



# **HART DISTRICT COUNCIL REGULATORY SERVICES ENFORCEMENT POLICY**

## **I. PURPOSE**

Hart District Council (the Council) has formally adopted the principles of the central and local government "Concordat on Good Enforcement" (the Concordat). The Concordat commits the Council to ensure it puts in place good enforcement policies and procedures. This document sets out what those being regulated can expect from enforcement officers working within the Regulatory Services Department of Hart District Council.

This policy sets out the general framework that will be applied across Regulatory Services in their role of protecting the public, the natural and built environment, consumers and those at work. These services include:

- Environmental Health
- Building Control
- Planning Enforcement
- Licensing
- Dog Warden

## **2. AIMS & OBJECTIVES**

Regulatory Services will endeavour to carry out its enforcement functions in an equitable, effective, efficient, practical and consistent manner having regard to its general aims as follows:

### **Purpose**

Regulatory Services will take a lead and work with others to improve the prosperity, environment and quality of life of all who live or work in the District.

### **Aims**

Regulatory Services aims to:

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- Increase the prosperity of the Borough by supporting existing businesses, encouraging new employment and economic growth.
- Protect and enhance the built and natural environment.

#### **Objectives**

The Regulatory Services Department will achieve its stated aim through a service delivery approach intended to allow businesses and others to meet their legal obligations and enforcement requirements without unnecessary expense. Firm action, including prosecution and other legal or enforcement action will however be taken where appropriate against those who flout the law.

### **3. LEGISLATION**

The Legislative and Regulatory Reform Act 2006 requires all Local Authorities including Hart to have regard to the Principles of Good Regulation when exercising a specified regulatory function. For local authorities, the specified functions include those carried out by our environmental health, planning enforcement, building control and licensing services.

We will exercise our regulatory activities in a way which is:

- Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence;
- Accountable – we will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;
- Consistent – the advice we provide to those we regulate will be robust and reliable. We will endeavour to act in a consistent manner with other local authorities;
- Transparent – those we regulate are able to understand what is expected of them and what they can anticipate in return; and
- Targeted – our resources will be focussed on higher risk enterprises and activities, reflecting local need and national priorities.

Hart has regard to the [Regulators' Code](#) in the preparation and delivery against this policy. In certain instances we may conclude that a specific part of the Code is either not relevant or is outweighed by another provision. We will ensure that any departure from the Code will be properly reasoned and based on material evidence.

For the purposes of the Human Rights Act 1998 Hart is a public authority. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

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Where there is a need for Hart to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988.

When deciding whether to prosecute the Council will have regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow considering legal action. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- **Evidential Test**  
When deciding whether there is enough evidence to prosecute, the Council will consider what evidence can be used in court and is reliable. The Council must satisfy itself that there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.
- **Public Interest Test**  
The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us in Appendix A.

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

#### **4. COURTESY AND HELPFULNESS**

The Council will wherever practical work with business and others being regulated, including small and medium sized businesses, to advise on compliance. In particular the Council will:

- Try to raise awareness of the Council's enforcement duties to achieve understanding and commitment and secure ownership of compliance arrangements, subject to available resources;
- Offer help, where possible to individuals, community groups and to local business, to help them to meet their obligations balanced against the need to achieve adequate protection for those being affected by unauthorised or illegal activities.
- Provide a helpful, courteous and efficient service with employees identifying themselves by name.
- Provide contact points and telephone numbers to encourage communication.
- Respond to complaints about our enforcement activities quickly and fairly, within the terms of the Council's Complaints, Comments and Compliments Scheme.

# **Enforcement of Criminal and Civil breaches**

## **1. Compliance Advice, Guidance and Support**

Hart uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter sets out what can be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter or notice may be presented as evidence of previous non-compliance.

The Council recognises that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and the Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, the Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

## **2. Voluntary agreements**

In many instances the Council may accept voluntary agreements that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary agreements seriously and consider enforcement action where there is little confidence of compliance.

## **3. Statutory (Legal) Notices**

In respect of many breaches the Council has powers to issue statutory notices. These include: 'Stop Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

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Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

#### **4. Court Orders and Injunctions**

In some circumstances the Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. The Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice or where the risk to safety or health is too great to consider lesser enforcement actions.

#### **5. Simple Caution**

The Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Council is likely to consider prosecution.

A simple caution will influence how the Council deals with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

#### **6. Prosecution**

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute the Council will have regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s). Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- How serious was the offence committed?
- What is the level of culpability of the suspect?
- What are the circumstances and what harm could have or was caused?

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- What was or could have been the impact on the community?
- Is prosecution a proportionate response?

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a custodial sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors or food business operators.

#### **7. Refusal/Suspension/Revocation of Licences**

The Council issues a variety of licences and permits and also ensures that appropriate standards are met in relation to licences issued. Most licences include conditions which require the licence holder to take steps to ensure that a business is suitably run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, the Council may take previous breaches and enforcement action into account.



## **What you can expect from Regulatory Services in Hart District Council**

1. This document explains what you can expect of Regulatory Services in Hart. This document sits beneath the Corporate Enforcement Policy. Regulatory Services is committed to providing you with an efficient, courteous and helpful service and this document tells you how we aim to do that and what standards we will meet.
2. Regulatory Services is responsible for the following areas:
  - Environmental Protection
  - Planning Enforcement
  - Food Safety
  - Health and safety
  - Licensing
  - Building Control
  - Public Health
  - Dog Warden

### **How we deliver our services**

3. The Regulatory Services Department makes a fundamental contribution to the maintenance and improvement of the built environment, public health, quality of life and wellbeing. Our aims are to:
  - Protect the public, businesses and the environment from harm
  - Support the local economy to grow and prosper
  - Take a proportionate approach to enforcement
4. Enforcement activity is determined by national priorities, assessing the needs of local people and our business community, and addressing significant risks where they exist. We do this through close engagement with residents, businesses and other groups. We utilise data and available information to ensure our resources are targeted appropriately, in the light of local needs and national priorities.
5. Regulatory Services are committed to being transparent in our activities, delivering against clear priorities and publishing our performance against annual work programmes, internal performance indicators and national targets.

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6. We carry out all our activities in a way that supports those we regulate to comply and grow:
- We ensure that information, guidance and advice is available to help you to meet legal requirements
  - We carry out inspections and other activities to check compliance with legal requirements, and we target these checks where we believe they are most needed.
  - We deal proportionately with breaches of the law as set out in our Enforcement Policy, including taking firm enforcement action when necessary.
  - We provide a range of services to residents and businesses, including pest control, development control, building control, environmental health, licensing and a dog warden service.

Our services will be delivered in accordance with the requirements of the [Regulators' Code](#).

### **Working with you**

7. In all your dealings with us you can expect, and will receive, an efficient and professional service. Our officers will:
- Be courteous and polite
  - Always identify themselves by name in dealings with you, and provide you with contact details
  - Seek to gain an understanding of how your business operates
  - Provide details of how to discuss any concerns you may have
  - Agree timescales, expectations and preferred methods of communication with you
  - Ensure that you are kept informed of progress on any outstanding issues.

### **Helping you to get it right**

8. The Regulatory Services Department at Hart is committed to working with businesses to ensure legislative compliance and success through the provision of accurate and timely advice. We make information and guidance on meeting legal requirements available through a variety of media including the council website, social media, newsletters and newspaper articles.
9. Where you need advice that is tailored to your particular needs and circumstances we will:
- Discuss with you what is required to achieve compliance
  - Provide advice that supports compliance and that can be relied on
  - Provide clear advice that can be easily understood and implemented
  - Distinguish legal requirements from suggested good practice

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- Ensure that any verbal advice you receive is confirmed in writing if requested
- Acknowledge good practice and compliance.

#### **Inspections and other compliance visits**

10. We monitor and support compliance in a number of different ways including through inspections, sampling visits, advisory visits and complaint investigations. These visits will always be based on an assessment of risk and an officer will not visit without a valid reason.
11. When we visit you our officers will:
  - Explain the reason and purpose of the visit
  - Carry their identification card at all times, and present it on request when visiting your premises
  - Exercise discretion in front of your customers and staff
  - Have regard to your approach to compliance, and use this information to inform future interactions with you
  - Provide information, guidance and advice to support you in meeting your statutory obligations, if required
  - Provide a written record of the visit where relevant.

#### **Responding to non-compliance**

12. Where we identify any failure to meet legal obligations, we will respond proportionately, taking account of the circumstances, in line with our Corporate and departmental Enforcement Policy.
13. Where we require you to take action to remedy any failings we will:
  - Explain the nature of the non-compliance
  - Discuss what is required to achieve compliance, taking into account your circumstances
  - Clearly explain any advice, actions required or decisions that we have taken
  - Agree timescales that are acceptable to both you and us, in relation to any actions required
  - Provide in writing details of how to appeal against any advice provided, actions required or decisions taken, including any statutory rights to appeal
  - Explain what will happen next
  - Keep in touch with you, where required, until the matter is resolved

#### **Requests for our services**

14. We shall clearly explain the services that we offer, including details of any fees and charges that apply. In responding to requests for our services, including requests for advice and complaints about breaches of the law, we will:

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- Acknowledge your request within the timescales specified in our corporate standards
  - Explain what we may or may not be able to do, so that you know what to expect
  - Keep you informed of progress throughout our involvement
  - Inform you of the outcome as appropriate
15. Our officers will exercise their judgment to determine whether a more prompt response is required.

#### **How to contact us**

16. You can contact us by:

Telephone: 01252 774421 (*Environmental Health including dog warden and pest control*)  
01252 774419 (*Development Control and Building Control*)  
01252 774496 (*Licensing*)

Email: [eh@hart.gov.uk](mailto:eh@hart.gov.uk)  
[Licence@hart.gov.uk](mailto:Licence@hart.gov.uk)  
[buildingcontrol@hart.gov.uk](mailto:buildingcontrol@hart.gov.uk)  
[planningadmin@hart.gov.uk](mailto:planningadmin@hart.gov.uk)

Web: [www.hart.gov.uk](http://www.hart.gov.uk)

By post: *Hart District Council*  
*Civic Offices*  
*Harlington Way*  
*Fleet*  
*Hampshire*  
*GU51 4EJ*

Or in person at the above address between 9am and 5pm (Monday-Thursday) 9am and 4:30pm (Fridays) excluding national holidays.

17. We will seek to work with you in the most appropriate way to meet your individual needs. We can make information available in different formats, and have access to translation and interpretation services.
18. If you contact us we will ask you for your name and contact details to enable us to keep in touch with you as the matter progresses. We treat all contact with the service in confidence unless you have given us permission to share your details with others as part of the matter we are dealing with on your behalf or there is an operational reason why we need to do so. We will respond to anonymous complaints and enquiries where we judge it appropriate to do so. Personal data will be managed in accordance with our Data Protection Policy.

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**Complaints and compliments**

19. Where we take enforcement action, there is often a statutory right to appeal. We will always tell you about your right to appeal at the appropriate time. We shall state the reasons taking such action and will always provide you with the contact details for the enforcing officer. We manage complaints about our service, or about the conduct of our officers, through Hart's Complaints and Compliments Policy which can be found at: <http://www.hart.gov.uk/feedback>
20. We value input from you to help us ensure our service is meeting your needs. We would like to hear from you whether your experience of us has been good or in need of improvement. This helps us to ensure we keep doing the right things and make changes where we need to. We use customer satisfaction surveys routinely but always welcome your constructive feedback at any time. You can provide feedback in the following ways:

Telephone: 01252 774421 (*Environmental Health*)  
01252 774419 (*Development Control and Building Control*)  
01252 774496 (*Licensing*)

Email: [enquiries@hart.gov.uk](mailto:enquiries@hart.gov.uk)  
[eh@hart.gov.uk](mailto:eh@hart.gov.uk)  
[Licence@hart.gov.uk](mailto:Licence@hart.gov.uk)  
[buildingcontrol@hart.gov.uk](mailto:buildingcontrol@hart.gov.uk)  
[planningadmin@hart.gov.uk](mailto:planningadmin@hart.gov.uk)

Web: [www.hart.gov.uk](http://www.hart.gov.uk)

By post: *Hart District Council*  
*Civic Offices*  
*Harlington Way*  
*Fleet*  
*Hampshire*  
*GU51 4EJ*

Or in person at the above address between 9am and 5pm (Monday-Thursday) 9am and 4:30pm (Fridays) excluding national holidays. Any feedback that we receive will be acknowledged, considered and responded to.

**Dated:** November 2014  
**Job title:** Head of Regulatory Services  
**Review Due:** November 2016