

# **Gateshead Council Health & Safety at Work Enforcement Policy**

## **PART 1 - GENERAL POLICY**

### **PURPOSE**

The purpose of this document is to state the Council's general policy with respect to health and safety law enforcement.

### **THE GENERAL POLICY**

The Council is committed to ensuring the health and safety of people at work and others in the workplace, through the inspection of premises, the investigation of complaints and accidents, the provision of health and safety training courses, and the enforcement of relevant health and safety legislation.

The primary responsibility for ensuring health and safety in a workplace lies with employers, and the Council will use a variety of means to ensure that employers and others meet their responsibilities, including education, advice, guidance or formal action.

The level of enforcement will be proportionate to the risks to Health and Safety. The requirements of the law take into account the compliance costs for business.

The Council is committed to giving the best standard of service and advice to employers and employees alike, in accordance with the Citizens Charter and DTI Code "Working with Business – A Code for Enforcement Agencies".

The Council will strive to achieve consistency of enforcement in health and safety at work between its own Inspectors, other local authorities and with the Health and Safety Executive (HSE), and, to this end, it supports the Lead Authority Principle, and the use of Local Authority Circulars (LACs).

Relevant training will be given to the Council's appointed Health and Safety Inspectors as and when necessary to ensure that Inspectors are up to date with legislation and techniques.

This policy will be regularly reviewed and revised as and when appropriate.

Gateshead Council employees involved in the enforcement of health and safety must be fair, independent and objective. They must not let any personal views about issues such as ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the of the suspect, victim, witness or offender influence their decisions. They must not be affected by improper or undue pressure from any source.

Each case is unique and must be considered on its own merits. There are however general principles that apply in the way each case must be approached. These are laid out in this policy and in the Enforcement Concordat to which the Council has signed up.

This policy fully takes into account the guidance set out in the Code for Crown Prosecutors.

All officers apply the principles of the Enforcement Management Model (EMM) in all regulatory actions. The EMM is a standard reference document produced by HSE which provides a framework for making enforcement decisions that meet the principles in the Health and Safety Commission's Enforcement Policy Statement.

The service will comply with the requirements of the Human Rights Act 1998 and in particular we will not act in such a way as to infringe right under Article 6 or Article 8 without proper justification. We will also comply with the requirements of the Regulation of Investigatory Procedures Act 2000.

The service works closely with enforcement and other agencies, including the Health and Safety Executive, Health and Safety Commission, Lacors, Police, the Fire Brigade and Lead Authorities.

This policy can be found on the Council's website [www.Gateshead.Gov.Uk](http://www.Gateshead.Gov.Uk) and is available in hardcopy from the Health & Safety Team, Regulatory Services, Gateshead Council, Regent Street, Gateshead, NE8 1HH (telephone number: 0191 433 3000).

## **PART 2 - ENFORCEMENT POLICY**

### **PURPOSE**

The purpose of this part of the document is to state the Council's policy with regard to:

- Identification of appointed Health and Safety Inspectors
- Approach to enforcement

### **APPOINTMENTS**

Responsibilities for health and safety law enforcement are laid upon local authorities by the Health and Safety at Work etc. Act 1974 and the Food and Environment Protection Act 1985. The types of premises and activities where local authorities or HSE enforce are determined by the Health and Safety (Enforcing Authority) Regulations 1998. For local authorities, these premises are principally shops, warehouses, offices, hotels, places used for leisure and consumer services and places of worship.

Appointment of Inspectors is in accordance with Section 19 of the Health and Safety at Work etc. Act 1974 and Section 19 (1c) of the Food and Environment Protection Act 1985 as amended by the Pesticides (Fees and Enforcement) Act 1989, and it is this Council's policy to appoint qualified Environmental Health Officers and specialist technical support staff as Health and Safety Inspectors.

### **APPROACH TO ENFORCEMENT**

This Council sees the education, advice and training of people with responsibilities for health and safety in the workplace as being as important as inspection and enforcement. To this end, it has and will, continue to adopt initiatives to ensure a better-informed business community and thus reduce the need to rely solely on the regulatory framework for compliance with health and safety responsibilities.

The Council is committed to moving inspection of premises towards a risk-based approach, rather than hazard spotting. The likelihood of hazards to cause harm in the workplace will be assessed and the efforts of Inspectors concentrated on securing control measures in areas of most risk.

The Council has adopted a computer based priority inspection rating system as outlined in LAC 67/1 (Rev 1) in order to ensure that lower risk premises are inspected less frequently allowing inspection resources to be concentrated on higher risk activities. The inspection rating is a numerical value based on an Inspector's judgement of the extent of hazards, management attitude and standards found, and is used to plan when the next preventative inspection is carried out. The target is to inspect all premises within the Authority's area at least once in every five years.

The Council is committed to a policy of risk reduction, rather than enforcement for its own sake.

Dialogue between line managers and enforcement staff is encouraged by this Council to contribute to its policy of consistency in enforcement.

Officers will be guided in their choice of enforcement action by LAC 22/1 – "Choice of Appropriate Enforcement Procedure".

### **PART 3 - IMPROVEMENT NOTICES**

#### **PURPOSE**

This part of the policy details the criteria on which a decision to serve an Improvement Notice should be based, and the content and method of service of Improvement Notices.

#### **CRITERIA FOR SERVING IMPROVEMENT NOTICES**

It is the policy of the Council to serve Improvement Notices on persons with health and safety responsibilities in the following circumstances:

- A serious contravention of the health and safety legislation exists and
- The Inspector considers that the contravention should be remedied within a specific time
- Where persons with health and safety responsibilities seem unwilling to comply with the legislation to the extent that formal action will be ineffective

## **METHOD OF SERVICE OF IMPROVEMENT NOTICES**

The mechanism for serving of Improvement Notices is dictated by section 46 of the Health and Safety at Work etc. Act 1974 and in Section 21 of the Food and Environment Protection Act 1985.

It is the policy of the Council to allow a minimum period of 21 days for compliance with the Notice, and for the time period for compliance to be discussed with the person with the responsibility for compliance or their representative.

Unless the requirements of the Notice are self-explanatory, Inspectors will state in the Schedule to the Notice the action they consider necessary to remedy the contravention, and, in doing so, may refer to published guidance e.g. a British Standard or an Approved Code of Practice.

An Inspector may extend the time period for compliance by means of a further Notice in appropriate circumstances subsequent to such a request by the person upon whom the Notice was served. The extended time period for compliance will be agreed with that person.

Notices will be checked by the Senior Officer for validation of the legal and technical content, and to ensure consistency.

Notices will be served by Special Delivery or by hand, where appropriate.

Non-compliance with an Improvement Notice within the specified time period will result in prosecution of the person(s) upon whom the Notice was served. Any decision to prosecute is made in consultation with the Council's Legal and Corporate Services.

## **PART 4 - PROHIBITION NOTICES**

### **PURPOSE**

This part of the policy details the criteria on which a decision to serve a Prohibition Notice is based, and the content and method of service of the Prohibition Notice.

### **CRITERIA FOR SERVING PROHIBITION NOTICES**

It is the policy of the Council that a Prohibition Notice will be served whenever an Inspector identifies an activity that involves, or will involve, a risk of serious personal injury.

### **METHOD OF SERVICE**

The legislative procedure for serving of a Prohibition Notice is dictated by Section 46 of the Health and Safety at Work etc. Act 1974 and in Section 22 of the Food and Environment Protection Act 1985.

If an Inspector considers that the risk of injury is imminent, the Notice will take effect immediately.

If this is not the case, the Prohibition Notice will be deferred and a time period for compliance specified in the Notice.

Notices may be served “on the spot” by the Inspector for Immediate Prohibition Notices where the aim is to stop the work at once. Otherwise, notices will be served by Special Delivery or by hand, where appropriate.

Inspectors will state in the Schedule to the Notice the actions they consider necessary to eliminate the risk of serious personal injury, unless the content of the Notice makes this self-explanatory.

Notices will be checked by the Senior Officer for validation of the legal and technical content and to ensure consistency.

The requirements of the Notice will be brought to the attention of the employees.

Non-compliance of a Prohibition Notice will result in prosecution of offenders. Any decision to prosecute is made in consultation with the Council’s Legal and Corporate Services.

## **PART 5 - DETERMINATION OF PROSECUTION FOR HEALTH AND SAFETY AT WORK LEGISLATION OFFENCES**

### **PURPOSE**

This part of the policy details the criteria on which a decision to prosecute should be based.

### **THE POLICY**

The Council always has the discretion whether or not to prosecute an offence and the decision will be based on the circumstances of each case. The criteria to prosecute must in general relate to risk.

### **CRITERIA TO PROSECUTE**

Prosecutions will normally be reserved for one or more of the following circumstances:

- More serious offences which lead to, or could have led to, injury or ill health
- Offences which represent a disregard of responsibilities under the Health and Safety at Work etc. Act 1974, the Food and Environment Protection Act 1985 or relevant statutory provisions.
- Offences which are not new and have been brought to the attention of the employer in the past
- Offences involving non-compliance with Statutory Notices.

Before proceeding with a prosecution an Officer must consider the following:

- The gravity of the offence
- Whether there is sufficient relevant evidence which is admissible, substantial and reliable
- Past history and attitude of the offender
- Whether there is a realistic prospect of conviction (in this respect the Authority is guided by the Code for Crown Prosecutors published by the Crown Prosecution Service)
- Whether it is in the public's interest, including the need to secure immediate action
- Whether the punishment of the offender is likely to deter others from similar failures to comply with the law
- Whether a Formal Caution or Notice might be more appropriate.

Investigation and decision-making should not be unduly prolonged or delayed, and the witnesses, complainants and any others should be kept informed as to the progress of the case.

Prosecution files will be examined by the Senior Officer to ensure that their contents meet the requirements outlined in this part of this policy.

Prosecution files will be examined by the Environmental Health and Trading Standards Manager to ensure that the proposed action meets with the principles of the Enforcement Concordat.

## **PART 6 - SIMPLE CAUTIONS**

### **PURPOSE**

The purpose of this part of the document is to state the Council's policy with respect to:

- Identification of circumstances which make appropriate the use of a simple Caution
- Confirmation that the use of Simple Cautions will be in accordance with the Home Office Circular 30/2005 and the guidance given By LACORS.
- Identification of the "Cautioning Officer" by designation
- Course of action to be taken when a person declines the offer of a Simple Caution
- Other bodies or Authorities to be notified, if appropriate.

### **THE AIM OF CAUTIONING**

The aim of a Simple Caution is to:

- Deal quickly and simply with less serious offenders
- Divert them from unnecessary appearance in the Criminal Courts
- Reduce the chances of their re-offending.

## **THE POLICY**

It is the policy of the Council that:

- A person will only receive a simple Caution when the circumstances of the offence meet the criteria identified in the Home Office Circular 30/2005
- The Simple Caution will only be administered by the “Cautioning Officer”. The Cautioning Officer is the Head of Regulatory Services.
- The Simple Caution may be administered in person by the “Cautioning Officer”.
- The offender will be advised in writing of the proposal to issue a simple Caution
- The Simple Caution will also be in writing and in accordance with the Home Office Circular 30/2005. Two copies will be signed by the person receiving the Caution, and subsequently, by the person administering the Caution. One of the copies will then be issued to the person receiving the Caution
- Where the offender refuses to accept a Simple Caution or fails to return the signed copies within 14 days, consideration will be given to the institution of legal proceedings.

## **RECORDING OFFENCES**

The circumstances of the offence will be recorded in the appropriate premises file and in a Caution file.

In accordance with Home Office guidelines, the Caution may be considered spent after a period of five years from the date of issue.

A copy of this policy is available on request from the Environmental Health and Trading Standards Team, Regulatory Services, Gateshead Council, Civic Centre, Regent Street, Gateshead, Tyne and Wear, NE8 1HH (telephone number 0191 4333000), or via the Council website [www.gateshead.gov.uk](http://www.gateshead.gov.uk)