

Report of the Head of Planning and Local Development

REVIEW OF ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

1 Purpose of report

- 1.1 The purpose of the report is to propose amendments to the Enforcement Policy previously adopted by the Environmental Health Service and to request permission to go out to public consultation.

2 Executive summary

- 2.1 All regulatory services must produce an Enforcement Policy for approval by Members with respect to its statutory obligations to enforce all relevant provisions of Environmental Health legislation. This policy explains how the service carries out its functions in a manner which is transparent and provides proper regard to the sensitivities of business and the local economy.

3 Appendices

Appendix 1 – Draft Environment Health Enforcement Policy

4 Proposed action:

- 4.1 **The committee is invited to RESOLVE that the Environmental Health Service Enforcement Policy be subject to public consultation.**

5 Background

- 5.1 The Environmental Health Service enforces a wide range of legislation relating to public health, pollution control, food safety, health and safety, licensing and animal welfare. The revised draft Environmental Health Enforcement Policy enclosed within Appendix One, updates the previous enforcement policy agreed in 2009. The new policy should be read in the context of the legislation the Environmental Health Service operates within and the national and statutory guidance for these statutes.
- 5.2 In 2014 the Regulators' Code was produced by the Better Regulation Delivery Office. Local authorities are obliged to be mindful of this code. The code directs regulators' that when reviewing policies they should consider how they support the economic growth of compliant businesses. To this end, the Environmental Health Enforcement Policy will help create a level playing field for compliant businesses.

6 Discussion

- 6.1 The Policy has been reviewed to take into account the Regulators Code, updated and new legislation and other government guidance and codes of practice. It will provide managers and officers with guidance to ensure consistent enforcement and businesses with confidence that enforcement action is consistent and proportionate to any non compliance. The service will follow national guidance and codes of practice on targeting higher risk activities and businesses.
- 6.2 Officers will in general, continue to follow a stepped approach to enforcement, but where there are serious breaches of legislation, or there is imminent risk to the health or welfare of people, immediate enforcement action will be considered.
- 6.3 The Policy recognises that most businesses and individuals want to comply with the law. Help and support will be provided to enable them to meet their legal obligations without unnecessary expenses, while firm action will be taken against those who flout the law or act irresponsibly.
- 6.4 The enforcement options available to officers in the Environmental Health service include; advice and guidance, written warning, statutory notices, fixed penalty notice, seizure or detention, refusal or revocation of approval for food businesses, prohibition of equipment, processes or premises, simple caution, and prosecution. Most work undertaken by the service involves advice, guidance and written warnings.
- 6.5 The decision to use enforcement action will be taken in the context of this policy and any other relevant council policies, but also in the context of the particular case under consideration. Factors taken into consideration will include but will not be limited to:
- The risk that the breach poses to the health and safety or economic welfare;
 - Whether the offence involves a failure to carry out the requirements of a statutory notice or order;
 - The degree of pre-meditation of the offender;
 - Where there is a previous history of warning or cautions for similar offences;
 - Incidents such as the obstruction of an officer.
- This list is not exhaustive and will depend on the facts of each case.
- 6.6 In revising this policy we have considered how best we can:
- Understand and minimise negative economic impacts of our activities;
 - Minimise the costs of compliance for those we regulate;
 - Improve confidence in compliance for those we regulate; and
 - Encourage and promote compliance.
- 6.7 The intention of the policy is to ensure that any enforcement action is compliant with the relevant legislation, code of practices and government

guidance. Any decisions on action taken must be transparent and accountable; proportionate; targeted; consistent in approach; and appropriate.

- 6.8 It is proposed that the policy be subject to a 6 week consultation through the council's website and through direct contact with those affected.

7 Financial and value for money implications

There are no direct costs associated with this action. The policy is designed to be business friendly and should benefit the local economy.

8 Risk analysis

Nature of risk	Consequences if realised	Likelihood of occurrence	Control measures
Enforcement policy will not comply with current standards if not reviewed	Enforcement action is open to challenge	High	Consult on the reviewed policy

9 Implications for resources

None

10 Implications for stronger and safer communities

This Policy supports businesses and the community by protecting public safety through risk-based regulation, in accordance with the Regulators Code.

The Policy also supports economic growth through improvements directly in businesses located within the district.

11 Implications for equalities

The implementation of the policy will be in accordance with good practice on equalities.

12 Author and contact officer

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13 Consultees

Julie Thomas, Head of Planning and Local Development
Liz Elliot, Head of Finance
James Chadwick, District Law

14 Background papers

Enforcement Concordat

Regulators' Code

2009 Environmental Health Enforcement Policy

Appendix 1

Environmental Health Enforcement Policy

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Date: September 2016

Borough Council of Wellingborough Environmental Health Enforcement Policy

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1.0 Introduction

- 1.1. It is the aim of the Borough Council of Wellingborough Environmental Health Service (the council) to ensure the health, safety and well-being of persons living and working in the district and to protect and improve the environment. This will be achieved by a process of educating, advising, and regulating. Fair and effective enforcement is an essential component in achieving this aim.
- 1.2. The objectives of the policy are to ensure that:
 - Efficient and effective approaches to enforcement are undertaken, to improve compliance without imposing unnecessary burdens and to coordinate enforcement with other agencies where possible
 - It is recognised that prevention is better than cure and as such we will offer information and advice to those we regulate, but where it becomes necessary to take formal action against a business, or member of the public, the council will do so. There are a wide range of tools available to us as an enforcement agency, with prosecution being the most serious.
 - Enforcement action undertaken is relevant and proportionate to the offence or contravention.
 - The past history of the individual or business is considered when making our decision.
 - The council's full costs of remedial works are recovered from those responsible.
- 1.3. This Enforcement Policy sets out the general principles and approach the council will follow when enforcing legislation to which Environmental Health is responsible for. It will be used in conjunction with all relevant statutory Codes of Practice and guidance issued by Central Government Departments such as Department of Environment Farming and Rural Affairs (DEFRA), Food Standards Agency (FSA), Health and Safety Executive (HSE) and Department of Communities and Local Government (DCLG) among others.
- 1.4. The above will be achieved by providing advice and by enforcement of regulations. Securing compliance with statutory requirements and using enforcement powers, including prosecution is an important part of this enforcement policy. The policy is built around a process of escalation.
- 1.5. Our decisions will have regard to current statutory guidance and codes of practice, particularly the Regulators' Code, the Enforcement Concordat, the Legislative and Regulatory Reform Act 2006, the Code of Practice for Crown Prosecutors and the Human Rights Act 1998.

2.0 Status of the Enforcement Policy

- 2.1 The Full Council of the Borough Council of Wellingborough approved this policy on ??.

- 2.2 This policy is intended to provide guidance for officers, businesses, consumers and the public. It does not affect the discretion of the council to take legal proceedings where this is considered to be in the public interest.

3.0 Scope and meaning of 'Enforcement'

- 3.1 This Policy applies to all the legislation enforced by officers within Environmental Health, which includes health and safety at work, food safety, environmental protection, animal welfare, pollution control, public health and other statutes as included in the council's constitution and delegated powers.
- 3.2 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement action such as prosecution.
- 3.3 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.

4.0 General principles

- 4.1. Underlying the policy of fair regulation are the principles of; **consistency** of approach; **transparency** about how the council operates and what those regulated may expect from the council; **accountability** for the efficiency and effectiveness of enforcement activities; **proportionality** in the application of the law and in securing compliance; and **targeting** of enforcement action.

- **Consistency**

The council aims to achieve consistency on advice tendered and regulatory actions and decisions taken on whether or not to prosecute for a contravention of the law. The council recognises that consistency does not mean simple uniformity. Officers need to take account of many variables; the scale of the impact, the attitude and actions of those involved and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgement over which council officers will need to exercise discretion. The council will continue to develop arrangements to promote consistency, including effective arrangements for liaison with other enforcing authorities.

- **Transparency**

Transparency is important to ensure public confidence in the council's ability to regulate. Those who are regulated need to understand what is expected of them, what they can expect of the council and why an enforcement action is being taken. As part of this process we will ensure that:

1. If remedial action is required it is clearly explained (in writing, if requested), why the action is necessary and when it must be carried out.
2. Distinguish between best practice advice and legal requirements.
3. An opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required.

4. If urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event.
5. Written explanation is given of any rights of appeal against formal enforcement action at the time the action is taken.

- **Accountability**

The council is accountable for the standard of its enforcement activities and independence of decision making. The council will ensure that officers who are authorised to initiate enforcement action are competent, suitably qualified and have relevant experience. As part of this process we will ensure that:

1. Effective consultation and feedback opportunities are provided to those regulated.
2. Employees provide courteous and efficient regulatory services and that comments received are acted upon.
3. Our complaints policy is accessible and publicised.

- **Proportionality**

The enforcement action taken by the Council will be proportionate to the risks posed to the environment, safety and health of the public and to the seriousness of any breach of the law.

- **Targeting**

Regulatory effort will be directed primarily towards those whose activities give rise to the greatest environmental, safety and public health risks. The council will use suitable models and tools to enable risks to be assessed and compared and also prioritise regulatory effort following contact from members of the public who provide information about illegal or inappropriate activity.

- 4.2 Each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the Regulators' Code. For more information about the Regulators' Compliance Code visit:
<https://www.gov.uk/government/publications/regulators-code>
- 4.3 Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- 4.4 We will attempt to take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance in making the decision to take formal action.
- 4.5 The council is a public authority for the purposes of the Human Rights Act 1998. We will therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 4.6 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Code.

- 4.7 In certain instances we may conclude that a provision in the Regulators Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Regulators Code will be properly reasoned, based on material evidence and documented.
- 4.8 When we receive information from a complainant or other source that may lead to enforcement action against a business or individual, we will normally notify that business or individual as soon as is practicable of any intended enforcement action. Notification will be delayed if it would impede an investigation or pose a safety risk to those concerned or the general public.
- 4.9 During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a court when required and/or in accordance with the Data Protection Act 1998.
- 4.10. Where any enforcement action is to be taken by the council, the officer shall have provided details of their rights of appeal as set out in the legislation. Notwithstanding the above the council shall afford the operator an opportunity to informally discuss with a nominated officer any grievance that they may have relating to the matter at hand. Should the operator wish to make a formal complaint regarding the enforcement of the environmental health legislation by the council they should use the council's complaint procedure.

5.0 Deciding what level of enforcement action is appropriate

5.1 Levels of enforcement action.

5.1.1 In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- The seriousness of compliance failure.
- The business's/individual's past performance and current practice.
- The risks being controlled.
- Legal, official or professional guidance.
- The priorities of the council.

5.1.2 Where the law has been contravened there are a range of enforcement options available to seek compliance with the law. Under normal circumstances a process of escalation will be used until compliance is reached. Exceptions would be where there is a serious risk to public safety or the environment, or the offences have been committed deliberately or negligently, or involve deception, or where there is a significant financial impact of the action.

5.2 No Action

5.2.1 In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the council outweighs the

detrimental impact of the contravention on the community. A decision to take no action may also be taken where formal enforcement is inappropriate in the circumstances, e.g. where a trader has ceased to trade or the offender is elderly and frail and formal action would seriously damage their wellbeing. In such cases we will advise the offender and complainant of the reasons for taking no action.

5.3 Informal Action and Advice

- 5.3.1 For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of non-compliance.
- 5.3.2 Sometimes we will advise offenders about 'good practice', but we will clearly distinguish between what they must do to comply with the law and what is advice only.
- 5.3.3 Failure to comply with informal action and advice is likely to result in an escalation of enforcement action.

5.4 Fixed Penalty Notices

- 5.4.1 Certain offences are subject to fixed penalty notices where prescribed by legislation. They are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. Should the FPN go unpaid then the normal course of action will be prosecution for the original offence in a Magistrates' Court.

5.5 Community Protection Notices (CPN)

- 5.5.1 These notices made under the Anti-Social Behaviour, Crime and Policing Act 2014, are served to stop a person (over 16), a business or an organisation committing anti-social behaviour which spoils the community's quality of life.

5.6 Formal Notice

- 5.6.1 Some of our powers allow notices to be served requiring the recipient to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, public safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, take into account the seriousness of the contravention and the implications of non-compliance.
- 5.6.2 Notices may require work actions to be taken or work to be done in which case the notice shall be of sufficient detail to inform the recipient of what is required.
- 5.6.3 All notices issued will include details of any applicable appeals procedures.
- 5.6.4 If a notice allows works to be carried out in default when a notice has not been complied with [a breach of the notice], we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for any costs we incur in carrying out the work.

5.7 Seizure

- 5.7.1 Where legislation enables, Authorised Officers are empowered to seize goods, equipment or documents. For example, officers may seize food deemed unfit for human

consumption, noise making equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt.

5.8 Forfeiture Proceedings

5.8.1 This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the Magistrates' Court.

5.9 Injunctive Actions

5.9.1 In certain circumstances we may employ a court injunction as the most appropriate course of enforcement action to deal with situations including, repeat offenders, imminent danger or threat to the environment or significant consumer detriment.

5.9.2 Anti-Social Behaviour Injunctions, Criminal Anti-Social Behaviour Orders and Criminal Behaviour Orders may be employed where, in liaison with the council's Community Support team, it is considered that that they are the most appropriate method to deal with anti-social activity.

5.10 Refusal, Suspension and Revocation of Licence

5.10.1 Where there is a requirement for a business to be licensed by the local authority, the licence may be granted where the applicant has met the requirements of the licence, met any necessary conditions attached to the licence and paid the prescribed fee. For such licences, where public representations or objections to an application are permitted and made, the Licensing Committee, or its Sub-Committee, will hear the case in accordance with its procedures and decide to grant, grant with conditions, or refuse the licence application in accordance with the relevant legislation.

5.11 Closure Powers

5.11.1 Closure powers were introduced by the Anti-Social Behaviour, Crime and Policing Act 2014. The purpose of this power is to allow the council to quickly close premises which is being used, or likely to be used, to commit nuisance or disorder.

5.12 Simple Caution

5.12.1 For a Simple Caution to be issued the Council must be satisfied that an offence has taken place and that:

- Sufficient evidence is available to prove the case.
- The offender must admit the offence.
- It is in the public interest to use a Simple Caution.
- The offender is 18 years of age or over.

Details of the process of issuing cautions is given on the Home Office guidance (Circular 30/2005) visit: <http://www.homeoffice.gov.uk>

5.12.2 A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction. It may be cited in court for a subsequent offence in order to demonstrate a propensity to commit crime.

5.12.3 When making our decision we will also take into account whether the alleged offender has received a Simple Caution for a similar offence.

5.12.4 A record of the Simple Caution will be kept on file and on Ecins. If the offender commits a further offence the caution may influence our decision to take a prosecution. If during the time the caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

5.13 Prosecution

5.13.1 A prosecution will normally be undertaken where the individual or organisation carries out one or more of the following actions:

- Deliberately, negligently or persistently breaches the law, likely to cause material loss or harm to others.
- Deliberately or persistently ignores written warnings or formal notices.
- Endangers, the health, safety or well-being of people, animals or the environment.
- Assaults or obstructs an Officer in the course of their duties.

5.14 Proceeds of Crime Applications

5.14.1 Applications may be made under the Proceeds of Crime Act 2002 for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from his/her criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

6.0 The use of prosecution or simple cautions

6.1 We will apply two 'tests' to determine whether a prosecution or Simple Caution is viable and appropriate. We follow guidance set by the Crown Prosecution Service when applying the tests.

6.2 Caution or prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

6.3 The Evidential Test

We must be satisfied that there is enough evidence to provide a **realistic prospect of conviction** against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or Magistrates' Court should only convict if it is sure of a defendant's guilt. The following factors must also be considered:

- Can the evidence obtained be used in court, does it comply with Police and Criminal Evidence Act 1984, Regulation of Investigatory Powers Act 2000, etc?
- Is the defendant's explanation of their conduct credible enough to be accepted by a court?
- Are there concerns about the accuracy or credibility of a witness?

6.4 The Public Interest Test

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against

prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend upon the seriousness of the offence or the circumstances of the suspect (examples are included in the Crown Prosecutor's Code). Some factors may increase the need to prosecute but others may suggest that another course of action is appropriate.

7.0 Who decides what enforcement action is taken

- 7.1 Decisions about the most appropriate enforcement action to be taken are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the council and/or the Government.
- 7.2 Where appropriate, decisions about enforcement will involve consultation between or approval from:
- Investigating officer(s).
 - Managers within Environmental Health.
 - District Law solicitors and other legal advisors.
- 7.3. Decisions will be documented in accordance with the council's procedures.

8.0 Liaison with other regulatory bodies and enforcement agencies

- 8.1 Where appropriate, enforcement activities within Environmental Health will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.
- 8.2 Where a Primary Authority has been established under the provisions of the Regulatory Enforcement and Sanctions Act 2008, the council will consult with the Primary Authority and any enforcement plan and instigate action in accordance with their advice. If we do not agree with the Primary Authority we will liaise with the Better Regulation Delivery Office (BRDO) and act in accordance with their decision.
- 8.3 Where an enforcement matter affects a wide geographical area beyond the Borough boundary or involves enforcement by one or more local authority or organisation, where appropriate, all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.
- 8.4 The Environmental Health service will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:
- Government Agencies
 - Police Forces
 - Fire Authorities
 - Local Authorities.

9.0 Considering the views of those affected by offences

- 9.1 Environmental Health practitioners undertake enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test the consequences for those affected by the offence and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decisions.

10.0 Protection of Human Rights

- 10.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard will be given to the following:
- Right to a fair trial.
 - Right to respect for private and family life, home and correspondence.

11.0 How to obtain a copy of the Policy, to make comments or to complain

- 11.1 This policy is available on the council's website, www.wellingborough.gov.uk
If you would like a paper copy of the policy and/or you would like to comment on the policy, please contact us by:
- telephone; 01933 229777
 - e-mail: envprotection@wellingborough.gov.uk
 - in writing to; The Borough Council of Wellingborough, Environmental Health, Swanspool House, Doddington Road, Wellingborough, Northants, NN8 1BP.
- 11.2 Complaints concerning the service or officers conduct can be made in accordance with the council's complaints procedure available from the above sources.
- 11.3 Although not published as a translation into other languages or formats, if you would like to receive a copy of this policy in another language or format then please contact the council as above.

12.0 Review of the Enforcement Policy

- 12.1 This Policy, appendices and the consequences and effectiveness of our enforcement action will be reviewed regularly.

Appendix A - Food Safety Enforcement

Additional Guidance in Relation to Food Safety Enforcement

The purpose of this appendix is to give further guidance on the provisions of the Food Safety Act 1990 and food legislation made under the European Communities Act 1972. The principles of enforcement are clearly set out in the main enforcement policy. The policy will be followed in conjunction with the Food Standards Agency's (FSA) Statutory Codes of Practice and guidance issued by the FSA.

1. Introduction

The council seeks to ensure that food and drink intended for human consumption, which is produced, stored, distributed, handled or consumed within the district of Wellingborough, is without risk to the health or safety of the consumer. This will be achieved through both education and enforcement of the regulations.

Only officers who are deemed competent by training, qualification and experience and who meet the criteria in the FSA Statutory Code of Practice will be authorised to undertake enforcement action..

The council has a range of tools at its disposal in order to secure compliance with the law and to ensure a proportionate response to criminal offences. The powers available are detailed below.

2. Enforcement Within Food Premises

Statutory Notices will be used only where the guidance criteria specified in the Statutory Code of Practice is fulfilled. Authorised Officers will only sign Hygiene Improvement Notices if they have personally witnessed the contravention and are satisfied that it meets the criteria given in this policy. When deciding upon the time period in which the Hygiene Improvement Notice must be complied with, the Officer must discuss with the Proprietor or his representative to seek agreement on a suitable period. If agreement cannot be reached then the Officer must consider the cost of the works required, the ease of remedying the non-compliance and the availability of suitable equipment before determining the period for compliance.

Failure to comply with a Hygiene Improvement Notice will in general result in prosecution and officers must therefore be able to justify their actions in accordance with the legislation, this policy and any other relevant guidance.

The use of a Hygiene Emergency Prohibition Notice will be considered when an imminent risk of injury to health can be demonstrated. The officer will consider the guidance criteria specified in the FSA Statutory Code of Practice concerning the conditions when prohibition may be appropriate before service of the Notice. Consideration must be given to the consequences of not taking immediate and decisive action if the health risk condition is fulfilled and there would be no confidence in the offer made by a proprietor to voluntarily close the premises or cease an operation.

Any accepted voluntary closure must be confirmed in writing by the proprietor and in the knowledge that the voluntary closure will stay in effect until the officer is satisfied that the premises no longer present a serious risk to public health or food safety.

Remedial Action Notices will be used if a continuing offence in an approved premise requires urgent action owing to a risk to food safety. The officer will consider the guidance criteria specified in the

FSA Statutory Code of Practice concerning the conditions when a Remedial Action Notice may be appropriate before service of the Notice.

The Council will liaise with, where appropriate, other agencies including local authorities involved with the Primary Authority Scheme, before enforcement action is taken to ensure consistent and coherent regulation.

3 Detention/Seizure

When food has not been produced, processed or distributed in compliance with the Regulations an Authorised Officer may detain or seize the food. Following the detention/seizure the Authorised Officer will follow the advice set out in the FSA Statutory Code of Practice.

Food will be detained where there are suspicions or indications that food at a particular establishment is unsafe and therefore examination is necessary. Such action will be proportionate to the risk to public health and where immediate action is required to ensure food safety. Decisions on whether to release or seize the food will be made as quickly as is reasonably practicable.

The Authorised Officer will provide written notification of the detention/seizure as soon as is reasonably practicable.

A Food Condemnation Notification will be given to the person in charge and/or the owner of the food where the officer intends to have the food dealt with by a Justice of the Peace. If the Magistrate does not condemn the food, it will be returned to the owner who will be entitled to compensation for any loss encountered,

A Withdrawal of Detention of Food Notice will be served as quickly as possible when evidence or information indicates that detained food can be released, and in any case within 21 days.

4 Revocation of Approvals

Certain food premises require the approval of the authority prior to conducting a business. Formal action will be taken against those premises which require approval but knowingly fail to gain approval before operation.

The council has the power, in certain circumstances, to revoke a premises approval. To warrant revocation of approval, the individual or organisation must have engaged in one or more of the following criteria;

- fraudulent activity,
- deliberately or persistently breached legal obligations, which were likely to cause harm to others,
- deliberately or persistently ignored written warnings or formal notices,
- obstructed an officer during the course of their duty,
- endangered, to a serious degree, the health or safety or well-being of the public.

Appendix B - Health and Safety Enforcement

Additional Guidance in Relation to Health and Safety Enforcement

The purpose of this appendix is to give further guidance on the provisions of the Health and Safety at Work etc Act 1974 and subordinate legislation. The principles of enforcement are clearly set out in the main enforcement policy. All the actions detailed in this appendix shall be carried out in accordance with the provisions of the Policy and current government / Health and Safety Executive (HSE) guidance.

1. Introduction

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

The ultimate purpose of the council's health and safety enforcement function is to ensure that employers and those having a duty under the Act, manage and control risks effectively thus preventing harm.

2. Enforcement of regulated premises

The appropriate use of enforcement powers, including prosecution, is important both to secure compliance with the law and to ensure that those who have a duty under it may be held to account for failures to safeguard the health, safety and welfare of employees or the public. Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, or to assist such claims.

The Authorised Officer has a range of tools at their disposal in order to secure compliance with the law and to ensure a proportionate response to criminal offences.

An Improvement Notice is served with the broad aim of dealing with serious risks to health and safety, securing compliance with health and safety law and preventing harm. The notices require offenders to cease activities in contravention of the law or give offenders reasonable time to rectify a contravention. Before an Authorised Officer recommends service of an Improvement Notice they must be satisfied of one or more of the following:

- There are significant contraventions of health and safety legislation and they are likely to continue.
- Where one or more health and safety contraventions have occurred and they are likely to be repeated.
- There is a lack of confidence in the business/proprietor's organisation of health and safety management.
- The business/proprietor has a history of non-compliance.
- Standards are generally poor and the business/proprietor has little awareness or appreciation of their legal duties or of statutory requirements.
- Effective action needs to be taken to remedy conditions that are serious and deteriorating.
- Where there is a risk of ill health or injury, but not so as to warrant a prohibition notice.

A Prohibition Notice stops work or use of a piece of equipment in order to prevent serious personal injury. A Prohibition Notice will only be considered in the following circumstance:

- When an officer is of the opinion that an activity (or activities) carried on at a premises involve or will involve a risk of serious personal injury. The number of people affected by the risk is not relevant.
- Whilst the risk does not have to be imminent before an immediate prohibition notice can be served; such notices will only be served where a risk of serious personal injury is such as to require action to be taken without delay to control that risk.

The Authorised Officer acting on behalf of the council has powers to seize unsafe goods or equipment to prevent it causing harm to people. When goods or equipment are seized an officer will leave an appropriate receipt.

3. Investigations

The Authorised Officer of the council shall determine whether incidents, cases of ill health, or complaints should be investigated.

Investigations are undertaken in order to determine;

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

In deciding what resources to devote to investigations, the council will have regard to the principles of enforcement set out in this statement and the objectives published in the Health and Safety Executive / Local Authority Enforcement Liaison Committee (HELA) strategic plans. In particular, in allocating resources the council will strike a balance between investigations and mainly preventative activity.

To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. The council recognises that it is neither possible nor necessary for the purposes of the Act, to investigate all issues of non-compliance with the law which are uncovered in the course of preventive inspections, or in the investigation of reported events.

In selecting which complaints or reports of injury or occupational ill health to investigate and in deciding the level of resources to be used, the officer will take account of the following factors;

- the severity and scale of potential or actual harm,
- the seriousness of any potential breach of the law,
- knowledge of the duty holder's past health and safety performance,
- the enforcement priorities,
- the practicality of achieving results,
- the wider relevance of the event, including serious public concern

In considering whether the law has been complied with, the Authorised Officer will have regard to relevant Approved Codes of Practice (ACOP) and guidance issued by the Health and Safety Executive and HELA. The officer will apply sensible judgement about the extent of the risks and the effort that has been applied to counter them.

The Enforcement Management Model (EMM) will be referred to when considering formal action for breaches of the law. Where action taken differs from that indicated by the EMM the reasons for this will be documented and reasonable.

4. Representations to the courts

In cases of sufficient seriousness, and when given the opportunity, the Authorised Officer/Solicitor acting for the Council will consider indicating to the Magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make, the Authorised Officer/Solicitor will have regard to Court of Appeal guidance.

5. Death at work

The Authorised Officer will carry out a site investigation of all reportable work-related deaths that have taken place in a local authority enforced premises, Where there has been a breach of the law leading to a work-related death, the Council will consider whether the circumstances of the case might justify a charge of corporate manslaughter.

The police and Crown Prosecution Service (CPS) have legal responsibility to pursue a charge of manslaughter if appropriate. The council is responsible for investigating contraventions of health and safety. If in the course of their health and safety investigation an Authorised Officer of the Council finds evidence suggesting that a manslaughter incident may have occurred, they will pass it to the police for their consideration. If the police or the CPS decide not to pursue a manslaughter case the council will normally bring a health and safety prosecution in accordance with its policy.

To ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, the HSE, the Association of Chief Police Officers (ACPO) and the CPS have jointly agreed and published "Work-Related Deaths: A Protocol for Liaison". The Authorised Officer acting on behalf of the Council will take account of this protocol when responding to work-related deaths.

Appendix C - Prescribed Premises for Pollution Control

Additional Guidance in Relation to Installations Prescribed under the Pollution Prevention and Control Act 1999 and Environmental Permitting Regulations 2010

The purpose of this appendix is to give further guidance on the provisions of the above legislation. The principles of enforcement are clearly set out in the main enforcement policy. All the actions detailed in this appendix shall be carried out in accordance with the provisions of the Policy and current government guidance.

1. Introduction

Operators of prescribed installations are required by the Environmental Permitting Regulations 2010 to comply with both procedural and operational conditions. A failure to do so in either case might constitute an offence. The council recognises that any such offences should be dealt with in a consistent and fair manner and any action by the council should be appropriate, proportionate to the circumstances and in accordance with its policies.

2. Enforcement of Regulated Installations

The purpose of enforcement is to ensure that preventative or remedial action is taken to protect the environment or to secure compliance with the regulatory system. The need for enforcement may stem from an unauthorised "incident" or activity or from a breach of the conditions of a permitted activity. Although the council expects full voluntary compliance with relevant legislative requirements or permit provisions, it will use its enforcement powers where necessary. The council has a range of tools at its disposal in order to secure compliance with the law and to ensure a proportionate response to criminal offences. The powers available are detailed below.

Enforcement Notices

Enforcement Notices may be served where the operator is contravening or likely to contravene permit conditions. The council will consider in each case the advantages of serving an Enforcement Notice, using warning letters or taking court proceedings. The use of an Enforcement Notice may not be appropriate merely to restate what is required by an existing condition. Warning letters will usually be sent and in the event of non-compliance prosecution will be considered.

Suspension Notices

The council may serve a Suspension Notice where, in respect of an installation permitted by it, there is a risk of serious pollution. This may or may not involve a contravention of a condition of the permit. Once the council is satisfied that the requisite action has been taken, written notification shall be given to the operator and the Notice withdrawn.

Variation Notices

The council will consider the issue of a Variation Notice in respect of permitted installations in the following cases;

- where the operator formally requests a specific variation
- where the operator notifies the Council of a proposed change to the process or installation and the Council determines that a variation is required to accommodate that change
- where the Council believes that the existing conditions attached to an authorisation or permit require amending or additional conditions are required.

When issuing a Variation Notice the council will include as part of that notice a copy of the consolidated authorisation or permit. Where the operator makes an application for a variation and the council decides not to vary the permit it shall notify the operator of its decision and the right of appeal against that decision.

Revocation Notices

The Council may revoke a permit in whole or in part, at any time by service of a Revocation Notice for appropriate reasons. When issuing a Revocation Notice the council will provide an accompanying letter stating the reasons and effect of the Revocation Notice.

Failure to comply with permit conditions or Notices

Failure to comply with permit conditions or the requirements of a notice may lead to a criminal enforcement response.

Operating without a permit

The council would expect any operator to be aware of the need for a permit and to obtain one before commencing operation. Should an operation be being carried on without a permit the operator will be invited to make a timely application and the additional fee for operating without a permit will apply. Failure to complying after the warning may lead to prosecution of the operator.

Other Actions

Requisitions for Information

The Council may require any person to provide such information as it may reasonably require discharging its functions. Where such a notice is not complied with the Council may instigate legal proceedings.

Appendix D – Environmental Protection, Public Health and Dog Control

Additional Guidance in relation to Environmental Protection Duties

The purpose of this appendix is to give further guidance on the provisions of Environmental Protection, Public Health and Dog Control legislation. The principles of enforcement are clearly set out in the main enforcement policy. All the actions detailed in this appendix shall be carried out in accordance with the provisions of the Policy and current government guidance.

1. Introduction

The policy of the council is to deal with statutory nuisances and conditions which may present a threat to public health. Various issues and problems can be tackled under these wide ranging powers including noise, dust fumes, smells, accumulations and deposits of waste/noxious refuse, animals kept so as to cause nuisance, and premises in an unsanitary state.

Under Part III of the [Environmental Protection Act 1990](#) certain matters are declared to be 'statutory nuisances'. They include the following:

- any premises in such a state as to be prejudicial to health or a nuisance
- smoke emitted from premises so as to be prejudicial to health or a nuisance
- fumes or gases emitted from premises so as to be prejudicial to health or a nuisance
- any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance
- any accumulation or deposit which is prejudicial to health or a nuisance
- any animal kept in such a place or manner as to be prejudicial to health or a nuisance
- any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance
- artificial light emitted from premises so as to be prejudicial to health or a nuisance.
- noise emitted from premises so as to be prejudicial to health or a nuisance
- noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street [or in Scotland, road].
- any other matter declared by any enactment to be a statutory nuisance

2. Enforcement of Nuisance and Anti-Social Behaviour

The purpose of enforcement is to deal with statutory nuisances and conditions which may present a threat to public health. The council has a range of tools at its disposal in order to secure compliance with the law and to ensure a proportionate response to criminal offences. The powers available are detailed below.

Environmental Protection Act 1990 Abatement Notices

Where a statutory nuisance has been established the council may serve an abatement notice on the person responsible for the nuisance or the owner or occupier of the premises. The notice may simply require the nuisance to stop and not recur or specify steps to be taken to abate the nuisance. Someone who receives an abatement notice has a period of 21 days to appeal to a Magistrates Court against it.

Where a complaint of a statutory nuisance has been made the complainant is required to evidence the occasions they are disturbed in their premises on a diary sheet. This is essential for determining whether there is the potential for statutory nuisance and how the case should be progressed and provides evidence should the case go to court.

If a statutory nuisance has been determined the legislation requires the local authority to serve an abatement notice on the person responsible to rectify the situation and to prevent a recurrence. Failure to comply with an abatement notice is a criminal offence and the offender could be subject to a fine of up to £5,000 for a domestic premises and £20,000 for a commercial or industrial activity.

An amendment under the Clean Neighbourhoods and Environment Act 2005 allows a local authority that is satisfied that a statutory noise nuisance exists, to issue a “minded to” on the person responsible. This advises them that a statutory nuisance exists and that the service of the notice is to be delayed for 7 days in order to work with them to resolve this issue. If a statutory nuisance or lack of action is determined the local authority will serve an abatement notice on the person responsible without further warning.

A breach of an Abatement Notice may also result in an application for a warrant to seize items from the premises in order to abate the nuisance. Seizures of noise making equipment will then be followed up with a prosecution of the breach of the notice and a confiscation order from the magistrate’s court to have the equipment destroyed.

Notices Served under the Control of Pollution Act 1974

Notices served under this legislation apply to noisy activities associated with demolition and construction. This seeks to reasonably control the activity through the use of ‘best practical means’ rather than attempt to prevent disturbance as the works are usually necessary. Prior consent can be sought from the council to carry out the works, that may cause disturbance, or the council can use reactive powers to impose conditions on the activity. Such as restricting working hours, siting of equipment and appropriate silencing.

Failure to comply with a condition attached to a prior consent or a notice is a criminal offence and on conviction an offender may be subject to maximum fine of £10,000.

Community Protection Notices (CPN)

The purpose of these notices is to stop a person (over 16), a business or an organisation committing anti-social behaviour which spoils the community’s quality of life. This power will be used by the council and the police in consultation with each other. If the behaviour has a detrimental effect on the quality of life of those in the locality, is of a persistent and continuing nature and is unreasonable a written warning will be issued informing the perpetrator of the problem behaviour, requesting them to stop and advising what the consequences will be if it does not stop.

If the behaviour continues a CPN will be issued, which will specify what is to be stopped or undertaken in order to avoid further anti-social behaviour. Failure to do so may result in works in default being undertaken by the council and the costs reclaimed from the person responsible. A breach of a CPN is a criminal offence, a fixed penalty of £100 may be issued and/or a prosecution. A fine of £2,500 for an individual or up to £20,000 for businesses may be issued by the courts.

Closure Powers

The purpose of this power is to allow the council to quickly close premises which is being used, or likely to be used, to commit nuisance or disorder. The council can issue a closure notice requiring closure of the premises for 48 hours or a closure order for up to six months. The council must be satisfied that nuisance to the public will occur in the next 48 hours or there will be disorder near those premises. For a closure order the council must be satisfied that there will be disorderly, offensive or criminal behaviour, serious nuisance to the public from that premises.

A closure notice is issued by the council however a closure order must be sought from the courts. The breach of the notice or the order is a criminal offence. Breach of a notice carries a penalty of up

to 3 months in prison and a breach of an order up to six months in prison. Both carry an unlimited fine for residential and non-residential premises.

The council will use these powers where it is deemed appropriate on a case by case basis and in conjunction with the police and other relevant agencies.

3. Filthy and Verminous Premises

The Public Health Act 1936 requires a local authority to take action when a property is deemed to be filthy, verminous or unwholesome. A notice served under this act requires the person responsible, who is usually the owner or tenant to take steps to clear and cleanse the property and where a vermin infestation is present, to treat to the satisfaction of the local authority. Unlike other pieces of legislation there is no appeal process for this notice. Should a notice not be complied with the council may undertake works in default and recover the costs from the person responsible.

4. Responsible Dog Ownership

The Environmental Protection Act 1990 requires the council to collect and detain any dog found in a public place. Any persons who claim ownership of a dog found to be straying will be required to pay any costs which have been incurred as a result of the collection and detention of that dog.

The council will impose a fine for stray dogs which will be payable by the owner upon return of the animal as permitted under the Environmental Protection (Stray Dogs) Regulations 1992

The Clean Neighbourhoods and Environment Act 2005 allows an authority to make a 'Dog Control Order' on relevant land, these orders can prohibit activity of the area upon which an order is imposed. The offences may relate the following;

- fouling of land by dogs and the removal of dog faeces;
- the keeping of dogs on leads;
- the exclusion of dogs from land;
- the number of dogs which a person may take on to any land. Where an individual is found to have committed an offence under this section they may be offered an opportunity to discharge the liability by way of a fixed penalty notice of £75.

It is an offence to allow an animal under their charge to foul and fails to remove the deposit from the land. Where an individual is found to have committed an offence under this act, they may be offered an opportunity to discharge the liability by way of a fixed penalty notice of £75.

Appendix E – Licensing

Additional Guidance in relation to Licensing Enforcement

The purpose of this appendix is to give further guidance on the provisions of licensing legislation. The principles of enforcement are clearly set out in the main enforcement policy. All the actions detailed in this appendix shall be carried out in accordance with the provisions of the Policy and guidance issued from the Home Office, Police, Fire Authorities, Department of Culture, Media and Sport and Department of Transport (DFT).

1. Introduction

The council policy is to protect the safety, welfare and wellbeing of all persons and animals subject to licensing legislation within the district.

The Statement of Licensing policy complements this policy and provides more detailed information on enforcement roles, information sharing and decision making.

The council has the responsibility to advise, determine and enforce a number of licensing regimes. The areas covered by this policy include:

Alcohol, Regulated Entertainment and Late Night Refreshment	Sale and Supply of all alcohol, whether for consumption on or off the premises. Regulated Entertainment involving Music, Singing and Dancing, Indoor Sports, Films, Plays; and Late Night Refreshment after 23:00 hours.
Animal Health and Welfare	Animal Boarding Establishments, Dangerous Wild Animals, Dog Breeding Establishments, Pet Shops, Riding Establishments, Game Dealers.
Charitable Collections	House to House and Street Collections.
Gaming	Amusement Arcades, Small Lotteries, Amusement with Prize Machines, Track Betting.
Hackney Carriage and Private Hire Vehicles	Hackney Carriage and Private Hire drivers, proprietors and operators.
Miscellaneous	Sex Establishments, Scrap Metal Dealers, Street Trading.

2. Enforcement of Licensed Premises

The council expects full voluntary compliance with relevant legislative requirements or licensing conditions, it will however, use its enforcement powers where necessary. The council has a range of tools at its disposal in order to secure compliance with the law and to ensure a proportionate response to licensing contraventions. The powers available are detailed below.

Suspension Notices

Suspension Notices are served to remove the licence until the reasons for suspension have been rectified. These will be considered where there is a risk to safety of the public or the welfare of animals. These are also applied automatically for non-payment of the licence fee for Alcohol and Gambling Licences.

Revocation of Licences or Approvals

In order to warrant revocation of a licence, the individual or organisation must meet one or more of the following criteria:

- Fraudulent activity undertaken
- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others.
- Deliberately or persistently ignored written warnings or formal notices
- Obstructed an officer during their duties
- Endangered, to a serious degree, the health, safety or well-being of people or animals.

Review of Licence

A premises licence issued under the Licensing Act 2003, can be reviewed at any time at the request of the public or a statutory body as specified under the legislation. As a result of the review, the licence is placed before the Licensing Sub-Committee which is able to vary / revoke / and, or suspend the licence; remove the designated premises supervisor; or remove licensable activities from a licence. In making decisions with respect to these licences the Statement of Licensing Policy will be referred to by the Licensing Sub Committee in addition to the enforcement policy.

A Licensing Act 2003 premises licence can be subject to an expedited review, when a senior police officer has issued a certificate stating that in his/her opinion the premises are associated with serious crime or serious disorder (or both). On receipt of the application and certificate, the licensing authority must within 48 hours consider whether it is necessary to take interim steps pending determination of the review of the premises licence. The authority must in any event undertake a review within 28 days of receipt of the application. The authority may:

- modify the conditions of the premises licence;
- exclude of the sale of alcohol by retail (or other licensable activities) from the scope of the licence;
- remove the designated premises supervisor from the licence; and
- suspend the licence.

Community Protection Notices (CPN) – The purpose of these notices is to stop a person (over 16), a business or an organisation committing anti-social behaviour which spoils the community's quality of life. This power will be used in consultation with the Police. If the behaviour has a detrimental effect on the quality of life of those in the locality, is of a persistent and continuing nature and is unreasonable a written warning will be issued informing the perpetrator of the problem behaviour, requesting them to stop and advising what the consequences will be if it does not stop.

If the behaviour continues a CPN will be issued, which will specify what is to be stopped or undertaken in order to avoid further anti-social behaviour. Failure to do so may result in works in default being undertaken and the costs reclaimed from the person responsible.

Closure Powers – The purpose of this power is to allow the council to quickly close premises which are being used, or likely to be used, to commit nuisance or disorder. The council can issue a closure notice requiring closure of the premises for 48 hours or a closure order for up to six months. The council must be satisfied that nuisance to the public will occur in the next 48 hours or there will be disorder near those premises to issue a closure notice. To issue a closure order, the council must be satisfied that there will be disorderly, offensive or criminal behaviour, serious nuisance to the public from that premises. A closure notice is issued by the council; however, a closure order must be applied for from the courts.

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