



UTTLESFORD DISTRICT COUNCIL ENVIRONMENTAL HEALTH SERVICES

Enforcement Policy – Premises Licensing

Draft Version 1.0

Key information on this document

Purpose: This policy is a general statement of the approaches to be taken regarding specific enforcement activities concerning waste, littering and other environmental offences. It regards to Corporate Enforcement Policy & associated Service Standards.

Introduction

Uttlesford District Councils Environmental Health & Licensing Service is responsible for the enforcement of a wide range of law (or statutory provisions) which is centred mostly on securing public health and safety, the regulation of the trading environment and the protection of the environment.

This document has regards to UDC's Corporate Enforcement Policy and complies with the Principles of Good Enforcement as laid out within the Regulatory Reform Act 2006. This policy explains our approach to regulatory activity, how we expect to deal with businesses, societies, clubs, charities and individuals and what happens when we find infringements of the law. For enforcement to be fair it is important that we are open and clear about the basis on which we take action.

UDC is committed to protecting the public, particularly those who may be especially vulnerable, promoting safety and welfare and enhancing the quality of life of all residents, workers and visitors to the district.

Our licensing service covers the following areas of law:

- Licensing Act 2003
- Gambling Act 2005
- Street Trading
- Taxi Legislation (Enforcement under separate review)
- Scrap Metal licensing
- Tables and Chairs licensing
- Sex licensing

1. Service Standards

When we receive an enquiry we aim to respond within three working days to phone messages and five working days to emails. Letters and complex matters may take longer and we will aim to give a full reply or progress report within 10 working days.

2. Licensed Premises

Licensing Act 2003: The Licensing Authority is required to promote the following objectives in relation to premises and people licensed under the Act:

- preventing crime and disorder
- protecting public safety
- preventing nuisance
- protecting children from harm

The Licensing Authority recognises the interests of both residents and businesses and will work closely, with partner agencies, to assist licence holders to comply with the law and the four licensing objectives it seeks to promote. However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law.

The Licensing Authority will establish an enforcement protocol with Essex Police, HM Border Force, Essex County Fire and Rescue Service, Essex County Licensing Authority Trading

Standards, Environmental Health and the council's Enforcement Team on enforcement issues. This protocol will provide for the targeting of resources towards high-risk premises and activities that require greater attention, while providing a lighter touch in respect of low risk premises that are well operated. A draft of the protocol can be viewed on the Licensing Authority's website: www.uttlesford.gov.uk. Hard copies are available on request

3. Compliance and Enforcement Actions

The Environmental Health & Licensing Service will where possible adopt positive incentives. Action will be taken where appropriate but there will be discussion with the business first unless immediate action is warranted or delay would defeat the object of the enforcement action. Targeted inspection programmes mean that effort is focussed in the worst performing businesses and that those which remain broadly compliant already receive a lighter touch.

The Council will base any enforcement action on the principles that businesses should:

- Be clear about the issues that have made enforcement action necessary
- Receive clear explanations from Officers of what they need to do and by when;
- Have opportunities to resolve differences before enforcement action is taken - unless immediate action is needed;
- Receive an explanation of their rights of appeal

The decision to take enforcement action by authorised officers must be made on a case by case basis. Officers are faced with many variables when making decisions, such as the severity of the risk/hazard, the attitude and competence of management, the licensees/permit holders compliance history. Decisions on enforcement action are discretionary, involving careful judgment by the officer. To ensure consistency, a case review system is in place so enforcement action should rarely be taken without a decision being discussed, reviewed and documented.

The decision whether to prosecute is delegated to the Environmental Health Manager in consultation with Legal Services. Certain types of formal enforcement action, excluding prosecution, are delegated to the Enforcement Officer.

In accordance with UDCs Corporate Enforcement Policy all regulatory activities will be carried out in a way which is transparent, accountable, proportionate and consistent. Activities will, so far as possible, be targeted only at cases in which action is needed.

4. Supporting Business

Our regulatory activities are focussed upon public safety but also allowing and encouraging economic progress and supporting businesses, individuals and voluntary and community organisations to meet their legal obligations. As part of that we will:

- Keep our regulatory activities and interventions under review to reduce their burden on businesses, clubs and individuals, as much as possible
- Risk assess our regulatory activities so as to target our resources where they will have greatest effect
- Carry out inspections only where there is a reason for doing so, for example, as a response to intelligence or as part of our risk assessment process
- Provide advice when it is requested and to do so pro-actively where this is practicable

- Only require data and information when it is strictly necessary for us in carrying out our regulatory activities

When we find a breach of the law, in the majority of cases we deal with the matter by advice. However, there will always be more serious cases that can only be effectively dealt with in a more formal manner.

Dependent upon the provisions of the particular legislation, we are able to take a variety of actions as outlined in more detail within UDCs Corporate Enforcement Policy; namely

- verbal or written warnings
- indirect action, including referral to another organisation for action
- suspension or revocation of licences or permits
- simple cautions
- prosecution

5. Enforcement Decisions

The Council will expect relevant good practice to be followed. Enforcement decisions will be based on:

- the severity and scale of the actual or potential harm arising from an incident
- the seriousness of any potential breach of the law
- the age and vulnerability of those affected
- the effect of the legislative breach upon the potential persons affected
- the future consequences of failing to address the breach at the present time
- the track record of the licence holder or the business
- the enforcement priorities with both local and national authorities
- the practicality of achieving results
- Any statutory defence
- Any explanation offered & attitude of the alleged offender
- the wider relevance of the incident including serious public concern
- any concurrent or potential action by other services and agencies and the suitability and effect of our action as opposed to combined with theirs in addressing the issues.

The Environmental Health & Licensing Service will have due regard to the advice given in statutory Codes of Practice, strategic plans, statutory & professional guidelines when delivering its service

6. Transparency

Transparency means helping licence/permit holders and prospective licence/permit holders to understand what is expected of them and what they should expect from regulators. It also means making clear to licence/permit holders not only what they have to do but, where this is relevant, what they do not. Officers will always distinguish between statutory requirements and advice or guidance about what is desirable but not compulsory.

Where English is not the first language of those being investigated we may be able to provide translations of our documents or translation services. In some instances we share an enforcement role with other agencies, for example police and trading standards e.g. for

under-age sales of alcohol and in such situations we will share information on our activities with our partner organisations.

7. Risk Assessment

Legislation makes some duties specific and absolute, others require action so far as is reasonably practicable. Deciding what is reasonably practicable to control risks involves the exercise of Officer's judgment. In the final analysis, it is the Courts that determine what is reasonably practicable in a particular case. Where licensees/permit holders must control risks so far as reasonably practicable, the Council will, when considering protective measures taken by them, take account of the degree of risk on the one hand, and on the other the cost, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is a gross disproportion between these factors and that the risk is insignificant in relation to the cost, the licensee/permit holder must take measures and incur costs to reduce the risk.

The Environmental Health & Licensing Service has a system for prioritising inspections according to the risks posed by a licensee/permit holder's operations, which takes account of the hazards and the nature and extent of the risks that arise. We will ensure that our efforts are targeted on businesses where they are most needed and will apply a risk-based approach across all licensing functions.

8. Advice and Guidance

The Environmental Health & Licensing Service will help and encourage businesses to understand and meet regulatory requirements more easily but this does not relieve regulated entities of their responsibility to comply with their obligations under the law.

The Licensing Section is committed to providing general advice for businesses and individuals in an effort to bring about improved standards and places great emphasis on providing clear guidance, information and advice so as to encourage compliance with the legislation. The Council's web site is employed extensively to disseminate up to date information.

9. Inspections

It is neither possible nor necessary for the Council to investigate all issues of non-compliance with the law that are uncovered in the course of planned inspections or reported events.

The Environmental Health & Licensing Service will ensure that regulatory effort is focussed on those businesses where non-compliance is likely and impact is high.

Whenever an enforcement decision needs to be made fair regard shall be given to the normal hours of trading of any business under investigation. When necessary, inspections and investigations will be carried out in the early morning, in the evening and at weekends, in order to obtain fair and representative evidence pertaining to the alleged breach(s).

Prior notification of an impending enforcement inspection will not be made where such notification would defeat the purpose for which the inspection was being undertaken.

In conducting investigations the Council will take account of any likely complimentary or shared enforcement roles. We will also refer relevant information to other Regulators where there is a wider regulatory interest.

10. Accountability

The Council also provides an effective corporate complaints procedure. However, periodically, the Environmental Health & Licensing Service will provide consultation opportunities for businesses to provide feedback on business satisfaction matters.

11. Referral to another Agency

Where any matter is found to fall more appropriately under the enforcement regime of another regulatory body or agency, e.g. the Police Authority, the case will be referred to that agency by the Council. In all cases of referred enforcement the person(s) under investigation will be notified in writing by either letter or email by the Council of the reasons for referral.

The main enforcement and compliance role of the Licensing Authority in terms of the Act/s will be to ensure compliance with the Premises Licence and other permissions which it authorises. The Gambling Commission will be the enforcement body for Operating and Personal Licences. Concerns about the manufacturer, supply or repair of gaming machines will not be dealt with by the Licensing Authority but will be notified to the Gambling Commission.

12. Revisits to Premises

Following service of a Statutory Notice or a written informal warning and/or advice, officers will revisit the premises, etc to check that compliance has been achieved. For very minor contraventions officers may advise that a check will be carried out at the next routine inspection. The decision on whether a follow-up visit is necessary will be based upon the seriousness of the non-compliance and the likelihood that further formal action will be taken as a direct result of the visit. Where practicable, the officer who undertook the original visit or inspection will carry out the revisit if there are significant breaches of legislation.

13. Equal Opportunities

Full regard will be taken of the Council's Equality and Diversity policies when applying the Licensing Enforcement Policy.