Enforcement Policy

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November 2016

A summary of the Policy is available in large print, on tape or in other languages on request
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1. Introduction

1.1. In 1998 the Cabinet Office published the “Enforcement Concordat” to help promote consistency in the UK regulatory enforcement regime.

1.2. The Enforcement Concordat set out principles of good enforcement policy and although a voluntary code of practice it was adopted by 96% of all central and local government bodies with enforcement functions.

1.3. Following the recommendations of the Hampton Report\(^1\), the Enforcement Concordat was supplemented by a statutory code of practice, the “Regulators Compliance Code”, to give the Hampton Principles a statutory basis.

1.4. This is provided by the Legislative and Regulatory Reform Act 2006, which places a duty on regulators to have regard to five Principles of Good Regulation\(^2\). The code of practice was issued on 17th December 2007 and came into force on 6th April 2008.

1.5. This enforcement policy which is a developed enhancement of a document originally produced by the erstwhile Norfolk Better Regulation Partnership (NBRP) seeks to deliver improved regulatory outcomes, whilst reducing unnecessary burdens on compliant businesses.

1.6. The enforcement policy re-affirms the work originally developed by the NBRP and furthers the aim of providing consistency of approach within Broadland District Council’s Environmental Services Department and with other partner regulatory services within Norfolk.

1.7. In accordance with the above, this document seeks to mirror as far as possible the existing Enforcement Policies of other partner regulatory services to enable and facilitate collaborative enforcement processes and joint enforcement activities.


1.9. This enforcement policy is intended to iterate the basic principles of enforcement activity with specific matters and issues relating to:

\[
\begin{align*}
1.9.1.1. & \text{ Private Sector Housing} \\
1.9.1.2. & \text{ Environmental Protection (incorporating Pollution Control and Street Scene} \\
1.9.1.3. & \text{ Environmental Enforcement (incorporating Health and Safety, Food Safety and licensing)}
\end{align*}
\]

These principles are within dedicated enforcement documents forming appendices to this policy. In all cases this main policy and the specific relevant document must be considered in conjunction.

\(^1\) "Reducing administrative burdens: effective inspection and enforcement" – Philip Hampton 2005
\(^2\) Transparency, accountability, proportionality, consistency and targeted action.
2. Enforcement Activity

For the purpose of this document ‘enforcement’ includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action such as prosecution or issue of notices and would include the inspection of premises for the purpose of checking compliance with legal requirements and the provision of advice to aid compliance.

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 Compliance Code.

In certain instances the regulator may conclude that a provision in the Code is either not relevant or is outweighed by another provision. The regulator will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

2.1 Formal Action

2.1.1 Whilst recognising that most businesses want to comply with the law the regulator also recognises that some elements of business and individuals will operate outside the law (both intentionally and unintentionally).

2.1.2 Broadland District Council will consider taking formal action in serious breaches which may include any of the following circumstances:

a. Where there is a risk to public health, safety or damage to the environment.
b. For matters where there has been recklessness or negligence.
c. A deliberate or persistent failure to comply with advice, warnings or legal requirements.
d. Any act likely to affect animal health or welfare, disease prevention measures, or the integrity of the food chain.
e. Obstruction or assault (including verbal assault) of an officer in the execution of their duties.

(THE ABOVE LIST IS NOT EXHAUSTIVE)

2.1.3 For the purposes of this document ‘formal action’ means: Prosecution, Simple Caution, Issue of Penalty Notices, Seizure, Suspension, Forfeiture, revocation/suspension of a licence, registration or approval, Written or Verbal Instruction, Advice or Warning, or any other criminal or civil proceedings, applied either separately or in any appropriate combination.

3. Principles of Good Regulation

The five principles of good regulation are:

- Transparency;
- Accountability;
- Proportionality;
- Consistency; and
- Targeted only at cases for which action is needed.
3.1. Transparency

We will communicate in plain English or in the appropriate language or method

In most circumstances we will ensure that people affected by formal action are informed of what is planned, and allow for discussion and time to respond before the action is taken. We will also give them a named officer’s contact details.

We will make a clear distinction between legal requirements and recommended works.

As part of our commitment to equality we will use the following:-

- Where businesses or the public do not have English as a first language we will offer translations of correspondence at the time of the inspection

- We also use INTRAN, the Interpretation and Translation Agency for the Public Services of Norfolk covering telephone interpreting, face to face interpreting, sign language and lip speaking service.

- We can provide large print documents and Braille

- We can provide taped information

- Documents can be emailed

3.2. Accountability

The regulatory officers will actively work with businesses and the public to advise and to assist with compliance and complaints.

- Out of hours contact for services will be provided for complaints or requests of an immediate high risk public health impact such as food poisoning outbreaks; serious pollution incidents; serious accidents and animal disease outbreaks.

- Carrying out evening visits and inspections when businesses are open during these times.

- Regulatory Officers will show their identification (and authority if requested) at the outset of every visit and explain the reason for the visit, unless the nature of the investigation requires otherwise.

- Contact points and telephone numbers will be provided for business and public use.

- The whole range of enforcement activities will be dealt with as promptly and efficiently as possible in order to minimise time delays.

- The Environmental Services Department has a complaint procedure for use by businesses, the public, employees and consumer groups. This is available on request by telephone and from reception desks.

- Feedback questionnaires will be routinely used to gather and act upon information about the service we provide.
3.3. Proportionality

- Any action required will be proportionate to the seriousness of the breach and the risk to health, safety or the environment.
- The most serious formal action, including prosecution, will be for serious breaches of the law where there is a significant risk to health, safety or the environment or where there has been a flagrant disregard for the requirements of the law.

3.4. Consistency

- Similar issues will be dealt with in the same way by the Regulatory Officers.
- There are arrangements in place to ensure discussion and comparison of enforcement decisions by the Regulatory Officers.
- All Regulatory Officers undertaking enforcement duties will be suitably trained, qualified and authorised so as to ensure that they are fully competent to undertake their enforcement duties.

3.5. Targeted

All enforcement action will be primarily targeted towards those situations that give rise to the most serious risks, where the risks are least well controlled and against deliberate or organized crime. Other factors also determine priorities for enforcement activity, including Government targets and priorities, new legislation, national campaigns and public concerns.

4. Intelligence and Risk Led Enforcement

Through capturing a coherent and robust intelligence picture, effective strategies and tasking and co-ordination for dealing with particular problems can be developed. This methodology enables the identification of new, current and emerging problems, and gives the capability to provide strategic and tactical direction as to how they can best be tackled. Activities are targeted based on general or specific risks identified via trends, history or specific incidents. Enforcement Agencies exchange information as part of their partnership work in reducing crime and disorder.

5. Enforcement Action

The Regulatory Officers will have regard to the guidance documents, which exist both generally, for example, the Code for Crown Prosecutors produced by the Crown Prosecution Service (CPS) as well as other guidance relevant to the individual regulator.

In determining the nature of enforcement action to be taken, the Regulators should ensure that any sanction or penalty should:

- Aim to change the behaviour of the offender;
- Aim to eliminate financial gain or benefit from non-compliance;
• Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
• Be proportionate to the nature of the offence and the harm caused;
• Aim to restore the harm caused by the regulatory non-compliance where appropriate;
• Aim to deter future non-compliance.

During an investigation a person who it is believed may have committed an offence may be formally interviewed. These interviews will be conducted under the rules of the Police and Criminal Evidence Act 1984.

5.1 Conflict of Interest in Food Law Enforcement Matters

Where a breach of food law is detected in premises where the enforcing authority is itself the food business operator, then except where the health and safety of an individual or the community is at risk and immediate action is required, the following protocol will be followed:

Where the breach is sufficiently serious to warrant more than the provision of advice, information, assistance or a written warning, a food officer from another food authority within Norfolk will be asked to assist in the decision making process as to the action required to be taken. The Chief Executive should also be informed of serious breaches without delay.

The food officer’s role is to assist and challenge the decision making process to ensure that appropriate, proportionate and consistent action is to be taken to remedy the breach, prevent re-occurrence and to minimise the risk of ‘conflict of interest’ for the enforcing authority. A record of the food officer’s involvement will be kept such that it is auditable.

5.2 Prosecution

Regulatory Officers will follow guidance which requires two main tests to be considered in relation to instigating a prosecution:

A. The Evidential Sufficiency Test – i.e.

• Is there admissible, substantial and reliable evidence that an offence has been committed? i.e. Can it be used in court? Is there enough evidence? Is the evidence sound and factual? (Which may include an expert opinion).

• Has the Police and Criminal Evidence Act 1984 been complied with to ensure fair and open gathering of the evidence?

B. The Public Interest Test – i.e.

• Is it in the public interest to prosecute?

The guidance gives a number of factors that may lead to a decision not to prosecute, including:

a) The court is likely to impose a nominal penalty;

b) The offence was committed as a result of a genuine mistake or misunderstanding;
c) If the loss or harm caused can be described as minor and was the result of a single incident;

d) There has been a long delay between the offence taking place and the date of the trial, unless:

- The offence is serious;
- The delay has been caused in part by the defendant;
- The offence has only recently come to light; or
- The complexity of the offence has meant that there has been a long investigation;

e) A prosecution is likely to have a bad effect on the victim’s physical or mental health;

f) The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health;

g) The defendant has put right any loss or harm; or

h) Details may be made public that could harm sources of information, international relations or national security.

The Regulatory Officers will also consider whether or not a prosecution is appropriate by consideration of the factors contained in paragraph 2.1.2 of this policy. When considering formal enforcement action, the Regulatory Officer will, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding the best approach.

The Environmental Service Department will have an internal procedure for the authorisation of any investigations that may result in prosecution. All such cases will be regularly reviewed.

If formal action is taken, the Environmental Services Department is likely to seek to recover the costs of the investigation. The Court determines the level of fine imposed and costs awarded.

5.3 Simple Cautions

A simple caution in certain cases may be offered as an alternative to a prosecution. The purpose of a simple caution is to deal quickly with less serious offences, to divert less serious offences away from the Courts, and to reduce the chances of repeat offences.

The regulators will comply with the provisions of the Home Office Circular 30/2005. The following conditions must be fulfilled before a caution is administered:

- There must be evidence of the offender’s guilt sufficient to give a realistic prospect of conviction;

- The offender must admit the offence; and

- The offender must understand the significance of the caution and agree to being cautioned.
If a person/Company declines the offer of a formal caution, the regulator will normally pursue the prosecution action.

5.4 Forfeiture
Where an accused has not agreed to voluntarily surrender any infringing goods then, on successful conclusion of legal proceedings, forfeiture may be applied for. This does not preclude a regulator taking forfeiture proceedings in their own right in appropriate circumstances.

5.5 Proceeds of Crime
Where appropriate, working in partnership as necessary, the regulatory authority will seek to recover the assets of convicted offenders under the Proceeds of Crime Act 2002.

5.6 Directors
On the conviction of a Director connected with the management of a company the prosecutor will, in appropriate cases, draw to the Court’s attention their powers to make a Disqualification Order under the Company Directors Disqualification Act 1986.

5.7 Civil Claims
Any enforcement action is completely separate and distinct from civil claims made by individuals for compensation or other remedy. Enforcement is not undertaken in all circumstances where civil claims may be pursued, nor is it undertaken to assist such claims.

The Environmental Services Department may upon request provide solicitors acting for individuals pursuing a civil claim, a factual report, which details the investigation and involvement in the case. There may be a charge for this report.

6. Working with external agencies and enforcement bodies
If a business has a Primary Authority (also if appropriate a Lead or Home Authority scheme or informal Lead or Home Authority scheme), the regulator will contact the Primary Authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety or the environment.

The Environmental Services Department will liaise with the other partner regulators to ensure that any proceedings instituted are for the most appropriate offence.

7. Publicity
Regulatory authorities have a responsibility to protect the public from detrimental trading and environmental practices. Regulators undertake a range of activities to achieve this. These include actions that are taken after the detection of an offence, as well as measures to prevent and deter their commission.

One such measure is the publication of convictions and information concerning significant detrimental trading or other behaviour. The publicity generated by prosecutions and other enforcement action acts as a deterrent to others. It also reassures the general public that Regulators take a serious view of such detrimental behaviour.

The Head of Environmental Services Department will therefore consider publishing the name and address of each person convicted of or subject to other enforcement action, together with details of the issues involved. In reaching a decision as to whether to publish such information, the Head of Environmental Services will consider the following factors:-
• The specific details of the offence committed or detrimental activity.
• The public interest in disclosing personal information e.g. the deterrent effect of the publication.
• Whether the publication would be proportionate.
• The personal circumstances of the offender.

This list is not exhaustive and other factors may be relevant in the circumstances of an individual case.
8. APPENDICES

2. ENVIRONMENTAL ENFORCEMENT - FOOD SAFETY

3. ENVIRONMENTAL ENFORCEMENT - REGULATORY SERVICES AND LICENSING

4. ENVIRONMENTAL ENFORCEMENT - HEALTH AND SAFETY

5. ENVIRONMENTAL PROTECTION

6. PRIVATE SECTOR HOUSING
ENVIRONMENTAL SERVICES ENFORCEMENT POLICY

APPENDIX ONE - FOOD SAFETY

GENERAL

1. All enforcement action will be based upon an assessment of risk to public health and/or the environment.

2. All enforcement action will be based upon an objective assessment following consideration of all the facts of the matter. Enforcement action will not be based on anecdotal, hearsay or other subjective assessment.

3. It will not be normal practice for formal enforcement action to be used as a punitive measure for minor technical contravention.

4. All enforcement action shall have regard to relevant legislation, codes of practice, and guidance periodically issued by the government, the Chartered Institution of Environmental Health, the Food Safety Agency (FSA), Local Government Regulation, and other relevant bodies. This also includes the Human Rights Act and the test of proportionality. Regard will also be had for departmental procedures and work instructions.

5. All authorised officers, when making enforcement decisions will abide by the requirements of the Enforcement Policy. Any departure from this policy must be exceptional, be capable of justification and be fully considered by the Head of Environmental Services before the decision is taken, unless there would be a significant risk to public health and/or safety by delaying the decision.

TYPES OF ACTION

1. Informal Action

   a) Informal action to secure compliance with legislation includes:-
      - Offering verbal advice
      - Verbal requests for action
      - Informal written advice (visit reports and letters)

   b) The circumstances where it is appropriate to use informal action are:-
      - Where the act or omission is trivial or not of a serious enough nature to warrant formal action.
      - As an initial notification to the alleged offender of a minor problem.
      - Where from the individual/organisations/businesses past history it can be reasonably expected that informal action will achieve compliance.
      - Where confidence in the individual/businesses management is high
      - Where the consequences of non-compliance will not pose a significant risk to public or employee’s health and safety or the environment.
There may be circumstances when some of the above are not met. However it may be more effective than a formal approach; eg this may apply to charitable or voluntary organisations. If an authorised enforcement officer considers this is appropriate, then they will discuss the matter with their immediate line manager to ratify their action. For non-hazardous and minor contraventions, a revisit may be an inappropriate use of resources.

All enforcement documentation issued or sent will:

- Contain all the information necessary to understand what needs to be done, why, when and by whom.
- Clearly distinguish between legal requirements and best practice advice or recommendations
- Indicate the legislation that applies

Authorised enforcement officers will at all times, even if only giving verbal advice, differentiate between legal requirements and matters which are recommended as good practice.

2 Formal Action

a) Formal action to secure compliance with legislation may include:
   - Formal verbal warning (confirmed in writing)
   - Formal written warning
   - Hygiene Improvement Notice
   - Hygiene Emergency Prohibition Notice
   - Remedial Action Notice
   - Simple Caution
   - Prosecution (summary or indictment)
   - Referral for manslaughter charge

b) The circumstances where it is appropriate to use formal action include:
   - There are significant contraventions of legislation
   - There is a lack of confidence in the individual/business to respond to an informal approach
   - There is a history of non-compliance with informal action
   - The consequence of non-compliance could be potentially serious to public health and/or safety of both the public and employees
   - Although prosecution is intended, immediate or swift action is necessarily required to remedy a serious threat to public health.

c) Verbal Warning - Authorised officers issuing verbal warnings shall specify clearly the reason for the warning, the relevant statutory provision being (or likely to be breached the works or actions required if any, and the time limit in which to carry out any works.) In the main, verbal warnings will be issued for matters requiring action in the immediate or very short term. Verbal warnings will be confirmed in writing at the earliest opportunity.
d) Written Warning - Formal written warnings or requests for works or actions to be carried out shall specify the reasons, the relevant statutory provisions being, or likely to be breached, the works or actions required and the time limit in which the individual/businesses should comply. The recipient of the letter shall be advised that failure to comply may lead to the issue of a statutory notice by the council.

e) Hygiene Improvement Notice

The circumstances where authorised officers will consider the issue of an hygiene improvement notice includes one or more of the following:

- There has been a significant contravention of legislation
- There is little confidence in the individual/business resolving the matter through an informal approach
- The service of a notice is the only realistic option to secure compliance
- There is a history of non-compliance with informal action
- Standards are generally poor with little management awareness of statutory requirements
- There is a realistic chance of securing conviction for non-compliance
- The consequences of non-compliance could be a risk to health and safety or food safety
- Previous action has failed to resolve the issue in question
- Although prosecution is intended, immediate effective action also needs to be taken to remedy the defect.

In general, hygiene improvement notices will not be used for minor technical contraventions but will be used where there is a risk to food safety. Hygiene Improvement notices will only be issued and signed by those officers authorised to do so.

Authorised enforcement officers will only serve a hygiene improvement notice where they are satisfied that service of notice is the most appropriate course of action and will discuss the content of the notice with a colleague, usually their line manager, before service takes place.

Authorised enforcement officers will place realistic time limits on hygiene improvement notices which where possible, will be agreed with the recipient as being attainable. Wherever possible, the authorised officer should also discuss the contents of the notice with the recipient and will consider any alternatives that may be put forward by the recipient at that time.

Generally failure to comply with an hygiene improvement notice will result in the authorised enforcement officer of the council seeking authorisation to instigate legal proceedings in respect of food safety matters.

f) Remedial Action Notice

The circumstances where authorised officers will consider the issue of a remedial action notice include one or more of the following:

- There has been a significant contravention of legislation
- There is little confidence in the individual/business resolving the matter through an informal approach
• The service of a notice is the only realistic option to secure compliance

• There is a history of non-compliance with informal action

• Standards are generally poor with little management awareness of statutory requirements

• There is a realistic chance of securing conviction for non-compliance

• The consequences of non-compliance could be a risk to health and safety or food safety

• Previous action has failed to resolve the issue in question

• Although prosecution is intended, immediate effective action also needs to be taken to remedy the defect.

In general, remedial action notices will not be used for minor technical contraventions but will be used where there is a risk to food safety. Remedial action notices will only be issued and signed by those officers authorised to do so.

Authorised enforcement officers will only serve a remedial action notice where they are satisfied that service of notice is the most appropriate course of action and will discuss the content of the notice with a colleague, usually their line manager, before service takes place.

Authorised enforcement officers will place realistic time limits on remedial action notices which where possible, will be agreed with the recipient as being attainable. Wherever possible, the authorised officer should also discuss the contents of the notice with the recipient and will consider any alternatives that may be put forward by the recipient at that time.

Generally failure to comply with a remedial action notice will result in the authorised enforcement officer of the council seeking authorisation to instigate legal proceedings in respect of food safety matters.

g) Hygiene Emergency Prohibition Notice

The circumstances where authorised officers will consider the issue of an hygiene emergency prohibition notice includes the following:

• Where premises, equipment or processes present an imminent risk of injury to health.

• The consequences of not taking immediate and decisive action to protect public health would be unacceptable.

• An imminent risk of injury to health can be demonstrated. (Evidence from relevant experts, including a food analyst or food examiner may be appropriate).

• The guidance criteria, specified in the relevant code of practice, concerning the conditions when prohibition may be appropriate, are fulfilled.

• There is no confidence in the integrity of an unprompted offer made by a person in charge and or company manager voluntarily to close premises or cease the use of any equipment, process or treatment associated with the imminent risk.

• A person in charge and or company manager is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition.

Only enforcement officers authorised to issue hygiene emergency prohibition notices shall do so and they must follow and have due regard to the guidance contained in the statutory Codes of Practice, LACOTS and any other recognised guidance.
h) Simple Caution

The issuing of a caution may be considered appropriate under the following circumstances:

- To deal quickly and simply with less serious incidents
- To divert them from unnecessary appearance in the criminal courts of matters that can be more quickly and equally efficiently dealt with by way of a simple caution
- To reduce the chance of a repeated offence

The council will not issue a caution unless the following conditions are fulfilled:

- There must be sufficient evidence instigate prosecution proceedings
- The offender must admit the offence
- The offender must show remorse and have undertaken to prevent recurrence of the offence
- The offender must accept the caution once they have understood its importance and significance and have given a written consent to being cautioned
- Taking a prosecution proceeding is not in the public interest, taking into account the public interest principles described in the code for crown prosecutors

If a person declines the offer of a caution, prosecution proceedings will normally be the next course of action. In some circumstances, the council may consider a written warning will suffice instead of a caution, eg in the case of an offence which is minor in nature.

i) Prosecution

The council will consider it appropriate to instigate prosecution proceedings where one or more of the following criteria are met:

- There is general disregard for the law, particularly where the economic advantages of breaking the law and / or the loss / adverse impact or potential loss / adverse impact on others resulting from the offence are substantial.
- There appears to have been a disregard for food safety.
- There is a history of non–compliance with the law, an approved Code of Practice or the relevant guidance and the person in charge and / or company is not intending to rectify or deal with this non compliance
- The person in charge and / or company is not capable of dealing adequately with the issues and/or is not prepared to pay for professional advice, or take on board their recommendations
- As a result of a legal contravention, there has been a serious incident or case of ill health.
- The offence involves failure to comply with a notice

When considering whether to prosecute for a breach of legislation following an incident, the seriousness of the contravention not the severity of the incident, is the prime issue for consideration. The extent of personal or company responsibility for the incident is also relevant.
Due regard must also be taken of guidance contained in The Code of Practice for Crown Prosecutors issued by the Crown Prosecution Service and relevant statutory codes of practice and the test of proportionality under the Human Rights Act. Factors to be considered may include:

- The seriousness of the alleged offence.
- The risk of harm to public health.
- Identifiable victims.
- Failure to comply with a statutory notice served for a breach of legislation.
- Disregard of public health for financial reward.
- The previous history of the party concerned.
- Offences following a history of similar offences.
- Failure to respond positively to past warnings.
- The likelihood of the alleged offenders being able to establish a due diligence defence.
- The ability of any important witness to give evidence and their willingness to co-operate.
- The willingness of the alleged offender to prevent recurrence of the alleged offence.
- The probable public benefit of a prosecution and the importance of the case eg whether it might establish a legal precedent.
- The more serious the offence, the less likelihood that the public interest will allow anything other than a prosecution.
- Whether other action, such as issuing a simple caution in accordance with Home Office Circulars issuing an hygiene improvement notice or remedial action notice or imposing a hygiene emergency prohibition notice would be more appropriate or effective.
- Any explanation offered by the alleged offender, (person or company representative)

Once a decision to instigate prosecution proceedings has been taken, the matter should be referred, without undue delay, to the council’s legal advisors.
ENVIRONMENTAL SERVICES ENFORCEMENT POLICY

APPENDIX TWO - REGULATORY SERVICES AND LICENSING

GENERAL

1 All enforcement action will be based upon an assessment of risk to public health and/or the environment.

2 All enforcement action will be based upon an objective assessment following consideration of all the facts of the matter. Enforcement action will not be based on anecdotal, hearsay or other subjective assessment.

3 It will not be normal practice for formal enforcement action to be used as a punitive measure for minor technical contravention.

4 All enforcement action shall have regard to relevant legislation, codes of practice, and guidance periodically issued by the government, the Chartered Institution of Environmental Health, the Food Safety Agency (FSA), Local Government Regulation, DCMS, Gambling Commission and other relevant bodies. This also includes the Human Rights Act and the test of proportionality. Regard will also be had to departmental procedures and work instructions. In respect of matters relating to the Licensing Act 2003.

5 All authorised officers, when making enforcement decisions will abide by the requirements of the Enforcement Policy. Any departure from this policy must be exceptional, be capable of justification and be fully considered by the Head of Environmental Services before the decision is taken, unless there would be a significant risk to public health and/or safety by delaying the decision.

TYPES OF ACTION

1 Informal Action

   a) Informal action to secure compliance with legislation includes:-
      - Offering verbal advice
      - Verbal requests for action
      - Informal written advice (visit reports and letters)

   b) The circumstances where it is appropriate to use informal action are:-
      - Where the act or omission is trivial or not of a serious enough nature to warrant formal action.
      - As an initial notification to the alleged offender of a minor problem.
      - Where from the individual/organisations/businesses past history it can be reasonably expected that informal action will achieve compliance.
      - Where confidence in the individual/businesses management is high
      - Where the consequences of non-compliance will not pose a significant risk to public or employee’s health and safety or the environment.
There may be circumstances when some of the above are not met. However it may be more effective than a formal approach; eg this may apply to charitable or voluntary organisations. If an authorised enforcement officer considers this is appropriate, then they will discuss the matter with their immediate line manager to ratify their action. For non-hazardous and minor contraventions, a revisit may be an inappropriate use of resources.

All enforcement documentation issued or sent will:

- Contain all the information necessary to understand what needs to be done, why, when and by whom.
- Clearly distinguish between legal requirements and best practice advice or recommendations
- Indicate the legislation that applies

Authorised enforcement officers will at all times, even if only giving verbal advice, differentiate between legal requirements and matters which are recommended as good practice.

2 Formal Action

a) Formal action to secure compliance with legislation may include:
   - Formal verbal warning (confirmed in writing)
   - Formal written warning
   - Unfit Vehicle Notice (PHV)
   - Issue of penalty points (PHV)
   - Simple Caution
   - Prosecution (summary or indictment)

b) The circumstances where it is appropriate to use formal action include:
   - There are significant contraventions of legislation or failure to comply with Licensing Conditions.
   - There is a lack of confidence in the individual/business to respond to an informal approach
   - There is a history of non-compliance with informal action
   - The consequence of non-compliance could be potentially serious to public health and/or safety of both the public and employees
   - Although prosecution is intended, immediate or swift action is necessarily required to remedy a serious threat to public health.

   Verbal Warning - Authorised officers issuing verbal warnings shall specify clearly the reason for the warning, the relevant statutory provision being (or likely to be breached, the works or actions required if any, and the time limit in which to carry out any works.) In the main, verbal warnings will be issued for matters requiring action in the immediate or very short term. Verbal warnings will be confirmed in writing at the earliest opportunity.

c) Written Warning - Formal written warnings or requests for works or actions to be carried out shall specify the reasons, the relevant statutory provisions being, or likely to be breached, the works or actions required and the time limit in which the individual/businesses should comply. The recipient of the letter shall be advised that failure to comply may lead to the issue of a statutory notice by the council.
d) Unfit Vehicle Notice (private hire vehicle)

The circumstances where authorised officers will consider the issue of an unfit vehicle notice (which maybe deferred) are detailed in paragraphs 24, 25, 26 and 27 of section 4 of the Council’s Private Hire and Hackney Carriage Policy and Conditions.

Unfit vehicle notices will only be issued and signed by those officers authorised to do so.

Generally failure to comply with an unfit vehicle notice will result in the authorised enforcement officer of the council seeking authorisation to instigate legal proceedings in respect of private hire vehicle matters.

e) Penalty Points (Private Hire)

The circumstances where authorised officers will consider the issue of penalty points are detailed in Appendix B of the Council’s Private Hire and Hackney Carriage Policy and Conditions.

f) Simple Caution

The issuing of a caution may be considered appropriate under the following circumstances:

- To deal quickly and simply with less serious incidents
- To divert them from unnecessary appearance in the criminal courts of matters that can be more quickly and equally efficiently dealt with by way of a simple caution
- To reduce the chance of a repeated offence

The council will not issue a caution unless the following conditions are fulfilled:

- There must be sufficient evidence instigate prosecution proceedings
- The offender must admit the offence
- The offender must show remorse and have undertaken to prevent recurrence of the offence
- The offender must accept the caution once they have understood its importance and significance and have given a written consent to being cautioned
- Taking a prosecution proceeding is not in the public interest, taking into account the public interest principles described in the code for crown prosecutors

If a person declines the offer of a caution, prosecution proceedings will normally be the next course of action. In some circumstances, the council may consider a written warning will suffice instead of a caution, eg in the case of an offence which is minor in nature.

g) Prosecution

The council will consider it appropriate to instigate prosecution proceedings where one or more of the following criteria are met:

- There is general disregard for the law, particularly where the economic advantages of breaking the law and / or the loss / adverse impact or potential loss / adverse impact on others resulting from the offence are substantial.
- There appears to have been a disregard for food safety.
- There is a history of non–compliance with the law, an approved Code of Practice or the relevant guidance and the person in charge and / or company is not intending to rectify or deal with this non compliance
• The person in charge and / or company is not capable of dealing adequately with the issues and/or is not prepared to pay for professional advice, or take on board their recommendations

• As a result of a legal contravention, there has been a serious incident or case of ill health.

• The offence involves failure to comply with a notice

When considering whether to prosecute for a breach of legislation following an incident, the seriousness of the contravention not the severity of the incident, is the prime issue for consideration. The extent of personal or company responsibility for the incident is also relevant.

Due regard must also be taken of guidance contained in The Code of Practice for Crown Prosecutors issued by the Crown Prosecution Service and relevant statutory codes of practice and the test of proportionality under the Human Rights Act. Factors to be considered may include:

• The seriousness of the alleged offence.
• The risk of harm to public health.
• Identifiable victims.
• Failure to comply with a statutory notice served for a breach of legislation.
• Disregard of public health for financial reward.
• The previous history of the party concerned.
• Offences following a history of similar offences.
• Failure to respond positively to past warnings.
• The likelihood of the alleged offenders being able to establish a due diligence defence.
• The ability of any important witness to give evidence and their willingness to co-operate.
• The willingness of the alleged offender to prevent recurrence of the alleged offence.
• The probable public benefit of a prosecution and the importance of the case eg whether it might establish a legal precedent.
• The more serious the offence, the less likelihood that the public interest will allow anything other than a prosecution.
• Whether other action, such as issuing a simple caution in accordance with Home Office Circulars issuing an hygiene improvement notice or remedial action notice or imposing a hygiene emergency prohibition notice would be more appropriate or effective.
• Any explanation offered by the alleged offender, (person or company representative)

Once a decision to instigate prosecution proceedings has been taken, the matter should be referred, without undue delay, to the council’s legal advisors.
ENVIROMENTAL SERVICES ENFORCEMENT
POLICY
APPENDIX THREE - HEALTH AND SAFETY

GENERAL

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

2 The Health and Safety Executive (HSE) and local authorities (LA) share the responsibility for the enforcement of health and safety law. Enforcement activities at work premises are allocated to either the HSE or the LA based on the main work activity. This allocation is specified in the Health and Safety (Enforcing Authority) Regulations 1989.

3 Broadland District Council enforces health and safety law in workplaces including: offices, shops, retail and wholesale distribution centres, leisure, hotel and catering premises.

4 This Enforcement Policy Statement is in accordance with the Regulators’ Compliance Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006. It sets out the general principles and approach which health and safety enforcing authorities are expected to follow.

5 All local authority and HSE staff who take health and safety enforcement decisions are required to follow the HSE’s Enforcement Policy Statement. Consequently, Broadland District Council has adopted the Policy. In general, staff taking enforcement decisions will be appointed inspectors, so this policy refers to inspectors for simplicity.

6 The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare.

7 In allocating resources, enforcing authorities should have regard to the principles set out below, the objectives published in the HSE Business Plan, and the need to maintain a balance between enforcement and other activities, including inspection.

The following is the full text of the Health and Safety Executive’s Policy Statement on Enforcement.

The purpose and method of enforcement

The ultimate purpose of the enforcing authorities is to ensure that duty holders manage and control risks effectively, thus preventing harm. The term ‘enforcement’ has a wide meaning and applies to all dealings between enforcing authorities and those on whom the law places duties (employers, the self-employed, employees and others).

The purpose of enforcement is to:

- ensure that duty holders take action to deal immediately with serious risks;
- promote and achieve sustained compliance with the law;
- ensure that duty holders who breach health and safety requirements, and directors or managers who fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts in England and Wales, or recommending prosecution in Scotland, in the circumstances set out later in this policy.

Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor to assist such claims.
The enforcing authorities have a range of tools at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Inspectors may offer duty holders information, and advice, both face to face and in writing. This may include warning a duty holder that in the opinion of the inspector, they are failing to comply with the law. Where appropriate, inspectors may also serve improvement and prohibition notices, withdraw approvals, vary licence conditions or exemptions, issue simple cautions⁴ (England and Wales only), and they may prosecute (or report to the Procurator Fiscal with a view to prosecution in Scotland).

1 Giving information and advice, issuing improvement or prohibition notices, and withdrawal or variation of licences or other authorisations are the main means which inspectors use to achieve the broad aim of dealing with serious risks, securing compliance with health and safety law and preventing harm. A prohibition notice stops work in order to prevent serious personal injury. Information on improvement and prohibition notices should be made publicly available.

2 Every improvement notice contains a statement that in the opinion of an inspector an offence has been committed. Improvement and prohibition notices, and written advice, may be used in court proceedings.

3 Prosecution and, if appropriate, simple precautions are important to bring duty holders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy, enforcing authorities should use one of these measures in addition to issuing an improvement or prohibition notice.

4 Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, enforcing authorities should have regard to the principles of enforcement set out in this statement and the objectives published in HSE’s Business Plan. In particular, in allocating resources, enforcing authorities must strike a balance between investigations and mainly preventive activity.

5 Sometimes the law is prescriptive – spelling out in detail what must be done. However, much of modern health and safety law is goal setting – setting out what must be achieved, but not how it must be done. Advice on how to achieve the goals is often set out in Approved Codes of Practice (ACOPs). These give practical advice on compliance and have a special legal status. If someone is prosecuted for a breach of health and safety law and did not follow the relevant provisions of an ACOP, then the onus is on them to show that they complied with the law in another way. Advice is also contained in other HSE guidance material describing good practice. Following this guidance is not compulsory, but doing so is normally enough to comply with the law. Neither ACOPs nor guidance material are in terms which necessarily fit every case. In considering whether the law has been complied with, inspectors will need to take relevant ACOPs and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them. More is said about these matters in this statement.

6 HSE expects enforcing authorities to use discretion in deciding when to investigate or what enforcement action may be appropriate. Enforcing authorities should set down in writing the decision-making process which inspectors will follow when deciding on enforcement action, and make this publicly available. HSE expects that such judgements will be made in accordance with the following principles. These are in accordance with the Regulators’ Compliance Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006.

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⁴ A simple caution is a statement by an inspector, that is accepted in writing by the dutyholder, that the dutyholder has committed an offence for which there is a realistic prospect of conviction. A simple caution may only be used where a prosecution could be properly brought. 'Simple cautions' are entirely distinct from a caution given under the Police and Criminal Evidence Act 1984 by an inspector before questioning a suspect about an alleged offence. Enforcing authorities should take account of current Home Office guidelines when considering whether to offer a simple caution.
The principles of enforcement

7 HSE believes in firm but fair enforcement of health and safety law. This should be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency about how the regulator operates and what those regulated may expect; and accountability for the regulator’s actions. These principles should apply both to enforcement in particular cases and to the health and safety enforcing authorities’ management of enforcement activities as a whole.

Proportionality

8 Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (dutyholders) expect that action taken by enforcing authorities to achieve compliance or bring dutyholders to account for non-compliance should be proportionate to any risks to health and safety, or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law.

9 In practice, applying the principle of proportionality means that enforcing authorities should take particular account of how far the dutyholder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

10 Some health and safety duties are specific and absolute. Others require action so far as is reasonably practicable. Enforcing authorities should apply the principle of proportionality in relation to both kinds of duty.

11 Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where dutyholders must control risks so far as is reasonably practicable, enforcing authorities considering protective measures taken by dutyholders must take account of the degree of risk on the one hand, and on the other the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, the dutyholder must take measures and incur costs to reduce the risk.

12 The authorities will expect relevant good practice to be followed. Where relevant good practice in particular cases is not clearly established, health and safety law effectively requires dutyholders to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately, the courts determine what is reasonably practicable in particular cases.

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

Targeting

14 Targeting means making sure that contacts are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and that action is focused on the dutyholders who are responsible for the risk and who are best placed to control it – whether employers, manufacturers, suppliers, or others.

15 HSE expects enforcing authorities to have systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a dutyholder’s operations. The dutyholder’s management competence is important, because a relatively low hazard site poorly managed can entail greater risk to workers or the public than a higher hazard site where proper and adequate risk control measures are in place. Certain very high hazard sites will receive regular inspections so that enforcing authorities can give public assurance that such risks are properly controlled.

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4 In this policy, ‘risk’ (where the term is used alone) is defined broadly to include a source of possible harm, the likelihood of that harm occurring, and the severity of any harm.
16 Any enforcement action will be directed against dutyholders responsible for a breach. This may be employers in relation to workers or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; designers or clients of projects; or employees themselves. Where several dutyholders have responsibilities, enforcing authorities may take action against more than one when it is appropriate to do so in accordance with this policy.

17 When inspectors issue improvement or prohibition notices; withdraw approvals; vary licence conditions or exemptions; issue formal cautions; or prosecute; enforcing authorities should ensure that a senior officer of the dutyholder concerned, at board level, is also notified.

Consistency

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

19 Dutyholders managing similar risks expect a consistent approach from enforcing authorities in the advice tendered; the use of enforcement notices, approvals etc; decisions on whether to prosecute; and in the response to incidents.

20 HSE recognises that in practice consistency is not a simple matter. HSE and local authority inspectors are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the dutyholder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Decisions on enforcement action are discretionary, involving judgement by the enforcer. All enforcing authorities should have arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

Transparency

21 Transparency means helping dutyholders to understand what is expected of them and what they should expect from the enforcing authorities. It also means making clear to dutyholders not only what they have to do but, where this is relevant, what they don’t. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

22 Transparency also involves the enforcing authorities in having arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements must have regard to legal constraints and requirements.

23 This statement sets out the general policy framework within which enforcing authorities should operate. Dutyholders, employees, their representatives and others also need to know what to expect when an inspector calls and what rights of complaint are open to them. Complaints procedures are set out on HSE’s website. In addition all enforcing authority inspectors are required to issue the HSE leaflet What to expect when a health and safety inspector calls to those they visit. This explains what employers and employees and their representatives can expect when a health and safety inspector calls at a workplace. In particular:

24 when inspectors offer dutyholders information, or advice, face to face or in writing, including any warning, inspectors will tell the dutyholder what to do to comply with the law, and explain why. Inspectors will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice;

25 in the case of improvement notices the inspector will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why, and by when, and that in the inspector’s opinion a breach of the law has been committed;

26 in the case of a prohibition notice the notice will explain why the prohibition is necessary.
Accountability

27 Regulators are accountable to the public for their actions. This means that enforcing authorities must have policies and standards (such as the four enforcement principles above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

28 HSE’s procedures for dealing with comments and handling complaints are set out in the leaflet *What to expect when a health and safety inspector calls* and on the HSE website.

29 Local authorities have their own complaints procedures – details are available from individual authorities.

Investigation

30 As with prosecution, HSE expects enforcing authorities to use discretion in deciding whether incidents, cases of ill health, or complaints should be investigated. Indicative targets related to levels of investigation by HSE are normally specified in HSE’s Business Plan, which is approved by the Government.

31 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.

32 To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. HSE’s Business Plan recognises that it is neither possible nor necessary for the purposes of the Health and Safety at Work etc Act 1974 to investigate all issues of non-compliance with the law which are uncovered in the course of preventive inspection, or in the investigation of reported events.

33 The enforcing authorities should carry out a site investigation of a reportable work-related death, unless there are specific reasons for not doing so, in which case those reasons should be recorded.

34 In selecting which complaints or reports of incidents, injury or occupational ill health to investigate and in deciding the level of resources to be used, the enforcing authorities should 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 dutyholder’s past health and safety performance;
   - the enforcement priorities;
   - the practicality of achieving results;
   - the wider relevance of the event, including serious public concern.

Prosecution

England and Wales

In England and Wales the decision to proceed with a court case rests with the enforcing authorities. Enforcing authorities must use discretion in deciding whether to bring a prosecution.

In England and Wales the decision whether to prosecute should take account of the evidential stage and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution may go ahead unless the prosecutor finds there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest.

While the primary purpose of the enforcing authorities is to ensure that dutyholders manage and control
risks effectively, thus preventing harm, prosecution is an essential part of enforcement. HSE expects that where in the course of an investigation an enforcing authority has collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and taking account of the Code for Crown Prosecutors, that it is in the public interest to prosecute, then that prosecution should go ahead. The Code for Crown Prosecutors requires the decision to prosecute to be kept under continuous review, so that any new facts or circumstances, in support of or undermining the prosecutions’ case, are taken into account in the decision to continue or terminate the proceedings. Where the circumstances warrant it and the evidence to support a case is available, enforcing authorities may prosecute without prior warning or recourse to alternative sanctions.

Scotland

1. In Scotland the Procurator Fiscal decides whether to bring a prosecution. This may be on the basis of a recommendation by an enforcing authority; although the Procurator Fiscal may investigate the circumstances and institute proceedings independently of an enforcing authority. Enforcing authorities must use discretion in deciding whether to report to the Procurator Fiscal with a view to prosecution. The Crown Office and the Procurator Fiscal Service endorse this Statement by HSE, and acknowledge that action on reports of offences submitted to them by the enforcing authorities should reflect the approach set out here.

2. In Scotland, before prosecutions can be instituted, the Procurator Fiscal will need to be satisfied that there is sufficient evidence and that prosecution is in the public interest. In Scotland, therefore, the decision as to proceedings is one for the prosecutor rather than the enforcing authority whose views will, however, be taken into account.

3. Subject to the above, HSE expects that, in the public interest, enforcing authorities should normally prosecute, or recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances apply. Where:
   • death was a result of a breach of the legislation;\(^5\)
   • the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
   • there has been reckless disregard of health and safety requirements;
   • there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
   • work has been carried out without or in serious non-compliance with an appropriate licence or safety case;
   • a dutyholder’s standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;
   • there has been a failure to comply with an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a simple caution;
   • false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
   • inspectors have been intentionally obstructed in the lawful course of their duties.

4. Where inspectors are assaulted, enforcing authorities will seek police assistance, with a view to seeking the prosecution of offenders.

5. HSE also expects that, in the public interest, enforcing authorities will consider prosecution, or consider recommending prosecution, where following an investigation or other regulatory contact, one or more of the following circumstances apply:
   • it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may

\(^5\) Health and safety sentencing guidelines regard death resulting from a criminal act as an aggravating feature of the offence. If there is sufficient evidence that the breach caused the death, HSE considers that normally such cases should be brought before the court. However, there will be occasions where the public interest does not require a prosecution, depending on the nature of the breach and the surrounding circumstances of the death.
deter others from similar failures to comply with the law;
• a breach which gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

**Prosecution of individuals**

6. Subject to the above, enforcing authorities should identify and prosecute or recommend prosecution of individuals if they consider that a prosecution is warranted. In particular, they should consider the management chain and the role played by individual directors and managers, and should take action against them where the inspection or investigation reveals that the offence was committed with their consent or connivance or to have been attributable to neglect on their part and where it would be appropriate to do so in accordance with this policy. Where appropriate, enforcing authorities should seek disqualification of directors under the Company Directors Disqualification Act 1986.

**Publicity**

7. Enforcing authorities in England and Wales should make arrangements for the publication annually of the names of all the companies and individuals who have been convicted in the previous 12 months of breaking health and safety law. They should also have arrangements for making publicly available information on these convictions and on improvement and prohibition notices which they have issued.

8. Enforcing authorities in England and Wales should also consider in all cases drawing media attention to factual information about charges which have been laid before the courts, but great care must be taken to avoid any publicity which could prejudice a fair trial. They should also consider publicising any conviction which could serve to draw attention to the need to comply with health and safety requirements, or deter anyone tempted to disregard their duties under health and safety law. In Scotland, decisions in relation to publicity of prosecutions are a matter for the Crown Office.

**Action by the courts**

9. Health and safety law gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences. Unlimited fines may be imposed by higher courts. HSE will continue to seek to raise the courts’ awareness of the gravity of health and safety offences and of the full extent of their sentencing powers, while recognising that it is for the courts to decide whether or not someone is guilty and what penalty if any to impose on conviction. A list of the sanctions presently available to the courts is attached to this statement.

10. In England and Wales, the enforcing authorities should, when appropriate, draw to the court’s attention all the factors which are relevant to the court’s decision as to what sentence is appropriate on conviction. The Court of Appeal has given guidance on some of the factors which should inform the courts in health and safety cases (R v F Howe and Son (Engineers) Ltd [1999] 2 All ER, and subsequent judgments). HSE notes that the Lord Chancellor has said that someone injured by a breach of health and safety legislation is no less a victim than someone who is assaulted.

**Representations to the courts**

11. In cases of sufficient seriousness, and when given the opportunity, the enforcing authorities in England and Wales should 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, enforcing authorities should have regard to Court of Appeal guidance: the Court of Appeal has said ‘In our judgment magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence’

12. In Scotland it would fall to the Procurator Fiscal to draw the court’s attention to the seriousness of any offence.
Death at work

13. Where there has been a breach of the law leading to a work-related death, enforcing authorities need to consider whether the circumstances of the case might justify a charge of manslaughter or corporate manslaughter (culpable homicide or corporate homicide in Scotland).

14. In England and Wales, to ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, HSE, the Association of Chief Police Officers (ACPO), the British Transport Police, the Crown Prosecution Service (CPS), the Local Government Association (LGA) and the Office of Rail Regulation (ORR) have jointly agreed and published *Work-related deaths: A protocol for liaison*. Other non-signatory organisations, such as the Maritime and Coastguard Agency (MCA), Civil Aviation Authority (CAA) and the Chief Fire Officers Association (CFOA), have agreed that they will take account of the protocol when responding to work-related deaths.

15. In Scotland a separate work-related deaths protocol has been agreed between the Crown Office, the Association of Chief Police Officers in Scotland (ACPOS), the British Transport Police and HSE. Scottish local authorities support the protocol.

16. In England and Wales the police are responsible for deciding whether to pursue a manslaughter or corporate manslaughter investigation and whether to refer a case to the CPS to consider possible manslaughter charges. The enforcing authorities are responsible for investigating possible health and safety offences. If in the course of their health and safety investigation, the enforcing authorities find evidence suggesting manslaughter or corporate manslaughter, they should pass it on to the police. If the police or CPS decide not to pursue a manslaughter or corporate manslaughter case, the enforcing authorities will normally bring a health and safety prosecution in accordance with this policy.

17. In Scotland, responsibility for investigating sudden or suspicious deaths rests with the Procurator Fiscal who will instruct the police. The police will lead the investigation of any potential offences related to culpable homicide or corporate homicide. HSE or the local authority will investigate any possible health and safety offences. Under the Scottish work-related deaths protocol the investigations will be co-ordinated and evidence shared. Unless a prosecution takes place in the same circumstances, the Procurator Fiscal is required to hold a Fatal Accident Inquiry into the circumstances of a death resulting from a work-related\(^6\) accident. An Inquiry may also be held where it appears to be in the public interest on the grounds that the death was sudden, suspicious or unexplained, or has occurred in circumstances such as to give rise to serious public concern.

\(^6\) In this case, an accident in the course of employment, if the deceased was an employee, or while engaged in their occupation, if an employer or self-employed person.
Crown bodies

18. Crown bodies must comply with health and safety requirements, but they are not subject to statutory enforcement, including prosecution. The Cabinet Office has established non-statutory arrangements for enforcing health and safety requirements in Crown bodies. These arrangements allow HSE to issue non-statutory improvement and prohibition notices, and for the censure of Crown bodies in circumstances where, but for Crown immunity, prosecution would have been justified. In deciding when to investigate or what form of enforcement action to take, HSE should follow as far as possible the same approach as for non-Crown bodies, in accordance with this enforcement policy.
Penalties for health and safety offences
The Health and Safety at Work etc Act 1974 (the HSW Act), section 33 (as amended) sets out the offences and maximum penalties under health and safety legislation.

Failing to comply with an improvement or prohibition notice, or a court remedy order (issued under the HSW Act sections 21, 22 and 42 respectively):

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<th>Lower court maximum</th>
<th>Higher court maximum</th>
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<tr>
<td>Failing to comply</td>
<td>£20 000 and/or 12 months’ imprisonment⁷</td>
<td>Unlimited fine and/or 2 years’ imprisonment⁸</td>
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On conviction of directors for indictable offences in connection with the management of a company (all of the above, by virtue of the HSW Act sections 36 and 37), the courts may also make a disqualification order (Company Directors Disqualification Act 1986, sections 1 and 2). The courts have exercised this power following health and safety convictions. Health and safety inspectors draw this power to the court’s attention whenever appropriate.

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<tr>
<td>Failing to comply</td>
<td>5 years’ disqualification</td>
<td>15 years’ disqualification</td>
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Further information
More information about the way health and safety legislation is enforced and about health and safety legislation generally can be found on the website www.hse.gov.uk and in these free leaflets:

- Work-related deaths: A protocol for liaison among the Crown Office and Procurator Fiscal Service, the Health and Safety Executive, the Association of Chief Police Officers (Scotland) and British Transport Police 2006

Local authorities may produce their own further information on enforcing health and safety. You can find your local authority’s address and telephone number in your local telephone directory.

HSE priced and free publications are available by mail order from HSE Books, PO Box 1999, Sudbury, Suffolk CO10 2WA Tel: 01787 881165 Fax: 01787 313995 Website: www.hsebooks.co.uk (HSE priced publications are also available from bookshops and free leaflets can be downloaded from HSE’s website: www.hse.gov.uk.)

For information about health and safety ring HSE’s Infoline Tel: 0845 345 0055 Fax: 0845 408 9566 Textphone: 0845 408 9577 e-mail: hse.infoline@natbrit.com or write to HSE Information Services, Caerphilly Business Park, Caerphilly CF83 3GG.

ENVIRONMENTAL SERVICES ENFORCEMENT POLICY

APPENDIX FOUR - ENVIRONMENTAL PROTECTION

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⁷ The sentencing option of 12 months applies in Scotland but will only apply in England and Wales when section 154(1) of the Criminal Justice Act 2003 is enacted.

⁸ † For some offences under section 33 of the HSW Act the penalties vary. Details can be found in the explanatory note to the Health and Safety (Offences) Act 2008.
GENERAL

8 All enforcement action will primarily be based upon an assessment of risk to public health and/or the environment.

9 All enforcement action will be based upon an objective assessment following consideration of all the facts of the matter. Enforcement action will not be based on anecdotal, hearsay or other subjective assessment.

10 It will not be normal practice for formal enforcement action to be used as a punitive measure for minor technical contraventions. Nevertheless it should be recognized that there are some offences, for example involving the service of a fixed penalty notices (FPN), which, in the public interest, it will be appropriate to administer to bring about general environmental benefits and discourage offences by others. For example the issuing of FPN’s for littering, dog fouling, certain waste offences, etc.

11 More serious environmental crime such as fly-tipping will generally be viewed as offences which should be pursued by prosecution following consideration by the Head of Environmental Services.

11 All enforcement action shall have regard to relevant legislation, codes of practice, and guidance periodically issued by the government, stand alone Agencies such as the Environment Agency, relevant professional institutions such as the Chartered Institution of Environmental Health, Local Government Regulation and other relevant bodies. This also includes the Human Rights Act and the test of proportionality. Regard will also be had for departmental procedures and work instructions.

12 All authorised officers, when making enforcement decisions will abide by the requirements of the Enforcement Policy. Any departure from this policy must be exceptional, be capable of justification and be fully considered by the Head of Environmental Services before the decision is taken, unless there would be a significant risk to public health and/or safety by delaying the decision.

When an offence has been committed by a person under the age of 18 no enforcement action will be undertaken before consulting with the local Youth Offending team (YOT).

TYPES OF ACTION

1 Informal Action
   a Informal action to secure compliance with legislation includes:-
      • Offering verbal advice
      • Verbal requests for action
      • Informal written advice (visit reports and letters)

   b The circumstances where it is appropriate to use informal action are:-
      • Where the act or omission is trivial or not of a serious enough nature to warrant formal action.
      • As an initial notification to the alleged offender of a minor problem.
      • Where from the individual/organisations/businesses past history it can be reasonably expected that informal action will achieve compliance.
      • Where confidence in the individual/businesses management is high
      • Where the consequences of non-compliance will not pose a significant risk to public or the environment.
There may be circumstances when some of the above are not met. However it may be more effective than a formal approach; e.g. this may apply to charitable or voluntary organisations. If an authorised enforcement officer considers this is appropriate, then they will discuss the matter with their immediate line manager to ratify their action. For non-hazardous and minor contraventions, a revisit may be an inappropriate use of resources.

All enforcement documentation issued or sent will:

- Contain all the information necessary to understand what needs to be done, why, when and by whom.
- Clearly distinguish between legal requirements and best practice advice or recommendations
- Indicate the legislation that applies

Authorised enforcement officers will at all times, even if only giving verbal advice, differentiate between legal requirements and matters which are recommended as good practice.

2 Formal Action

a. Formal action to secure compliance with legislation may include:
   - Formal verbal warning (confirmed in writing)
   - Formal written warning
   - Improvement Notice
   - Prohibition Notice
   - Simple Caution
   - Prosecution (summary or indictment)
   - Issuing other statutory notice eg. nuisance
   - Other formal action as laid out in legislation

b. The circumstances where it is appropriate to use formal action include:
   - There are significant contraventions of legislation
   - There is a lack of confidence in the individual/organisation/business to respond to an informal approach
   - There is a history of non-compliance with informal action
   - The consequence of non-compliance could be potentially serious to public health and/or safety of both the public and employees
   - Although prosecution is intended, immediate or swift action is necessarily required to remedy a serious threat to public health

c. Verbal Warning - Authorised officers issuing verbal warnings shall specify clearly the reason for the warning, the relevant statutory provision being (or likely to be breached, the works or actions required if any, and the time limit in which to carry out any works.) In the main, verbal
warnings will be issued for matters requiring action in the immediate or very short term. Verbal warnings will be confirmed in writing at the earliest opportunity.

d. **Written Warning** - Formal written warnings or requests for works or actions to be carried out shall specify the reasons, the relevant statutory provisions being, or likely to be breached, the works or actions required and the time limit in which the individual/businesses should comply. The recipient of the letter shall be advised that failure to comply may lead to the issue of a statutory notice by the council.

e. **Environmental Protection (statutory notices)**

   The circumstances where officers will consider the issue of a statutory notice will include the following:

   - Authorised officers have little confidence in individual/businesses to resolve the matter unless a statutory notice is served
   - The service of a statutory notice and subsequent enforcement, for example by way of works in default or prosecution, is the only realistic option to secure compliance.
   - Informal action has failed to resolve the issue in question.
   - Where a company holding an authorisation or permit issued under Regulations under the Pollution Prevention and Control Act 1999 fails to comply or in the opinion of the case officer is likely to fail to comply with a condition attached to its authorisation or permit.
   - Where the law allows the issuing of a fixed penalty notice (FPN) for a specific offence eg. dog fouling, littering, certain waste offences, etc. Notices will only be issued where there is satisfactory evidence available of an offence and, given the circumstances, a proportionate response to the offence. Failure to pay and discharge the notice will normally lead to prosecution (see below).

   In general, statutory notices will not be used for minor technical contraventions.

   Statutory notices will only be signed by those officers authorised by the Head of Environmental Services.

   Authorised officers shall only sign statutory notices where they are satisfied that sufficient evidence has been presented to them and that service of a notice is the most appropriate way forward.

   When drafting notices, realistic time limits for compliance shall be imposed and the case officer shall, where possible or appropriate, discuss these with the recipient.

   Case officers shall also discuss with the recipient, where appropriate, the works that will be specified and that there will be the opportunity to fully consider any alternatives put forward by the recipient and the availability of solutions.

   Generally, failure to comply with statutory notices will result in the council instituting prosecution proceedings and/or carrying out the works specified in the notice in default.

   The circumstances where a statutory notice will be served are:
• Where (under Part III Environmental Protection Act 1990 or subsequent legislation) the council is satisfied that a statutory nuisance exists, or is likely to occur or recur

• Any legislation where the Council has a duty to serve a statutory notice given satisfactory evidence

f. Prohibition Notices (Pollution Prevention and Control Act 1999 - regulations made under this Act)

If, on production of sufficient evidence, an authorised officer is satisfied that the carrying on of a prescribed process involves an imminent risk of serious pollution of the environment the council will take action and serve a prohibition notice.

g. Simple Caution

The issuing of a simple caution may be considered appropriate under the following circumstances:

• To deal quickly and simply with less serious incidents

• To divert them from unnecessary appearance in the criminal courts of matters that can be more quickly and equally efficiently dealt with by way of a simple caution

• To reduce the chance of a repeated offence

The council will not issue a caution unless the following conditions are fulfilled:

• There must be sufficient evidence instigate prosecution proceedings

• The offender must admit the offence

• The offender must show remorse and have undertaken to prevent recurrence of the offence

• The offender must accept the caution once they have understood its importance and significance and have given a written consent to being cautioned

• Taking a prosecution proceeding is not in the public interest, taking into account the public interest principles described in the code for crown prosecutors

If a person declines the offer of a caution, prosecution proceedings will normally be the next course of action. In some circumstances, the council may consider a written warning will suffice instead of a caution, e.g. in the case of an offence which is minor in nature.

h. Prosecution

The council will consider it appropriate to instigate prosecution proceedings where one or more of the following criteria are met:

• There is general disregard for the law, particularly where the economic advantages of breaking the law and / or the loss / adverse impact or potential loss / adverse impact on others resulting from the offence are substantial.

• There is a history of non–compliance with the law, an approved Code of Practice or
the relevant guidance and the person in charge and / or company is not intending to rectify or deal with this non compliance

- The person in charge and / or company is not capable of dealing adequately with the issues and/or is not prepared to pay for professional advice, or take on board their recommendations

- As a result of a legal contravention, there has been a serious incident or case of ill health.

- The offence involves failure to comply with a notice

- In cases of fly-tipping and other waste offences where there is a general public expectation of enforcement to combat environmental crime. Individual incidents, although possibly not serious on their own, when viewed collectively are viewed by the public as unacceptable. In such cases it is generally in the public interest to instigate legal proceedings as a matter of course, after taking into account all relevant factors. The decision to take such action in individual cases will be the responsibility of the Head of Environmental Services.

- In other waste or environmental offences such as littering, dog fouling, etc where a fixed penalty notice (FPN) has been served but not paid. Individual incidents although possibly not serious on their own, when viewed collectively are viewed by the public as unacceptable. In such cases it is generally in the public interest to instigate legal proceedings as a matter of course, whilst taking into account all relevant factors. The decision to take such action in individual cases will be the responsibility of the Head of Environmental Services.

When considering whether to prosecute for a breach of legislation following an incident, the seriousness of the contravention not the severity of the incident, is generally the prime issue for consideration. The extent of personal or company responsibility for the incident is also relevant. Due regard must also be taken of guidance contained in The Code of Practice for Crown Prosecutors issued by the Crown Prosecution Service and relevant statutory codes of practice and the test of proportionality under the Human Rights Act. Factors to be considered may include:

- The seriousness of the alleged offence.

- The risk of harm to public health.

- Identifiable victims.

- Failure to comply with a statutory notice served for a breach of legislation.

- Disregard of public health for financial reward.

- The previous history of the party concerned.

- Offences following a history of similar offences.

- Failure to respond positively to past warnings.

- The likelihood of the alleged offenders being able to establish a due diligence defence.

- The ability of any important witness to give evidence and their willingness to co-operate.

- The willingness of the alleged offender to prevent recurrence of the alleged offence
• The probable public benefit of a prosecution and the importance of the case eg whether it might establish a legal precedent.

• The more serious the offence, the less likelihood that the public interest will allow anything other than a prosecution.

• Whether other action, such as issuing a simple caution in accordance with Home Office Circulars

• Any explanation offered by the alleged offender, (person or company representative)

Once a decision to instigate prosecution proceedings has been taken, the matter should be referred, without undue delay, to the council's legal advisors.

ENVIRONMENTAL SERVICES ENFORCEMENT POLICY

APPENDIX FIVE

PRIVATE SECTOR HOUSING

GENERAL

1 All enforcement action will be based upon an assessment of risk to residents’ health and safety, public health and/or the environment.

2 All enforcement action will be based upon an objective assessment following consideration of all the facts of the matter. Enforcement action will not be based on anecdotal, hearsay or other subjective assessment.
3 It will not be normal practice for formal enforcement action to be used as a punitive measure for minor technical contravention.

4 All enforcement action shall have regard to relevant legislation, codes of practice, and guidance periodically issued by the government, the Chartered Institution of Environmental Health, Local Government Regulation and other relevant bodies. This also includes the Human Rights Act and the test of proportionality. Regard will also be had for departmental procedures and work instructions.

5 All authorised officers, when making enforcement decisions will be influenced by the requirements of the Enforcement Policy. Any departure from this policy must be exceptional, be capable of justification and be fully considered by the Head of Housing and Environmental Services before the decision is taken, unless there would be a significant risk to public health and/or safety by delaying the decision.

**TYPES OF ACTION**

1 **Informal Action**

   a Informal action to secure compliance with legislation includes:-
      • Offering verbal advice
      • Verbal requests for action
      • Informal written advice (visit reports and letters)

   b The circumstances where it is appropriate to use informal action are:-
      • Where the act or omission is trivial or not of a serious enough nature to warrant formal action.
      • As an initial notification to the alleged offender of a minor problem.
      • Where from the individual / organisations / businesses past history it can be reasonably expected that informal action will achieve compliance.
      • Where confidence in the individual / businesses management is high
      • Where the consequences of non-compliance will not pose a significant risk to residents’ health and safety or the environment.

There may be circumstances when some of the above are not met. However it may be more effective than a formal approach; e.g. this may apply to charitable or voluntary organisations. If an authorised enforcement officer considers this is appropriate, then they will discuss the matter with their immediate line manager to ratify their action. For non-hazardous and minor contraventions, a revisit may be an inappropriate use of resources.

All enforcement documentation issued or sent will:

   • Contain all the information necessary to understand what needs to be done, why, when and by whom.
   • Clearly distinguish between legal requirements and best practice advice or recommendations
   • Indicate the legislation that applies

Authorised enforcement officers will at all times, even if only giving verbal advice, differentiate between legal requirements and matters which are recommended as
2 **Formal Action**

a  Formal action to secure compliance with legislation may include:

- Improvement Notice (Housing Act 2004)
- Suspended Improvement Notice (Housing Act 2004)
- Prohibition Order (Housing Act 2004)
- Suspended Prohibition Order (Housing Act 2004)
- Hazard Awareness Notice (Housing Act 2004)
- Emergency Remedial Action (Housing Act 2004)
- Emergency Prohibition Notice (Housing Act 2004)
- Empty Dwelling Management Order (Housing Act 2004)
- Compulsory Purchase Order (Housing Act 2004 and / or Town & Country Planning Act 1990)
- Demolition Order (Housing Act 1985)
- Ruinous and dilapidated buildings and neglected sites Notice (Building Act 1984)
- Drainage Notice (Building Act 1984 Public Health Act 1961)
- House in Multiple Occupation (HMO) Mandatory Licence (Housing Act 2004)
- Caravan Sites Licence (Caravan Sites and Control of Development Act 1960)
- Direction Order (Criminal Justice & Public Order Act 1994)
- Works in Default
- Prosecution (summary or indictment)

b  The circumstances where it is appropriate to use formal action include:

- There are significant contraventions of legislation
- There is a lack of confidence in the individual/business to respond to an informal approach
- There is a history of non-compliance with informal action
- The consequence of non-compliance could be potentially serious to residents and / or public health.
- There is a requirement to issue a Notice to protect the resident from any
retaliatory conviction.

- Although prosecution is intended, immediate or swift action is necessarily required to remedy a serious threat to public health.

c Improvement (IN), Prohibition (PN), Emergency Prohibition (EPN) and Hazard Awareness Notices (HAN) (including Suspended Improvement and Prohibition Notices)

The circumstances where authorised officers will consider the service of Improvement, Prohibition and Hazard Awareness notices under the Housing Act 2004 includes one or more of the following:

- An assessment of a property under the Housing Health and Safety Rating System (HHSRS) reveals the presence of one or more Category 1 Hazards, (i.e. hazards rated A,B or C). (The Council has a duty to take action).

- An assessment of a property under the Housing Health and Safety Rating System (HHSRS) reveals the presence of one or more Category 2 Hazards, (hazards rated D,E,F,G,H,I or J). (The Council has a discretionary power to take action).

- There is little confidence in the individual/business resolving the matter through an informal approach

- The service of a notice is the only realistic option to secure compliance

- There is a history of non-compliance with informal action

- Standards are generally poor with little management awareness of statutory requirements

- There is a realistic chance of securing conviction for non-compliance

- The consequences of non-compliance could be a risk to residents' health and safety.

- Previous action has failed to resolve the issue in question

In general, improvement and prohibition notices will not be used for minor technical contraventions but will be used where there is a risk to resident’s health and safety. Hazard awareness notices may be used where the risks are either minor or where it is deemed impracticable for works to reduce or eliminate more serious risks.

Authorised enforcement officers will only serve an improvement, notice where they are satisfied that service of notice is the most appropriate course of action and will discuss the content of the notice with a colleague, usually their line manager, before service takes place.

Notices will only be issued and signed by those officers authorised to do so.

Authorised enforcement officers will only consider service of an improvement notice in respect of one or more HHSRS Category 2 Hazards where the following applies.

**HHSRS band D Hazard**

There will be a general presumption that where one or more Band D hazards exist, officers will consider action under the Housing Act 2004. Where the hazards identified relate to “Damp and Mould” and “Fire”, action will be determined as if the “assessment vulnerable occupant” is the “actual occupant”. Where “Excess Cold” is identified as a Band D hazard, insulation works to the property will be considered a priority when enforcement action is taken.

**Multiple HHSRS Hazards bands D – I**
Where a number of hazards at band D or below appear, when aggregated together, to create a more serious situation, or where the property appears to be in a un-maintained and/or dilapidated condition, the Private Sector Housing Manager or the Head of Environmental Services may authorise action under the Housing Act 2004.

Officers will discuss the content of the notice with a colleague, usually their line manager, before service takes place.

Authorised enforcement officers will place realistic time limits on improvement and prohibition notices which where possible, will be agreed with the recipient as being attainable. Wherever possible, the authorised officer should also discuss the contents of the notice with the recipient and will consider any alternatives that may be put forward by the recipient at that time.

Generally failure to comply with an improvement or prohibition notice will result in the authorised enforcement officer of the council seeking authorisation to instigate either or both of legal proceedings for non-compliance and / or works in default.

d Emergency Remedial Action

The circumstances where authorised officers will consider the undertaking of emergency remedial action includes one or more of the following:

- An assessment of a property under the Housing Health and Safety Rating System (HHSRS) reveals the presence of one or more Category 1 Hazards, (i.e. hazards rated A, B or C). (The Council has a duty to take action).
- the hazard(s) involves an imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises
- There is little confidence in the individual/business resolving the matter through an informal approach
- Taking emergency remedial action is the only realistic option to remove the imminent risk.
- There is a history of non-compliance with informal action
- Standards are generally poor with little management awareness of statutory requirements
- The consequences of in-action could be a risk of serious harm to residents’ health and safety.
- Previous action has failed to resolve the issue in question

Emergency remedial action will not be used for minor technical contraventions but will be used where there is an imminent risk of serious harm to residents’ safety.

Emergency remedial action will only be authorised by those officers authorised to do so.

Authorised enforcement officers will only authorise emergency remedial action where they are satisfied that such action is the most appropriate course of action and will discuss the details of the case and required works content of the notice with their line manager, before the action takes place.
Wherever possible, the authorised officer should also discuss the matter with the property owner(s) and will consider any alternatives that may be put forward by the recipient at that time.

Emergency remedial action will be followed in the statutory time (7 days) by a Housing Act 2004 Section 41 Emergency Remedial Action Notice.

e Empty Dwelling Management Order (EDMO) and Compulsory Purchase Order (CPO)

The circumstances where authorised officers may consider the initiation of an EDMO or CPO includes the following:

- These Orders will only be considered in respect of long term empty property where all other actions under the Council’s Empty Homes Strategy (EHS) programme have failed to result in dwelling coming back into use within a reasonable timeframe.

- Additionally a CPO may be considered without previous engagement with the EHS programme where a suitable long term empty property is brought to the council’s attention in an area of housing need and where the owner has made it clear he has no intention have the property occupied and has no good reason for that intention.

- A CPO will not be initiated without prior authorisation from the Head of Housing & Environmental Services in consultation with the Portfolio Holder for Communities and Housing.

- The owner(s) have been fully appraised of their statutory compensation rights.

Only enforcement officers authorised to issue EDMOs shall do so and they must follow and have due regard to the statutory guidance under the Housing Act 2004 and relevant case history decisions from the Residential Property Tribunal.

f Demolition Order

The serving of a Demolition Order (DO) may be considered appropriate under the following circumstances:

- To deal with a property (normally a detached property) where a full socio-economic assessment indicates that there is no other reasonably acceptable alternative.

The council will not serve a Demolition Order unless satisfied the following conditions are fulfilled:

- There must be sufficient evidence instigate prosecution proceedings

- There must be adequate arrangements in place to ensure that the Demolition Order does not result in homelessness of occupants (if any).

- The owner(s) have been fully appraised of their statutory compensation rights.


These notices will be considered in the following circumstances.

- An assessment of property indicates defects likely to lead to risks to public safety or health.

- There is little confidence in the individual/business resolving the matter through an informal approach.
• The service of a notice is the only realistic option to secure compliance
• There is a history of non-compliance with informal action
• Standards are generally poor with little management awareness of statutory requirements
• There is a realistic chance of securing conviction for non-compliance
• The consequences of non-compliance could be a risk to residents’ health and safety.
• Previous action has failed to resolve the issue in question

HMO and Holiday Caravan Sites Licences (breach of conditions). These licences will be issued on application by a relevant fit and proper person and payment of the appropriate fee.

Conditions will be attached to the licence in accordance with statutory guidance and Model Standards where applicable. Breaches of Licence conditions will be considered as potential matters for enforcement prosecution and will be dealt with according to the general policy on prosecutions (see below).

Residential Caravan Sites Licences (Breach of conditions)

The circumstances where authorised officers will consider the service of a compliance notice under the Caravan Control Of Development Act 1960 includes one or more of the following:

• There is little confidence in the individual/business resolving the matter through an informal approach
• The service of a notice is the only realistic option to secure compliance
• There is a history of non-compliance with informal action
• Standards are generally poor with little management awareness of statutory requirements
• There is a realistic chance of securing conviction for non-compliance
• The consequences of non-compliance could be a risk to residents' health and safety.
• Previous action has failed to resolve the issue in question

Direction Order

Service of a Direction Order is relevant only to unauthorised encampments and will be considered only after a meeting under the auspices of the Norfolk Protocol for the Consideration of Unauthorised encampments has been convened and has considered all aspects of the encampment including health, safety, welfare, human rights etc of the campers, balancing the human rights of the campers with those of any affected nearby settled residents. The campers will be invited to send a representative to the Protocol meeting.

In cases of urgency, a Direction Order may be considered without prior reference to a Protocol meeting but in these cases the matter must be discussed with the Head of Environmental Services and his agreement obtained. Where practicable the County Traveller Liaison Officer will be notified of such urgent action.

Works in default

The council will consider it appropriate to instigate works in default where one or more of the following criteria are met:

• The relevant person has failed to comply with a statutory notice requiring the execution of works.
• It is considered unlikely that the relevant person has any intention to carry out the required works.

• It is considered that the relevant person does not have the capability or capacity to organise and execute the required works.

• One or more of the property’s occupants are considered to be vulnerable.

• Where the relevant person demonstrates a flagrant disregard for the health and safety of his tenants and / or a flagrant disregard for the requirements of the legislation, consideration will be given, where statute empowers, to undertake works in default and a simultaneous prosecution.

**Simple Caution**

The issuing of a caution may be considered appropriate under the following circumstances:

• To deal quickly and simply with less serious incidents

• To divert them from unnecessary appearance in the criminal courts of matters that can be more quickly and equally efficiently dealt with by way of a simple caution

• To reduce the chance of a repeated offence

The council will not issue a caution unless the following conditions are fulfilled:

• There must be sufficient evidence instigate prosecution proceedings

• The offender must admit the offence

• The offender must show remorse and have undertaken to prevent recurrence of the offence

• The offender must accept the caution once they have understood its importance and significance and have given a written consent to being cautioned

• Taking a prosecution proceeding is not in the public interest, taking into account the public interest principles described in the code for crown prosecutors

If a person declines the offer of a caution, prosecution proceedings will normally be the next course of action. In some circumstances, the council may consider a written warning will suffice instead of a caution, eg in the case of an offence which is minor in nature.

**Prosecution or Civil Penalty**

The council will consider it appropriate to instigate prosecution proceedings or Civil Penalty where one or more of the following criteria are met:

• There is general disregard for the law, particularly where the economic advantages of breaking the law and / or the loss / adverse impact or potential loss / adverse impact on others resulting from the offence are substantial.

• There appears to have been a disregard for residents’ health and safety.

• There is a history of non–compliance with the law, an approved Code of Practice or the relevant guidance and the person in charge and / or company is not intending to rectify or deal with this non compliance

• The person in charge and / or company is not capable of dealing adequately with the issues and/or is not prepared to pay for professional advice, or take on board their recommendations

• As a result of a legal contravention, there has been a serious incident or case of ill health.
• The offence involves failure to comply with a notice

When considering whether to prosecute for a breach of legislation following an incident, the seriousness of the contravention not the severity of the incident, is the prime issue for consideration. The extent of personal or company responsibility for the incident is also relevant. Due regard must also be taken of guidance contained in The Code of Practice for Crown Prosecutors issued by the Crown Prosecution Service and relevant statutory codes of practice and the test of proportionality under the Human Rights Act. Factors to be considered may include:

• The seriousness of the alleged offence.
• The risk of harm to public health.
• Identifiable victims.
• Failure to comply with a statutory notice served for a breach of legislation.
• Disregard of public health for financial reward.
• The previous history of the party concerned.
• Offences following a history of similar offences.
• Failure to respond positively to past warnings.
• The likelihood of the alleged offenders being able to establish a due diligence defence.
• The ability of any important witness to give evidence and their willingness to cooperate.
• The willingness of the alleged offender to prevent recurrence of the alleged offence
• The probable public benefit of a prosecution and the importance of the case eg whether it might establish a legal precedent.
• The more serious the offence, the less likelihood that the public interest will allow anything other than a prosecution.
• Whether other action, such as issuing a simple caution in accordance with Home Office Circulars.
• Any explanation offered by the alleged offender, (person or company representative)

Once a decision to instigate prosecution proceedings has been taken, the matter should be referred, without undue delay, to the council’s legal advisors. For Civil Penalty procedures the Council will approach as per the criteria for prosecution and the fine level set in accordance with Councils approved policy.

Fine Procedures


Where the Council is satisfied on the balance of probabilities that a person has failed to comply with the requirement to belong to a redress scheme the Council may by notice require the person to pay the authority a penalty of £5,000.

For the first two years of this legislation to the 30th September 2016 the Council will operate a warning procedure detailing that a breach of this legislation has occurred and requiring the relevant person join a redress scheme within 28 days. If within the 28 days, the person has not joined a redress scheme the Council will initiate the fine procedure.
After the 30th September 2016 the Council will initiate the fine procedure detailed in the Order where satisfied that a person has failed the requirement without any warning procedure.

“The Smoke and Carbon Monoxide Regulations (2015)”

Where the authority is made aware that a rental property does not have a Smoke Alarm fitted to every floor and a Carbon Monoxide alarm fitted to any habited room which contains a solid fuel burning combustion appliance or that such an alarms was not appropriately checked at the start of a tenancy the Council will consider issuing a penalty notice.

The level of fine imposed will be determined by procedures detailed in the Councils “Statement of Reasons” detailed on the Councils website.

Copies of this document and other advisory leaflets are available from:

**Broadland District Council**  
Environmental Health Service  
Thorpe Lodge  
1 Yarmouth Road  
Thorpe St Andrew  
Norwich  
NR7 0DU

Telephone: 01603 431133  
Email: reception@broadland.gov.uk  
Website: www.broadland.gov.uk

On request, we will make this policy available on tape, in Braille, large type, or in another language.

The policy will be reviewed annually.