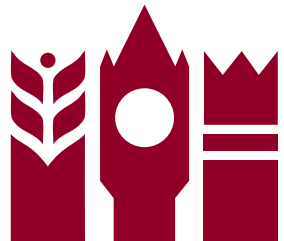


Agriculture Act 1970 Agriculture (Miscellaneous Provisions) Act 1968 Agriculture Produce (Grading and Marking) Acts 1928 & 1931 Animal Boarding Establishments Act 1963 Animal Health Act 1963 Breeding of Dogs Act 1973 and 1991 Building Act 1984 Building (Prescribed Fees) Regulations 1994 Building Regulations (as amended) 1991 Business Names Act 1985 Children and Young Persons Act 1933 Children and Young Persons (Protection from Tobacco) Acts 1991 Children Act 1989 Clean Air Act 1993 Companies Act 1985 Construction Procedures Regulations 1991 Consumer Credit Act 1974 Consumer Protection Act 1987 Control of Pollution Act 1974 Copyright, Design and Patents Act 1988 Courts and Legal Services Act 1990 Crime and Disorder Act 1998 Dangerous Wild Animals Act 1976 Development and Tourism Act 1969 Disabled Discrimination Act 1995 Education Reform Act 1988 Energy Act 1976 Energy Conservation Act 1981 Environmental Protection Act 1990 Estate Agents Act 1979 European Communities Act 1972 Explosives Acts 1875 to 1976 Fair Trading Act 1973 Farm and Garden Chemicals Act 1967 Fire Preventions Act 1971 Fire Safety and Safety of Places of Sports Act 1987 Food and Environment Protection Act 1985 Food Safety Act 1990 Hallmarking Act 1973 Health Act 1961 Health and Safety at Work Etc. Act 1974 Highways Act 1980 Housing Act 1985, 1988 and 1996 Insurance Broker (Registration) Act 1977 Local Government (Miscellaneous Provisions) Act 1972, 1976 and 1982 Medicines Act 1968 Mock Auctions Act 1961 Nurses Agencies Act 1957 Party Wall Etc. Act 1996 Pesticides (Fees and Enforcement) Act 1989 Pet Animals Act 1951 Poisons Act 1972 Prices Act 1974 and 1975 Prevention of Damage by Pests Act 1949 Property Misdescriptions Act 1991 Protection from Eviction Act 1977 Public Health Act 1936 Registered Homes Act 1984 Riding Establishments Acts 1964 and 1970 Road Traffic (Foreign Vehicles) Act 1972 Road Traffic Acts 1988 and 1991 Road Traffic Offenders Act 1988 Road Traffic (Consequential Provisions) Act 1988 Safety of Sports Ground Act 1975 Solicitors Act 1974 Sunday Trading Act 1994 Telecommunications Act 1984 Theft Act 1968 Timeshare Act 1992 Town & County Planning Act 1990 Trade Descriptions Acts 1968 and 1972 Trade Marks Act 1994 Trading Representations (Disabled Persons) Act 1958 and 1972 Trading Stamps Act 1964 Unsolicited Goods and Services Acts 1971 and 1975 Video Recordings Act 1984 Weights and Measures Act 1985

Making Regulation Work

advice for residents and businesses in Darlington



**DARLINGTON
BOROUGH COUNCIL**

Making Regulation Work

1. Enforcement Concordat

The Government published a concordat on good enforcement practice, in March 1998, setting out the principles of operation and delivery that characterise a good enforcement service. Its purpose is to achieve fair, practical and consistent enforcement across the Country.

Darlington Borough Council, together with many other enforcement agencies accepted the invitation to sign up to the principles of the concordat.

2. The Council's Approach

We will explain to individuals and businesses the approach adopted to ensure compliance with a wide range of legislation we have a duty to enforce. Our aim is to secure efficient compliance with the legislation while minimising the burden to the Council and the community.

We take into account specific legal requirements and nationally published guidance in carrying out enforcement activities.

Officers will, where necessary, be provided with detailed procedure notes to assist consistent enforcement action.

3. Our Principles of Good Enforcement

Standards: In consultation with the business community and other relevant interested parties, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them.

Openness: We will provide information and advice in plain language on the rules that we apply. We will be open about how we set about our work, consulting businesses, consumers, voluntary organisations and charities about it. We will discuss specific compliance failures or problems with anyone experiencing difficulties.

Helpfulness: We believe that prevention is better than cure and that our role therefore involves actively working with people and businesses, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and officers will identify themselves by name. We will provide a named person and telephone number for further contact.

Wherever practicable our enforcement services will be effectively co-ordinated to minimise unnecessary overlap and delay.

Complaints about service: We will provide well publicised, effective and timely complaints procedures, easily accessible to residents and businesses. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained.

Proportionality: We will minimise the costs of compliance by ensuring that any action we require is proportionate to the risks or other consequences. We will take particular care to work with small businesses and the community so that they can meet their legal obligations without unnecessary expense, where practicable.

Consistency: We will carry out our duties in a fair, equitable and consistent manner. Whilst authorised officers will exercise judgement in individual cases, we will promote consistency, including effective arrangements for liaison with other

authorities and enforcement bodies. Decisions shall not be influenced by gender, race, ethnic origin, religious beliefs, political beliefs or sexual orientation. Sensitive consideration will be given to individual needs.

4. Levels of Enforcement Action

The focus for enforcement activity by authorised officers has three consecutive stages:-

- 1 Advice:** Advising businesses, and raising awareness about legal standards and promoting good practice.
- 2 Support:** Promoting positive relationships and discussing issues at the earliest opportunity to prevent any breach of regulations and making clear the consequences of non compliance.
- 3 Statutory Notice and Legal Proceedings:** Following procedures laid down in legislation, codes of practice and professional guidance notes, officers will take appropriate enforcement action. This formal stage will only be considered where stages 1 and 2 have failed to achieve effective compliance or where there is for example:-
 - i a serious risk to health, safety or the environment;
 - ii blatant disregard of legal responsibilities;
 - iii an offence which is of such gravity that other forms of action are inappropriate.

Court action may include Criminal and/or Civil Proceedings.

5. Statutory Notices

The legal authority to serve statutory notices, which require a person to comply with specific legal requirements, is provided in many Acts of Parliament. Failure to comply with terms of a Statutory Notice makes the person liable to court action.

It is possible in exceptional circumstances to prosecute as well as serve a notice; failure to comply with a notice would be an additional offence. When a Statutory Notice is served written information detailing the method of appealing against the notice will be provided at the same time.

6. Legal Proceedings - Criminal and Civil

To ensure that we achieve a consistent approach to legal proceedings the following criteria will be taken into account:-

- a** The breach is prevalent in an area and legal proceedings may be seen as a deterrent against non compliance, e.g. dog fouling, dumping of rubbish or cable burning when it is improbable a suspected offender will be seen on subsequent occasions.
- b** The seriousness of the offence for example:
 - i risk of harm to the public health;
 - ii identifiable victims;
 - iii failure to comply with a statutory notice served for a significant breach of legislation or to effect the abatement of a nuisance;
 - iv disregard of public health for financial reward.
- c** The previous history of the party concerned for example:
 - i offences following a history of similar offences;
 - ii failure to respond positively to past warnings;
 - iii failure to comply with statutory notices.
- d** Any available defence. This includes statutory defences e.g. due diligence in relation to food safety; best practicable means or best practical environmental option.

- e The available evidence including witnesses.
- f Willingness to prevent a further breach.
- g Whether other action, such as the issue of a formal caution in accordance with Home Office Advice or the service of a statutory notice would be more appropriate or effective.
- h Any explanation offered.

Before the investigating officer commences court action legal advice will be taken from the Council's Solicitor. As a general rule, legal proceeding will start without unnecessary delay, and within the legal time limits.

7. Formal Cautions

Under certain circumstances a formal caution may be an alternative outcome to prosecution. This option will be considered by the investigating officer before court action.

The purpose of formal cautions are:-

- a to deal quickly and simply with less serious offenders;
- b to avoid unnecessary appearance in criminal courts;
- c to reduce the chance of suspected offenders re-offending.

Home Office Circular 18/1994 provides guidance on the cautioning of suspected offenders:-

- a In order to safeguard the suspected offender's interests, the following conditions should be fulfilled before a caution is administered -
 - i there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction;

- ii the suspected offender must admit the offence;
 - iii the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.
- b** There is no legal obligation for any person to accept a formal caution and no pressure should be applied for the person to accept a caution.
- c** If there is insufficient evidence to consider a prosecution, then a formal caution is inappropriate.
- d** When a person declines to accept a formal caution, it will be necessary to consider taking alternative enforcement action. Whilst this may mean taking court action, it is not inevitable. The officer shall discuss options with the Borough Solicitor.

A formal caution will generally be administered by a Section Manager or Head of Service in Council offices, but if the person is elderly, infirm or otherwise vulnerable, a caution may be administered less formally, perhaps at the offenders home and in the presence of a friend, relative or other appropriate person.

In certain special circumstances the formal caution may be administered by letter.

Where the offender is a juvenile, the formal caution will be issued in the presence of a parent, guardian or other appropriate person.

In the case of a person who has accepted a formal caution re-offending for a similar offence, then the formal caution will be cited in any prosecution case.

8. Human Rights

- a. When making decisions on action to be taken the European Convention on Human Rights will always be taken into account.
- b. When a decision has been made on the appropriate action persons directly affected will be informed.

9. How to Comment upon the delivery

Darlington Borough Council is committed to providing high quality services that are readily accessible and responsive to comments from the public. This includes services that involve the enforcement of legislation.

If you wish to make a comment, or complain about any Council Service information on how to do this is available on the Council's website www.darlington.gov.uk or an information leaflet is available from Council reception counters. This information can also be made available in Braille or large type.

In the first instance contact should be made with the manager responsible for the service and, where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time scales involved.

For further information on the Council's , Comments Compliments & Complaints Procedure contact the Policy Unit, Town Hall, Darlington. DL1 5QT

Telephone 01325 388016, Fax 01325 388019,

e-mail: policy.unit@darlington.gov.uk

