



PEMBROKESHIRE COUNTY COUNCIL

FOOD, SAFETY AND PORT HEALTH SECTION

POLICY	REF.
HEALTH AND SAFETY: ENFORCEMENT POLICY	HSP01

ISSUE NO.	PREPARED BY	APPROVED BY	SIGNATURE	DATE
02	J BEYNON	Dr Steven Jones (Director of Development) Cllr Ken Rowlands (Cabinet Member for Environmental and Regulatory Services)	See attached	28/05/09

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REVISION SUMMARY			
14/05/09 Policy revision to take account of the provisions of the Regulatory Enforcement and Sanctions Act 2008, the Health and Safety (Offences) Act 2008 and amendments to the criteria for the selection of incidents and complaints.			
DATE LAST REVIEWED	28/05/09	DATE OF NEXT REVIEW	Not applicable

Introduction

Health and safety legislation and enforcement aims to protect the health, safety and welfare of people at work, and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out.

Primary responsibility for health and safety in the workplace lies with employers, employees and the self-employed, who are responsible for managing and controlling risks. These are generally referred to as 'duty holders'.

The role of Pembrokeshire County Council (hereafter referred to as 'the Council'), as a health and safety enforcing authority, is to ensure that duty holders manage and control risks effectively, thus preventing harm.

The Council, has enforcement responsibilities for certain premises and work activities, as determined by the Health and Safety (Enforcing Authority) Regulations 1998. These responsibilities are extended to include petroleum sites licensed by the Council in accordance with the Petroleum Regulations Acts of 1928 and 1936 and Petroleum (Consolidation) Act 1928.

Whilst the enforcement of public health and consumer protection legislation is generally covered by the Council's Environmental Health and Trading Standards Enforcement Policy, this (Health and Safety Enforcement Policy) sets out in more detail the enforcement principles that apply and provides more specific information on the selection of relevant enforcement options by the Health and Safety Enforcement Team. These principles will also be applied to enforcement of standards under the Caravan Sites and Control of Development Act 1960.

Purpose of Enforcement

The ***purpose of enforcement*** is to:

- Ensure that duty holders take action to deal immediately with serious risks.
- Promote and achieve sustained compliance with the law.
- Ensure that duty holders who breach health and safety requirements, and directors or managers, who fail in their responsibilities, are held to account, which may include bringing alleged offences before the courts.

Enforcement is distinct from civil claims for compensation and will not be undertaken in all circumstances where civil claims may be pursued, nor to assist such claims.

Enforcement Principles

The Council is committed to firm but fair enforcement of health and safety law and has adopted the Cabinet Office's 'Enforcement Concordat'.

Enforcement is informed by the ***principles*** of:

- ***Proportionality*** in applying the law and securing compliance.
- ***Consistency*** of approach.
- ***Targeting*** of enforcement action.
- ***Transparency*** about how the Council operates and what duty holders may expect.
- ***Accountability*** for the Council's actions.

These principles apply both to enforcement in individual cases and to the management of enforcement activities overall.

- **Proportionality**

Proportionality means relating enforcement action to risk.

Action taken by the Council to achieve compliance or to bring duty holders to account for non-compliance shall be proportionate to any risks to health and safety, or to the seriousness of any breach, which includes any actual *or potential* harm arising from any breach of the law.

In practice, the Council will take account of how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

Some health and safety duties are specific and absolute. Others require action 'so far as reasonably practicable'. The principle of proportionality will be applied in relation to both kinds of duty.

Deciding what is 'reasonably practicable' to control risks involves the exercise of judgement. Regard will be had to the degree of risk on the one hand, and to the sacrifice (whether in money, time or trouble) involved in the measures necessary to avert the risk, on the other.

Unless it can be shown that there is gross disproportion between these factors and that the risks are insignificant in relation to the cost, duty holders must take the measures necessary and incur costs to reduce the risk.

The Council will expect relevant good practice to be followed. Where this is not clearly established, duty holders are required to establish the significance of any risks to determine what action needs to be taken.

Ultimately, the courts will determine what is reasonably practicable.

Some irreducible risks may be so serious that they cannot be permitted irrespective of the consequences.

- **Targeting**

The Council will ensure that enforcement contacts are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled, and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it.

Where several duty holders have responsibilities, action may be taken against more than one when it is appropriate to do so in accordance with this policy.

When inspectors issue improvement notices or prohibition notices, or vary licence conditions, issue simple cautions or prosecute, the Company Secretary will be notified where applicable.

- **Consistency**

Consistency of approach does not mean uniformity. It means taking a similar approach, in similar circumstances, to achieve similar ends.

The Council appreciates that duty holders managing similar risks will expect a consistent approach from the Council in the advice tendered, the approach to enforcement and in response to incidents and complaints.

In practice, consistency is not a simple matter and inspectors will be faced with many variables, including:

- the degree of risk;
- the attitude and competence of management;
- any history of incidents or breaches involving the duty holder;
- previous enforcement action;
- the seriousness of any breach, including any potential or actual harm; and
- where a Primary Authority partnership exists for the business concerned (see below), any advice given to the company by the Primary Authority.

Whilst decisions on health and safety enforcement action are, in law, at the discretion of the inspector, the Council has established arrangements to promote consistency in the exercise of this discretion. These are set out later in this policy.

- **Transparency**

Transparency means helping duty holders to understand what is expected of them and what they should expect from the Council. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they don't. This means distinguishing between statutory requirements and advice about what is desirable but not compulsory. *It should be noted, however, that compliance with advice on good practice might be important in demonstrating compliance with general health and safety obligations.*

To meet this objective, advice will be put clearly and simply and shall be confirmed in writing if you prefer. In doing so, inspectors shall explain why any remedial work is necessary and, where appropriate, over what time-scale.

Transparency also involves the Council having arrangements for keeping employees, their representatives, and victims or families informed, subject to any legal constraints and requirements.

Wherever possible, inspectors will meet or speak to employees or their representatives during their visits, providing an opportunity to speak in private if they so wish.

Furthermore inspectors will provide employees or their representatives with information necessary for the purpose of keeping them informed about matters affecting their health, safety and welfare, and on action which the inspector has taken, or proposes to take.

Depending on the circumstances, the inspector may provide this information orally or in writing.

Provision will be made for the particular interests of the public, businesses and employees where it is reasonable to do so.

- **Accountability**

The Council is accountable to the public for its actions.

Accordingly, it has established:

- policies and standards against which it can be judged, and
- a mechanism for dealing with comments and handling complaints.

Targeting of Resources

In targeting its resources, the Council will have regard to the principles set out below; the objectives published in the Health and Safety Commission's (HSC's) and the Health and Safety Executive/Local Authority Enforcement Liaison Committee's (HELA's) strategic plans; to any advice issued by the Local Authorities Co-ordinators of Regulatory Services (LACORS) and the Local Better Regulation Office (LBRO); and, to any inspection plans established for a company by its Primary Authority (see below). The Council also recognises that it is imperative to strike a balance between carrying out investigations and other preventative activities, including inspection.

- **Preventative inspections and other proactive activities**

Workplaces falling to the Council for enforcement are risk-assessed and prioritised for inspection in accordance with HELA's Local Authority Circular LAC 67/1, rev.3, (as at the time of writing, this document is under review).

Workplaces classed as high/intermediate risk, i.e. those in risk categories A, B1 and B2, will be subject to routine programmed inspection. As far as possible, these inspections will be carried out at the prescribed intervals. Furthermore, inspections will focus on priority areas, as highlighted by national/local data, as contributing to greatest work related injury and/or ill health.

Other workplaces will not be subject to routine programmed inspection, but may be targeted as part of a separate campaign or project, or by one of a range of other enforcement strategies.

In practice, inspectors will use their professional judgement to determine the areas to be covered by an inspection. In addition, the scope of an inspection may be limited by any inspection plan established for a company by its Primary Authority. Where an inspector carries out an inspection that covers only part of a business the scope of the inspection, and the reason for limiting the inspection, shall be recorded in the premises file and in the inspection report.

Further details are available in the Council's Health and Safety Enforcement Service Plan, which is prepared annually and is featured on the Council's web-site at www.pembrokeshire.gov.uk.

- ***Impact of the Primary Authority partnership scheme on the proactive inspection of workplaces***

As of 6th April 2009, by virtue of the Regulatory Enforcement and Sanctions Act 2008, the Primary Authority scheme came into force across the UK, providing companies with the right to form a statutory partnership with a single local authority, which then provides robust and reliable advice for other local authorities to take into account when carrying out inspections or dealing with non-compliance.

The Council must and will have full regard to these requirements.

In practice, before undertaking the inspection of any premises, inspectors will determine whether a Primary Authority partnership exists, and if so what areas are covered. Where a relevant partnership has been established for health and safety matters, and an inspection plan has been agreed for the company concerned, inspectors will adhere to this plan unless a deviation from the plan can be justified, and then only after *first* agreeing this with the Primary Authority (or in the event of a dispute with the Local Better Regulation Office).

A flow diagram setting out the operation of these arrangements is included at Appendix A.

The Primary Authority scheme will operate alongside other non-statutory partnership arrangements set up under LACORS Home Authority Principle, which inspectors shall continue to have regard to.

- ***Investigation of incidents and complaints***

Investigations of dangerous occurrences, accidents, cases of work related ill health, hereafter referred to as incidents, and complaints, are undertaken in order to determine:

- causes;
- whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
- lessons to be learnt and to influence the law and guidance; and
- what response is appropriate to a breach of the law.

The Council recognises that it is neither possible nor necessary for the purposes of the Health and Safety Act Work, etc. Act 1974, to formally address all issues of non-compliance with the law that are uncovered during the course of a preventative inspection, or in the investigation of reported incidents or complaints.

To maintain a proportionate response, the criteria for selecting incidents and complaints for investigation, shall necessarily target more serious matters, so as not to distort the overall balance of resource between preventative and reactive work.

The following criteria shall apply for the purpose of selecting incidents and complaints for investigation, and in determining the level of resources to be employed:

Defined circumstances for investigation:

- Fatalities arising out of or in connection with work (excluding suicides or death by natural causes).
- The following defined MAJOR INJURIES to all persons including non-employees:
 - *all amputations of digits past 1st finger joint*
 - *serious multiple fractures (more than 1 bone, excluding wrist or ankle)*
 - *crush injuries leading to internal organ damage (e.g. ruptured spleen)*
 - *head injuries involving loss of consciousness*
 - *burns and scalds to greater than 10% of the body surface*
 - *permanent blinding in one or both eyes*
 - *any degree of scalping*
 - *asphyxiation*
- All RIDDOR reportable diseases and dangerous occurrences (excluding those already investigated/under investigation).
- All incidents which result in RIDDOR defined major injuries* in the following categories:
 - *workplace transport incidents resulting in major injury**
 - *electrical incidents resulting in major injury**
 - *falls from height greater than 2m resulting in major injury**
 - *any major injury* from working in a confined space*

Circumstances requiring judgement as to seriousness:

- Incident likely to cause serious concern from the public at large and potential outcome/outcome is serious giving consideration to children, vulnerable adults and multiple casualties.
- Incident likely to have been caused by a serious breach of health and safety law i.e. via EMM, notice or prosecution would result.

Circumstances allowing discretionary selection:

- Investigation contributes to HSE Priority Programme.
- Incident involving new processes or plant.
- Company history.
- Company risk rating.
- Confidence in management.
- Training of inspectors

**Major injury: All amputations of digits past 1st finger joint, hand, arm, foot or leg; fracture other than to fingers, thumbs or toes; dislocation of shoulder, hip, knee or spine; loss of sight (temp or perm);*

chemical or hot metal burn or penetrating eye injury; injury from electric shock/burn leading to unconsciousness or resuscitation or hospital stay >24hrs; any injury leading to hypo/hyperthermia or unconsciousness or resuscitation or hospital stay >24 hrs.

While having regard to the above criteria, incidents may be disqualified from investigation where an investigation is impractical, where there are no possible risk reduction measures or where resources are inadequate.

Decisions on the investigation of complaints shall generally be taken by inspectors.

Decisions on whether or not incidents should be investigated, shall be approved by the Senior Environmental Health Officer or Food, Safety and Port Health Manager.

Where it is considered that an incident which meets the criteria for investigation should be disqualified for one of the factors given above, the decision as to whether an investigation shall be carried out shall be taken by the Food, Safety and Port Health Manager.

In cases where there is a shared enforcement role, liaison with other agencies which might be involved will take place at an early opportunity to confirm the responsibilities of the respective parties in each case.

- ***Work-related deaths***

Where there has been a breach of law leading to a work-related death, the Council shall have regard to the possibility that the circumstances of the case might justify a charge of manslaughter.

To ensure that decisions on investigation and prosecution are closely co-ordinated following a work related death, investigations will be conducted in accordance with '*Work Related Death: A Protocol for Liaison*', which is supported by Association of Chief Police Officers (ACPO), the Health and Safety Executive (HSE), The Crown Prosecution Service (CPS), the Local Government Association (LGA) and the British Transport Police (BTP).

The police are responsible for deciding whether to pursue a manslaughter investigation, while the Council's health and safety inspectors will investigate possible health and safety offences and take action in accordance with this policy.

Approach to Enforcement

The Council's health and safety inspectors will issue the HSC leaflet '*What to expect when a health and safety inspector calls*' to those they visit. This leaflet explains what employers and employees and their representatives can expect when a health and safety inspector calls at a workplace.

The Council has a wide range of tools at its disposal in seeking to secure compliance with health and safety law and to ensure a proportionate response to criminal offences.

Inspectors may offer duty holders information and advice, both face to face and in writing. Where appropriate inspectors may also serve improvement and prohibition notices, vary licence conditions, issue simple cautions and may prosecute.

In practice, health and safety enforcement decisions will be guided by the Enforcement Management Model (EMM), which provides a framework for decision making aimed at selecting enforcement action that is proportionate to the risk arising from a breach of law, and to the requirements of this Enforcement Policy.

Additionally, regard will be had to other relevant requirements and guidance including:

- advice issued by the Local Authorities Co-ordinators of Regulatory Services (LACORS)
- the Enforcement Concordat
- any relevant Codes of Practice issued under the Regulatory Reform Act 2001
- the Regulators Compliance Code
- the Code for Crown Prosecutors
- Home Office Circular 16/2008 (Simple cautioning of adult offenders)
- the Human Rights Act 1998.

Before formal enforcement action is taken, inspectors will provide duty holders with an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required.

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 5 working days and in all cases within 10 working days.

- ***Significance of the Primary Authority Partnership Scheme (and the Lead Authority Partnership Scheme and Large Organisation Pilot Programme) to enforcement decisions***

As of 6th April 2009, by virtue of the Regulatory Enforcement and Sanctions Act 2008, the Primary Authority scheme came into force across the UK, providing companies with the right to form a statutory partnership with a single local authority, which then provides robust and reliable advice for other local authorities to take into account when carrying out inspections or dealing with non-compliance.

The Council must and will have full regard to these requirements.

In practice, before taking 'formal' enforcement action against a company subject to a Primary Authority partnership for the area/s covered, the Council will consult the Primary Authority *before* any action is taken.

This duty to consult generally applies to statutory enforcement only, although will also include situations where non-statutory enforcement action indicates that legal action will be considered for failing to follow any direction given.

An exception applies in cases where urgent action is needed to protect employee or public health and/or safety, e.g. the service of a Prohibition Notice.

The Primary Authority shall consider whether the action proposed by the Council is inconsistent with advice that it has previously provided to the company. If the proposed action is not inconsistent with any advice previously provided, then the Council will be free to proceed with its proposed course of enforcement.

If the proposed enforcement is inconsistent, the Council will seek to negotiate a way forward with the Primary Authority.

In the event of a dispute, which cannot be resolved to the satisfaction of the Council, the Council will raise the matter with the Local Better Regulation Office, which has statutory responsibility for making a determination.

A flow diagram setting out the operation of these arrangements is included at Appendix A.

In the interest of consistency, where the Council proposes to pursue action informally against a company, and this action may impact on any advice given centrally to the company by its Primary Authority, liaison with the Primary Authority will again take place prior to action being taken.

The Primary Authority scheme will operate alongside other non-statutory partnership arrangements set up under the Lead Authority Partnership Scheme or Large Organisation Pilot Programme, which officers shall continue to have regard to. In particular, liaison with the lead local authority will take place where enforcement action may have a bearing on any central agreed policies and/or procedures.

- ***Informal action***

In the vast majority of cases, compliance with the law is promoted and secured informally by inspectors who offer information, advice and support, both face to face and in writing.

Informal action will generally be appropriate where:

- the act or omission is not serious enough to warrant formal action; **and**
- from the individual/enterprise's past history it can be reasonably be expected that informal action will achieve compliance; **and**
- confidence in the individual/enterprise's management is high; **and**
- the consequence of non-compliance will not pose a significant risk to health and/or safety

It is the policy of the Council to write to the duty holder wherever breaches of legislation are identified following an investigation, inspection or other regulatory contact.

This correspondence will:

- state what steps must be taken to comply with the law;
- the reason/s why the steps must be taken; and,
- distinguish between legal requirements and best practice advice.

The timescale agreed for the completion of any work will be included, where appropriate.

The Council has a duty to keep employees adequately informed about matters affecting their health, safety and welfare. In practice, inspectors will provide employees or their representatives with information necessary for the purpose of keeping them informed about matters affecting their health, safety and welfare, and on action which the inspector has taken, or proposes to take.

Depending on the circumstances, the inspector may provide this information orally or in writing.

• **Revisits**

In general, revisits to check compliance following each inspection should not be necessary, as significant risks should be dealt with at the time of the initial visit.

However, revisits will be carried out where it is necessary to gather evidence or check compliance with an enforcement notice or other enforcement action.

Where minor regulatory breaches are identified, the subsequent planned inspection should offer sufficient opportunity to determine effective compliance. Alternatively, businesses may be asked to confirm compliance in writing. If written confirmation is not received the premises will be revisited.

Where continued non-compliance is evident further enforcement action will be taken.

- ***Improvement Notices***

The use of statutory Improvement Notices will in general be restricted to circumstances where there is a risk to health and/or safety or where there are significant welfare issues.

Improvement Notices will generally be served where:

- there are significant contraventions of legislation; **and/or**
- there is a lack of confidence in the individual/enterprise to respond to an informal approach; **and/or**
- there is a history of non-compliance with informal action; **and/or**
- standards are generally poor with little management awareness of statutory requirements; **and/or**
- the consequences of non-compliance could be potentially serious to health and/or safety.

Inspectors will discuss the notice and, if possible, resolve points of difference before serving it. The notice will:

- state what needs to be done;
- why;
- by when; and
- that in the inspector's opinion a breach of the law has been committed.

An explanation about the right of appeal to an employment tribunal will be included.

In accordance with the Environment and Safety Information Act 1998, Improvement Notices that relate to matters of public concern will be placed on a public register.

In addition, a copy of the Improvement Notice will be sent to an employee representative.

Failure to comply with an Improvement Notice is an offence and will generally result in prosecution.

- **Prohibition Notices**

Where there is a risk of serious personal injury inspectors must consider the use of a Prohibition Notice which may either take immediate effect or be deferred in which case it would take effect after a specified period of time.

Prohibition Notices will generally be served where:

- the consequences of not taking immediate and decisive action to protect public health or safety would be unacceptable
- a risk of injury to health and/or safety can be demonstrated (this might include evidence from relevant experts such as an electrical engineer)
- there is no confidence in the integrity of an undertaking made by an individual/enterprise to voluntarily cease the hazardous activity or use of equipment, or process associated with the imminent risk

The notice will explain why the prohibition is necessary.

An explanation about the right of appeal to an employment tribunal will be included.

In accordance with the Environment and Safety Information Act 1998, Prohibition Notices that relate to matters of public concern will be placed on a public register.

In addition, a copy of the Prohibition Notice will be sent to an employee representative.

Failure to comply with a Prohibition Notice is an offence and will generally result in prosecution.

- **Simple Cautions**

A simple caution may be offered as an alternative to prosecution in certain circumstances.

The purpose of a simple caution is to:

- deal simply and quickly with less serious offences where the offender had admitted the offence;
- divert offenders where appropriate from appearing in the criminal courts
- record an individual's criminal conduct for possible reference in future criminal proceedings; and
- to reduce the likelihood of re-offending.

In considering whether it might be appropriate to issue a simple caution in lieu of prosecution, regard will be had to Home Office Circular 16/2008 (Simple cautioning of adult offenders).

To safeguard the interests of *suspected* offenders, the following conditions shall be fulfilled before a **simple caution** is administered:

- the suspect must have made a clear and reliable admission of the offence either verbally or in writing; **and**
- there must be a realistic prospect of conviction; **and**
- it is in the public interest to use a simple caution as the means of disposal; **and**
- the offender is 18 years of age or older at the time the caution is to be administered; **and**
- a simple caution is appropriate to the offence and the offender; **and**
- the offender must consent to being cautioned

Where an individual/enterprise declines the offer of a simple caution, the matter will normally be dealt with by way of a prosecution.

Where it is appropriate to do so in accordance with this policy, a Simple Caution may be administered in addition to issuing an Improvement or Prohibition Notice.

- ***Prosecution***

Whilst the primary purpose of the Council is to ensure that duty holders manage and control risks effectively, thus preventing harm, prosecution is an essential part of enforcement.

The decision whether to prosecute shall take account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors.

No prosecution will go ahead unless there is sufficient evidence to provide a realistic prospect of conviction and a prosecution would be in the public interest.

Where the circumstances warrant it and the evidence to support a case is available, the Council may prosecute without prior warning or recourse to alternative sanctions.

Where it is appropriate to do so in accordance with this policy, a prosecution may be brought in addition to issuing an Improvement or Prohibition Notice.

Subject to the above tests being met, a **prosecution** will normally be brought where, following an investigation or other regulatory contact, one or more of the following circumstances apply:

- the **gravity of an alleged offence, together with the seriousness of any actual or potential harm**, warrants it. Includes all cases where a death has resulted from a breach of legislation.
- there are/have been **serious failures in management** (i.e. where a duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk).
- it is **appropriate in the circumstances as a way to draw general attention to the need for compliance** with the law and the maintenance of standards required by the law, and conviction may deter others from similar failures to comply with the law
- the **general record and approach of the offender** warrants it. This shall include situations where false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk and those where inspectors have been intentionally obstructed in the lawful course of their duties. Where inspectors are assaulted, the Council will seek police assistance, with a view to seeking the prosecution of offenders.
- there has been **reckless disregard of health and safety requirements**. This will include situations where a breach which gives rise to significant risk has continued despite relevant warnings from employees, or other representatives, or from others affected by a work activity and those where work has been carried out without or in serious non-compliance with an appropriate licence or safety case.
- there have been **repeated breaches or persistent poor compliance**. In practice, this applies to repeated breaches that give rise to significant risk, and to persistent and significant poor compliance.
- There has been a **failure to comply with a written warning or notice**

served. Includes any failure to comply with an improvement or prohibition notice, or a repetition of a breach that was subject to a simple caution, or a failure to accept a simple caution.

Consideration will, however, be given to:

- the **willingness of the offender to prevent a recurrence.**
- the **likelihood of a successful defence.**
- the **explanation offered by the offender.**
- the **ability of witnesses to co-operate.**

In determining who to prosecute, consideration will be given to the management chain and the role played by individual directors and managers. Action will be taken against such individuals where the inspection or investigation reveals that the offence was committed with their consent or connivance or to have been attributed to neglect on their part, and where it would be appropriate to do so in accordance with this policy.

Where appropriate, the Council will seek disqualification of directors under the Company Directors Disqualification Act 1986.

In cases of sufficient seriousness, and when given the opportunity, the Council will indicate to magistrates that an offence may be so serious that they might send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make, the Council will have regard to Court of Appeal guidance.

In addition, the Council will when appropriate draw to the court's attention all the factors that are relevant to the court's decision as to what sentence is appropriate on conviction.

Penalties

Offences and maximum penalties are set out under Section 33 of the Health and Safety at Work etc Act 1974 (as amended).

As of the 16 January 2009, The Health and Safety (Offences) Act 2008:

- raises the maximum fine which may be imposed in the lower courts to £20,000 for most health and safety offences.
- makes imprisonment an option for more health and safety offences in both the lower and higher courts.

- makes certain offences, which were previously triable only in the lower courts, triable in either the lower or higher courts.

Separate penalties apply to offences brought under the Caravan Sites and Control of Development Act 1976, which might also be brought by the Health and Safety Team.

In addition, to any fines that might be awarded, it is the policy of the Council to seek to recover full costs for investigations that lead to prosecution.

Publicity

The Council will respond to press enquiries about charges that have been laid before the courts and will provide factual information wherever possible. In doing so, care will be taken to avoid any publicity which could prejudice a fair trial.

Consideration will also be given to publicising any conviction which could serve to draw attention to the need to comply with health and safety requirements, or deter anyone tempted to disregard their duties under health and safety law. This will include sharing information on prosecution with the HSE's Local Authority Unit.

Information on these convictions (and on improvement and prohibition notices served) will be made available to the public on request.

Ensuring Consistency in Enforcement

The Council will only authorise inspectors who are suitably qualified, trained and experienced in relation to health and safety enforcement. Newly appointed inspectors will be put through an appropriate programme of training and supervision, in accordance with an appropriate competency framework.

In considering whether the law has been complied with, inspectors will have regard to relevant Approved Codes of Practice and guidance, using sensible judgement about the extent of the risks and the effort that has been applied to counter them.

Enforcement decisions will be guided by the Enforcement Management Model (EMM), and to the requirements of this Enforcement Policy.

To ensure that the interpretation of requirements and approach to enforcement remain appropriate and consistent within the Authority, inspectors will be subject to regular monitoring by the Senior Environmental Health Officer (Health and Safety) and/or Food, Safety and Port Health Manager, in accordance with an internal monitoring procedure. As part of this process, inspection and service request records will be reviewed and accompanied visits undertaken. In addition, statutory notices will be subject to peer review prior to issue wherever possible.

Whilst the decision to offer a simple caution and to prosecute for health and safety offences rests with authorised inspectors, in practice cases will be considered, and the action approved, by the Food, Safety and Port Health Manager, Head of Public Protection and Director of Development, in accordance with the Public Protection Division's Prosecution Protocol.

Nationally, arrangements exist for the co-ordination of enforcement standards via the Health and Safety Executive and the Health and Safety Executive/Local Authority Enforcement Liaison Committee (HELA). HELA provides consistent advice and guidance to local authorities and industry.

Regional consistency is achieved in liaison with other local authorities through the South West Wales Health and Safety Task Group, the All Wales Health and Safety Technical Panel and the Enforcement Liaison Officer of the Health and Safety Executive. Liaison also takes place with other enforcement bodies including Trading Standards, Building Control and the Fire Service, as necessary.

As indicated above, before taking 'formal' enforcement action against a company subject to a Primary Authority partnership for the area/s covered, the Council will consult the Primary Authority *before* any action is taken.

This duty to consult generally applies to statutory enforcement only (other than where immediate action is required to protect health and/or safety), although will also include situations where non-statutory enforcement action indicates that legal action will be considered for failing to follow any direction given.

In the interest of consistency, where the Council proposes to pursue action informally against a company, and this action may impact on any advice given centrally to the company by its Primary Authority, liaison with the Primary Authority will again take place prior to action being taken.

The Primary Authority scheme will operate alongside other non-statutory partnership arrangements set up under the Lead Authority Partnership Scheme or Large Organisation Pilot Programme, which officers shall continue to have regard to. In particular, liaison with the lead local authority will take place where enforcement action may have a bearing on any central agreed policies and/or procedures.

Complaints

Complaints about the service will be investigated in accordance with the Council's 'Complaints, Compliments & Suggestions' policy. This policy is featured on the Council's web-site at www.pembrokeshire.gov.uk, and a guidance leaflet is available on request.

Complaints should initially be made to, and shall be investigated by, the Council's Food, Safety and Port Health Manager:

Contact details:

Food, Safety and Port Health Manager
Public Protection Division
Pembrokeshire County Council
County Hall
Haverfordwest
SA61 1TP

Tel: (01437) 775636
Fax: (01437) 775494
e-mail: healthandsafety@pembrokeshire.gov.uk*

*General e-mail account accessed by all Health and Safety Inspectors

Most complaints are settled in this way, often immediately.

Complainants can also contact the HSE's Local Authority Unit which will see that complaints are followed up promptly and fairly by the Council.

In cases of maladministration, complaints can also be made to the Local Government Ombudsman for Wales.

Enforcement with respect to those premises where the Council has an interest

It is recognised that conflict of interest may arise in premises for which the Council is the relevant enforcing authority and in which it also has an ownership or management interest. Examples of such premises include local authority owned leisure centres, museums, golf courses, etc.

These premises will generally fall to the Council for the enforcement of health and safety requirements, apart from any residual health and safety responsibilities falling to the Council as owners of the premises, suppliers of equipment, or as clients of any contractors, which would continue to be enforced by the HSE.

Where the interest of the authority is so great that it should no longer act in an enforcement capacity, e.g. where it holds all responsibilities under health and safety law and its appointed contractors or occupiers hold none, transfer of enforcement responsibility to the HSE's Field Operations Directorate (FOD) will be pursued.

In accordance with the requirements of HELA Circular 22/10, to ensure openness and transparency in respect of premises in which it may have an interest, the Council will:

- Carry out its enforcement policy and practice in exactly the same way that

it does in all other premises.

- Ensure that the attention received is in accordance with the criteria applied to other duty holders.
- Keep the HSE informed of any situations in which it might have an enforcement interest so that it may consider the extent of its involvement. In doing so, the Council will be proactive in passing all necessary information to the HSE to enable them to consider whether any further action is warranted.
- Maintain a clear separation between the Council's various roles to ensure that individual officers are not asked to act in a capacity which draws them into a conflict of interest.
- Ensure that any investigation retains its independence and objectivity and, in exceptional circumstances, shall consider the appointment of an officer from another local authority to carry out the investigation or alternatively contracting the investigation to an independent or consultant EHO.
- In exceptional circumstances, maintain a distance between the legal representation of its enforcement officers and its duty holders.