



HULL & GOOLE PORT HEALTH AUTHORITY



GENERAL ENFORCEMENT POLICY

Introduction

Authorised Officers of the Hull and Goole Port Health Authority carry out a wide range of duties under various Acts and Regulations, including carrying out programmed inspections, responding to complaints, undertaking investigations, and offering advice and guidance. This policy outlines the approach we take when considering what action is appropriate in a particular situation, and will apply to the following functions:

- Environmental Protection (including land and air pollution and public health issues)
- Food Safety and Imported Food Control
- Infectious Disease
- Ship Sanitation
- Water and recreational water quality (ships and port estates/areas)

The Authority's 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' Code.

The aim of this booklet is to advise businesses and other service users what they may expect from the Authority's enforcement officers (Environmental Health Officers) and the decision framework applied by the Authority in deciding what, if any, of its powers to exercise in enforcing legal provisions.

Our aim is to protect the public, animal and environmental health, business, consumers and workers from unacceptable hazards and to provide advice to assist businesses to comply; thereby supporting growth.

Policy

The Hull & Goole Port Health Authority

- Has regard to the Regulators' Code and will assist and encourage regulated entities to understand and achieve compliance with legal requirements more easily; and respond proportionately to identified regulatory breaches.
- Takes into account guidance set out in the Code for Crown Prosecutors.
- Recognises that where there is a shared enforcement role with other authorities and enforcement bodies it has in place arrangements to promote co-operation and consistency.
- Takes into account the needs of all stakeholders within its area, including businesses, employees and the public.
- Will ensure that regulatory activities are carried out in a way that is transparent, accountable and proportionate.
- Will take firm action against those that flout the law or act irresponsibly.
- Will ensure a consistent application of powers with a view to setting a level playing field for businesses.
- Will base our regulatory activities on risk.

External Guidance

Our approach to enforcement is based on applicable legislation and influenced by guidance and requirements from National and Government bodies including the Department for Environment and Rural Affairs, the Food Standards Agency, Animal and Plant Health Agency and the Home Office.

In updating this policy, due consideration has been paid to the Legislative and Regulatory Reform Act 2006 and the Regulators Code which provides a clear, flexible and principles based framework for how Regulators should engage with those they regulate. The Service also follows the Guidance contained in the Code for Crown Prosecutors and other relevant guidance as it becomes available.

Standing Orders – Authorisation of Officers

Under the Hull and Goole Port Health Authority Standing Orders (last revised 2012 and approved March 2012 – minute 1486) the Chief Port Health Inspector has delegated powers to appoint and authorise officers as deemed appropriate pursuant to any power contained in any enactment within their responsibility (Standing Order 10 vii).

The level of enforcement that Officers are authorised to undertake is dependent on a period of assessment, qualification training and experience to fulfil the role. Officers will show their written authorisation/identification card when visiting premises, ships and sites or carrying out inspections.

Levels of enforcement action – A stepped approach

The choice of enforcement action will be based upon the seriousness of any breach of the law using a staged approach to enforcement. We will follow a stepped approach aiming to engage, explain, encourage and enforce, in that order.

A combination of enforcement measures may be appropriate in some cases, whilst in other circumstances formal measures may be taken immediately without warning due to the risk or seriousness of the incident.

Powers of Entry

Entry may be sought for a number of purposes including:

- Inspection
- Sampling
- Collection of evidence
- Checking for compliance
- Seizure or detaining of articles, food or equipment
- Investigation
- Carrying out works in default

The powers of entry prescribed under legislation vary, with some allowing an authorised officer to request entry to a business address without notice. Alternatively, officers seeking access to a residential premises may be required to give notice to an occupier or owner. These powers will

normally only be used where informal requests for access as requested may result in an offence of obstruction being committed.

Where entry has been refused, depending on the legislation, the Authority may make an application to a Justice of the Peace to issue a warrant that may authorise entry by the use of force.

Prevention

Preventing contravention of the law by raising awareness and promoting good practice is a key aim. The methods that we will pursue to achieve this aim may include advice, issues of press releases and news articles on our website and the opportunities presented by day-to-day contact with businesses and other customers.

Frequently Asked Questions

1. Who will visit my premises?

- Authorised officers (Port Health Inspectors, Port Health Support Officers and Official Veterinarians (imported food)) have a right to enter and inspect business premises, including ships and cargoes, at all reasonable hours. They do not have to make an appointment and may visit without notice.
- Officers must give at least 24 hours notice before requiring entry to domestic premises.

2. What will they look for?

- Officers will concentrate on priorities but will also deal with any other noted matters of concern when carrying out inspections and investigations.
- They may identify breaches of the relevant law whilst undertaking inspections/audits and/or interviewing managers, ships officers, and staff.
- They will inspect premises, including ships, observe activities and examine documentation.
- They will assess the effectiveness of management in identifying hazards and in controlling the risks arising from activities.
- They will look for bad practices and provide advice and guidance on best practice.
- They may take samples for examination or analysis, to ensure compliance with the relevant Regulations.

3. How often will my premises be visited?

- The frequency of planned inspections of land-based premises and permitted installations will depend on the risk-rating of your business. This takes account of factors such as hazards, previous history, and confidence in management.
- Ships will be visited according to a risk-assessment or because of a service request or complaint.
- Premises may also be visited as part of a special survey or because of a complaint or another incident.
- Identity and physical checks on imports are completed in accordance with regulatory requirements and for national surveillance purposes.

4. What can I expect from the officers?

- To be shown identification.

- To be treated courteously.
- To be able to discuss the outcome of the inspection or visit and to receive advice and guidance.
- To receive a report of the inspection detailing any breaches of the law, with a clear distinction being made between recommendations and any action necessary to comply with the law.
- To be given an appropriate timescale to take any action necessary to comply with the law.
- To be informed of any likely follow-up action.
- To be allowed to discuss any relevant circumstances before any formal enforcement action is taken, unless immediate action is required.
- To be given reasons for immediate action at the time it is taken and to receive written confirmation within ten working days.
- To be notified in writing of any rights of appeal against formal action at the time it is taken.

5. **What powers do officers have and what action will they take?**

- Officers have powers of entry (see 1. above).
- They may carry out investigations and examinations; take measurements, photographs and samples.
- Detain or seize food, defective equipment, and articles.
- Require information and take statements from people they believe can assist in an investigation.
- Inspect and copy documents.

You must not obstruct officers in carrying out their duties. It is an offence to do so.

Officers may:

6. **Take no formal enforcement action** when the premises are found to be satisfactory, this will be confirmed in writing. A decision to take no action will be made by the case officer only in the event of a minor breach and where there is no impact on public safety or environmental damage.
7. **Take informal enforcement action** when there are no serious breaches of the law and:
 - It is considered that such informal action will be successful
 - Confidence in management is high
 - It is considered that taking informal action will have the same effect as taking formal action
 - Officers will send informal letters, give verbal warnings and requests, offer advice and issue reports of inspections.

We will use our best efforts to resolve any situations where the law may have been broken without resorting to formal notices, or referring the matter to the courts, subject to the requirements to investigate statutory nuisances.

8. **Take formal enforcement action**

- By serving a **Fixed Penalty Notice** in the case of smoke-free law being breached by smoking in a smoke-free place or failure to display correct no-smoking signage.
- **Warning Letters**, these state that in our opinion, there has been a more serious breach of the law and warns that more formal action will follow if the contravention continues or is

repeated. A record will be retained and may be referred to if further legal action is required. Warning letters will normally only be issued following consideration and confirmation by a Senior Officer to ensure that our action is fair and consistent and in accordance with any statutory requirements or guidance. There may be circumstances where formal warning letters are not issued prior to the commencement of enforcement action.

- **Voluntary procedures, including closures** where legislation provides, we may accept a signed voluntary undertaking to ensure that breaches will be rectified immediately and/or recurrences prevented. The person signing the voluntary undertaking must have the authority of the proprietor/employer to agree to such voluntary action and will be made aware that, by undertaking a voluntary closure they relinquish rights to compensation. The decision to accept voluntary action in part, will be based on our confidence that the business or individual will comply. Failure to comply with a voluntary undertaking will be taken seriously and subsequent enforcement action may occur.
- **Legal Notices**, many of the various pieces of legislation that we enforce provide for the service of formal notices on individuals, businesses and other organisations requiring them to meet specific legal requirements. Such notices may include (but are not limited to), improvement, prohibition, emergency prohibition, statutory nuisance, suspension and revocation and ship sanitation control certificates. A notice will explain what is wrong and where appropriate, what is required to remedy the situation and timeframe to comply. It will also set out what the likely consequences are if the notice is not complied with. The method of appealing against the notice and the timescale for doing so will be provided in writing at the same time. Notices will only be signed by an authorised officer.
In most situations before formal action is taken, we will provide an opportunity to discuss matters and hopefully resolve points of difference. However, this may not be possible where immediate action has to be taken, for example, following the investigation of statutory nuisances, or to prevent imminent risk to health or the environment.
- **Permits, consents or authorisations.** Depending on the relevant legislation, permits, consents or authorisations may be refused, reviewed, varied, suspended or revoked if any condition(s) are not complied with, or if any offence(s) are committed or to remedy an unsatisfactory situation. Where necessary, additional conditions may be added. Such action is not taken lightly, and discussion and communication would generally occur prior to any such action happening, unless the concern was so significant it needed to be actioned immediately. Permits will only be granted where relevant standards are met and compliance with policy is achieved.
- **Seizing food, dangerous articles or substances.** Powers exist under certain legislation for authorised officers to seize or detain items (including goods, equipment and records etc) such as when directed by an external body such as the FSA or UKHSA or when a blatant breach of statute has or is about to occur, or where we need to secure compliance with a Notice. We will, where feasible, notify interested parties of any intention to seize and/or detain, the legal basis for such action, the steps involved and their rights to appeal or seek compensation, where appropriate.
- **Simple Caution.** The use of a simple caution will be considered as an alternative to prosecution. Before issuing a caution, the following conditions must be satisfied:
 - There must be evidence of guilt sufficient to give a realistic prospect of conviction if the case were to be taken to prosecution;
 - the offence is not one where a prosecution is required in the public interest.
 - the offender must understand the significance of the simple caution and consent to it; and
 - the offender must admit the alleged offence by signing a simple caution form.

The Chief Port Health Inspector, in consultation with Legal Services will determine if the threshold has been met to issue a caution. A caution is a serious matter, which can influence any future decision should the company or individual offend again. It can be referred to in subsequent court proceedings, and if the case is proven, the previous simple caution may be considered by the court, as if it were a previous conviction, if the caution was issued less than three years ago. Where the offer of a simple caution is refused, the case will be reviewed again, and a prosecution may be pursued. In considering and issuing simple cautions we will have regard to the Ministry of Justice Guidance – Simple Cautions for Adult Offenders.

- **Prosecution** is normally a last resort after alternatives have failed to remedy problems. This may happen where it is necessary to protect consumers, employees or the environment, in order to try and prevent a recurrence, and act as a warning to others. We would only prosecute without prior warning in very severe circumstances, or where the action was deliberate and or sought to achieve financial advantage. Any decision to prosecute will take into account the Government's Code for Crown Prosecutors. Under this code there are two tests that need to be satisfied before a decision to prosecute can be agreed. The first stage is the evidential test, where we must be satisfied that there is enough evidence to provide a "realistic prospect of conviction". If the case does not meet the evidential test, it cannot go ahead, no matter how serious it may be. If the evidential test is passed the case must then pass the second stage, the public interest test. The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. We may take a prosecution against those who are considered responsible for the offence. Where a Company is involved, we may prosecute the company where the offence resulted from its activities. We may however consider any part played in the offence by officers of the company, such as directors or managers. Action could also be taken against other employees where the offence was committed with their consent, was due to their neglect, or they 'turned a blind eye' to the circumstances of the offence. We will apply the principles of 'Criminal Procedures & Investigations Act 1996' as well as Home Office Guidance, when making decisions on the course of action to be taken in any particular case. Each case is considered individually, and the balance for or against prosecution is reviewed in light of the circumstances of the case, in consultation with Legal Services. The following factors will be considered when deciding whether to prosecute:

- the seriousness and effect of the offence;
- whether the offence, or the circumstances leading to it were foreseeable;
- the intent of the offender;
- the history of offending;
- the attitude of the offender; and
- the deterrent effect of a prosecution, on the offender and others.

There are times where the circumstances of the case mean that the balance tends to be in favour of a prosecution. These would include:

- offences which have, or may have, significant consequences for the environment or the health or safety of the public or employees;
- carrying out operations without, or in serious breach of, a relevant licence, permit or authorisation;
- excessive or repeated breaches of legal requirements;
- failure to supply information without reasonable excuse, or knowingly supplying false or misleading information;
- obstruction of the Authority's officers in carrying out their powers; or impersonating Authority officers. Where a prosecution is pursued, and the defendant is found guilty, our policy is to seek to recover the costs incurred by in undertaking the prosecution.

Court Orders/Injunctions. A direction from the court (such as an order or an injunction) may be sought to resolve a breach of a notice and/or prevent a situation from recurring. The Court may also direct that certain activities are ceased or remedied. Failure to comply with a court order is a serious offence that may lead to imprisonment as it constitutes contempt of court.

9. What rights of appeal are there against Statutory Notices or other Formal Action?

Where a right of appeal against a formal action exists other than through the courts, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken.

10. Publicity

Depending on the circumstances of the case, and if considered to be in the public interest, we may publish the names of all the companies and individuals who have been convicted of relevant offences. The Authority may also provide factual information on any convictions and on improvement and prohibition notices, which they have issued to the media. The purpose of publicising this is to act as a deterrent to criminal behaviour and encourage compliance with the legislation.

11. Our commitment to you

Officers and staff will always be aware and aim to deliver on the following;

- we will always endeavour to be courteous and helpful
- officers will introduce themselves and show identification on arrival or when requested
- we will enter into discussion and offer advice to try and ensure that people do not unnecessarily expose themselves to the possibility of formal action through a lack of understanding, or information
- we will ensure that when discussing any action, officers make clear what is recommended as good practice, and what is actually required by the law
- before taking enforcement action, the case will be discussed with a senior officer to ensure that the proposed action is appropriate and fair
- where formal action is taken, officers will provide an opportunity to discuss the case and, if possible, resolve points of difference, unless immediate action is required, for example in the interests of safety or environmental protection, or to prevent evidence from being destroyed
- where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing, in most cases within five working days and in all cases, within ten working days
 - where there are rights of appeal against formal action, advice on the appeal process will be clearly set out in writing at the time. There are also opportunities for review of the case by a more senior officer, where there is disagreement with any enforcement action taken
 - we will be consistent in our approach following the criteria and guidance set down in relevant legislation, codes of practice, written procedures, or instructions
 - where appropriate, we will liaise with peers in related enforcement bodies to ensure that we are making consistent decisions with others. We may have similar enforcement powers as other bodies and therefore will coordinate our approach to seek to avoid duplication and ensure the most appropriate action is taken
 - we will be objective to ensure that our decisions are not influenced by gender, ethnic origin, religious or political beliefs, sexual preferences or any other status

- we will where necessary, provide help or guidance where a disability or other special need makes it difficult for a duty holder to understand or comply with our requirements
- where English is not the first language and understanding is a barrier, we will endeavour to seek support so those we are communicating with are not disadvantaged. The Authority does not provide automatic translation of publications from English into other languages. Translation or interpreting services will aim to be provided where needed to ensure access to essential services or participation in local democracy.

12. Our expectation of customers and contacts

Hull and Goole Port Health Authority is committed to ensuring that all employees work in a healthy and safe environment free from discrimination, intimidation, and harassment. Harassment and bullying are totally unacceptable, and the Chief Port Health Inspector is committed to preventing and eradicating it in all its forms. We expect the customers and contacts we deal with, treat all our employees with respect and dignity. Harassment, bullying and inappropriate behaviour must not occur, and any occurrence will be treated seriously, and appropriate action taken to prevent a recurrence.

13. The process of making a complaint to Hull and Goole Port Health Authority

We are committed to listening to your suggestions for improving services. We will endeavour to keep you informed about the progress and outcome of your complaint. We will put the problem right if we believe your complaint is well founded, and we will make sure that we take action to prevent the problem recurring. Details of how to make a complaint to the Authority can be found here: <https://www.hullandgoolepha.gov.uk/our-service/>



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