

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
10 June 2014

Subject: **HEALTH & SAFETY ENFORCEMENT POLICY**

All Wards
Portfolio Holder for Environmental and Planning Services: Councillor Brian Phillips

1.0 PURPOSE OF THE REPORT

1.1 The purpose of this report is to present the Health and Safety Enforcement Policy for approval.

2.0 BACKGROUND

2.1 The current Health and Safety Enforcement Policy v1.1 was approved by the Licensing and Environment Protection Committee at its meeting on 26th November 2012. Version 1.2 has now been produced following changes in national guidance and requirements. The following amendments have been made in the latest version:-

- a) Section 2.0 and paragraph 4.11 reflect the changes introduced by the replacement of the section 18 Guidance with a National Local Authority Enforcement Code. This Code was developed in response to the recommendations by Professor Lofstedt that the Health & Safety Executive take a stronger role in directing Local Authority health & safety inspection and enforcement activity. This National Code has been developed in response to this recommendation and as an outcome of the Red Tape Challenge on Health & Safety. It is designed to ensure that LA health & safety regulators take a more consistent and proportionate approach to enforcement. This required no change to our existing enforcement practices.
- b) Paragraph 5.1.6 introduces a reference to the approved Council policy in relation to Protected Disclosures. This confirms that the Council will protect the identity of employees who make protected disclosures under the Public Interest Disclosure Act 1998. The Policy was approved by Cabinet on 5th November 2013 as an amendment to the Council's existing Whistleblowing Policy covering its own employees.
- c) Paragraph 7.1.1 refers to the replacement of the Regulators' Compliance Code by the Regulators' Code. This mandatory Code, published in July 2013, comes into effect on 1st April 2014. The Council must have regard to the Code when setting standards or giving evidence. This Code did not require a change of Policy but introduced some practices in relation to the way enforcement is carried out.
- d) Paragraph 7.1.2 introduces the Environmental Health Service's Business Friendly Scheme. This scheme implements the requirements of the Regulators' Code and demonstrates how the Service will meet its requirements.
- e) Section 8 – Enforcement Options remains unchanged.
- f) Paragraph 8.6.5 again refers to the change from section 8 Guidance to the National LA Enforcement Code.

g) New paragraph 9.0 introduces the Independent Regulatory Challenge Panel. This new body will look into complaints regarding advice given by the Health and Safety Executive or Local Authority Inspectors about health and safety which a business might think is incorrect or goes beyond what is required to control risk adequately. Reference to this body will be made in our correspondence and on our website.

2.2 The overall effect of these changes is not felt to be a change of policy but a formalisation of the current service design and delivery system in Hambleton.

3.0 LEGAL IMPLICATIONS:

3.1 The revisions ensure incorporation of recent Government requirements and ensure that the Health & Safety enforcement service complies with national expectations.

4.0 FINANCIAL IMPLICATIONS AND EFFICIENCIES:

4.1 There are no financial implications in this report.

5.0 RISK ASSESSMENT:

5.1 There are no risks associated with this report.

6.0 DIVERSITY:

6.1 Approval of an up to date Enforcement Policy will ensure that all enforcement activity is undertaken based on the merits of the particular situation.

7.0 RECOMMENDATIONS:

7.1 That Cabinet approves and recommends to Council the Health and Safety Enforcement Policy.

MICK JEWITT

Background papers: Health & Safety at Work etc. Act 1974
National LA Enforcement Code. HSE. May 2013
Regulators' Code. BIS. July 2013
Business Friendly Scheme. Environmental Health Service. 2013

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HAMBLETON DISTRICT COUNCIL
ENVIRONMENTAL HEALTH SERVICE

HEALTH AND SAFETY ENFORCEMENT POLICY

Date of Issue:

Version Control

<i>Version No.</i>	<i>Amended by</i>	<i>Date</i>
1.0	Philip Mepham	14/2/2012
1.1	Philip Mepham	8/10/2012
1.2	Philip Mepham	2/1/2014

1.0 Introduction

- 1.1 Hambleton District Council is an enforcement authority in relation to health and safety in the workplace and have powers and duties in the Health and Safety at Work etc. Act 1974 and associated legislation.
- 1.2 This enforcement policy builds on the overall Environmental Health Enforcement Strategy and Policy and explains its interpretation in relation to health and safety at work.
- 1.3 This policy applies to all aspects of the health and safety service within the boundaries of Hambleton District Council.

2.0 Relevant Documents

The following documents are relevant to this Policy:-

Health and Safety at Work etc Act 1974, and any Regulations, Approved

- Codes of Practice, or Guidance thereunder.
- Current relevant guidance from the Health and Safety Executive and
- Government Departments or Agencies
- Work Related Deaths: A Protocol for Liaison
- Police and Criminal Evidence Act 1984
- Human Rights Act 1998
- Criminal Procedure and Investigation Act 1996
- Crown Prosecution Service Guidance
- The Council's Scheme of Delegation
- National Local Authority Enforcement Code
- HSE Enforcement Policy Statement
- Regulation of Investigatory Powers Act 2000
 - Enforcement Management Model
- A Risk based Approach for Selecting Complaints about Dutyholders.
- Statutory Code of Practice for Regulators
- Legislative and Regulatory Reform Act 2006
- Regulatory Enforcement and Sanctions Act 2008

3.0 Responsibility

- 3.1 All authorised officers are responsible for compliance with this policy in relation to the use of their enforcement powers.

4.0 Enforcement Policy Statement

- 4.1 The Council aims to improve health and safety outcomes which includes reducing work-related ill health and accidents, and protect the health, safety and welfare of employees and to safeguard others, principally the public, who may be exposed to risks from the way work is carried out.

- 4.2 The purpose of enforcement action is to:
- Secure action by dutyholders to manage and control risks effectively, thus preventing harm
 - Ensure dutyholders take action to deal immediately with serious risks
 - Promote and achieve sustained compliance with the law
 - Hold dutyholders to account for failures to safeguard the health, safety and welfare of those to whom they owe that duty

The full range of enforcement options available is listed in Section 8. All decisions regarding enforcement action will have regard to risks to health and safety which may arise because of failures in health and safety practices.

- 4.3 The Council intends to achieve these aims using a range of targeted risk based interventions and using a variety of different methods. When carrying out these activities Authorised Officers will give due regard to current advice and guidance issued by the Health and Safety Executive (HSE), the HSE/ Local Authorities Enforcement Liaison Committee (HELA), Local Government Regulation as part of the Local Government Group, the Better Regulation Development Office, the Code for Crown Prosecutors, and any Services standards and procedures applicable to the circumstances. Information on the Environmental Health Service's standards and procedures relating to these activities can be found in the Sections 6 and 7.
- 4.4 The Council is fully committed to working in partnership, cooperating and liaising with other organisations, and co-ordinating internally with other Council Departments, in order to achieve the aims of this policy. The Council is also committed to operating under a flexible warrant scheme with the HSE and other West and North Yorkshire Local Authorities who are members of the West and North Yorkshire Health and Safety Liaison Group. In particular, where a Primary Authority Scheme exists for a business, Authorised Officers will check the scheme information and liaise with the Local Authority Partner before any intervention takes place. Also Authorised Officers will act in accordance with agreed procedures with the North Yorkshire Police in relation to the Protocol on Work-Related Deaths. Liaison arrangements will be maintained with other local authorities and the HSE's Enforcement Liaison Officer through the West and North Yorkshire Health and Safety Liaison Group. A quality management system is in operation for the health and safety enforcement function within the overall Environmental Health Service Quality Management System.
- 4.5 The Council will ensure that these services are flexible and responsive to needs in order to be equally accessible to all its citizens, and that all service users are treated equally and dealt with fairly.
- 4.6 The Council will ensure that where there is the potential for a conflict of interest to arise in premises for which the Council is the relevant enforcing authority, but for which the Council also has an ownership or management interest, these issues will be dealt with in an open and transparent way.
- 4.7 The Council is committed to consultation with stakeholders on the operation of

- this policy.
- 4.8 The Council recognises that enforcement activities must be effective and well targeted and are committed to the need to achieve objectives fairly and effectively without imposing unnecessary burdens on business by having regard to the Statutory Code of Practice for Regulators.
- 4.9 The Council will ensure that all Officers authorised under the Health and Safety at Work etc Act 1974 are competent and are subject to assessment in order to determine and maintain competency.
- 4.10 All Officers authorised under Section 19 of the Health and Safety at Work etc Act 1974 will comply with the Police and Criminal Evidence Act 1984, the Human Rights Act 1998, the Criminal Procedures and Investigations Act 1996, and the Regulation of Investigatory Powers Act 2000 when carrying out any enforcement duties.
- 4.11 This policy is consistent with:
- HSE's Enforcement Policy Statement
 - National Local Authority Enforcement Code issued to Local Authorities in accordance with Section 18 of the Health and Safety at Work Act 1974
 - Guidance to Local Authorities by the HSE on targeting interventions
 - The Statutory Code of Practice for Regulators
- 4.12 This policy will be reviewed on a regular basis.
- 4.13 This enforcement policy has been agreed by the Members of Hambleton District Council.
- 4.14 Copies of this policy will be made available on request to all parties. They can be obtained from any of the Council's offices, on the Hambleton District Council website www.hambleton.gov.uk and will also be offered to employers during intervention visits. Other documents referred to in this policy detailing different aspects of service are also available to view on request.

5.0 Delivering the service

- 5.1.1 In all cases a targeted hazard and risk based approach will be applied to all health and safety enforcement activities. Health and safety interventions will be targeted on higher risk activities and serious breaches of health and safety regulation. Where the level of risk is either inherently low and/or the dutyholders manage the residual risk well, proactive intervention may not be warranted. In deciding the level of resources to be used in the application of this policy and the type of intervention, the following factors will be considered:
- The management of significant risks
 - The risk profile of the business/sector
 - National information on accidents, priorities and inspection schemes
 - The principles of sensible risk management
 - The severity and scale of potential or actual harm
 - The seriousness of any potential breach of the law
 - Knowledge of the dutyholder's past health and safety performance

- The enforcement priorities
- The practicality of achieving results
- The wider relevance of the event, including serious public concern

5.1.2 All investigations have the same aims i.e. to determine: -

- Causes
- Whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law
- Whether there are lessons to be learnt
- What response is appropriate

5.1.3 Businesses can expect to receive a visit summary sheet at the time of the inspection and also for initial visits the information leaflet '*What to expect when a health and safety inspector calls*'.

5.1.4 Due regard will be given to the views of workers representatives for health and safety enforcement activities.

5.1.5 Any disclosure of information will be lawful and in accordance with HSE policy and freedom of information legislation.

5.1.6 Information provided by employees as whistleblowers will be protected in accordance with the Council's Policy on Protected Disclosures.

5.2 Inspection of workplaces and work activities.

A priority rating scheme coupled with enforcement guidance of national, regional and local based priorities determines the frequency and targeting of proactive inspections of workplaces and work activities. This means that this inspection programme is weighted and directed at businesses with the most serious risks. In all cases the reason for the inspection will be recorded with the inspection records. Where proactive inspections are not indicated due to a lower risk, other interventions can be considered appropriate to the risk.

5.3 Investigation of accidents and incidents

Each event is evaluated against criteria based on HSE guidance to determine the appropriate level of response. The criteria evaluation form will be kept with the event. A copy of the criteria for incident investigation is available on request.

5.4 Investigation of complaints

Officers aim to respond promptly to complaints and in any event within 3 days which is the current target in the Environmental Health Service Plan. The Council will exercise discretion in deciding the nature and extent of any investigation of incidents, cases of ill health or complaints. The speed of response may vary according to the seriousness of the risk in line with the factors listed in paragraph 5.1.1. above. In all cases the allocation of

resources will be targeted at higher risks. Any information on decisions related to the response for the investigations will be kept with the case records.

5.5 Provision of advice and responding to requests for service

Officers aim to respond promptly and in any event within 3 days to requests for advice and service. This advice can include redirecting enquiries to the appropriate enforcing authority.

5.6 Promotion of health and safety issues,

The Council aims to promote a range of issues relating to health and safety. In particular, the Council supports national campaigns on priority topics with relevance to local issues and for those businesses for which the Council is the enforcing authority.

6.0 **Delegation to Officers**

6.1 Decisions about health and safety enforcement are delegated to officers of the Council as shown in the Council's constitution. The following paragraphs illustrate the delegated powers.

6.2 Chief Executive

Overall responsibilities for the health and safety enforcement function of the Councils.

6.3 Director of Leisure and Health Services

To carry out on behalf of the Chief Executive the health and safety function of the Council. Appointment of suitably qualified, experienced and competent persons to act as Authorised Officers to carry out functions under the Act in accordance with the relevant statutory provisions and codes of practice; responsibility for ensuring that Authorised Officers maintain their competency.

6.4 Legal Officer

To assist in instituting proceedings and to prosecute on behalf of the Council in respect of any offence against any legislation which the Council is authorised to enforce.

6.5 Authorised Officers

As authorised according to their individual qualifications, experience and competency the exercise of the powers contained in Section 20 (Powers of Inspectors), 21 (Improvement Notices), 22 (Prohibition Notices), Section 25 (Power to Deal with Imminent Dangers), and Section 38 (Institution of proceedings) of the Health and Safety at Work etc Act 1974.

6.6 Any enforcement decisions which may be required and which do not fall within the limits of this policy shall be taken by the Director of Leisure and Health Services.

7.0 **Enforcement action**

7.1.1 The Council will comply with the Regulators' Code which sets out what businesses and others being regulated can expect from enforcement officers. This Code requires regulation which is effective and well targeted promoting

fairness and protection from harm, but does not impose unnecessary burdens. Also, regulation must be flexible enough to allow or even promote economic progress and at the same time deal proportionately with criminal behaviour which would have a damaging effect on legitimate businesses.

7.1.2 The Council will adopt a positive approach towards ensuring compliance by helping and encouraging businesses to understand and meet regulatory requirements more easily and will respond proportionately to regulatory breaches. This includes giving positive feedback to businesses and other regulators, to encourage and reinforce good practices. The means by which this will be achieved are set out in the EHS Business Friendly Scheme.

7.1.3 Before taking any enforcement action the circumstances encountered during inspections or following incidents or complaints will be investigated

7.2 This policy is consistent with the HSE Enforcement Policy Statement and the Enforcement Management Model, ensuring that the fair enforcement of Health and Safety law is determined by the principles of *proportionality*, *consistency*, *targeting*, *transparency* and *accountability* as follows:

7.2.1 Proportionality

Enforcement action will be proportionate to any risks to health and safety and to the seriousness and extent of any breach, which includes consideration of any actual or potential harm arising from a breach of the law. Some duties are specific and absolute, whereas others require action 'so far as is reasonably practicable'. The principles of proportionality will be applied in relation to both kinds of duties.

7.2.2 Consistency

There are always many variables in the circumstances where enforcement action is considered. In order to achieve and maintain consistency decisions about enforcement action will be taken having due regard to the information in statutory Codes of Practice and Guidance. The Council will aim to take a similar approach in similar circumstances to achieve similar ends, by giving due regard to this policy for all health and safety enforcement matters. Any departure from this policy will be made in consultation with the Environmental Health Manager and the reasons will be documented and kept with the relevant file.

7.2.3 Targeting

Enforcement action will be prioritised and targeted to deal primarily with those activities which give rise to the most serious risks or where the risks are least well controlled, and focused on dutyholders who are best placed to control them.

7.2.4 Transparency

The Council will aim to ensure that duty holders understand what is expected of them and what they should expect from the Council. This also means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory. All Authorised Officers will issue a written

visit summary and, for initial visits, the HSE leaflet '*What to expect when a health and safety inspector calls*' to those duty holders they visit.

The procedures will adhere to the following principles:

- Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any work is necessary and over what time-scale and making sure that legal requirements are clearly distinguished from best practice advice or recommendations.
- 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 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, if not in the form of a notice, 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).

7.2.5 Accountability

The Council is accountable to the public and businesses for their actions. The activities and actions of their officers are subject to procedures which are available on request. The contact details of the officer dealing with a particular issue will be included in any correspondence. Where appropriate, details of rights of appeal to an Employment Tribunal will be provided in writing to the duty holder. If you are dissatisfied, Hambleton District Council operates a Complaints Procedure for dealing with any complaints about services. Customers can make a complaint about services, including the Health and Safety service in several ways. This could be by contacting Councillors or Council staff via the Council's website or by contacting Council's service points by phone, by post or by email. The procedures are available at Council offices too and will be provided on request to all parties.

8.0 Enforcement options

8.1 The choices for action are as follows:

- take no action
- take informal action
- use statutory notices
- seize, render harmless or sample any article or substance
- use formal cautions
- prosecute

The circumstances under which the various enforcement actions may be taken are described in the following sections of the policy. Written details of the reasons for the choice of action will be kept on the appropriate premises file.

8.2 Informal Action

8.2.1 Informal action includes giving advice and guidance, verbal and/or written warnings or requests for action and the use of letters.

8.2.2 Informal action will be considered where: -

- Circumstances do not warrant formal action
- Confidence in the operator of the business is high
- It is expected that informal action will achieve compliance.

When verbal advice is given it will, if requested, be confirmed in writing.

8.3 Statutory Notices - Improvements

8.3.1 Service of an Improvement Notice will be considered when: -

- In the opinion of the inspector an offence has been committed
- Standards are generally poor with little management awareness of statutory requirements.
- There is significant contravention of statutory provisions but prosecution or prohibition is not appropriate.
- Circumstances show it is likely that contraventions will continue or be repeated.
- There is little confidence that the duty holder will respond to an informal approach.
- The consequences of non-compliance could pose a serious risk to health or safety.
- Effective action needs to be taken to remedy conditions that are serious or deteriorating, even though it is intended to prosecute

8.3.2 Improvement Notices will only be issued by suitably qualified and competent officers who are authorised to do so.

8.3.3 In serving Improvement Notices relevant HSE and HELA guidance will be followed. Realistic time limits will be applied and alternative ways of complying with the notice will be considered.

8.3.4 Information on the rights of appeal against Improvement Notices will be included with the notice.

8.3.5 The originating officer will consider all written requests to extend the time limits of the notice which are received within the existing time limits.

8.3.6 Compliance with the notice will be checked as soon as practicable after the expiry of the notice, and in any case within 5 days.

8.3.7 Failures to comply with a notice within the specified time limit will, except where extenuating circumstances apply, result in prosecution.

8.3.8 Information on Improvement Notices will, where appropriate, be made publicly available.

8.4 Statutory Notices - Prohibition

8.4.1 Prohibition will be considered where the Authorised Officer is of the opinion that activities pose a risk of serious personal injury and the consequences of not taking immediate and decisive action to protect persons' health or safety would be unacceptable.

8.4.2 Prohibition will be considered where there is no confidence in the integrity of an unprompted offer to voluntarily close premises or cease the use of any equipment or process.

8.4.3 Officers authorised to issue Prohibition Notices will be suitably qualified, competent, and be authorised to do so and also will have experience in a variety of health and safety enforcement situations.

8.4.4 In serving Prohibition Notices relevant HSE and HELA guidance will be followed.

8.4.5 Before issuing Prohibition Notices authorised officers will, where it is reasonably practicable to do so, consult with the Lead Officer (Commercial) or the Environmental Health Manager.

8.4.6 Information on the rights of appeal against a Prohibition Notice will be included with the notice.

8.4.7 The originating officer will consider all written requests to withdraw the notice or to extend the period specified in the notice which are received within this specified period. This will be carried out in consultation with the Environmental Health Manager.

8.4.8 Monitoring of the compliance with the notice will be take place in a timely fashion and in accordance with the period specified in the notice.

8.4.9 Failures to comply with a notice within the terms of the notice will, except where extenuating circumstances apply, result in prosecution.

8.4.10 Information on Prohibition Notices, where appropriate, will be made publicly available.

8.5 Seizure

8.5.1 The powers to seize, render harmless, and, where appropriate, sample any article or substance will be considered if the officer has reasonable cause to believe that such an article or substance is the cause of imminent danger of serious personal injury.

8.5.2 As soon as may be after any article or substance has been seized and rendered harmless, the officer will give a copy of a report which gives the particulars of the circumstances to the responsible person at premises where the article or substance was found, or to the owner as appropriate.

8.5.3 The powers to seize, render harmless, or sample any article or substance will only be used by suitably qualified and competent officers who are authorised to do so.

8.6 Prosecution

8.6.1 The Council must use discretion in deciding to bring a prosecution. Any decision to prosecute should be kept under continuous review. Where the circumstances warrant it and the evidence to support a case is available, the Council may prosecute without prior warning or recourse to alternative sanctions.

8.6.2 Prosecution will be considered where there has been a serious breach of health and safety legislation. Other enforcement actions may have taken place prior to consideration for prosecution.

8.6.3 The decision to refer matters to the Council Solicitor for prosecution will be taken by the Environmental Health Manager and the Director of Leisure and Health Services who will consider all relevant evidence and information.

8.6.4 Where decisions are taken about whether to prosecute the due regard will be given to the Enforcement Management Model, the evidence, the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors and the relevant Home Office Guidance. The factors which will be considered may include the following:-

- the seriousness of the alleged offence
- the previous history of the party concerned
- the ability of any important witnesses and their willingness to co-operate
- the willingness of the alleged offender to prevent a recurrence
- the probable public benefit of prosecution and the importance of the case
- whether other enforcement action would be more appropriate
- any explanation offered by the alleged offender

8.6.5 The Council will have regard to the current Section 18 HSE Guidance to Local Authorities in that the circumstances where prosecution of offenders would be recommended include:-

- death was the result of an offence
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it
- flagrant or reckless disregard of health and safety requirements such that persons health, safety or well being is put at risk
- work has been carried out without or in serious non compliance with an appropriate licence or safety case
- A dutyholder's standard of managing health and safety is found to be far below what is required by health and safety law and giving rise to significant risk
- where there has been a failure to comply with an enforcement notice or there has been repetition of a breach that was subject to a formal caution
- where there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance
- officers have been wilfully supplied with false information or intentionally obstructed in the lawful course of their duties

In the public interest prosecution will also be considered where: -

- a conviction may deter others from failures to comply with the law.
- a breach which gives rise to a significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

8.7 Simple Caution

A Simple Caution is an option which officers may consider using Home Office Circular 016/2008. Simple Cautions are an alternative to a prosecution that may be considered where circumstances described in section 7.14 – 7.21 of the Environmental Health Enforcement Strategy and Policy exist.

9.0 Independent Regulatory Challenge Panel

9.1 An Independent Regulatory Challenge Panel has been established. This body can look into complaints regarding advice given by LA Inspectors about health & safety which a person may think is incorrect or goes beyond what is required to control the risk adequately. An effort must first be made by that person to resolve the matter with the relevant Inspector and their manager. The Panel can be contacted at www.hse.gov.uk/contact/contactchallengepanel.htm where the process can be found.