

RENFREWSHIRE COUNCIL

HEALTH AND SAFETY ENFORCEMENT POLICY

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1. Purpose

- 1.1 This policy outlines the approach of Renfrewshire Council to the enforcement of health and safety legislation within its area. It is a statement of the general principles which will be followed when health and safety enforcement activities are carried out. It is designed for enforcement staff and to inform businesses and members of the public. It takes account of the Health and Safety Commission Enforcement Policy Statement, health and safety legislation and relevant guidance, including the Enforcement Management Model and the Enforcement Handbook Scotland, both from the Health and Safety Executive.
- 1.2. Renfrewshire Council is an enforcing authority in terms of Section 18 of the Health and Safety at Work etc. Act 1974 with responsibility for making adequate arrangements to enforce health and safety legislation in certain types of premises within its area, depending on their main activity. These include offices, shops, warehouses, and leisure, hotel and catering premises, referred to here as relevant workplaces. Under the direction of the Director of Environmental Services, and through the Head of Regulatory Services, operational responsibility for health and safety enforcement lies with the Consumer Protection Manager.
- 1.3 As an enforcing authority, Renfrewshire Council aims to protect the health, safety and welfare of people at work, and safeguard other people, particularly the public, who may be exposed to risks from the way work is carried out in relevant workplaces. We will secure compliance with the law by using our enforcement powers appropriately, and ensure that those who have duties under it (duty holders) may be held to account for any health, safety or welfare failures.
- 1.4 We will do this through a programme of risk based inspections of relevant workplaces for health and safety standards; investigation of notifiable accidents and incidents and investigation of any complaints about health, safety or welfare at work. We will also undertake health and safety surveys and campaigns. For low risk premises, we will take alternative approaches to enforcement, including the issue of general safety information and advice leaflets and we may inspect a limited number to verify compliance.

2. Guiding Principles

- 2.1 Our enforcement will be guided by the principles of **proportionality** in applying the law and securing compliance; **consistency** of approach, **targeting** of enforcement action and **transparency** about how we operate and what you can expect from us. We will endeavour to be **helpful** in order to advise on, and assist businesses with compliance.
- 2.2 **Proportionality:** We will relate any enforcement action to the risks to public safety and the seriousness of any breach of legislation. As far as the law allows we will take account all of the circumstances surrounding the case when considering action.
- 2.3 **Consistency:** This does not mean uniformity. We will however strive to take a similar approach in similar circumstances to achieve similar ends. We have in place arrangements to promote consistency through membership of the West of Scotland Health and Safety Liaison Group and access to the Health and Safety Co-ordinating Group (HASCOG).
- 2.4 **Targeting:** We will make sure that inspections and other enforcement activity is targeted primarily on those whose activities give rise to the most serious risks or

where the hazards are least well controlled. Action will be focussed on the duty holders who are responsible for the risk and who are best placed to control it.

2.5 Transparency: This means that we will assist duty holders and others to understand what is expected of them and what they should expect from our officers. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

2.6 Helpfulness: We believe that prevention is better than cure, and within the constraints of enforcement we will endeavour to actively work with duty holders to ensure compliance.

3. What an Inspector can do?

3.1 A visit to a workplace by an authorised inspector is normally routine and is carried out in connection with:

a programmed health and safety inspection (based on a risk scored inspection frequency);
investigating a notifiable accident;
investigating a notifiable incident (eg a boiler explosion or similar);
investigating a complaint;
advising on a health, safety or welfare issue;
carrying out safety surveys; and,
a re-visit in connection with any of the above. (to check and monitor compliance or progress, and on request by a business or individual)

The inspector may be alone or accompanied by another officer. Again this may be routine, although where formal action is being contemplated it is normally corroborated by a witness. Advance notice that a visit is to take place is not normally given. Inspectors may also be accompanied by other people to assist them where specialist knowledge is required, such as electrical engineers. The specialists will always hold either a temporary or permanent authorisation under the Health and Safety at Work Act.

3.2 Authorised inspectors have various powers of entry, inspection, prohibition, including detention and seizure of articles or substances. All inspectors follow the Departments documented procedures which are currently being developed. These take account of the relevant statutory guidance and ensure that officers are suitably authorised to carry out health and safety enforcement duties in terms of their qualifications, ongoing training and necessary practical experience.

In general an authorised inspector can:

Enter any premises at any reasonable time (at **any** time if in his opinion a situation is or may be dangerous);
Take a police constable with him if he is likely to be seriously obstructed in his duties;
Take with him any other duly authorised person and any necessary equipment or materials;
Make any examination and investigation and require any person with relevant information to answer his questions and thereafter sign a declaration of truth (not admissible in evidence against that person or spouse);
Direct that premises or any part of them be left undisturbed;
Take measurements, photographs and recordings;
Take samples of any articles or substances in the premises (including the atmosphere in the premises or in the vicinity);
Require that contraventions are remedied;

Where there is a risk of serious personal injury, prohibit a work activity. (with immediate effect if the risk is, or will be, imminent);
Dismantle or subject to any process or test any article or substance (which caused or is likely to cause a danger to health and safety) and seize and detain it for so long as is necessary (subject to conditions);
Where the article or substance is a cause of imminent danger of personal injury, seize it and render it harmless by destruction or otherwise;
Require the production of, and inspect and take copies of, any books or documents or entries in them (subject to conditions including legal privilege);
Require any person to afford him such facilities and assistance within that person's control or responsibility as are necessary; and
Exercise any other power which is necessary.

There is also a range of enforcement action which can be taken following any visit and this is outlined in section 4.

3.3 When dealing with businesses we expect our health and safety inspectors to;

Be courteous;
Explain the purpose for their visit and where they are from;
Show appropriate identification when requested. (All health and safety inspectors carry a countersigned warrant card with a photograph, embossed and countersigned);
Wear appropriate protective clothing;
Indicate the level of compliance with legislation;
Offer advice if requested;
Explain clearly what needs to be done and why, and by when;
When writing to you, clearly distinguish legal requirements from best practice advice and guidance;
Agree a reasonable time period to take remedial action;
Provide an opportunity to discuss the issues before formal action is taken;
Explain fully why any particular action is being taken, and any rights of appeal (whenever possible this advice will be issued with enforcement notices);
Confirm any action in writing;
Issue a copy of the leaflet "What to expect when an inspector calls";
Undertake not to disclose any relevant information (subject to exemptions laid down in the Health and Safety at Work Act).

4. Enforcement Action

4.1 We will take a graduated approach to enforcement, aiming to encourage the adoption of a preventative approach to health and safety, and proceed from an initial informal educative approach wherever possible. The aim is to ensure that duty holders manage and control risks effectively; take immediate action to deal with serious risks, and promote and achieve sustained compliance with the law. The decision on taking informal or formal action depends on the circumstances. Formal Action is normally only contemplated where there are clear and significant breaches of legislative requirements or where there has been no response to the informal/educative approach. Formal action will be taken in compliance with relevant guidance, this policy and the Department's documented enforcement procedures. The principles contained in the Enforcement Management Model will also be taken into account. Action will always be proportionate to the perceived risk. We will monitor the standards and effectiveness of all enforcement actions.

4.2 Following an enforcement visit, there are a number of options available to the health and safety inspector. This ranges from:-

- ◆ giving informal advice verbally or in writing;

- ◆ leaving a hand written proforma after an inspection containing advice or detailing minor contraventions;
- ◆ issuing a letter outlining formal advice and detailing specific contraventions of relevant legislation;
- ◆ issuing a warning letter detailing contraventions;
- ◆ issuing a formal Improvement Notice;
- ◆ issuing a formal Prohibition Notice;
- ◆ initiating other formal procedures such as taking possession of any article or substance or seizing it and making it safe and, ultimately submitting a report to the Procurator Fiscal for him to decide on a prosecution.

4.3 The law requires employers to have in place arrangements for consulting with employees or their representatives, and a health and safety inspector will normally meet or speak with them during an inspection, and this can be done in private. Inspectors will provide them with information affecting their health safety and welfare at work, including any serious concerns he may have or enforcement action he is taking. Normally any correspondence will be copied to employees, including copies of enforcement notices where they affect their work.

4.4 A health and safety inspector may serve an **Improvement Notice** where a breach of the law is more serious and it either needs to be addressed quickly, or it has already been notified to the duty holder and has not been acted upon. The Inspector will discuss the Improvement Notice before serving it. The notice will say what needs to be done, by when and why. The time period for action to be taken to resolve the contravention will be at least 21 days, and there is a right of appeal to an Employment Tribunal. Details of how to appeal will be included with the notice. Further legal action can be taken if the notice is not complied with within the time period specified. The bringing of an appeal has the effect of suspending the operation of the Notice until the issue has been dealt with.

4.5 Where an activity involves, or will involve, a risk of serious personal injury, a health and safety inspector may serve a **Prohibition Notice** prohibiting the activity, either immediately or after a specified time period, and not allow it to be resumed until the risk has been dealt with. The inspector will endeavour to contact the employer, or person having control of the undertaking, prior to the service of the notice, in order to explain why the notice is being served, and give advice on compliance. However, if such action will result in continuing serious risk, the notice will be served without delay. The notice will explain why the action is necessary, and details of how to appeal to an Industrial Tribunal will be included with it. In the case of a Prohibition Notice the operation of the notice can only be suspended if the Tribunal so directs.

4.6 Where a **report to the Procurator Fiscal** is being considered, officers may issue a standard formal caution prior to interview, in order to protect the rights of any potentially accused person. This takes the following form:-

‘ You are not obliged to say anything. Anything you do say will be taken down in writing and may be used in evidence in a Court of Law.’

It must be stressed that the use of the caution does not mean that a report will be made to the Fiscal, only that it may be considered. Reports to the Procurator Fiscal recommending prosecution are subject to approval by the Manager and Director of Environmental Services or Head of Regulatory Services. One or more of the following circumstances will normally apply, before a report is submitted. Where:-

- ◆ death was a result of a breach of legislation;
- ◆ the gravity of the alleged offence, together with the seriousness of any actual/potential harm or the general record and approach of the offender warrants it;

- ◆ there has been reckless disregard of health and safety requirements;
- ◆ there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- ◆ a significant risk has arisen from a duty holder's standard of managing health and safety being far below what is required by law;
- ◆ there has been a failure to comply with an improvement or prohibition notice;
- ◆ a breach giving rise to significant risk has continued despite relevant warnings from employees, their representatives, or from others affected by a work activity;
- ◆ it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law;
- ◆ false information has been wilfully supplied or there has been an intent to deceive in relation to a matter which gives rise to significant risk;
- ◆ inspectors have been intentionally obstructed in the lawful course of their duties.

Once a report is submitted, it is the Procurator Fiscal who decides whether the case goes to Court or is dealt with by other means (eg formal warning etc).

4.7 Health and Safety Inspectors must inform the appropriate Team Leader or Manager of their involvement in any formal enforcement action as soon as is practicable. Where there is a risk to the public in delaying any decision and immediate action is necessary on site, inspectors should try to contact their appropriate Team Leader or Manager, and are expected to use reasonable judgement in the absence of any approval. Reports to the Procurator Fiscal are always subject to final approval by the Director of Environmental Services or Head of Regulatory Services.

4.8 When taking formal enforcement action Health and Safety Inspectors must contact, and if necessary, liaise with the relevant Lead Authority, if the company are part of the Lead Authority Partnership Scheme or the Account Manager if the company are part of the Large Organisations Partnership Pilot. This also applies when significant shortcomings have been found which could have national significance or following any on site investigation of any notifiable death, major injury, case of work-related ill health or dangerous occurrence.

5. Review of Enforcement Action

5.1 Business proprietors can seek a review of any enforcement decision or action taken by our health and safety inspectors. Requests for a review should be made to the Team Leader or Manager, and need not be made in writing. If a written request is made it should be directed to The Director of Environmental Services, Environmental Services Department, HQ South Building, Cotton Street, Paisley PA1 1UG. An acknowledgement will be made within three working days followed by a response no later than 10 working days from the date of receipt. Any review will be carried out as quickly and simply as possible by the Team Leader, approved by the Manager (or Head of Service if not available), and the decision communicated directly. This will be confirmed in writing if requested.

6. Exemptions to the Policy

6.1 All authorised health and safety inspectors when making enforcement decisions should abide by this policy. It is recognised that there may be occasions when the policy/procedure as detailed may not be strictly followed. Departures from this policy and current enforcement procedures must however be exceptional, and only made when there is sufficient justification for an exemption. The exemption must be fully considered by the Team Leader or Manager, before the decision is taken, unless it is considered that there is a risk to the public in delaying the decision. Any such

exemption must be recorded in the premises file and relevant register, and where appropriate, recorded on Flare.

7. Complaints Procedure

7.1 The Environmental Services Department has a complaints procedure which records complaints and evaluates the services we provide in line with the guidance issued in the Council's Corporate Complaints Procedure. This normally requires that any formal written complaint is acknowledged within three working days and following a full investigation a detailed reply is sent out within a further 10 working days from the date of receipt. This procedure applies to written complaints about :-

- ◆ The service provided by the Department;
- ◆ Individual Officers;
- ◆ Council Policy.

Details about how complaints are dealt with and a submission form are contained in the Renfrewshire Council 'Help us to Help you' Customer Complaints form. Where a relevant complaint is made to officers or direct to the Department, a complaints form will be offered unless the complaint is already detailed in writing to the Council. The complaint form should be sent to the Customer Services Manager, Environmental Services Department, HQ South Building, Cotton Street, Paisley PA1 1UG.

8. Revisions of this Enforcement Policy

8.1 The enforcement policy will be reviewed from time to time.

In carrying out any such review we will take into account:

- ◆ statutory requirements
- ◆ changes in Government policy
- ◆ changes in departmental structure
- ◆ feedback from traders and consumers
- ◆ views of enforcement staff

8.2 Feedback from traders and members of the public will be gathered in several ways, including monitoring information gathered from the complaints procedure and from any requests to review enforcement action. The Division will also consider the outcomes of any surveys of traders and the public which are carried out as part of the Council's Best Value Review process. If you have any comment which you wish to make in respect of this policy, please address it to The Director of Environmental Services, Environmental Services Department, HQ South Building, Cotton Street, Paisley PA1 1UG.

9. Publication

9.1 This document will be used for reference by all health and safety enforcement staff within this department, and is the framework for all health and safety enforcement activities. It will be made available to all business and to trade organisations known to be operating within Renfrewshire Council's area.

9.2 A summary leaflet detailing the main provisions of the Enforcement Policy will be made available to businesses and the public. A full copy will be available for inspection at the Environmental Services Department, HQ South Building, Cotton Street, Paisley PA1 1UG, and posted on the Renfrewshire Council Web site at renfrewshire.gov.uk.