

REGULATORY ENFORCEMENT POLICY

Our Role

We aim to ensure South Gloucestershire will always be 'a great place to live and work', by supporting our corporate objectives to ensure the continued success of South Gloucestershire.

Our role is to protect individuals, communities, businesses and the environment of our area. We do this through education, guidance and enforcement, helping to promote and improve, health and our quality of life. We act for and on behalf of victims against activities that causes harm and tackle rogue individuals / businesses that cause harm to our communities or economy.

We believe that carrying out these functions in a fair, consistent, independent and practical manner will help to promote a thriving local and national economy.

We are committed to these objectives in our approach to enforcement action, which is intended to:

- Support and protect victims from the risk of harm from others
- ensure that we enforce the law in a fair, equitable and consistent manner
- assist businesses and others in meeting legal obligations without unnecessary expense or time
- focus on prevention rather than cure
- take firm action against those who flout the law or act irresponsibly

Enforcement activities

Environmental Health enforcement activities include:

- air pollution control
- industrial pollution control
- noise control
- environmental nuisance
- drinking water quality
- contaminated land
- epidemiology and public health
- pest and vector control
- comment and input to strategic and operational planning and licensing issues
- smoke free enforcement
- occupational health and safety
- food hygiene, safety and standards
- housing standards
- empty homes
- home renovation and improvement
- licensing houses in multiple occupation
- envirocrime, including fly tipping

Trading Standards, Licensing, Anti-Social Behaviour and Community Safety enforcement activities include:

- licensing – e.g. premises providing regulated entertainment, selling alcohol, gambling premises, street traders, taxi / private hire driver and operators, scrap metal dealers and caravan sites
- fair trading
- product safety
- explosives (fireworks) and Petroleum licensing
- weights and measures
- animal Health, welfare and feed chain
- community safety issues such as Anti-social behaviour, domestic and sexual abuse and hate crime.

Principles of Enforcement

South Gloucestershire Council has formally adopted the central and local government Concordat on Good Enforcement. This means that we will be open, helpful and fair to ensure that any enforcement action is proportionate to the risks. We will also follow the principles of the Regulator's code and the Farm Regulators' Charter.

Our Approach

• Prevention

We believe that the first step in enforcement is to help prevent contravention of the law by raising awareness and promoting good practice. We provide written guidance on aspects of the law and are happy to discuss and explain requirements with our customers and members of the public.

• Inspections

Environmental Health, Trading Standards and Licensing will:

- arrange routine inspections
- carry out unannounced inspections
- act on information received, or make enquiries about a specific complaint
- Use intelligence and risk assessment to determine who to inspect and at what frequency
- Comply with appropriate codes of practice

• Inspection Frequency

We will attempt to concentrate on those sectors, businesses or individuals whose activities impact most on the safety, health or well-being of the community at large, on vulnerable groups or individual people.

Factors that are taken into account include:

- the nature and history of the business, property, or person
- procedures and controls a business or individual has in place
- national guidance determining inspection frequency
- renewal date of any licence or permit
- local knowledge

• Warrants

An application to a magistrate's court may be made for a warrant to enter a property. This may be necessary to gain entry to inspect, access records, access computers, disable equipment (for example an alarm), and to seize items. Entry may be made with the aid of the police.

• Seizure

Articles are removed which pose a risk to health or safety, or which cause repeated or serious nuisance, such as noise. Items which are counterfeit or breaching other Trading Standards legislation may also be seized as evidence.

• Work in Default

Work required in the interest of public health, safety or the environment, may be undertaken by the department. Costs are later recovered.

We prefer Informal Action

We will use our best efforts to resolve any issues where the law may have been broken without issuing formal notices, or referring the matter to the courts. This will be our first option when the circumstances indicate that a minor offence may have been committed and we are confident that appropriate corrective action will be taken.

During inspections and following investigations about specific complaints:

- minor technical breaches will be dealt with informally by the officer giving information, advice or guidance
- formal action including the issuing of fixed penalty notices, will be taken where it is an absolute offence, there is a threat to human health and the environment, the breach is serious, or the circumstances exceptional.

Wherever possible or requested, advice or guidance will be given in writing with a distinction made between legal requirement and best practice. An opportunity will be given to discuss the matter and any rights of appeal, complaint or further representation will be advised. This will not, however, be possible where immediate action is considered necessary.

We sometimes have to give legal notice

Some legislation that we enforce provides for the service of formal notices including fixed penalty notices, on individuals, businesses or other organisations requiring them to meet specific legal requirements. Where a formal notice is served which has a designated appeal procedure, the method of appealing against the notice and the time-scale for doing so will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right, and what the likely consequences are if the notice is not complied with. There is a charge associated with some notices, where this is the case it will be made clear prior to the service of the Notice.

The most common legal notices include:

Improvement Notice

Issued under both Food Safety Act and Health and Safety Act Work etc to remedy non-compliance. Issued under the Housing Act 2004 to eliminate or reduce the highest risk hazards in a home.

Prohibition Notice

Issued under the Health and Safety at Work etc. Act to prohibit an activity where there is a risk of serious personal injury. Issued under the Housing Act 2004 to prohibit the use of a property for residential use.

Abatement Notice

Issued under the Environmental Protection Act to remedy a statutory nuisance.

Community Protection Notice

Issued under the Anti-social Behaviour, Crime and Policing Act, this is used to tackle a wide range of issues that have a negative impact on the quality of life of the community.

Civil Penalty Notice

Where appropriate and in line with any adopted policies, Civil Penalty Notices may be considered as an alternative to prosecution for relevant Housing Act offences detailed in the Housing and Planning Act 2016.

The final resort is prosecution / application for Criminal Behaviour Orders

Where the circumstances warrant it, and the alternative actions mentioned previously in this policy are considered inappropriate, then prosecution may result. We will consider the following factors when deciding whether or not to prosecute:

- the failure to carry out action required in a notice within the time specified
- the recovery of outstanding fines resulting from a fixed penalty notice
- previous advice has been ignored
- flagrant/reckless disregard for the law or repeated breaches
- the seriousness of the offence
- the attitude of the offender towards the offence
- the offender's history of previous behaviour
- the deterrent effect of a prosecution, on the offender and others
- whether a Simple (previously Formal) Caution would be more appropriate

Where an offence has been admitted a simple caution rather than prosecution will be considered as a possible course of action.

Formal action (which could include a prosecution) will be considered if it is in the public interest to do so. Fly tippers are always prosecuted where there is sufficient evidence.

To ensure that fair and consistent decisions are made regarding prosecutions any decision to prosecute takes account of the Code for Crown Prosecutors by having regard to the weight of evidence and public interest.

If required or requested we will, during the investigation, give the offender the opportunity to be interviewed, with legal representation if they so wish, and will give due regard to any statutory defences, explanations or mitigation.

The Human Rights Act 1998 introduced an obligation on public authorities to act consistently with the Articles of the European Convention on Human Rights. These articles confer rights on an individual for example, it confers a right of respect for a person's home, other land and business assets. However, the Council's use of enforcement powers under the various Acts enforced by Environmental Health is a justified interference with these rights if it is in accordance with the law, in the public interest, and proportionate to the objective of remedying the breach of these Acts.

Repeat Offenders

For those that continue to offend, or repeatedly fail to comply with advice or legislative requirements, or cause a disproportionate drain on the council's regulatory resources a specific risk-based approach to enforcement may be adopted. This could result in an escalation of focussed enforcement activity to secure long term compliance and reduce the regulatory burden.

Primary and Home Authorities

A Local Authority may act as a Primary or Home Authority. These promote a consistent enforcement approach for other local authorities. Officers will liaise with other authorities when applicable, and checks will be made prior to service of Notice unless in emergency situations. This Authority is currently a Primary Authority.

A consistent approach

All our staff will:

- be courteous, open, fair and consistent in enforcing the law
- show their official identification or give a business card when they visit
- give their name when speaking on the telephone
- answer enquiries as promptly as they can
- tell you if they are going to write following a visit: sometimes staff need to consult colleagues or others, seek further advice, or conduct further investigations

We will be consistent in our approach by following the criteria and guidance set down in relevant legislation and codes of practice. We will ensure that before considering prosecution, the case will be subject to independent review by a Senior Manager and the Council's Solicitor. We will always be objective to ensure our decisions are based on facts and evidence.

Every effort is made to ensure consistent enforcement standards between local authorities although local circumstances may preclude an entirely uniform approach on all issues.

In some instances the services covered by this policy may have shared responsibilities with another enforcement agency. In these circumstances we will liaise with that other agency to ensure effective coordination, to avoid inconsistencies and to ensure that any proceedings instituted are for the most appropriate offences.