



EAST DEVON DISTRICT COUNCIL

LICENSING SERVICE

ENFORCEMENT POLICY

2008

Enforcement Policy

This Enforcement Policy explains the District Council's Licensing Service's 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.

How we focus our service

East Devon District Council 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.

The District Council's Licensing Service covers the following areas of law:

- Licensing Act 2003
- Gambling Act 2005
- Street Trading
- Taxi Legislation
- Charitable Street and House to House Collections

We always strive to use advice as the main method of ensuring that businesses and individuals comply with legal requirements. We will inspect premises associated with licensing activities and vehicles, give talks to consumers, clubs and business groups etc., and publish a range of leaflets.

When we receive an enquiry we aim to respond within 3 working days to phone messages and 5 working days to letters, e-mails etc. Complex matters may take longer and we will give a full reply or progress report within 15 working days.

We believe that prevention is better than cure.

How we structure our regulatory activities

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulators' Compliance Code.

In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

In planning and carrying out our activities we always have regard to the principles in the Regulators' Compliance Code. It should be noted that our officers may need to move outside the principles of the Code where individual operational circumstances necessitate them doing so.

Our regulatory activities are focussed upon 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 proactively where this is practicable
- Only require data and information when it is strictly necessary for us in carrying out our regulatory activities

What you can expect of our staff

You are entitled to expect our staff:

- To be courteous and helpful
- To identify themselves by name and produce identification if requested
- To provide a contact point for any further dealings
- To give clear and simple advice
- To confirm advice in writing on request, explaining why action is required and over what time-scale
- To clearly distinguish between what you must do to comply with the law and what is recommended as best practice
- To minimise the cost of compliance by requiring proportionate action
- To give you reasonable time to comply (unless immediate action is necessary in the interest of safety or to prevent evidence being lost)
- To notify you if the matter is to be reported for legal proceedings
- In cases of dispute to advise you of the procedure for making a complaint or representations
- To maintain confidentiality except where we have a legal obligation to disclose information.

Action we take if the law is contravened

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.

Dependant upon the provisions of the particular legislation, we are able to take a variety of actions, including:

- Verbal or written warnings
- Fixed Penalty Notices
- Indirect action, including referral to another authority for action
- Suspension or revocation of licences

- Simple Cautions
- Injunction
- Prosecution

Where immediate enforcement action is necessary an explanation will be given at the time and confirmed in writing, usually within 5 working days and always within 10 working days.

Before any enforcement action is taken there will usually be the opportunity for the alleged offender to discuss the case. However, when we are considering a prosecution this will be at a formal interview.

Where the circumstances would normally justify prosecution but there has been a clear admission of the offence we will consider offering the offender an option of signing a Simple Caution. This is an alternative to prosecution which can be referred to in court should the business re-offend.

We will always observe the strict legal Codes on the way investigations are to be conducted and legal action taken.

Some of the above actions provide for appeal and review processes before or following their imposition. When this is the case those affected will receive full written details of their rights.

Where English is not the first language of those being investigated we may be able to provide translations of our documents.

In some instances we share an enforcement role with other agencies, for example police and Trading Standards for under-age sales of alcohol etc. and in such situations we will share information on our activities with our partner organisations.

Taking Legal Action

To ensure any action we take is proportionate and targeted only at cases in which action is needed, a number of factors will be taken into consideration, including: -

- The seriousness of any alleged offence
- The value involved
- The age and vulnerability of those affected
- The previous history of those involved
- Any statutory defence available
- Action taken to prevent any recurrence
- Any explanation offered and, as far as the law allows, the circumstances and attitude of the alleged offender(s) towards compliance and the investigators
- What course of action will best serve the community interest

Prosecution is always likely in cases that involve:

- serious offences affecting the health, safety or morality of the public,
- serious offences relating to animal health and welfare,
- serious offences involving fraud,
- continued or gross negligence,
- obstruction or wilful non-compliance,
- deceptive or misleading claims or actions,
- breaking statutory prohibitions,
- breaking court orders,
- where national policies indicates such course of action, or
- where the community interest is detrimentally affected to a significant extent.

The decision to prosecute is taken by the Council's Head of Legal, Licensing and Democratic Services:

- in accordance with all relevant statutory requirements and Codes, for example the Code for Crown Prosecutors
- in accordance with all other best practice guides, and
- without any unnecessary delay

Good Enforcement Practice

As with many other regulators, East Devon District Council has a responsibility to comply with the Regulators' Compliance Code.

We endeavour to serve the people of East Devon by working with the public including the business community to ensure a safe environment including a fair and safe trading environment and a thriving economy. We take particular care to help small businesses and voluntary and community organisations meet legal obligations with minimal expense.

All our staff are bound by this policy to ensure we take a consistent approach to our work.

In carrying out our work, we are accountable to the members of East Devon District Council who are democratically elected to represent the people of East Devon.

If you have any comments on this Enforcement Policy or would like further information then please contact us:

Licensing Service

East Devon District Council

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Website: <http://www.eastdevon.gov.uk/licensing>