



**SOUTH CAMBRIDGESHIRE
DISTRICT COUNCIL**

**DRAFT POLICY
STREET TRADING**

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PREAMBLE

The overarching objectives of the policy are to;

- promote the Authorities visions and values,
- protect the rights and health and safety of the general public, workers, residents, small businesses, minority and vulnerable groups,
- and to ensure consistent and transparent decision making.

- 1.1 This document outlines the policy, which will guide South Cambridgeshire District Council when considering applications for licences. The Authority will determine each application on its' individual merits and this policy should not be regarded or interpreted as an indication that any requirement of the relevant law may be overridden.
- 1.2 The Local Government (Miscellaneous Provisions) Act 1982 (1982 Act) Schedule 4 is the licensing regime to control Street Trading consent within determined locations within the district of South Cambridgeshire

2. Purpose

- 2.1 The Council's street trading policy is to create a street trading environment which complements premises-based trading, is sensitive to the needs of residents, provides diversity and consumer choice, and seeks to enhance the character, ambience and safety of local environments.

3. What is Street Trading?

- 3.1 Street trading means selling, exposing or offering for sale any article in a street. The term 'street' includes any road, footway or other area to which the public has access without payment.
- 3.2 South Cambridgeshire District Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 for parts of its area and has designated all streets in the named area as 'consent streets' for street trading purposes. The adoption was advertised in the Cambridge Evening News in 1990.
- 3.3 The effect of this designation is that street trading in any street within the villages adopted by South Cambridgeshire District Council (APPENDIX A) is prohibited, subject to legal exemptions, without first obtaining a street trading consent from the Council.

4. Exemptions from the need to obtain Consent

4.1 Some types of trade are legally exempt from the need to obtain a street trading consent. These include:

- a person trading under the authority of a pedlars' certificate granted under the Pedlars Act 1871 – by the Police Authority
- trade carried out by roundsmen e.g. milkmen
- trade carried on at a petrol filling station

5. Street Trading Consents for which fees are not payable

5.1 South Cambridgeshire District Council will not require the payment of fees for the following Street trading activities:

- fetes, carnivals or similar community based and run events
- non-commercial or charitable events
- farmers markets (producer-managed marketplace for local producers to sell their own produce direct to local people)
- sales of articles by householders on land contiguous with their homes

6. Site Assessment

6.1 The Council will identify suitable 'pitches' for street trading from information given by applicants.

6.2 Consents may also be issued to mobile artists who sketch or paint, sell their own work and move from location to location.

6.3 In determining whether to create a consent street trading pitch the Council will have regard to:

- any effect on road safety, either arising from the site of the pitch or from customers visiting or leaving
- any loss of amenity caused by noise, traffic or smell
- existing Traffic Orders e.g. waiting restrictions
- any potential obstruction of pedestrian or vehicular access
- any obstruction to the safe passage of pedestrians
- the safe access and egress of customers and staff from the pitch and immediate vicinity
- any Planning Implications for change of use

7. Consultations

7.1 Before a new pitch is created or at such a time as the status of any existing pitch is being reviewed the Council will consult and seek written observations from:

- occupiers of premises immediately adjacent and opposite
- ward Councilors
- Parish Council
- Cambridgeshire Constabulary

- Development Control
- Highways & Transportation/County Council
- existing holders of street trading consents in the immediate area.

7.2 Any objection from consultees will be assessed against the criteria in 6.3 above.

7.3 Any proposed change to standard conditions (APPENDIX B) will be consulted with consent holders and others, if relevant.

8. Nature of Goods and Trading Hours

8.1 The nature of goods that may be sold from any pitch will be specified in the consultation process. Any subsequent substantial change will be subject to the level of consultation in 7.1 above.

8.2 The Council would not normally grant consent for the sale of goods or services which conflict with those provided by nearby shops.

8.3 Goods will normally consist of food, drinks, fresh flowers, Fresh fish, ice cream or soft drinks. Other types including services will be considered on a pitch by pitch basis and have particular regard to local needs shopping, product/ service diversity and balance.

8.4 Street trading hours will normally mirror those of shops in the immediate vicinity. In the case of hot food takeaways trading hours will be determined on a pitch-by-pitch basis.

8.5 Any Food vans wanting to sell goods after 23.00 hours are required to hold a Premises License under the Licensing Act 2003, for the supply of late night refreshment.

8.6 The design and appearance of the stall, barrow, van or cart etc. used must be agreed by the Council's Licensing Officer.

9. Issue of Street Trading Consents

9.1 Street trading consents will normally be issued for a period of twelve months.

9.2 Consents will be issued for a minimum of two days per week, unless the applicant can provide an alternative scheme acceptable to the Licensing Officer.

9.3 The Council reserves the right to review a consent status area at any time subject to or at the request of a consultee detailed above or if any byelaw or legislative changes require change.

9.4 Fees for consents are to be paid in full in advance, or in exceptional circumstances in the case of traders on "A" roads quarterly. Renewal

payments for “A” road traders can be made on a quarterly basis and will be due on or before the following dates:

- 1 April
- 1 July
- 1 October
- 1 January

- 9.5 Failure to maintain payments as above will result in the consent not being renewed. Once a licence has lapsed any subsequent application will be treated as a new application.
- 9.6 Where consent has expired due to non payment the pitch will become available to others to apply for immediately.
- 9.7 Applications will be determined by the Licensing Officer. Available pitches will be offered to applicants on a first come first served basis.
- 9.8 Consent cannot be issued to a person under the age of 17 years. An application may also be refused if the applicant is unsuitable to hold the consent by reason of having been convicted of an offence or for any other reason.

10. Fee Structure

- 10.1 The fee structure will primarily reflect pitch location, trading days and hours requested.
- 10.2 The Licensing Officer will consult with the Licensing Committee to set fees and to annually review the fee structure.
- 10.3 Where a street trading consent pitch has to be withdrawn for a temporary period for reasons beyond the direct control of South Cambridgeshire District Council, i.e roadworks, road relaying etc no fee in whole or part of shall be refundable.

11. Conditions and Enforcement

- 11.1 Standard conditions (APPENDIX B) will be attached to every street trading consent detailing the holder's responsibilities to maintain public safety, avoid nuisance and generally preserve the amenity of the locality.
- 11.2 Specific conditions will also be attached such as the days and hours when street trading is permitted, the goods, which may be sold, and the size of the pitch.
- 11.3.1 Failure to comply with conditions may lead to revocation or non-renewal of consent.
- 11.4 Persons trading without a consent and who are not exempt (see 4.1

above for examples) will be the subject of enforcement action in accordance with the South Cambridgeshire District Council Enforcement Policy (APPENDIX C). This will include any person who holds a certificate granted under the Pedlars Act 1871, but who fails to operate in accordance with the Act.

- 11.5 Where consent status is revoked due to non compliance of licensing conditions or where the Council determines that the status of a consent pitch is to be withdrawn, no part of the fee or other associated costs shall be refundable.

12. Social Inclusion

- 12.1 Within this policy the District Council will consider local and regional strategies and policies including the Local Community Strategy, Crime Prevention, Tourism and cultural strategies. However it recognises the need to avoid, so far as possible, duplication of existing legislation and other regulatory regimes that place obligations on employers and operators such as The Health and Safety at Work Act 1974, The Environmental Protection Act 1990, Children Act 2004, Disability Discrimination legislation and the Regulatory Reform (Fire Safety) Order 2005.
- 12.2 The Council is aware of its obligations under the Race Relations Act 1976 as amended with the Council's Race Equality Scheme and will have due regard to the need to eliminate unlawful discrimination; and to promote equality of opportunity and good relations between persons of different racial groups.

13. General

- 13.1 This policy will complement and inform other Council initiatives including those on street markets and life in the public realm.
- 13.2 This policy will be the subject of periodic monitoring and review.
- 13.3 This policy will inform the detailed conditions attached to every street trading consent.
- 13.4 This policy will be applied in a manner that is consistent with the Council's equalities policies.
- 13.5 This Policy does not override any requirements or powers conferred by the Local Government (Miscellaneous Provisions) Act 1982, Schedule 4. Where any conflict arises the wording within legislation shall take precedence.

APPENDIX A

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 Cambourne Business Park
 Cambourne
 Cambridge
 CB23 6EA

t: 03450 450 063
 f: 01954 713248
 dx: DX 729500 Cambridge 15
 minicom: 01480 376743
www.scambs.gov.uk



STREET TRADING APPLICATION FORM

What type of application is this? **NEW/ RENEWAL**

First Grant	Renewal
Vehicle Change	Trailer Change

A. APPLICANT'S PERSONAL DETAILS:

Title: (Mr/Mrs/Miss)		Surname:	Forename:
Address:			
DOB:		Tel No:	
NI number:		DVLA Driver Licence Number:	

B. DRIVER'S PERSONAL DETAILS: (if different from applicant)

Title: (Mr/Mrs/Miss)		Surname:	Forename:
Address:			
DOB:		Tel No:	
NI number:		DVLA Driver Licence Number:	

C. VEHICLE DETAILS:

Vehicle Registration No:	Trading:	Towing:	Plate No:
Make:		Model:	
Colour:		Photographs of trading vehicle attached:	Front view Side view YES / NO
Vehicle owner if different from above:			

Address at which trailer will normally be kept:	

Trailer (if applicable)

Make:		Model:	
Colour:		Photographs of trading vehicle attached:	Front view Side view YES / NO
Vehicle owner if different from above:			
Address at which trailer will normally be kept:			

D. TRADING DETAILS:

Trading Name:	
Type of goods traded:	
Address or location at which trading will take place (specific sites/streets required):	
Days of the week and times of trading:	

E. ICE CREAM TRADERS ONLY

Name of Supplier:	
Address of Supplier:	
Telephone Number of Supplier:	
Contact Name at Supplier Company:	

Signature:

F. DECLARATION OF CONVICTIONS, FIXED PENALTIES & FORMAL CAUTIONS:

1. Have you ever been refused a Street Trading Consent or Street Trading Licence or had such a Consent or Licence revoked or suspended?
2. If YES, please give details including the local authority, date and reason:

YES / NO

.....

3.(a) You must disclose **ALL** convictions for offences (including traffic offences) in the spaces on the page opposite, unless that conviction is regarded as 'spent' by the Rehabilitation of Offenders Act 1974. 'Spent' convictions need not be disclosed to the council.

(b) As a general guide **ALL** convictions must be disclosed (including traffic offences) unless the conviction falls into one of the following categories:

- I. Imprisonment for a term exceeding 6 months not exceeding 30 months over 10 years ago
- II. Imprisonment for a term not exceeding 6 months over 7 years ago
- III. A fine (including most traffic offences), probation, community service over 5 years ago
- IV. Conditional discharge, bound over, supervision order over 1 year ago or period of sentence, whichever is longer
- V. Absolute discharge over 6 months ago
- VI. Cashiering, discharge with ignominy, dismissal with disgrace from HM Forces over 10 years ago
- VII. Dismissal from HM forces over 7 years ago
- VIII. Disqualification, disability, prohibition
- IX.
 - c) Formal cautions must be declared for a period of 5 years
 - d) Generally **TRAFFIC OFFENCES** are declarable for a period of **5 years** (because fines are normally imposed) and has nothing to do with removal of endorsements from licences, etc.
 - e) **FIXED PENALTIES** which resulted in an endorsement on your DVLA Driving Licence must be declared for a period of **5 years** from the date of endorsement.
 - f) If you are in any doubt, or your particular sentence is not listed above then ask the advice of the licensing staff or consult a solicitor.
 - g) A sentence exceeding 30 months imprisonment must **always** be declared.
 - h) All requested details must be declared for each offence. Any gaps or vagueness may result in delay to the application.
 - i) The coding system for driving offences may be used if you wish.
 - j) All calculations as to whether or not a conviction is 'spent' are made with reference to the conviction date and **not** the date of the offence.
 - k) The rehabilitation period may be automatically extended by the commission of a further offence during the rehabilitation period in respect of indictable offences.
 - l) **One final word of warning**, do not be tempted to omit an offence because you are not sure it has to be declared or not. Ask the licensing staff. It will be considered a very serious matter and may result in suspension or revocation of your licence.

LIST BELOW ALL THE OFFENCES FOR WHICH YOU HAVE BEEN CONVICTED BY A COURT AND ALL RELEVANT FIXED PENALTIES AND FORMAL CAUTIONS.

COURT (OR POLICE FORCE)	DATE OF CONVICTION OR FIXED PENALTY OR FORMAL CAUTION	OFFENCE(S)	SENTENCE OR ORDER OF THE COURT

Are you or have you ever been subject to the notification requirements of Section 1 of the Sex Offenders Act 1997?

YES / NO

Your attention is drawn to Schedule 4 Paragraph 10(3) of the Local Government (Miscellaneous Provisions) Act 1982 in that :

Any person who, in connection with an application for a street trading consent, makes a false statement which he knows to be false in any material respect, or which he does not believe to be true, shall be guilty of an offence.

DECLARATION

I DECLARE THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THE ANSWERS GIVEN ABOVE ARE TRUE. IF A CONSENT IS GRANTED I UNDERTAKE TO COMPLY WITH THE CONDITIONS ATTACHED TO THE CONSENT.

I LIST ABOVE ALL OFFENCES FOR WHICH I HAVE BEEN CONVICTED WHICH NEED TO BE DECLARED, AND ALL FIXED PENALTIES AND FORMAL CAUTIONS WHICH BEED TO BE DECLARED.

Usual Signature Date

G. MAKING AN APPLICATION

PLEASE BRING/SEND TO THE LICENSING SECTION:

1. THIS FORM COMPLETED IN FULL
2. EMPLOYEE REGISTRATION FORMS FOR ALL EMPLOYEES
3. 2 IDENTICAL PASSPORT STYLE PHOTOGRAPHS OF YOURSELF AND ANY EMPLOYEES CLEARLY NAMED ON THE REVERSE OF THE IMAGE
4. PROOF OF YOUR NATIONAL INSURANCE NUMBER
5. YOUR DRIVING LICENCE, OR THAT OF THE PERSON WHO WILL TOW YOUR TRAILER
6. 2 COLOUR PHOTOGRAPHS OF THE TRADING VEHICLE TO BE USED FOR THE BUSINESS – FRONT AND SIDE VIEW
7. THE CONSENT FEE
8. PROOF THAT YOU HAVE REGISTERED WITH FOOD HYGIENE SECTION

When completed please sign and date and return the form to:-

South Cambridgeshire District Council
Licesning section
Cambourne Business Park
Cambourne
Cambridgeshire
CB23 6EA.

APPENDIX B

STREET TRADING "CONSENT STREET" MANDATORY LICENCE CONDITIONS

- i) The structure (hereinafter referred to as "the facility") shall be of such size, design and construction as may be approved in writing by the District Council. The facility approved by the District Council shall not be materially altered in external appearance without the prior approval of the District Council.
- ii) There shall be clearly displayed on the facility a notice stating that "this unit is licensed by South Cambridgeshire District Council to trade on the (*INSERT PERMITTED AREA*) licence number :-.
- iii) The facility shall be maintained in good repair and condition.
- iv) All refuse, whether liquid or solid matter, arising from the operation of the facility shall be stored in a proper manner in accordance with details approved by the District Council and removed from the site at the end of each working day. The Consent holder shall provide two litter bins adjacent to their food stall for public use.
- v) The Consent holder shall take all reasonable steps to keep the site free from litter and in particular shall ensure that the two litter bins are emptied and the area around the stall is free of litter at the end of each day's trading.
- vi) No signs or advertisements relating to the facility shall be displayed at the site, or on the approaches thereto, except as may be approved by the District Council after consultation with the Highway Authority.
- vii) No structure, erection or object, other than the facility permitted by this Consent, shall be placed on the site and no works affecting the surface or sub-structure of the highway shall be carried out, except with the prior written approval of the District Council.
- viii) This Consent is personal to the Consent holder to whom it is granted and subject to the District Council's power to vary or revoke the Consent in accordance with the provisions of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and shall be valid for a period of up to twelve months from the date on which it is granted.
- ix) Upon the termination or revocation of this Consent, the Consent holder shall forthwith remove the facility and leave the site in a clean and tidy condition.
- x) The Consent holder must hold an appropriate food hygiene qualification or attend a food hygiene training course approved by the District Council within six months of first being licensed.
- xi) Food handlers must wear clean white over-clothing when working in the facility.
- xii) No obstruction of the layby or danger to persons using it or any nuisance or annoyance shall be caused, whether to persons using the layby or otherwise.

APPENDIX C - ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

1. INTRODUCTION

The Cabinet Office and Local Government Association have jointly published an Enforcement Concordat. This sets out a blueprint for fair, practical and consistent enforcement across the Country and South Cambridgeshire District Council has formally adopted the Concordat for all its enforcement based services and in so doing gave a commitment to ensure best practice in enforcement policy and activities. This policy lays out the principles to be adopted by Officers exercising any enforcement function within Health & Environmental Services.

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 Regulator's Compliance Code. In certain instances the Council may conclude that a provision in the Code is either not relevant or is outweighed by another provision. The council will ensure that any decision to depart from the code will be properly reasoned, based on material evidence and documented.

The primary function of Local Government enforcement work is to protect the citizens, the environment and groups such as consumers and workers. At the same time carrying out enforcement activity in an equitable, practical and consistent manner helps promote a thriving national and local economy. South Cambridgeshire District Council is committed to these aims and to maintaining a fair and safe trading environment. This is reflected in the Health & Environmental Services statement of purpose.

The effectiveness of legislation in protecting society depends crucially on the compliance of those regulated. The Council believes in providing a balanced approach to enforcement, providing help to those who need it, while taking firm action, including prosecution where appropriate. We will, therefore, provide a service which is courteous and helpful and which works with individuals and businesses, wherever possible, to help them comply with the law. Officers will have regard to the needs of people covered by the Council's Vulnerable Adult and Child Protection Policies.

In drafting this policy, the Council has considered the implications of the Human Rights Act 1998 and believes that it is compatible with Convention Rights. The first part of the policy sets out the general principles adopted and is annexed with specialist service specific policies.

1.1 **Health & Environmental Services Statement of Purpose**

1.1.1 **Objectives** – The objectives of Health & Environmental Services within South Cambridgeshire District Council are to work in partnership with local organisations, businesses and the wider community to:

- ❖ Protect & enhance the environment, now and in the future.
- ❖ Improve on the sense of well being within our existing & future villages, communities and businesses.
- ❖ Safeguard and improve public health.
- ❖ Enhance the quality of life of citizen's generally and for those disadvantaged specifically.
- ❖ Instil a sense of pride in being associated with Environmental Health at SCDC.

1.1.2 **Values**

- ❖ High quality customer service to the public.
- ❖ Target resources to areas of greatest risk/effect/change.
- ❖ Consult and provide sensible, clear, open, honest and fair decisions.
- ❖ To improve service to the public that represents best value
- ❖ Be professional, consistent & equitable, showing mutual respect towards others.
- ❖ Use common sense.
- ❖ Be responsive and flexible to people's needs.
- ❖ Set standards by which to be judged.

1.2 **What do we mean by Enforcement?**

The Health & Environmental Services function enforces a wide range of laws, primarily designed to ensure public health and safety and improve the quality of life of citizens. Primary responsibility to abide by these laws rests with us all, as individuals, and we recognise that most people and businesses wish to comply. Effective enforcement is not just about inspection, instruction, licensing or prosecution; it is much

more than this. We will, therefore, provide free information and advice to help people understand legal requirements and will proactively seek to raise awareness of the requirements and good practice.

2. PRINCIPLES OF ENFORCEMENT

Enforcement activities will be guided by the framework principles of good enforcement contained in both the Enforcement Concordat and the Regulator's Compliance Code. This policy is built on the principles of proportionality, consistency, openness and targeting of enforcement action.

2.1 **Proportionately** – The enforcement action taken will be proportionate to the risks posed and to the seriousness of the breach of the law. In coming to a decision we will consider not only the seriousness of the risk to public health and safety, environmental damage or loss of public or residential amenity but also the attitude of the alleged offender. We will also minimise the costs of compliance by ensuring the required action or works are proportionate to the risks.

2.2 **Consistency** – Individuals and businesses with similar legal obligations expect consistency from the Council. This includes any advice given, its response to complaints and other incidents, the use of powers and in decisions on whether to prosecute.

However, consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. Officers are faced with many variables; the level of hazard, the attitude and competence of management and the compliance history may vary. Decisions on enforcement action are a matter of professional judgement and the Officer must exercise discretion, the Council has arrangements in place and will continue to develop them to promote consistency including effective arrangements for liaison with other enforcement authorities. Where applicable we will use the Home Authority/Lead Authority schemes to help further ensure regulatory consistency.

2.3 **Openness** – The public must have confidence in the Council's ability to protect them via effective regulation. This confidence can only be attained if the Council is open in what it does. This means helping them to understand what is expected of them and what they should expect from the Council. It means making clear not only what they have to do but also where it is relevant and what they do not. This entails distinguishing between legal requirements and advice or guidance about what is desirable but not compulsory.

We will:

- (a) provide advice and information in plain language;

- (b) discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example to protect the environment, to prevent the destruction of evidence or to protect health and safety; where such urgent action is required a written explanation will be provided as soon as practicable after the event;
- (c) provide a clear explanation (in writing if necessary and/or requested) as to why any action is necessary, when it must be carried out and distinguish between legal requirements and best practice recommendations;
- (d) provide a written explanation on any rights of appeal against formal enforcement action;
- (e) provide contact details, including e.mail and telephone details, to encourage customers to seek advice, information and clarification;
- (f) Officers will identify themselves by name except for surveillance purposes; in any event, if requested Officers will show their identification and provide a means of checking that identity if necessary;
- (g) publicise our complaints service;
- (h) translate letters into other languages and arrange for interpreters, if necessary.

2.4 **Targeting** – Regulatory effort will be directed towards those who are responsible for risk to health and safety or whose activity gives rise to serious risks, where the risks are less well controlled or against deliberate or organised crime. Action will be focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.

The Council has systems in place for prioritising regulatory effort. They include the response to complaints from the public about regulated activities, the assessment of the risks posed by operations and the gathering and acting on intelligence about illegal activity. Business management actions and competence are important. Repeated related incidents or breaches may be an indication of an unwillingness to change behaviour, or inability to achieve sufficient control and may require greater regulatory control from the Council. A relatively low hazard activity or site, poorly managed, has the potential for greater risk to the environment and/or health and safety than a higher hazard activity or site when proper control measures are in place.

Where practicable and appropriate the Council will provide incentives for businesses consistently achieving high levels of compliance i.e. through its Scores on the Doors scheme, lighter touch inspections or

use of alternative inspection regimes. Risk ratings for businesses will be updated regularly to reflect the latest agreed position.

3. **SPECIFIC ENFORCEMENT ACTIVITIES**

3.1 ***Routine/Programme Inspections***

The Officer will state the purpose of the inspection at the start of the visit. At the conclusion of all inspections, the Officer will offer to discuss their findings with the responsible person. Written inspection reports will be issued following all programmed inspections, even in those circumstances where conditions at the time of the inspection were satisfactory.

Revisits will be made to ensure that significant breaches have been remedied and to check on compliance with formal notices once they have expired.

3.2 ***Investigations***

The Environmental Health unit will respond to and, where appropriate, investigate all complaints. The response may vary according to the nature of the allegation and its seriousness. In most circumstances, the identity of the complainant will not initially be disclosed.

3.3 ***Powers of Entry***

Inspection and visits to premises and work activities will normally be made without prior warning. In instances where it is appropriate to do so, appointments may be arranged, eg where the presence of a particular manager, owner or employee is required to discuss a particular issue.

In appropriate circumstances, Notice of Entry will be served or an application made to the Magistrates Court for a warrant to enter, eg if access is refused or the premises are vacant or the seriousness of the investigation requires timely access. Such Notices will be served in accordance with the relevant legislation's powers of entry.

3.4 ***Working Hours***

The Council recognises that enforcement activity is not solely a Monday to Friday, 09.00 to 17.00 hours function and that the District has a 24 hour society. Accordingly, the Council provides a 24 x 7 reactive environmental health emergency response service available to all. In addition, planned inspections, visits and investigations are carried out outside normal working hours to cater for times when businesses are operating or when the activity under investigation is occurring.

3.5 ***Shared Enforcement Roles***

Situations often occur where the enforcement responsibility is shared with another agency or body or a multi-agency approach is required. In such circumstances the Council will liaise with the appropriate agency, e.g. Health & Safety Executive, Food Standards Agency, Health Protection Agency, Environment Agency, Fire Authority, Police and Trading Standards. The service specific enforcement policies annexed to this General Policy contains the detailed references.

4. ENFORCEMENT OPTIONS

- 4.1 Much of our enforcement activity is governed by guidance in the form of Codes of Practice, Government Circulars, orders etc. When making enforcement decisions, Officers must have regard to any relevant national or other guidance, as well as the provisions of the Human Rights Act 1998, RIPA and this Enforcement Policy.

The enforcement action and sanction taken will:

- ❖ aim to change behaviour of the offender
- ❖ aim to eliminate any financial gain or benefit from non-compliance
- ❖ be responsive & consider what is appropriate for the particular offender and regulatory issue, which can include the punishment and public stigma that should be associated with a criminal conviction.
- ❖ be proportionate to the nature of the offence and the harm caused
- ❖ aim to restore the harm caused by the regulatory non-compliance, where appropriate and
- ❖ aim to deter future non-compliance.

The decision as to which types of enforcement action is appropriate must always be governed by the particular circumstances of the case. In coming to a decision the criteria to be considered will include:

- ❖ the seriousness of the offence;
- ❖ the history of the activity/offender
- ❖ contamination of the environment or risk to health;
- ❖ public expectation;
- ❖ any special or local circumstances which make the problem more or less acute;
- ❖ confidence in achieving compliance;
- ❖ consequences of non-compliance;

- ❖ likely effectiveness of various enforcement options.

The criteria are not exhaustive and those that apply will depend on the particular circumstances in each case. This does not mean that all factors must be in favour of enforcement action, rather than, on balance, the preponderance is in favour.

4.2 **Options** – Having considered the enforcement criteria the following options are available.

- (a) To take no action;
- (b) to take informal action;
- (c) to serve statutory notices;
- (d) to issue formal cautions;
- (e) to suspend, revoke or refuse to renew a licence;
- (f) to impose an administrative penalty;
- (g) to do the work in default and recover all costs in so doing;
- (h) to prosecute;
- (i) apply for a Court Order or Injunction.

Where appropriate, a staged approach to enforcement should be adopted. In the first instance every opportunity should be given to discuss and remedy problems before any formal action is taken, unless immediate action is required.

4.3 **Informal Action** – Informal action may consist of any or all of the following:

- ❖ Giving advice, offering general assistance and guidance;
- ❖ issuing verbal warnings;
- ❖ written communications requiring attention.

Informal action will be taken when:

- (a) the act or omission is not serious enough to warrant formal action; or
- (b) from the individual's or business' past history it can be reasonably expected that informal action will achieve compliance; or
- (c) the confidence in an individual or business proprietor is high; or
- (d) the consequences of non-compliance will not pose a significant risk to public health, safety or the environment;
- (e) the informal action will not produce a lower standard of compliance than would be achieved by the use of formal legal procedures.

When an informal approach is used to secure compliance with legislation confirmation of what action is required must be in writing and in accordance with Section 2.3 of this Policy.

4.4 **Statutory Notices** – Statutory Notices will be used after first considering the informal action route as detailed in Section 4.3. If the criteria under informal action cannot be met and/or

- (a) where there is a statutory duty to serve a Notice;
- (b) where, in addition to prosecution, measures need to be taken to remedy conditions that are serious, deteriorating, or where the service of a Notice is needed to support a prosecution:

then the service of a Notice will follow. Failure to comply with a statutory Notice will normally, where relevant, result in prosecution and/or works in default as appropriate.

4.5 **Prohibition Notices** – The service of a Prohibition Notice or Injunction will be considered in one or more of the following circumstances:

- (a) an imminent risk of injury to health or safety can be demonstrated;
- (b) an imminent risk of serious pollution to the environment can be demonstrated;
- (c) the consequence of not taking immediate and decisive action to protect the public would be unacceptable;
- (d) there is no confidence in the integrity of an unprompted offer made by a proprietor to voluntarily close premises or cease the use of any equipment, process or treatment associated with the imminent risk; or
- (e) a proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition;
- (f) where it would be the most effective remedy available.

4.6 **Prosecution**

4.6.1 **General** – The Council recognises that the decision to prosecute is significant and would have far reaching consequences on the offender. The decision to undertake a prosecution will normally be taken by the Corporate Manager Health & Environmental Services together with the Council's Principal Solicitor. No prosecution will be undertaken without consideration to the tests outlined in "The Code for Crown Prosecutors". The criteria for the issue of proceedings are:

- (a) The alleged offence involves a flagrant breach of the law, such that public health, safety or well being is or has been put at risk or irreversible damage has resulted.
- (b) There has been a disregard for the environment.
- (c) The integrity of the licensing framework is threatened.
- (d) The alleged offence involves a failure by the suspected offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements of an authorised Officer.
- (e) The alleged offence involves a failure to comply in full or in part with the requirements of a statutory Notice.
- (f) There is a history of similar offences.
- (g) The alleged offence causes public alarm and it is desirable to reassure the public and deter other offenders.
- (h) The alleged offence involves obstruction, failure to disclose information or making a false statement or an assault on an enforcement officer.
- (i) A prosecution is in the public interest; there is a realistic prospect of conviction and sufficient evidence to support proceedings.

The Council will always seek to recover the costs of the investigation and court proceedings.

4.6.2 ***Prosecution without Warning***

The general guiding principle of this policy is to give a person or a company a reasonable opportunity to comply with the law. However, there are circumstances where prosecution may be undertaken without prior warning, eg:

- ❖ the contravention is a particularly serious one;
- ❖ there has been a particularly blatant disregard of the law;
- ❖ a statutory Notice has been previously issued for a similar offence; or
- ❖ the integrity of the licensing framework is threatened.

4.6.3 ***Formal Caution***

A formal caution may be issued by the Corporate Manager Health & Environmental Services as an alternative to a prosecution. Formal cautions will be issued to:

- ❖ deal quickly and simply with less serious offences;

- ❖ divert less serious offences away from the courts; or
- ❖ reduce the chances of repeat offences.

To safeguard the suspected offender's interests the following conditions will be fulfilled before a caution is administered:

- ❖ there must be evidence of the suspected offender's guilt, sufficient to give a realistic prospect of conviction; and
- ❖ the suspected offender must admit the offence; and
- ❖ the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

No pressure will be applied to a person to accept a formal caution. Should a person decline the offer of a formal caution a prosecution will be pursued.

5. NON-COMPLIANCE WITH POLICY AND COMPLAINTS

If any person is unhappy with the action taken, or information or advice, given, then they will be given the opportunity of discussing the matter with the relevant manager. Should they still be aggrieved then their views should be made known directly to the Corporate Manager Health & Environmental Services or the Council's corporate complaint procedure should be followed (copy available on request).

This is without prejudice to any formal appeals mechanism.

6. TRAINING AND APPOINTMENT OF OFFICERS

All Officers undertaking enforcement duties will be suitably trained and qualified so as to ensure that they are fully competent to undertake enforcement activities. The Department supports the principle of continuing professional development and will ensure that all Officers are provided with additional in post training to maintain up-to-date knowledge and skills commensurate with their position.

All Officers will be formally authorised by the Council, as delegated, to exercise specific powers under relevant statutes. The Corporate Manager Health & Environmental Services will determine the level of authorisation for each Officer, by their qualifications, experience and competence having regard to any relevant national guidelines.

Authorisation will be in writing and in a form that can be shown on request.

7. MONITORING OF ENFORCEMENT

The Corporate Manager Health & Environmental Services will review staff competency and the consistency of enforcement on a regular

basis. The Department maintains systems to monitor the quality and nature of enforcement activities undertaken so as to ensure, as far as is reasonably practicable, a uniform and consistent approach. Where local or national co-ordinating bodies exist, such as FSA, HSE, LACORS, Cambridgeshire Food Liaison Group and Cambridgeshire Health & Safety Liaison Group, the Department will ensure that wherever possible its enforcement practices are consistent with best practice.

The review of the enforcement services may involve any of the following activities and any variations from the policy will be addressed within the appropriate service plan:

- ❖ supervisory officer for enforcement action;
- ❖ monitoring visits by line managers;
- ❖ shadowing visits by colleagues;
- ❖ monitoring of correspondence and statutory notices;
- ❖ complaint procedures
- ❖ peer review exercise
- ❖ internal training sessions and workshops on enforcement issues;
- ❖ employee development scheme;
- ❖ customer satisfaction surveys.
- ❖ National Indicator results
- ❖ Business stakeholder forum feedback