary authority’ principles as the means by which regulated persons trading across local authority boundaries are able to rely on one local authority as their main source of advice on compliance.

We will work with other local authorities in the west of Scotland and throughout the UK to ensure consistent interpretation and application of the law. We will do this by playing an active part in cross-border working groups as well as by having regard to guidance from bodies such as the Food Standards Scotland, Trading Standards Scotland and the Health & Safety Executive.
Appendix 3 - Types of enforcement action

1. No action required
   In situations where no contraventions or improvements are noted we will note the high standards found and reflect this in any correspondence and /or risk rating.

2. Informal action
   Informal Action includes verbal advice/warnings and advisory letters/inspection reports and will apply in most circumstances. This type of action will be used to resolve minor offences or technical infringements, which are capable of immediate rectification, are unlikely to be repeated and our experience indicates that the matter is liable to be resolved without the need to take formal action.

3. Formal action
   Formal Action includes written warnings, statutory notices and reporting contraventions to the Procurator Fiscal. This type of action will be used to resolve significant offences or technical infringements, which present a significant risk, are likely to be repeated and our experience indicates that the matter is unlikely to be resolved without the need to take formal action.

   a) Written notifications, formal written warnings and undertakings
      A Formal Written Warning/Notification/Undertaking regarding breaches of legislation will be issued as an escalation step when immediate formal action is not required and is intended as a last opportunity for a matter to be resolved before more significant enforcement action is taken.

   b) Statutory notices including fixed penalty notices and enforcement orders
      A statutory notice is a formal notice, served by Environmental Services, which states the non-compliance or a risk of non-compliance or addresses negative impacts. It will inform the recipient what they need to do and failure to comply with these steps is an offence in most cases.

      An Enforcement Order is granted by the civil court against the trader either on application by Trading Standards or following a breach of an Undertaking, and a failure to comply is contempt of court and punishable by a fine and / or imprisonment.

   c) Report to the Procurator Fiscal
      We have the ability to refer offences to the Crown Office and Procurator Fiscal Service (COPFS) for consideration of prosecution. Their role includes assessing the sufficiency of evidence and assessing whether or not it is in the public interest to pursue criminal proceedings.

      We will normally refer to COPFS for consideration of prosecution those offences that are most serious.

      Our Enforcement Guidance explains how we will implement the enforcement options available to officers.
Appendix 4 - Reasons for deviating from enforcement policy

<table>
<thead>
<tr>
<th>Person/Premises -</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location –</td>
</tr>
</tbody>
</table>

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 officer and Divisional Officer/Environmental Services Manager.

Officer (signed)
Job Title
Manager (signed)
Job Title
Date