

Appendix 2

**South Somerset
District Council
Environmental
Protection
Enforcement Policy
2016 - 2020**

**Incorporating the Regulators'
Code**

Environmental Health Service

Introduction

1. SSDC has produced a Regulatory Services Enforcement Policy document 2016-2020 that covers most enforcement activity of the council. This is an overarching document giving broad guidance to all departments concerned. Separate to that policy, this policy document has been produced which gives more specific detailed guidance covering the work of the Environmental Protection Unit
2. In May 2014 an audit was carried out of SSDC's Streetscene Enforcement function, which is now part of the Environmental Protection Unit. That audit recommended that the existing Streetscene Enforcement policy was updated to reflect the latest developments concerning Streetscene offences. This policy document meets that aspiration as well as covering all other aspects of enforcement dealt with by the Environmental Protection Team.
3. This policy document provides operational detail and policy guidance to officers in relation to enforcement options and various environmental offences dealt with by the Environmental Protection Unit. This policy should be read in conjunction with the SSDC Enforcement Policy 2016-2020 referred to above.
4. All officers in the Environmental Protection Unit are fully trained in enforcement procedures and receive regular update training. All authorised officers will act in accordance with this policy and refer to this policy when making enforcement decisions.

Status of Policy

5. Section 6 of the Regulators' Code¹ sets out Government's expectation that Local Authorities will ensure that their approach to their regulatory activities is transparent. The provisions of section 6 includes an expectation that local authorities will publish a clear set of service standards, setting out what those they regulate should expect from them. This includes their enforcement policy, explaining how they respond to non-compliance.

¹For further information on the Regulators' Code visit BRDO's website: www.gov.uk/government/publications/regulators-code

When does this policy apply?

6. This policy applies to the work of the Environmental Protection Unit of the Council. This service encompasses numerous powers and duties that enable the control of behaviour of individuals and/or businesses in the interest of public health and the environment.
7. Enforcement activities will include any action carried out in the exercise of statutory powers and duties. This is not limited to formal enforcement action such as prosecution or the issuing of Notices. It also includes the inspection of premises for the purpose of checking compliance with regulation or permitted conditions and the investigation of complaints.

How are decisions made?

8. A range of enforcement options are available for each offence. The case officer dealing with a situation will act on his/her own initiative in routine/straightforward cases. In more complex cases he/she will liaise with the Principal EHO and/or the Legal department depending on the circumstances. Any cases recommended for prosecution will be presented to legal services for comment and review prior to proceedings being instigated.
9. All options may not be available for all offences and officers will ensure the option applied is the most relevant to the offence in question. Given below are examples of some of the core areas of work dealt with and the procedures adopted when taking enforcement action when dealing with them. Many of the procedures used and copies of the relevant paperwork can be found on the RIAMS (Regulatory Information and Management System) website. www.riams.org. In addition further information on enforcement and case law can be found in the Environmental Health Encyclopaedia by Sweet & Maxwell and in Environmental Health Procedures by W H Bassett.

Examples of Core offences:

The Environmental Protection Team deal with a wide variety of legislation and offences. Some of these are rarely used and will be dealt with on a case by case basis. It is not practicable to give examples of all areas of enforcement work, there are however a number of core legal provisions and offences that the team regularly deal with and some examples of these are summarised below:

Statutory Nuisances

Dealt with under the Environmental Protection Act 1990 sections 79 to 81.

This covers a range of matters which cause significant interference with the normal use and enjoyment of someone else property, for example noise or dark smoke, can be classed as a statutory nuisance. An abatement notice can be served to deal with such nuisances. An offence is committed if such a notice is not complied with. Options available are:

Written Warning,
Notice – abatement,
Seizure and forfeiture of equipment,
Simple caution
Prosecution

Officers will follow procedures to gather evidence to determine if a statutory nuisance exists. Each case will need to be considered on its merits and officers will have regard to the severity and impact of the nuisance, its frequency and duration, as well as any attempts to rectify the situation, in their decision making. In most domestic nuisance cases a warning letter will be sent in the first instance. Further nuisance will usually result in the service of an abatement notice in line with legal requirements.

In most commercial cases an abatement notice will usually be served unless agreement is reached within seven days for action to abate the nuisance. Continued nuisance following a notice is an offence. This will usually result in further enforcement which will again be dependent on the severity and impact of the nuisance and the frequency and duration and any attempts to rectify the situation. Seizure of equipment will normally only be considered for domestic cases of loud music where seizure of noise making equipment is considered the most expedient way of abating the nuisance.

Environmental Permits

Dealt with under the sections 20, 22, 36 to 38 Environmental Permitting Regulations 2010.

A range of business operations, set out in the Environmental Permitting (England and Wales) Regulations 2010, are required to have an environmental permit in order to operate. Operating without a permit is an offence. These permits set out conditions to control environmental impacts. Non-compliance with permit conditions is also an offence. Options available are:

Inspection report/written warning
Notices – enforcement, variation, suspension and revocation
Simple caution
Prosecution

Officers will inspect permitted processes for compliance with their permit conditions and issue inspection reports accordingly. Minor and advisory matters will be dealt with through the report. Significant e.g. emission limit breach, or repeated technical breaches e.g. failure to provide requested information, of permit conditions will usually result in service of an enforcement notice.

Any matter likely to result in risk of serious pollution will normally result in the service of a suspension notice. Variation notices will normally be used to change permit conditions. Revocation notices will normally only be used where a process ceases to operate or for continued non-payment of subsistence charges.

Private Water Supplies

Dealt with under the Private Water Supply Regulations 2009 regulations 14 to 20, and Water Industry Act 1991 section 80 to 82.

Local authorities are required to monitor and risk assess private water supplies. Where these present a danger to health notices can be served. Non-compliance with such a notice is an offence. Options available are:

Inspection/risk assessment report

Notices – reg18, section 80

Simple caution

Prosecution

Officers will monitor and risk assess private water supplies in accordance with legal requirements. Minor and advisory matters will be dealt with through the risk assessment report and advisory letters. Where there is a potential danger to human health a regulation 18 notice will normally be served.

Non-compliance with the notice is an offence and will usually result in further enforcement action, either works in default, formal caution or prosecution depending on the circumstances. Where the private water is deemed to be unwholesome and/or insufficient and remedial action is not being taken by the relevant person(s), a section 80 notice will normally be used.

Prevention of Damage by Pests

Dealt with under the Prevention of Damage of Pests Act 1949, section 4

Local authorities can deal with any accumulations of rubbish etc. that give harbourage to rats. Options available are:

Written warning
Notices
Simple caution
Prosecution

Normally a written warning would be issued in the first instance of action required under this legislation. However, for reasons of expediency or severity it may be necessary to issue notices without prior warning being given. Non-compliance with a notice is most likely to be dealt with by undertaking works in default and recovering costs. Other enforcement will be considered for repeat or serious offences.

Illegal deposit of waste and duty of care (Fly-tipping)

Dealt with under Environmental Protection Act 1990, sections 33 and 34 (as amended). Local Authorities can deal with fly tipping. Options available are:

Fixed penalty notice (currently £250)
Written warning
Simple caution
Prosecution

A fixed penalty notice can be issued to someone caught in the act of fly tipping for a less serious offence. Where evidence is obtained for a more serious case of fly tipping and the case meets the tests for prosecution, a file will be prepared. Depending on the seriousness of the offence and the circumstances and the evidence available either a Simple Caution may be issued or a prosecution case may be taken forward.

Dog fouling

Dealt with under the Clean Neighbourhoods and Environment Act 2005 section 59. Options available are:

Written warning
Fixed penalty notice
Simple caution
Prosecution

South Somerset has a Dog Control Order in place which creates an offence to not pick up dog foul in designated areas. Where a person is witnessed not picking up dog waste then normally they will be asked to do so. If this request is not complied with evidence will normally be gathered and a Fixed Penalty Notice(FPN) will be issued. Where an FPN is not paid or where there is a repeat offence then a prosecution file will be prepared. This may result in a Simple Caution being issued or a prosecution case being taken forward.

Enforcement action-dealing with those affected

10. When we decide to take enforcement action we will:

- Formally caution all people being interviewed for an offence. The meaning of the caution is explained as part of the caution process to ensure understanding.
- Clearly explain any advice, actions required or decisions that we have taken. Most of which will be explained clearly in writing.
- Discuss and agree timescales that are acceptable to those concerned and us, in relation to any actions required
- Provide in writing details of how to appeal against any advice provided, actions required or decisions taken, including any statutory rights to appeal. Where appropriate arrangements will be made for those who need the information in large print, Braille, audio or another language.
- Explain what will happen next and offer practical information on the process involved
- Keep in touch with those concerned where required, until the matter is resolved