

COMMERCIAL ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

Introduction

The Commercial Environmental Health (CEH) team carry out regulatory functions in the following areas:

- Food safety
- Health & safety
- Pollution control, including noise
- Public health and the control of infectious disease

In most cases compliance is achieved through advice and assistance, but there are occasions when further action is required, action that can include prosecution through criminal courts.

Purpose and scope

Our leaflet, *Enforcement Policy Principles for Development and Street Scene Services*, sets out the general principles that apply to all the enforcement policies of that department, including Commercial Environmental Health. It ensures our services are delivered in accordance with the Regulators Compliance Code and supporting Statutory Code of Practice, which can be seen at <http://www.berr.gov.uk/files/file45019.pdf>.

The policy sets out what businesses and others affected by its regulatory responsibilities can expect from the service and assists staff in exercising enforcement powers. The policy applies to all officers with enforcement responsibilities, and it will be reviewed as necessary in response to changing circumstances, such as new legislation or guidance. In general, resources will be targeted on those whose activities give rise to the most serious risks or where hazards are least well controlled.

Service Standards

The basic standards of customer service are set out in the leaflet, *Commercial Environmental Health – Our Service Standards*, available from our offices and via the Council's web site, (see *contacts and further information* below).

In regard to enforcement, the general standards and procedures applicable to the service are set out below.

Inspections and Other Enforcement Visits

Business premises in the borough will be routinely inspected according to their relevant risk rating and in accordance with any Codes of Practice or guidance issued by the Food Standards Agency and the Health and Safety Executive. At the end of

the inspection the officer will hand over a Post Inspection Report (PIR) that summarises the findings of the inspection.

Other visits may be made to premises in for the purposes of investigating complaints, sampling, monitoring compliance or investigating accidents.

Legal Breaches

When an officer discovers a legal breach they will fully and openly discuss the circumstances and the action required to comply with the law. However if the officer believes further legal action may follow then the requirements of the Police and Criminal Evidence Act and it's associated codes of practice will apply and any discussion about the breach may need to take place under conditions of a formal interview under caution.

Where the officer needs to take immediate action, for example in the interests of food safety, health and safety, environmental protection or to prevent evidence being destroyed, an explanation will be provided at the time and confirmed in writing. Where there is a legal requirement for written documentation to accompany the action (for example the rights of appeal), this will be provided.

Enforcement Options

We aim to achieve compliance with the law by selecting the most appropriate mix of advice and formal action. When deciding on the appropriate course of action officers will also have regard to guidance issued by advisory bodies such as the Food Standards Agency, the Health and Safety Executive and the Local Authorities Coordinators of Regulatory Services (LACORS). In particular the Health and Safety Executive's Enforcement Management Model will be used to guide enforcement decisions in health and safety matters.

In the event of an infringement officers will consider the following options:

- Advice – verbal or written
- Instructions or warnings – verbal or written
- Statutory notices
- Seizure of items
- Work in default
- Injunctions
- Simple cautions
- Prosecution

Officers will consult with the Head of Commercial Environmental Health or Team Leaders if necessary on the most appropriate course of action.

In considering whether to initiate a prosecution, the following matters will be considered:

- The admissibility and reliability of the evidence and there being a realistic prospect of conviction
- Relevant matters in the Code of Conduct for Crown Prosecutors
- Any expressed views of victim or victims family about the offender
- Whether there has been any wilful obstruction of the officer investigating the offence

Criminal proceedings will not normally be taken against an individual if he/she is not involved in the management or supervision of the business nor has any additional responsibility for matters associated with the offence and is acting only in the course of their employment, unless the employee has contradicted the employer's instructions, is being deliberately obstructive or in committing the offence has acted unreasonably.

In the case of corporate bodies, if it is believed the offence was committed with the consent or connivance or was attributable to any wilful neglect on the part of any Director of the body, then legal action will be considered against that Director.

Legal action will not normally be taken against private individuals not acting in the course of their employment or in the course of a trade or business even though it may have been their act or default that caused the commission of an offence. However if that act or default was a deliberate act or default committed with a view to deceive or for gain then a prosecution can be considered.

Informal action

Informal action to secure compliance includes offering advice, giving verbal warnings and making written recommendations for action either by letter or in report form. It also includes obtaining a written undertaking to voluntarily cease an operation and/or dispose of or surrender goods to the Council. It may also take the form of referral to another agency for action. Informal action may be appropriate where:

- The breach of duty is not serious enough to warrant formal action
- Previous history of the individual or business involved suggests that informal action will achieve compliance within a suitable timescale
- Confidence in the individual or business is high
- The consequences of non-compliance will not pose a significant risk

Statutory Notices

Officers may serve statutory notices when one or more of the following apply:

- There has been a failure to respond to an informal approach
- There is a significant contravention of a relevant statutory provision
- There is a lack of confidence in the individual or business to respond to an informal approach
- The consequences of non-compliance present a serious risk
- Effective action needs to be taken as quickly as possible to remedy conditions that present a serious risk

Seizure

We have the power through various pieces of legislation to seize faulty, dangerous, unwholesome or contaminated goods, food or equipment responsible for causing nuisance or harm to consumers, employees, other businesses or residents. Officers conducting a seizure will do so in accordance with Commercial Environmental Health procedures and the requirements of the relevant legislation.

Work in default

Where provided by the legislation, failure to comply with a notice may also result in the Council carrying out the work required and recovering the costs incurred. Such consideration may be in addition to or instead of other enforcement options.

Injunction

An injunction from the High Court may be sought where there are sufficient grounds to believe that such action is warranted to prevent an occurrence, halt an existing occurrence or deal with dangerous circumstances. The decision to take an injunction will be made in conjunction with Legal Services.

Simple Cautions

Simple cautions will be issued in accordance with guidance laid down in Criminal Justices Act 2003 Code of Practice on the cautioning of offenders. The aim of the caution is to deal quickly and simply with less serious offences and can only be used when the offender admits the offence and accepts the caution. The evidence available must comply with the Crown Prosecution Service code on criteria for prosecution.

Prosecution

The decision to prosecute for an offence will be made by the Head of Commercial Environmental Health and based on the individual circumstances of the case.

Circumstances that warrant prosecution will normally include at least one of the following:

- Breach of the law so the safety, health or well being of anyone is or has been put at risk
- Knowing or wilful failure to comply in full or in part with legal requirements
- Failure to comply in full or part with a statutory requirement after having been given reasonable opportunity to do so
- Fraud or deception which is detrimental to health, safety or the environment
- A history of similar offences

Notifications

This service will fully comply with any requirements for statutory notifications to the . Office of Fair Trading (OFT), the Health and Safety Executive, Food Standards Agency and the Department of Trade and Industry.

The service will also provide the OFT with information about convictions in order to keep the Central Register of Convictions updated

Shared Enforcement Role

For some legislation there is a shared enforcement role with the Police, the OFT, Trading Standards, Licensing etc.

Food Safety

Commercial Environmental Health are the enforcing authority for all food hygiene and food standards matters, except those relating to trades descriptions or weights and measures, where Trading Standards are the enforcing authority. Every attempt will be made to work in a co-ordinated way with Trading Standards so as to minimise the burdens on businesses and duplicate visits.

Noise

Commercial Environmental Health are the enforcing authority for statutory nuisances arising from commercial premises, including noise. However, there is some overlap with colleagues in Licensing where the noise issue may be dealt with by enforcing licensing conditions. Commercial Environmental Health will advise and liaise with Licensing on those premises causing problems so the matter can be dealt with in the most efficient way.

Colleagues in the Residential EH service deal with statutory nuisances arising from domestic premises.

Health and Safety

The division of enforcement responsibility between the Health and Safety Executive and the Local Authority is covered by the Enforcing Authority Regulations and guidance from the Health and Safety Commission. This authority is committed to working in partnership with the Health and Safety Executive and joint projects form part of the annual service plan.

It is agreed with colleagues in Licensing that they will inform Commercial Environmental Health of health and safety issues that arise during licensing inspections that cannot be dealt with informally at the time.

Animal Welfare

Commercial Environmental Health will deal with any matters related to animal health and welfare, fertilisers and feeding stuffs the Agriculture Act and similar topics.

Infectious Diseases

Commercial Environmental Health are the enforcing authority for the legislation relating to the control of certain infectious diseases. Advice and guidance will always be sought from the Health Protection Unit at the Primary Care Trust in all matters relating to the control of outbreaks of infectious disease and the exclusion of people from work or school.

Partnership Working and Sharing Information

The Commercial Environmental Health service works in partnership with the Health Protection Unit of the Primary Care Trust, the Food Standards Agency, the Health and Safety Executive, the Local Authority Co-ordinators of Regulatory Services (LACORS) and the Chartered Institute of Environmental Health.

Commercial Environmental Health may receive information that will be of relevance to other regulators investigating criminal offences. The policy is that such information should be provided to those other regulators providing no officer commits any offence in giving that information. Information may be passed to, amongst others, the Police, Customs and Excise, the Medical Devices Agency, the Food Standards Agency, the Inland Revenue, Health and Safety Executive, the Health Protection Unit, other local Authority Environmental Health Departments, and the Office of Fair Trading.

Particular Customer Needs

This service will endeavour to be flexible in responding to customer needs by wherever possible adapting the method of operation to suit the customer.

Service leaflets, letters or other documents will be translated into other languages free of charge if requested, utilising the Language Line subscription Service. We will also arrange for interpreters when necessary.

The service supports the Home Authority Principle of the Local Authority Co-ordinators of Regulatory Services (LACORS). The Home Authority Principle is designed to encourage efficiency, reduce duplication, assist enterprises to comply with the law and promote a consistent approach to interpretation of legal matters in the field of Environmental Health. The Lead Authority Scheme is a similar arrangement for health and safety matters.

Contacts and Further Information

All our services have a range of information leaflets, which explain what we do and how we can help you. For further information please:

- ◆ Call the service on 020 8891 7994 or send a fax to 020 8891 7726
- ◆ Look at our website www.richmond.gov.uk
- ◆ E-mail us at commercialeh@richmond.gov.uk
- ◆ Write to us or visit us at the address shown below

Visitors who have difficulty with the stairs to the Parkshot building can be seen in the Magistrates Court next door. Please call at the court reception. Alternatively, please contact us and we will arrange to see you in your home, workplace or other place that is convenient to you.

If you need this leaflet in Braille, large print, audio tape or another language, please contact us on 020 8891 7994 or minicom 020 8831 6006

Commercial Environmental Health

7b Parkshot
Richmond
TW9 2RT

Tel: 020 8891 7994
Fax: 020 8891 7726

اگر آپ کو اس اشاعت کو سمجھنے میں کوئی مشکل ہے تو، براہ کرم نیچے دیے ہوئے ایڈریس کے استقبال پر جا کر ملیئے، جہاں ہم آپ کیلئے ٹیلیفون انٹرپرائزنگ سروس (ٹیلیفون پر ترجمانی کی سروس) کا انتظام کر سکتے ہیں۔

Nese keni veshtersi per te kuptuar kete botim, ju lutemi ejani ne recepcionin ne adresen e shenuar me poshte ku ne mund te organizojme perkthime nepermjet telefonit.

إذا كانت لديك صعوبة في فهم هذا المنشور، فنرجو زيارة الإستقبال في العنوان المعطى أدناه حيث بإمكاننا أن نرتب لخدمة ترجمة شفوية هاتفية.

এই প্রকাশনার অর্থ বুঝতে পারায় যদি আপনার কোন সমস্যা হয়, নিচে দেওয়া ঠিকানায় রিসেপশন-এ চলে আসুন যেখানে আমরা আপনাকে টেলিফোনে দোভাষীর সেবা প্রদানের ব্যবস্থা করতে পারবো।

اگر در فهمیدن این نشریه مشکل دارید، لطفاً به میز پذیرش در آدرس قید شده در زیر رجوع فرمایید تا سرویس ترجمه تلفنی برایتان فراهم آورده شود.

જો તમને આ પુસ્તિકાની વિગતો સમજવામાં મુશ્કેલી પડતી હોય તો, કૃપયા નીચે જણાવેલ સ્થળના રિસેપ્શન પર આવો, જ્યાં અમે ટેલિફોન પર ગુજરાતીમાં ઇન્ટરપ્રિટીંગ સેવાની ગોઠવણ કરી આપીશું.

ਜੇਕਰ ਤੁਹਾਨੂੰ ਇਸ ਪਰਚੇ ਨੂੰ ਸਮਝਣ ਵਿਚ ਮੁਸ਼ਕਲ ਪੇਸ਼ ਆਉਂਦੀ ਹੈ ਤਾਂ ਹੇਠਾਂ ਦਿੱਤੇ ਗਏ ਪਤੇ ਉੱਪਰ ਰਿਸੈਪਸ਼ਨ 'ਤੇ ਆਓ ਜਿੱਥੇ ਅਸੀਂ ਟੈਲੀਫੋਨ ਤੇ ਗੱਲਬਾਤ ਕਰਨ ਲਈ ਇੰਟਰਪ੍ਰਿਟਰ ਦਾ ਪ੍ਰਬੰਧ ਕਰ ਸਕਦੇ ਹਾਂ।