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service

Enforcement Concordat: Good Practice Guide for England and Wales

dti



SMALL BUSINESS SERVICE

AN EXECUTIVE AGENCY OF THE DTI

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Foreword

“Good enforcement brings benefits to business, enforcers and consumers. Since the launch of the Enforcement Concordat in 1998, enforcers and business have been working to realise these benefits through the Concordat’s Principles of Good Enforcement.

The Principles of Good Enforcement are best carried out through a partnership approach to enforcement, with enforcers and business working together to achieve regulatory compliance. This approach particularly helps small business to understand and meet its responsibilities more easily. It also helps to achieve higher levels of compliance and gives greater consumer and employee safety.

Ultimately this also contributes to the economic vitality of our local communities. With compliance made easier, and with enforcers able to focus their resources on businesses who break the law, law-abiding businesses will be free to compete on a level playing field.

We therefore welcome this *Good Practice Guide for England and Wales*. It both celebrates the good work that is being done and demonstrates to all enforcement bodies what can be achieved by applying the Concordat’s Principles of Good Enforcement.”

Melanie Johnson MP, Parliamentary Under-Secretary of State for Competition, Consumers and Markets

Nigel Griffiths MP, Parliamentary Under-Secretary of State for Small Business

Rt Hon Lord Macdonald of Tradeston, CBE, Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster

Andrew Davies AM, Minister for Economic Development and Transport

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Summary of the Good Practice Guide

1 This table summarises the options open to enforcement bodies as they work to implement the Enforcement Concordat's Principles of Good Enforcement.

| Principles of Good Enforcement | | Implementation | |
|--------------------------------|--|---|--|
| Policy | Procedures | Options | Good Practice examples |
| Standards | Consult with business and stakeholders in setting standards for level of service and performance Monitor performance | Publish openly Collaborative auditing Look for feedback | Harnessing the web (p11) Achieving a joined-up approach through a proactive 'reach-out' survey (p11) |
| Openness | Provide information on regulations and enforcement practice Discuss compliance failures or problems with anyone experiencing difficulties | Disseminate information widely Be approachable to business | Accompanying inspections with helpful information (p12) Well-researched and relevant compliance guidance (p13) Following up contact with businesses to avoid repeat problems (p14) |

| Principles of Good Enforcement | | Implementation | |
|---------------------------------------|---|---|---|
| Policy | Procedures | Options | Good Practice examples |
| Helpfulness | <p>Clear advice confirmed in writing</p> <p>Distinguish between best practice advice and legal requirements</p> <p>Consider providing an opportunity for discussion before formal enforcement action</p> <p>Give a clear explanation of the need for any immediate action</p> <p>Focus on preventative activity</p> | <p>Provide clear information on regulatory requirements</p> <p>Engage with business</p> <p>Co-ordinate with other enforcers where appropriate</p> | <p>Plain English information packs (p15)</p> <p>Face-to-face advice and consultancy (p16)</p> <p>Using technology for smart compliance (p16)</p> <p>Assisting compliance with dedicated teams (p17)</p> <p>Improving the flow of information (p18)</p> <p>Using partnerships to improve business–enforcer relationships (p19)</p> <p>Regular contact with stakeholders (p20)</p> <p>Creating a higher profile for initiatives to improve awareness (p20)</p> <p>Endorsing best practice by business (p21)</p> <p>A Charter Mark for motor traders (p21)</p> <p>One-stop-compliance-shop (p22)</p> |
| Complaints about service | <p>Explain complaints procedure at the time any formal action is taken</p> | <p>Collate complaints and action taken, build evidence base to guide future activity</p> <p>Easy-to-use, accessible system</p> | <p>Using a complaints/ comments database (p24)</p> <p>Joined-up complaints process (p24)</p> <p>User-friendly complaints and feedback systems (p25)</p> |
| Proportionality | <p>Tailor enforcement action to risks to minimise costs of compliance</p> <p>Prosecute when proportionate to bring serious offenders to account</p> | <p>Publish prosecution guidelines</p> <p>Target higher risk business activities for formal action</p> | <p>Explaining the Code for Crown Prosecutors (p26)</p> <p>Priority planning for low-risk activities (p27)</p> <p>Sectorally-targeted risk assessment (p27)</p> <p>Identifying problem traders (p27)</p> |

| Principles of Good Enforcement | | Implementation | |
|---------------------------------------|--|---|--|
| Policy | Procedures | Options | Good Practice examples |
| Consistency | Have effective arrangements to promote consistency | Liaise with other enforcement bodies External auditing Internal process improvements Quality accreditation | Providing a single point of contact for large national businesses (p28) Joined-up benchmarking (p28) Sector-specific business liaison (p29) Co-ordination between enforcers for regional consistency (p29) Sharing information and experience (p29) Improving services through evaluation from business groups (p30) Using an 'Enforcement Management Model' (p31) |

Introduction

2 In March 1998 the Cabinet Office, in partnership with the Local Government Association (and other principal local authority associations), business and consumer groups, published the central and local government Concordat on Good Enforcement (the Enforcement Concordat). Since then a significant number of local authorities, government departments and government agencies have signed up to the Enforcement Concordat (an up-to-date list is available on the Cabinet Office website at <http://www.cabinet-office.gov.uk/regulation/PublicSector/enforcement/Enforcement.htm>).

3 The Enforcement Concordat is a voluntary, non-statutory code of practice. It sets out the best practice that many enforcers had adopted in their dealings with business before 1998, in terms of the Principles of Good Enforcement:

- Standards: setting clear standards
- Openness: clear and open provision of information
- Helpfulness: helping business by advising on and assisting with compliance
- Complaints about service: having a clear complaints procedure
- Proportionality: ensuring that enforcement action is proportionate to the risks involved

- Consistency: ensuring consistent enforcement practice.

4 See pages 39–41 for the full text of the Concordat.

5 Implementing the Principles of Good Enforcement brings significant benefits to enforcers, business and society as a whole. By facilitating compliance, enforcers can achieve higher compliance rates and reduce the number of costly prosecutions they have to undertake. This will allow them to target those who flout the law or act irresponsibly. Business, in particular small to medium enterprises, will also find it easier to get compliance right first time, which will contribute to the safety of consumers and employees.

6 By encouraging enforcers and business to work together, without undermining enforcers' duty to take formal action where necessary, the Concordat will create a level playing field for competition between law-abiding businesses, which will help to enhance the economic vitality of local communities.

7 The *Enforcement Concordat: Good Practice Guide for England and Wales* sets out a range of options drawn from current good practice, which enforcers can use to help them apply the Principles of Good Enforcement. It does not adopt a one-size-fits-all approach to implementation, but instead presents practical examples of what has worked for various enforcement bodies. These form a non-exhaustive

range of options for enforcement bodies to consider as they work to implement the Concordat's Principles of Good Enforcement.

8 The *Good Practice Guide* also details the steps an enforcement body should take once it has signed up to the Enforcement Concordat. These are: determining lead responsibility; reviewing existing policies; consulting with business; and drawing up a strategy for implementation. Finally, it suggests possible monitoring systems, involving continuous assessment and consultation. The Department of Trade and Industry (DTI) is undertaking a separate review of how future compliance with the Enforcement Concordat should be monitored.

Defining enforcement

9 The Enforcement Concordat adopts a broader definition of 'enforcement' that combines advisory visits and assisting compliance with formal action. The Principles of Good Enforcement are based on this definition, and are intended to encourage co-operation with business and fair and consistent enforcement practice by enforcement bodies. The goal is higher levels of voluntary compliance with regulations.

10 Helping business to comply with regulations and to meet their legal duties is therefore the goal of the Enforcement Concordat. However, it recognises that enforcers must be able to take immediate action when required (for example, to ensure public health and safety or to protect the environment) and does not restrict enforcers' ability to take firm action against those who flout the law or act irresponsibly. This combination of assistance and quick, firm action when necessary will ensure the compliance

that is needed to protect the public and preserve fair competition.

Scope of the Enforcement Concordat

11 Good enforcement is often about building good partnerships between enforcers and business. The adoption and application of the Enforcement Concordat should be the responsibility of all enforcement bodies, national and local, working in partnership with the relevant business community. Indeed, a wide range of national and local enforcement bodies have signed up to the Enforcement Concordat, and many businesses have played an active role in applying the Enforcement Concordat's Principles (see 'What enforcement bodies can expect from business' on page 32).

12 The Enforcement Concordat should be applied across all the regulatory functions of an enforcement body. For local authorities this means all regulatory services which affect the business community. Key services include trading standards, environmental health, planning and building control; but fire, highways, registration and inspection units, licensing departments and social work should all be considered for inclusion. This list is non-exhaustive, and authorities are encouraged to extend the Concordat to cover other services.

13 The *Good Practice Guide* has no legal force and is intended to complement the Enforcement Concordat by providing examples of good enforcement practice and procedure. Neither the Enforcement Concordat nor the *Good Practice Guide* are legally binding documents, and decisions to take enforcement action remain the responsibility of individual enforcement bodies.

14 The *Good Practice Guide* covers England and Wales. The Scottish Executive and Northern Ireland Executive plan to draw on the *Good Practice Guide* in producing their own documents for Scotland and Northern Ireland.

Wider policy context

15 The Enforcement Concordat and good enforcement contribute to a wide range of central and local government agendas, including:

- **Local authorities' new power to promote economic, social and environmental well-being** – good enforcement will help economic regeneration in both urban and rural areas, and will help to encourage, develop and sustain vibrant businesses in a local authority's area.
- **Best value** – good enforcement practice by a local authority will feed into the Corporate Performance Assessment.
- **Local government modernisation** – following the Principles of Good Enforcement in the Concordat will assist local authorities in achieving consistency across services as well as ensuring easy access for businesses to help and advice.
- **Central government's 'Better Regulation' initiative** – the Enforcement Concordat is a natural complement to the Government's 'Better Regulation' agenda, which recognises the need for regulation but also recognises that the burden on business should be kept to a

minimum.¹ The Concordat helps to reduce the burden of regulation by making compliance easier for business.

- **Central government's 'Think Small First' initiative** – the Government is committed to taking small business into account. The principles of good enforcement will make it easier for small businesses to get the information they need in order to comply with regulations. Through the Whitehall Group, senior government officials regularly share good practice relating to the interface between government and small business.

Who owns the Enforcement Concordat?

16 The Enforcement Concordat is owned and operated by its signatories – local and national enforcement bodies. They have been putting its principles into practice since 1998 and this *Good Practice Guide* is intended to help them, and the businesses they regulate, to realise the benefits of good enforcement.

17 The *Good Practice Guide* is jointly published by the DTI, its Small Business Service (SBS) and the Cabinet Office. For further information on the Enforcement Concordat, please contact the SBS who is administering the list of signatories and the sign-up process (www.sbs.gov.uk).

¹ Under 'Better Regulation' the Government has committed itself to only regulating when absolutely necessary and when similar ends cannot be achieved by less intrusive means (e.g. self-regulation, codes of conduct, etc); consolidating or deregulating where appropriate; and making existing regulation work better.

Policy, procedures and good practice

18 Good enforcement secures compliance with regulations by using a combination of help, advice and formal action. The Enforcement Concordat's 'Principles of Good Enforcement' help enforcement bodies to make good enforcement a reality. The Principles of Good Enforcement are broken down into policies and procedures that enforcers can use in their everyday work. The policies (Standards, Openness, Helpfulness, Complaints about service, Proportionality and Consistency) act as a guide for enforcers, whilst the procedures set out the minimum requirements for putting the policies into practice.

19 To illustrate the value of implementing the Principles of Good Enforcement through policies and procedures, this section takes each policy in turn, quotes the full text that signatories to the Enforcement Concordat have agreed to, then:

- looks at the reasoning behind it; and
- gives options for implementing the policy and its procedures through good practice examples (see boxes).

20 These are real-life examples of good practice, drawn from the good work that enforcement bodies are doing to make the Enforcement Concordat's Principles work for them. They demonstrate what can be done by enforcers rather than what should be done. The aim is to illustrate a range of possibilities for applying the Enforcement

Concordat's Principles out on the street and in enforcement officers' day-to-day dealings with business and others.

Standards

The Enforcement Concordat states:

'In consultation with business and other relevant interested parties, including technical experts where appropriate, 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. The standards will be made available to businesses and others who are regulated.'

21 It is important that businesses know what to expect when they deal with enforcement bodies. Enforcement bodies can achieve this by being transparent about their standards of service, and involving the business community in drawing them up. This will help to foster productive working relationships with law-abiding businesses. It will also encourage businesses to seek help and advice, and will make it clear to businesses that flout the law or act irresponsibly that they can expect proportionate punishment.

Providing and distributing information

22 An effective way to achieve transparency about standards of service is to publish, and comply with, an enforcement policy (in line with the Enforcement Concordat). This will inform business what it can expect from enforcement officers, and should be made available by enforcers both in print form and on their website.

Harnessing the web

Many enforcement bodies have published enforcement policies on their websites. Good examples include:

- West Sussex County Council; see <http://www.tradingstandards.gov.uk/westsussex/pdf/TSEnforcement.pdf>
- Cheltenham Borough Council; see <http://www.cheltenham.gov.uk/libraries/templates/ourservice.asp?FolderID=194>
- Hampshire County Council; see <http://www.hants.gov.uk/regulatory/bsp/enforcea.html>
- Durham County Council; see <http://www.durham.gov.uk/durhamcc/usp.nsf/pws/consumer+services+-+enforcement+policy>

Looking for feedback

23 One method of monitoring performance against standards of service is to conduct business/user surveys. The results can help to highlight areas of success and areas that need improvement.

Achieving a joined-up approach through a proactive 'reach-out' survey

Basingstoke and Deane Borough Council conducted a survey of business attitudes to the enforcement of food safety regulations. This helped them to assess their performance and to determine future priorities.

Businesses were approached through a questionnaire included in the Food and Safety Group's bi-annual newsletter, and through the health and safety seminars that are held every two months.

The responses were analysed, together with those from other authorities in Hampshire undertaking similar exercises. The results indicated that the strategy of 'business friendly' enforcement, which had been in place for some time, was recognised by business. This was used to inform the Food and Safety Group Service Plan for 1999/2000, especially in the area of information delivery to businesses. Most businesses wanted to comply with health and safety legislation, but many found the level of information daunting.

As a result of these comments the Food and Safety Group, led by the health and safety lead officer, undertook to apply a more 'joined-up' approach to the information being produced. This will entail a fine-tuning of existing information and training material, and the addition of a self-audit checklist and a small business information pack (cross-referenced to the checklist). This will include, where appropriate, references to Health and Safety Executive leaflets and priced publications, plus information about targeted training sessions.

It is expected that this approach will not only assist businesses to comply with

their legal duties, but will also reduce the direct officer involvement because the business community will be better informed and prepared. The process of consulting business has increased confidence in the approach that the service has been taking, and has helped to inform future action. The Group Service Delivery Plan has been written following consideration of the survey results. Overall, the project has resulted in a better-informed and more focused regulatory service.

See <http://www.basingstoke.gov.uk/business/foodsafety.asp>

24 Liaison with other enforcement bodies is also a valuable way of assessing performance against service standards, for example through benchmarking groups (see 'Consistency' below for more details).

Openness

The Enforcement Concordat states:

'We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.'

25 Enforcement bodies should be open and transparent about the nature of their enforcement activities, and the laws that they enforce. Businesses need to have a clear understanding of what their legal

obligations are, how to fulfil them and what enforcement bodies can do to help.

26 Clear communication from enforcement bodies about what they do will help businesses to understand what is required of them. This can be achieved by distributing general information on legal requirements, discussing compliance issues with specific businesses, and fully explaining formal action when it is taken. It is important that enforcers make a clear distinction in all contact with businesses (for example in advice or guidance) between what businesses are legally required to do, and what is desirable but not compulsory.

Disseminating information on regulations

27 This can be done by publishing advice leaflets, placing information on websites, producing newsletters, and using business liaison/collaboration bodies to distribute information on new legal developments, enforcement initiatives, etc. See 'Helpfulness' below for more examples of good practice in disseminating information.

Accompanying inspections with helpful information

Moray Council Trading Standards Service sends all businesses who are the subject of inspection visits a letter which outlines Moray's commitment to working in partnership with business to achieve regulatory compliance (and pointing recipients towards the advice pages on its website). The letter also summarises the Enforcement Concordat, and includes a short questionnaire that aims to assess Moray's compliance with the Enforcement Concordat.

See <http://194.217.0.19/inform/published/councilservices/1370/1392.html>

Well-researched and relevant compliance guidance

The Office of Fair Trading (OFT) publishes a wide range of material to help businesses comply with legislation for which they have enforcement responsibility. A good example of advice for traders is OFT's *Guidance on unfair terms in tenancy agreements* (OFT356) published in November 2001 with the accompanying consumer leaflet, *Unfair tenancy terms*.

Before preparing this material, OFT consulted a wide range of stakeholders on the guidance, including NACAB and Shelter, the Housing Forum of the Office of the Deputy Prime Minister, (which includes the trade), and the Law Commission. After consultation, the guidance was written to explain why OFT considers some types of standard contract terms in tenancy agreements to be unfair under the Unfair Terms in Consumer Contracts Regulations 1999. This was needed because the relationship between the Regulations and landlord and tenant law was extremely complex and poorly understood, and there was widespread non-compliance as a result.

The guidance is intended to clarify the position, and to explain OFT's views and the basis on which OFT would take enforcement action. But the aim is also to put landlords, letting agents and publishers of standard contracts in a position where they can successfully review and revise their own contracts without OFT intervention. The guidance therefore reduces the need for landlords to seek specialist legal advice. It is also intended to be of help to trading standards services as co-regulators and to help promote consistent enforcement by them. Furthermore, it aims to assist

housing advisers in advising on tenants' rights, and to be of help to tenants themselves.

It will be reviewed periodically to reflect OFT's developing views on unfair terms in tenancies, and the views of those who use the guidance. Landlords have asked for examples of unfair terms and how they have been revised. These were not available for the original guidance but OFT plans to publish some as an annex to the main guidance.

The main benefit of the guidance has been that it addresses a widespread compliance problem in a cost-effective way. It applies to assured and assured shorthold tenancies. The Office of the Deputy Prime Minister estimates that there are 1.4 million private assured tenancies in England with a total annual rental value of £5.7 billion. The estimated number of all private rented sector landlords is about 600,000 plus some 13,000 letting agencies.

The guidance was widely distributed and is in considerable demand. As of January 2003 nearly 3,000 hard copies of the guidance and 28,500 copies of the leaflet have been distributed. The guidance has led to most of the major trade associations and those businesses that publish standard tenancy agreements revising their terms to comply with the requirements of the Regulations.

See <http://www.of.gov.uk/>

Being approachable to business

28 This involves being open to discussing potential and actual compliance failures, i.e. both before and after formal enforcement action has been taken. For example, in cases that do not require immediate action but that are the subject of formal action, some enforcers inform the business of their intention to take action and offer them the chance to discuss the specific compliance issue and put it right before action is taken.

Following up contact with businesses to avoid repeat problems

West Yorkshire Trading Standards Service has adopted a practice of offering follow-up visits after any formal action resulting from compliance failures. The aim is to offer advice and education on how businesses can ensure that they do not repeat the infringement.

See <http://www.westyorks.trading-standards.org.uk/downloads/enforcement%20policy%202002.pdf>

Helpfulness

The Enforcement Concordat states:

'We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information from us. Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.'

29 Implementing the policy of Helpfulness essentially means letting businesses know what they need to do to comply with regulatory requirements. The best enforcement services are therefore responsive, open and polite, and they provide persuasive evidence that in enforcement matters prevention is better than cure.

30 Helpfulness can mean providing information and advice, or providing a form of regular contact between enforcement bodies and the business community.

Providing information on regulatory requirements

31 A key aspect of helpfulness is providing clear information on regulatory requirements. This can entail creating an advice function within (or alongside) an enforcement body to work in tandem with the formal enforcement function.

At the simplest level it can entail publishing guides for local businesses to assist them in meeting regulatory requirements. This should:

- help to enhance the image of enforcers with business (as providing assistance as well as pursuing rule-breakers); and
- raise awareness of regulation among businesses which should mean that less time will be spent on explaining basic requirements.

32 Guidance notes on legislation should be written in clear, accessible language (technical material should be written with the layman in mind), and drawn up in consultation with key members of the business community so that their areas of concern are covered.

33 All guidance or information should be available in a range of media: print (leaflets, newsletters), telephone (to request leaflets, etc), electronic (websites), Braille, and languages other than English (as appropriate). This allows business and the general public to obtain a range of information on regulations that may affect them, at their leisure and without the need to come into formal contact with an enforcement body.

Plain English information packs

- Aberdeenshire Council is launching a 'Business Information Pack' as part of its 'Business Friendly Initiative' to guide businesses through regulatory requirements and to provide points of contact for council services. The pack will be written in plain language and have advice and information on most of the major regulatory services and will be expanded to cover all local authority regulatory activities. It will initially be published in hard copy, but Aberdeenshire Council is exploring ways of publishing it electronically (via its website or possibly on CD-ROM).

See <http://www.aberdeenshire.gov.uk/web/business.nsf/html/57EPH2?OpenDocument>

- East Hertfordshire District Council's Environmental Health Unit has developed a 'Guide to Law and Practice' to help local businesses meet their legal obligations. Its ring-bound format allows for easy updating (cost £5,000 for 750 sent to SMEs).

See http://www.eastherts.gov.uk/business/regulations/regulations_and_your_business.htm

- Winchester City Council has produced a simple guide for local businesses on health and safety at work.

See http://www.winchester.gov.uk/enviro_health/health&safety/index.shtml

Face-to-face advice and consultancy

- Creating a separate regulatory advice function can also have good results. Kirklees Business Partnership has enjoyed great success with its Regulatory Advice Team which provides advice, training and consultancy services on regulatory issues to small and medium-sized businesses (in particular it offers two hours' free consultation to any business to assist with regulatory compliance, mainly health and safety, and food safety). A telephone hotline also provides a one-stop-shop for advice from a range of enforcement bodies.

See <http://www.kbp.org.uk/>

- Stockton-on-Tees Borough Council has followed a similar path to that of Kirklees by setting up a Food and Environmental Business Advice Unit which complements enforcement activity by providing training and advice to businesses to help them meet their obligations and become more competitive.

See <http://www.feau.co.uk/>

- The Small Business Service provides a consultancy service to government departments on communicating regulatory requirements to a small business audience, and has compiled a database of small business owners, managers and administrators willing to participate in relevant consultations. In addition to this, the *How to Get the Message Across* booklet was re-issued in March 2003. This provides help to government departments in producing their guidance for small businesses.

A copy of this can be ordered from <http://www.dti.gov.uk/publications> or by calling the DTI Publications order line on 0870 1502 500 and quoting reference URN 03/662.

Using technology for smart compliance

- The Environment Agency has set up a website that provides sectorally-targeted information to businesses about their legal obligations.

NetRegs at: <http://www.environment-agency.gov.uk/netregs/>

- Norfolk County Council has set up a similar website, Superuk.com, which allows businesses to access and query information on all regulations enforced by local authorities.

See <http://www.superuk.com>

- The Health and Safety Executive (HSE) provides rapid access to its wealth of health and safety information, and access to expert advice and guidance via Infoline. Infoline is HSE's public enquiry contact centre, which takes enquiries by telephone, e-mail, minicom, fax and letter. Enquiries can be sent via HSE's website at www.hse.gov.uk (click on 'contact us'). All callers can remain anonymous, which makes the service accessible to everyone. Infoline receives 280,000 contacts a year, 90% of which are dealt with at first point of contact. The service was awarded Cabinet Office Beacon Status for Customer Relationship Management in late 2001.

- In order to reduce routine user–enforcer interface time (thus cutting costs and allowing staff to focus on key tasks), enforcement bodies could have downloadable forms on their websites (or send regular users forms on floppy disks), include ‘fees calculators’ on websites, and publish e-newsletters.
- For lengthy or ongoing compliance procedures, enforcers could consider providing a single point of contact for users/businesses. For example, the Building Control section of the London Borough of Newham has put in place a dedicated ‘checking officer’ to deal with all building control applications.

See <http://www.newham.gov.uk/environment/buildingcontrol/index.htm>

- HSE launched the Incident Contact Centre (ICC) in April 2001. This is a user-friendly way for businesses in England, Scotland and Wales to meet their statutory obligation to report specific kinds of health and safety incidents. Businesses can now telephone their reports to a single contact point – without having to fill in a form or identify the enforcing authority. They can also report via a website (www.riddor.gov.uk) using an interactive form, or by e-mail, fax or post. The ICC helps businesses during the reporting process and can direct them to HSE’s Infoline or HSE staff for more information. The ICC provides businesses with a simple, fast, effective and integrated reporting service – reducing paperwork and giving businesses greater choice when reporting.

See <http://www.hse.gov.uk>

Assisting compliance with dedicated teams

Inland Revenue’s Right Track Teams (RTTs) embody the Policy of Helpfulness by encouraging and managing compliance. Their primary role is to make contact with people who appear to be operating in the hidden or informal economy as ‘ghosts’ or ‘moonlighters’. RTTs are then tasked with bringing these individuals into the formal economy, overseeing their registration with Inland Revenue and ensuring they pay their tax and NICs on time for at least two years or return cycles, through proactively assisting them to file their returns on time. During 2001/02, 34,864 ‘ghosts’ and ‘moonlighters’ were registered and all of those who continue in business will receive follow-up customer service contacts during the following two return cycles.

Upon discovery, i.e. once the RTT officer has established liability, through letter, phone calls and if required meetings (at the customer’s convenience), all co-operative customers are allocated to a Customer Manager (CM) to support them within the Customer Assistance Programme. At this stage a tax record is created, and all applicable returns are issued. A letter is issued to the customer to introduce their CM and outline the CM’s role. During the two-cycle period the CM will liaise with the customer or their nominated agent and provide guidance on the return process. They ensure that their customers understand all applicable deadlines and the consequences of non-compliance, and deal with any basic enquiries that arise. If required and appropriate, the CM will also suggest and arrange help from Inland Revenue’s Business Support Teams and Enquiry Centres, etc.

Inland Revenue's Business Support Teams (BSTs) also provide help and assistance with compliance to small businesses. They offer national support to new/small businesses and employers in view of the Government's recognition of the significant burdens these sectors have to cope with. Although their primary responsibility is to new/small businesses and employers, the BSTs will provide education to all types of business and employers on specific new Government initiatives such as tax credits. The BSTs provide free help to customers through specially trained Business Advisors in two main ways:

- one-to-one consultations, usually at the business premises but also at any location convenient to the customer. The BSTs will also, if asked, check that the customer's record-keeping systems or payroll processes are adequate; and
- half-day workshops covering a range of subjects relating to payroll or business tax matters.

See <http://www.inlandrevenue.gov.uk>

Improving the flow of information

A Best Value review undertaken by Taunton Deane Borough Council revealed that many small businesses in its area felt that health and safety communication was not always clear. This was reinforced by the Council finding that its inspectors were having to spend a lot of time either dealing with businesses that had no idea what an inspection entailed, or chasing up businesses that had not taken action, or had taken insufficient action following inspections.

As a result, Taunton Deane Council now attaches to the advance notification of inspection letter an information sheet that details what the inspector will expect to find, and gives guidance on how to find health and safety information. There are separate versions for micro-businesses and branches of larger companies. With the inspection report, businesses are also given an information sheet on what they are expected to do with the report and a pro-forma action plan. All documents are in plain English.

See <http://www.tauntondeane.gov.uk>

Engagement with business

34 Forms of regularised engagement between enforcers and the business community (for example, through Local Business Partnerships) can be beneficial in fostering an atmosphere of trust and good working relationships between enforcers and business. In particular they can help to overcome any perception by business that enforcement bodies are unnecessarily prescriptive or adversarial.

35 Businesses are often reluctant to ask enforcement bodies for advice because they are afraid of admitting that they do not know how to comply with the law (and of opening themselves up to possible enforcement action). Regularised contact in the form of newsletters, seminars, open meetings, advice sessions, e-mail discussion groups, etc, can help to encourage enforcer-business and enforcer-enforcer dialogue. It can also become a mechanism for helping businesses to understand and comply with their legal obligations.

Using partnerships to improve business-enforcer relationships

- Basingstoke and Deane Borough Council, Hampshire County Council, Fire and Rescue Services and local Police have set up a Local Business Partnership to enable businesses and regulators within the Basingstoke and Deane area to work more closely together. The Local Business Partnership aims to create a new relationship between businesses and the regulators by:
 - cutting out any red tape when applying regulations to business;
 - encouraging better two-way communication between the local business community and the regulators, to make it easier for the business community to comply with regulations by ensuring they are given clear information and good, user-friendly advice;
 - helping to improve mutual understanding of needs;
 - making it easier for businesses to comply with regulations, by helping them understand their responsibilities under the legislation;
 - developing clear standards of service that businesses can expect from the regulators;
 - providing a mechanism for businesses to receive early notification of forthcoming new legislation, and enabling them to assess its likely impact;

- ensuring fair competition for all local businesses, whatever the size of the company; and
- helping regulators target enforcement on those flouting the law.

See <http://www.basingstoke.gov.uk/business/localbusinesspartnership.asp>

- A business partnership was set up in Cardiff in response to local businesses' desire that the Cardiff Trading Standards Service should actively help business by being available for informal discussions of the problems faced by business – thereby resolving issues without the need for formal action.

See <http://www.cbp.org.uk/content/frames.htm>

- Barnsley Local Business Partnership has had great success with its 'Business Alive' all day events that provide businesses with a chance to get up to date information on regulatory issues.

See <http://www.barnsley.gov.uk/business/lbpartnerships/background.asp>

- The Government's and the Health and Safety Commission's Revitalising Health and Safety Strategy recognises that to continue improving health and safety in Great Britain, the Health and Safety Executive (HSE) needs to work together with businesses and others to prevent and control risks to employees, the self-employed and members of the public.

The strategy is built upon key themes, one of which emphasises the need for 'partnership on health and safety issues'. This includes co-operation between public sector bodies, companies of all sizes, trade unions, professional and standards-setting bodies, designers, manufacturers and suppliers. HSE encourages, helps set up and becomes part of these relationships.

A prime example of this is HSE's work to help and encourage industry sectors and companies in setting their own health and safety performance targets. Certain sectors have achieved notable improvements. Employers, trade unions and HSE, working together through the Health and Safety Commission's Paper and Board Industry Advisory Committee, have achieved welcome progress in reducing injuries and deaths in the paper industry.

Through this joint initiative, fatal and major accidents reduced by 30% overall in the three years 1998 to 2001. Those firms who have involved their employees in all aspects of health and safety have achieved reductions of more than 50%. A further challenging three-year target has been agreed. In the offshore oil and gas industry, a programme to

reduce hydrocarbon leaks succeeded in reducing major releases by 16% compared to April 2000. A number of other sectors have also set their own targets, including: construction, electrical, the food and drink industry, textiles, mining and quarries.

See <http://www.hse.gov.uk>

36 Targeted or business-specific contact is also a useful method of reaching out to businesses and communicating to them the benefits of compliance.

Regular contact with stakeholders

Crewe and Nantwich Borough Council set up a Landlords Forum which meets every three months and allows landlords to seek information on issues of concern to them, and allows the Council to disseminate information.

See <http://www.crewe-nantwich.gov.uk/>

Creating a higher profile for initiatives to improve awareness

HM Customs and Excise Business Liaison Team has set up the 'Building Bridges to Small Businesses' initiative to draw together advice from government offices and provide the answers that small businesses need to their VAT and customs questions. The Business Liaison Team markets the initiative through open days which demonstrate the service it provides.

See <http://www.hmce.gov.uk/business/>

37 Accreditation schemes for business can also be a possible way forward for enforcement bodies to engage regularly with businesses and facilitate compliance with regulation. Successful accreditation schemes can contribute

to improved levels of compliance and bring benefits to consumers in the form of product quality and safety.

Endorsing best practice by business

- The East Riding of Yorkshire Council's Housing Standards Team has introduced a Private Rented Sector Accreditation Scheme to encourage good practice and high standards from private landlords.

This is a voluntary scheme initiated by the Council in partnership with private sector landlords and managing agents, but also involving Building Control and Planning sections, the Humberside Fire and Rescue Service, Humberside Police, the North Yorkshire and East Riding Energy Efficiency Advice Centre, Smart Moves, Housing Benefit, Housing Services and the Yorkshire Coast Landlords Association and Trading Standards.

The scheme has three levels: accreditation, commended and highly commended. Following accreditation, a landlord/agent will be invited to apply for the 'commended' award. 'Highly commended' is usually awarded on recommendation.

The scheme was established following consultation, through a working group, with landlords, agents, officers and tenants. Findings from a tenant satisfaction survey were also used to shape the scheme. As tenants expressed particular concern about the costs of heating, security and fire safety, these elements were incorporated into the commended standard within the scheme. The Private Rented Sector Accreditation Scheme is an excellent example of what can be achieved by

consultation and by the involvement of service users.

See <http://www.eastriding.gov.uk/>

A Charter Mark for motor traders

- The London Borough of Enfield has developed the Enfield Responsible Motor Trader Scheme, which aims to benefit both traders and consumers by raising the standard of trading within the motor trade sector.

Consumers benefit by being able easily to recognise scheme members by a clear logo. This assures them that the trader abides by a code of practice in selling and servicing cars, and has a clear process for dealing with complaints. Traders benefit by having a positive public image and by having in-house training and quality checks externally audited.

Finally, the local authority benefits by improving relationships with car traders and improving standards within the car trade.

See <http://www.enfield.gov.uk/resmotor.htm>

- Similarly, West Yorkshire Trading Standards Service's Motor Trade Partnership Scheme aims to ensure greater customer satisfaction and a reduction in the number of complaints received by West Yorkshire Trading Standards. Members of the scheme demonstrate a commitment to be fair, safe and honest in their dealings with their customers.

See <http://www.ts.wyjs.org.uk/mtpindex.htm>

Co-ordinate with other enforcement bodies

38 Making linkages with other enforcement bodies can greatly help in providing a co-ordinated service in specific areas.

One-stop-compliance-shop

- The Driver and Vehicle Licensing Agency and HM Customs & Excise have teamed up to provide a one-stop-shop for personal importers of new vehicles from the EC. This enables them to make a prior customs declaration so that they can license and register their vehicle on arrival in the UK (previously users were having to wait some weeks for the issue of customs forms for the registration and licensing of new vehicles purchased in Europe).

See http://www.dvla.gov.uk/faq/faq_imports_exports.htm

- The DTI's Small Business Service (SBS) has worked with other government departments and agencies to produce an accessible and straightforward guide to save new businesses time and money in getting to grips with regulatory requirements. The result is the first single reference source of government requirements and support for those thinking of or about to set up a new business in the UK. *The No-nonsense Guide* was published in March and is available in hard copy and electronically through www.businesslink.org and other business intermediaries.

- The SBS has also produced a series of summary guides to regulation in poster form. These provide information on a range of areas that are of interest to new businesses and cover some topics not touched upon in *The No-nonsense Guide*. Topics covered in this series are: setting up in business, employing staff, health and safety, sale of goods, insolvency and business succession.

Complaints about service

The Enforcement Concordat states:

'We will provide well-publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases 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.'

39 It is vital that enforcement bodies gather feedback on the services they provide. Positive feedback serves to reinforce good practice, whilst comments from business and others can help to refine and improve enforcement activity. Negative feedback in the form of complaints is no less valuable – it can provide useful information for enforcers when they periodically review the quality of their services.

40 Listening to and acting on feedback, whether positive or negative, is also a good way of putting the policies of Openness and Helpfulness into practice. It shows that an enforcement body is open to the views of business, learns from

its mistakes and is continually trying to improve its service.

41 The proper handling of feedback is therefore an important part of good enforcement practice. Businesses should be fully informed not only of what to expect from an enforcement body/officer, but also how they can submit praise, comments or complaints about the service they receive. Here are some key aspects of an effective complaints procedure:

Access to the complaints procedure

- Encourage complaints and compliments by advertising procedures and making them easy to use. For example, include a leaflet outlining the complaints procedure and standards of service (which also allows recipients to make comments on the service they receive) with all correspondence. Details of complaints procedures can also be published on websites, which could also allow for complaints to be submitted over the web.
- Tell users about service standards and how to complain if they are not met.
- Make it clear that complaints and comments are welcomed and will be used to assess and improve enforcement activity. For example, make available on a website information on how complaints have been handled in the past, what went wrong and what was done to put matters right.
- Be aware of users who have special difficulties, for example those with a reading disability or whose first language is not English.
- Carry out surveys to check that complaints systems really are easy to use.

Handling complaints

- Encourage front-line staff to 'own' complaints.
- Have clear, written procedures that focus on sorting out complaints quickly.
- Consult staff and users when drawing up and revising complaints procedures.
- Make sure that the procedures are fair to staff and users, and that information is treated as confidential.
- Recognise the importance of good communication skills when recruiting and training staff who handle complaints.
- Make sure that all staff, especially those who have most contact with users, know your policy and receive training.
- Draw up a menu of remedies and make sure that staff and users understand the options, including the role of any ombudsman.
- Provide support to staff, and get senior managers' commitment to handling complaints properly.

Results

- Record all complaints and analyse them to understand users' views and the improvements they want. It is important that an evidence base of complaints is built up to inform decisions about enforcement activity.
- Publish information at least once a year on the number and type of complaints; how quickly they were dealt with; users' satisfaction; and actions taken as a result.

- Pass information from complaints to policy makers.
- Take advantage of new information technology, including putting complaints procedures on the Internet.
- Have complaints reviewed by someone not responsible for the person or service complained about.

42 More information on effective complaints procedures can be found on the Cabinet Office's 'Better Public Services' website at: <http://www.servicefirst.gov.uk/1998/complaint/b5summ.htm>

Using a complaints/comments database: efficient for enforcers and customers

Kirklees Metropolitan Borough Council's Housing Service has designed its own system, called ACE, which records, monitors and reports on approvals, complaints and enquiries. ACE can be used with the service's existing software. Many of the system's features are a result of past guidance on good practice; general issues that affect society and local authorities (for example, nuisance and harassment); and consultations with front-line staff.

Customers' views are also taken into account. For example, the system produces an automatic acknowledgement to a written complaint or query. However, staff found that people making oral complaints or enquiries preferred just to be told their ACE reference number. This saves the council a lot of money on postage.

Customer relationships and the image of the service have improved because customers can discuss problems with any housing officer in any location.

Officers can check the history of the complaint, who dealt with it, and any action taken. This means that customers do not have to repeat their story to different members of staff.

The system has been running since July 1996, and is so successful that Kirklees Housing Service has sold it to the company who provided the original software. The company has since sold the system to other organisations.

See <http://www.kirklees.gov.uk/you-kmc/complaints/complaints.shtml>

Joined-up complaints process

The Blackpool District of the Benefits Agency has introduced its own local Customer Complaints Policy to achieve uniformity across the district and to ensure that all users are treated fairly. The document is designed to achieve uniformity when staff receive either a complaint or a compliment, and includes Service Level Agreements between each command manager and the customer service manager, agreeing targets for all types of complaints including MP enquiries. The policy document also gives staff guidance on procedure, desk aids to follow, and aide-memoires, and is envisaged to ensure higher levels of performance than the national procedures in productivity and speed of clearance. All complaints are handled in the same way, thus ensuring fair treatment for all customers.

The procedure is considered to make the complaints policy more relevant for staff and certainly gets attention from staff because it is recognised as locally produced to meet their needs and those of their users.

Monthly surveys are issued to customers who have submitted a complaint and have received a written response, to ascertain if they felt the complaint was fully answered, if the reply was clear, and also if they were happy with the length of time taken to deal with the complaint.

See <http://www.blackpool.gov.uk/>

User-friendly complaints and feedback systems

The Environmental Health and Licensing Services Division of Cheltenham Borough Council has developed a user-friendly complaints process, which is available electronically to make it open and accessible to all.

Cheltenham Borough Council is committed to providing high-quality services that meet the needs of users. To ensure that it is able to do this, it seeks to identify what people think of services so that it can constantly review and improve them. The Environmental Health and Licensing Services part of the Council website makes very clear that the service welcomes complaints as an opportunity to put matters right.

In addition to clear information on how to complain, comment or compliment the service, the website includes details of service levels that users have a right to expect and reports on complaints that have been handled in the past, what went wrong, and what was done to put matters right.

See <http://www.cheltenham.gov.uk/>

Proportionality

The Enforcement Concordat states:

'We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.'

43 Proportionality is an important part of the Enforcement Concordat's partnership approach to enforcement. The Concordat recognises that most businesses want to comply with the law. This means that the proportionate response to most enforcement situations will be for enforcers to co-operate with business to achieve compliance by being open and helpful, offering informal advice, and providing the chance to discuss compliance problems. The overall aim is the highest possible levels of compliance with the law coupled with proportionate enforcement, in which prosecution is generally reserved for the most serious offenders.

44 Being proportionate also means applying the principles of risk assessment to enforcement activity. Enforcement bodies should focus their attention on those whose activities give rise to the most serious risks, or where potential hazards are least well controlled. Compliance in lower-risk business activities should be encouraged by being open and helpful.

45 Therefore action should be proportionate to the seriousness and persistence of the infringement and should be the minimum action necessary to secure future compliance. For example, in some instances the circumstances of an infringement and the enforcement body's own policy will mean that prosecution is a disproportionate form of action to deal with the matter.

46 Formal enforcement action (up to and possibly including prosecution) is proportionate in some cases. The procedure for investigating suspected offences is set out in the Police and Criminal Evidence Act 1984 (PACE) and the Codes of Practice made under it, and the Criminal Procedure and Investigation Act 1996 (CPIA). The criteria for deciding whether to bring a prosecution following an investigation are set out in Code for Crown Prosecutors and enforcers' own enforcement policies. Nothing in the Enforcement Concordat or the *Good Practice Guide* changes these provisions. Indeed PACE and CPIA provide important safeguards for the public by laying down strict standards that the police and other enforcement officers have to apply in carrying out their investigations.

47 In the context of the Concordat's partnership approach to securing regulatory compliance, enforcers should note the effect of PACE Code C: if an enforcement officer obtains information without cautioning which gives the officer reasonable grounds to suspect an offence has been committed for which prosecution may well be a proportionate response, the officer may caution the individual and continue the interview in accordance with PACE, its Codes and any requirements imposed under the CPIA.

48 Ultimately, applying the policy of proportionality will help enforcers to

balance helping businesses and others to meet their legal obligations without unnecessary expense, with taking firm action (including prosecution in those cases where advice and assistance are clearly an insufficient response in themselves to the conduct displayed). But in the majority of cases involving law-abiding businesses, enforcers should be able to use the Concordat's partnership approach to achieve regulatory compliance.

49 Some examples of proportionate enforcement are described below.

Publish prosecution guidelines

Explaining the Code for Crown Prosecutors

Northamptonshire County Council, like many enforcers, has published on its website the criteria it will apply in deciding whether or not to prosecute. These are based on the Home Office guidelines (the 'Code for Crown Prosecutors') that detail a two-stage decision-making process involving an evidential and a public interest test. The final decision on the outcome of an infringement is always made in the light of all the circumstances, and even if the evidence warrants a prosecution, the public interest test allows for discretion not to proceed automatically with a prosecution.

See <http://www.tradingstandards.gov.uk/northants/about.htm#pros>

Target higher-risk business activities

Priority planning for low-risk activities

The Health and Safety Executive/Local Authority Liaison Committee (HELA) has introduced a priority-planning regime for health and safety enforcement which recommends the approach of engaging those involved in low-risk business activities by means other than the traditional method of inspection.

Sectorally-targeted risk assessment

Inland Revenue has set up a 'Small Business Initiative'. Between April and July 2002, just under 17,000 letters were issued by Inland Revenue Area Offices around the country to self-employed people whose 2000/01 tax returns indicated potential tax at risk. The letters aimed to help these individuals improve their compliance profile on the 2001/02 return, by including guidance on how to avoid some frequent errors in completing tax returns; by making an offer of help with the 2001/02 return; and by mentioning Inland Revenue's enquiry strategy.

Why were letters sent to this group of customers?

Around 44% of Inland Revenue's self-employed Income Tax Self Assessment customers declare a turnover of less than £15,000 and are eligible to submit three-line accounts, i.e. gross profit less expenses = net profit. 20% of this number (about 616,000 people) do not employ an agent to prepare their returns. Inland Revenue has discovered from recent research that this group sends the highest proportion of poorly completed returns (50%, as compared with 19% from those who employ a qualified agent).

For this group Inland Revenue decided that it made sense to use its risk assessment information, identifying 'risky' cases (not the very high-risk cases that it wanted to take up for enquiry) to increase compliance coverage over a large group of customers. A proactive contact, accompanied by an offer of help if the customer wants it, which results in better voluntary compliance by even modest amounts across a large group, is a good use of scarce resource. It means that Inland Revenue can concentrate its regulatory effort on serious cases.

See <http://www.inlandrevenue.gov.uk/budget2001/revce1.htm>

Identifying problem traders

The London Borough of Camden has implemented a 'Problem Trader' scheme, whereby any business which is subject to eight or more justified consumer enquiries in a rolling year, is visited by a consumer advisor and a trading standards officer, in order to discuss any underlying problems and to remind the business of its obligations under the civil and criminal consumer law that the Trading Standards Team enforces.

See <http://www.camden.gov.uk>

Consistency

The Enforcement Concordat states:

'We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Co-ordinators of Regulatory Services (LACORS) and the Local Authority National Type Approval Confederation (LANTAC).'

50 It is important to ensure, and to demonstrate, that enforcement activities are consistent both within a single enforcement body and between enforcers regionally and nationally. Whilst consistency of approach does not mean uniformity, it does mean taking a similar approach in similar circumstances to achieve similar ends. Those being regulated should reasonably expect a consistent approach from enforcing authorities in the advice they give.

Liaison between enforcement bodies

51 A particularly effective way of achieving consistency is through inter-enforcement body benchmarking and liaison agreements whereby a group of enforcers undertake to regularly assess their performance relative to each other, and to ensure that they deal with large national businesses in a consistent way.

52 Benchmarking is a highly visible way of assuring the business community that enforcement is consistent, and a valuable way for enforcers to monitor and assess

their own performance. Ensuring that enforcement bodies liaise in dealing with businesses will encourage efficiency, promote uniformity, reduce duplication and assist business in complying with the law (the Trading Standards Home Authority Principle is a good example of how this liaison can work in practice).

Providing a single point of contact for large national businesses and the enforcers that deal with them

The Trading Standards **Home Authority Principle** is designed to encourage efficiency, promote uniformity, reduce duplication and assist enterprises to comply with the law. The main aim of the Principle is to prevent infringements by offering advice at source and by encouraging enforcement authorities and enterprises to work in liaison with a particular authority called the 'home authority' in order to retain high standards of protection whilst minimising duplication and public expenditure. A similar scheme operates in the area of health and safety regulation, the **Lead Authority Partnership Scheme**.

See <http://www.lacors.gov.uk> for more information on the Trading Standards Home Authority Principle and Health and Safety Lead Authority Partnership Scheme.

Joined-up benchmarking

Benchmarking allows enforcers to compare critical aspects of their performance, including the application of the Concordat's Principles. It can help to identify gaps in their performance, to highlight fresh approaches to implementing the Concordat, and to monitor progress.

The North of England Benchmarking Group brings together Trading Standards officers from Cumbria County Council, Durham County Council, Lancashire County Council, Northumberland County Council, North Yorkshire County Council, and West Yorkshire Trading Standards Service.

The Core Cities Group brings together Birmingham, Bristol, Leeds, Liverpool, Manchester, Newcastle, Nottingham and Sheffield.

Sector-specific business liaison

The Kent Food Liaison Group provides a forum for the food enforcement representatives of the 13 borough councils in Kent to meet regularly to discuss enforcement issues and share good practice. It has developed and published codes for business regulation that will be used by enforcers in Kent. It also provides a co-ordinated way of engaging with food businesses in Kent through a business partnership that is made up of a network of food business consultees.

See <http://www.kent.gov.uk>

Co-ordination between enforcers for regional consistency

The four district councils in Suffolk (including Waveney District Council's Environmental Services Department) have worked together to produce a code for business regulation that sets out the approach that enforcers will use across the county.

Sharing information and experience

- The Quality Networks Scheme. Quality Networks are locally run by groups of people from all areas and levels of public service (national and local) which aim to: share information on developments in best practice; compare progress in areas of common interest; build partnerships between public service organisations; and encourage problem sharing and solving.

There are 24 Quality Networks throughout the UK, with over 2,000 members from across the public sector. Networks are not intended to replace existing contacts, but to give enforcers and other public servants the opportunity to expand the knowledge and expertise available to their organisation.

The greatest potential benefit of joining a Quality Network will be the opportunity to meet other enforcers to discuss quality of service issues. Most public service organisations have similar problems to overcome. By pooling experience and facilitating partnerships between enforcers, Quality Networks can help find solutions to common problems, and perhaps avoid reinventing the wheel. They also provide an opportunity to benchmark performance against that of others.

- The Public Sector Benchmarking Service provides a web-based resource that enforcement bodies can use to disseminate and gather information on best practice in enforcement.

See <http://members.benchmarking.gov.uk> for more information.

- The Office of Fair Trading (OFT) Consumer Regulations Website (CRW) is an example of enforcers helping each other to achieve good enforcement by being proportionate and consistent in their action.

The CRW allows enforcers to share information about cases they are working on. Initially this applies to 'Stop Now' work. The website has been developed using Invest to Save funding and a dedicated project team has worked with a pilot group of enforcers to ensure the site is as effective as possible. Good lines of communication have been set up by members of the project team travelling around the country to demonstrate the site. The project is being rolled out to all enforcers and training is being carried out in regional locations.

The CRW will cut down on duplicated effort, and should make contact with businesses more targeted and enforcement action more consistent. A spin-off of this project is the creation of better working relationships between OFT and the other enforcers.

See <http://www.crw.gov.uk/>

Improving services through evaluation from business groups

Barnsley Council has had a very positive experience of being audited against the Enforcement Concordat by representatives from the Barnsley Business Partnership. The auditors noted a marked improvement between their first and second audits and praised the attitude of the Council's services, which it said were 'more than willing to take on criticism and showed a strong willingness to improve their services'.

See <http://www.barnsley.gov.uk/docs/econcord.doc>

Internal processes

54 Enforcement bodies can:

- build good enforcement practice (i.e. facilitating compliance, targeting formal proceedings) into corporate/organisational business plans, and use the EFQM Excellence Model to measure and review performance;
- consider producing a 'Good Enforcement Practice' briefing pack for enforcement officers; and
- consider applying for a Charter Mark to demonstrate the excellence of their enforcement activities.

External auditing

53 Another option for ensuring the quality and consistency of enforcement activity is for enforcers to submit to external auditing by business representatives.

Using an 'Enforcement Management Model'

As part of the Health and Safety Executive's (HSE) quality assurance policy, HSE has set out how it manages enforcement in line with the Health and Safety Commission's 'Enforcement Policy Statement' (EPS) and therefore the Enforcement Concordat. As part of this process, an Enforcement Management Model (EMM) has been developed to help ensure proportionate and consistent decisions.

The EMM provides inspectors with a step-by-step decision-making process, which guides inspectors in exercising their professional judgement. It is written for inspectors but may assist others (e.g. employers) in their understanding of the principles inspectors follow when deciding on a particular course of action. The EMM, together with the procedure for its application, ensures that the principles, criteria and practices required by the EPS are adhered to. The EMM shows how enforcement action is related to the seriousness of risks which have been created, and the extent of failure to comply with what the law requires.

The EMM allows managers to review the decision-making process and their inspectors' enforcement actions to ensure the purpose and expectations of the EPS have been met. It also helps experienced inspectors assess their decisions in complex cases, allows peer review of enforcement action, and can be used to guide less experienced and trainee inspectors in making enforcement decisions.

The EMM is being applied to HSE and local authority health and safety

enforcement decisions. The EMM has been extensively trialled to ensure that it is fit for purpose and is now publicly available on HSE's website at <http://www.hse.gov.uk/enforce/emm.pdf>

What enforcement bodies can expect from business

55 The Enforcement Concordat recognises that most businesses want to comply with the law. The Principles of Good Enforcement therefore aim to make compliance easier for business by fostering a partnership approach to enforcement in which enforcers and business have a mutual interest in working together to achieve compliance. This approach brings benefits for business in the form of a better relationship with enforcers, easier compliance and a level playing field for law-abiding businesses; and significant benefits for enforcers in the form of higher compliance levels, which frees resources to tackle businesses that flout the law or act irresponsibly.

56 In order for the Enforcement Concordat's partnership approach to regulatory compliance to be effective, enforcement bodies can legitimately expect that:

- Businesses would actively enter into constructive working relationships with them. This essentially means businesses themselves applying the policy of Openness. For example, a business seeking advice from an enforcement body should expect to disclose relevant details of its operating procedures and, if necessary, to supply supporting evidence.

- Businesses would be proactive in seeking advice about regulatory compliance from enforcement bodies, and try to take every opportunity to participate in initiatives/projects/schemes set up by enforcers to encourage regulatory compliance. Enforcement bodies cannot compel businesses to seek advice. Businesses should not wait for enforcers to contact them but should take the initiative and make contact as early as possible.
- Businesses would establish an open relationship with enforcers. For example, adopting a co-operative, non-confrontational approach to advice from enforcement officers, and exhibiting a willingness to co-operate with suggestions and discuss problems.

57 By working with enforcement bodies that apply the Principles of Good Enforcement, businesses will benefit from constructive working relationships that will enable them to get regulatory compliance right first time and not have to go through the costly process of correcting mistakes.

Adoption and implementation

58 Many central and local enforcement bodies have already signed up to, adopted and implemented the Enforcement Concordat. In the case of those who have not yet gone through this process, the following section offers a good practice guide to the adoption and implementation of the Enforcement Concordat, in terms of:

- What is entailed once an enforcement body has agreed to adopt?
- Setting the adoption process in motion
 - determining lead responsibility
 - ensuring the involvement of all regulatory functions
 - reviewing existing enforcement policies
 - consulting with business
 - working with other regulators
 - drawing up a strategy for implementation

What is entailed once an enforcement body has agreed to adopt?

59 By formally adopting (or 'signing up to') the Enforcement Concordat, an enforcement body is demonstrating a commitment to the Principles set out

in the Enforcement Concordat and a commitment to work towards achieving the required standards.

60 A majority of local authorities in England and Wales, enforcement agencies and government departments have already signed up to the Enforcement Concordat. Those who have not adopted the Concordat and wish to do so should send formal notification of adoption to the DTI's Small Business Service (SBS).

Setting the adoption process in motion

Determining lead responsibility

61 Senior management has a key role to play in getting the whole process off the ground. The starting point for adoption should be their full endorsement of the Enforcement Concordat. They should work jointly to promote adoption, and to demonstrate the good enforcement culture that should underpin the enforcement body's regulatory approach.

62 Senior management also needs to take an early decision about who will assume lead responsibility for the adoption process. This lead officer should be a senior manager, with some corporate responsibilities. The lead officer should work closely with the managers of the enforcement body's regulatory functions.

Ensuring the involvement of all regulatory functions

63 It is essential that the adoption of the Enforcement Concordat is an **inclusive** exercise and that **all** an enforcement body's regulatory functions are involved in the adoption process. The lead officer should request each regulatory function in the enforcement body to appoint a senior manager to serve on an Enforcement Concordat Working Group that should oversee adoption and implementation of the Concordat.

Reviewing existing enforcement policies

64 An enforcement body is not required to provide evidence that it has all necessary policies and procedures in place before it can signal support for (adopt) the Enforcement Concordat's Principles. However, some enforcement bodies may prefer to proceed on this basis. If this is the case, then the Working Group should now begin to review the enforcement policies of all regulatory departments and to develop a corporate 'core' enforcement policy document for use across the enforcement body.

65 If necessary, this core document should be supplemented by policies for individual regulatory functions. The core policy document should be comprehensive and should aim to be as helpful as possible to any regulated business. Supplementary policies should make reference to commitments to national co-ordination and consistency mechanisms (e.g. for local authorities, LACORS, LANTAC, the Home Authority Principle and the Lead Authority Partnership Scheme).

66 However, adoption of the Enforcement Concordat, at its most basic level, simply demonstrates a commitment to implementing the Enforcement

Concordat Principles. Therefore, if the enforcement body prefers at this stage to give a commitment to undertake this work following formal adoption, then the drafting of the core policy document and any supplements to it needs to be undertaken at the implementation stage of the process (see below).

Consulting with business

67 When the draft core enforcement policy document and (if required) the draft supplementary policies have been prepared, the lead officer and the Working Group should arrange to consult with business and other stakeholders. 'Business' can be interpreted in the widest sense as those affected by regulation. Any suggestions generated by this consultation should be openly considered and, where appropriate, incorporated into the enforcement policy document. Bodies an enforcement body might want to consult include: Chambers of Commerce, trade associations, the Federation of Small Businesses, local Business Centres and Forums, the British Retail Consortium, the Confederation of British Industry, town centre management initiatives, the National Farmers' Union, local tourist boards, the Building Employers' Federation and others from the local area, as appropriate.

Working with other regulators

68 Consideration should be given to liaison with local representatives of other enforcement bodies. At this stage, this will aid the 'joining up' of regulatory services operating within the local community.

Drawing up a strategy for implementation

69 Once formal adoption has been agreed, an enforcement body should

draw up a strategy for implementation. This exercise will effectively define the co-ordinated corporate mechanism for the delivery of the Enforcement Concordat Principles. If no work has been undertaken at the adoption stage to draw up a core enforcement policy document and (if required) any relevant supplements, nor to consult with business and others on the policies proposed, then this work should form part of drawing up the strategy for implementation.

70 Working to produce the strategy should help to clarify what action the relevant areas of the enforcement body need to take in order to deliver the Enforcement Concordat's Principles. For example, within an enforcement body one function may already have an enforcement policy in place for certain aspects of its work but not for others; another function may never have looked at bringing in such policies. In all cases, policies will need to be developed and circulated to all relevant parties for comment and a timetable drawn up specifying target dates for completion. The strategy for implementation should set out:

- what enforcement functions are covered;
- what changes will be made, and what training might be needed in order to fulfil the policies and procedures of the Enforcement Concordat;
- how, and when, these changes will be achieved; and
- how the enforcement body will monitor performance against the Enforcement Concordat Principles in the future.

71 To ensure continuity an enforcement body's lead officer, in conjunction with the Enforcement Concordat Working Group, should oversee preparation of the strategy for implementation.

72 The strategy is intended to guide the work of enforcement bodies in applying the Principles of the Enforcement Concordat. Consequently it is for the enforcement body to decide whether or not to publish it.

Monitoring

73 It is important that enforcement bodies should monitor their performance in applying the Principles of Good Enforcement to their enforcement activities. It is only through some form of monitoring that they can assess the impact of the Enforcement Concordat on their day-to-day work.

74 The need for monitoring of voluntary compliance with the Enforcement Concordat is emphasised by the Regulatory Reform Act 2001. By establishing a reserve power for ministers to set out a binding code of good practice in enforcement, the Regulatory Reform Act 2001 provides assurance to business, the voluntary sector and others that unjustifiably over-zealous or inflexible enforcement is not acceptable.

75 This section suggests some ways for enforcement bodies to monitor their performance through internal processes, and offers specific suggestions for local authority and central government enforcers.

Monitoring through internal processes

Continuous assessment

76 Enforcement bodies should develop a process of continuous assessment of how they are applying the Enforcement Concordat's Principles of Good Enforcement. The assessment process

that is chosen should suit the individual enforcement body; for example, sharing and learning from the experiences of other enforcers can be extremely beneficial. Enforcement bodies should be committed to transparency throughout. The process could follow any one of the five methods set out below, or could be a combination of all or some:

- Self-assessment by enforcement function lead officers, or inter-function assessments, or by a corporate officer with a cross-function Enforcement Concordat responsibility.
- Inter-enforcement body assessment by arrangement with at least two other enforcement bodies.
- For local authorities monitoring by an independently appointed assessment team.
- Business monitoring involving a third-party assessment process led by a business team appointed through suitable local mechanisms. This might be especially useful where a Local Business Partnership is in operation.
- Surveys of businesses.

Measuring performance

77 Enforcement bodies should seek to develop a suite of Performance Indicators through internal and external discussions (for example, the number of complaints

from business about non-compliance with the Enforcement Concordat). These will provide a basis for the objective measurement of implementation and improvement.

Continuous consultation

78 To ensure that the transparency and value of assessment is maintained, the Enforcement Concordat could be the subject of periodic consultation processes with business, and internally with enforcement officers. Client panels, focus groups or questionnaires might be vehicles for this.

Recommending and reviewing improvements

79 The assessment and audit process should encourage and result in recommendations for improvement, across the enforcement body or for local authorities within individual regulatory service areas. It is important that any recommendations are implemented and a review procedure is in place to ensure implementation.

Co-ordinating the monitoring process

80 A lead officer could co-ordinate the process of continuous monitoring and assessment by an enforcement body. This officer should have the appropriate corporate authority to manage the assessment procedures and continuous improvement processes.

Monitoring for local authority enforcers

81 Local authority enforcers are already involved in much monitoring activity. Where possible, arrangements for monitoring the Enforcement Concordat should work with existing arrangements;

where this is not possible, they should not impose significant extra burdens on enforcers.

82 DTI is currently exploring, with ODPM, whether and how Best Value Performance Indicator 166 could be modified to monitor local authority compliance with the Enforcement Concordat.

Monitoring for central government enforcers

83 As a result of recent consultation, the Government has decided that an annual report on compliance with the Concordat would create an unnecessary burden for central government enforcers. However, the SBS will work with central government bodies to ensure the best possible compliance, and will periodically review central government's performance against the Concordat.

Review of the Good Practice Guide

84 The *Good Practice Guide* will be subject to continuous review and further enhanced and expanded as might be most helpful to enforcement bodies.

Text of the Enforcement Concordat

The Principles of Good Enforcement: Policy and Procedures

85 This document sets out what business and others being regulated can expect from enforcement officers. It commits us to good enforcement policies and procedures. It may be supplemented by additional statements of enforcement policy.

86 The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.

87 The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice, and safety.

88 We have therefore adopted the central and local government Concordat on Good Enforcement. Included in the term 'enforcement' are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the Concordat we commit ourselves to the following policies and procedures, which contribute to best value, and will provide information to show that we are observing them.

Principles of Good Enforcement: Policy

Standards

89 In consultation with business and other relevant interested parties, including technical experts where appropriate, 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. The standards will be made available to businesses and others who are regulated.

Openness

90 We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives.

We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

Helpfulness

91 We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information from us. Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

Complaints about service

92 We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases 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.

Proportionality

93 We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

94 We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

Consistency

95 We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Co-ordinators of Regulatory Services (LACORS) and the Local Authority National Type Approval Confederation (LANTAC).

Principles of Good Enforcement: Procedures

96 Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.

97 Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

98 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.

99 Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

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