

Public Document Pack

15 July 2008

Dear Councillor

A meeting of the Council will be held in the **Council Chamber, Civic Centre, Newcastle Road, Chester-le-Street, Co Durham, DH3 3UT on Thursday, 24th July, 2008 at 6.00 pm**

Yours sincerely

A handwritten signature in black ink, appearing to read 'Roy Templeman', is written over a light grey rectangular background.

R TEMPLEMAN

Chief Executive

AGENDA:

1. Apologies for Absence
2. To Confirm the Minutes of the Meeting held 26 June 2008 (Pages 1 - 10)
3. Public Speaking
4. To receive declarations of interest from Members
5. Report from the Leader of the Council
6. Reports from Portfolio Holders
 - a) Neighbourhood Services
 - b) Regeneration and Strategic Planning
 - c) Resources and Value for Money
 - d) Community Engagement and Partnerships

7. Questions to Leader and Executive Members
8. To accept the report of the Audit Committee held 24 June 2008 (Pages 11 - 14)
9. To confirm the Environmental Health Enforcement Policy (Pages 15 - 76)
10. Proposed Countywide Common Early Retirement and Voluntary Redundancy Policy (Pages 77 - 96)
11. Correspondence
12. Conferences
13. Common Seal

THE DISTRICT COUNCIL OF CHESTER-LE-STREET

Report of the meeting of Council held in the Council Chamber, Civic Centre, Newcastle Road, Chester-le-Street, Co Durham, DH3 3UT on Thursday, 26 June 2008 at 6.00 pm

PRESENT:

Councillor D Thompson (Chairman)

Councillors

A Humes	D M Holding
A Turner	C J Jukes
G Armstrong	W Laverick
L Armstrong	M D May
S Barr	P H May
J W Barrett	J M Proud
L E W Brown	M Sekowski
R Court	J Shiell
L Ebbatson	S C L Westrip
P Ellis	F Wilkinson
M Gollan	A Willis
S Greatwich	

Officers: R Templeman (Chief Executive), T Galloway (Director of Development Services), J Elder (Acting Head of Resources), I Herberon (Head of Corporate Finance), L Howley (Chief Environmental Health Officer), B Lightburn (Community Leisure Manager), C Potter (Head of Legal and Democratic Services), N Tzamarias (Assistant Director of Development Services) and C Turnbull (Democratic Services Officer)

There were 30 members of the public present.

17. APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillors GK Davidson, SA Henig, AK Holden, PB Nathan, DL Robson and TJ Smith.

18. TO CONFIRM THE MINUTES OF THE ANNUAL MEETING HELD 29 MAY 2008

The minutes of the proceedings at the Annual Meeting of the District Council held on 29 May 2008 copies of which had previously been circulated, were submitted.

The Council RESOLVED:

“That the minutes be confirmed as a correct record.”

The Chairman proceeded to sign the minutes.

19. PUBLIC SPEAKING

No requests had been received from members of the public to speak at the meeting in accordance with the Council's agreed policy.

20. TO RECEIVE DECLARATIONS OF INTEREST FROM MEMBERS

There were no declarations of interest from Members.

21. REPORT FROM THE LEADER OF THE COUNCIL

The Leader, Councillor L Ebbatson, reported that as a result of meetings with other District Leaders in Durham and the Leader of the new unitary, the County Durham Association of Local Authorities would continue to meet. This provided a ready made forum to collectively discuss issues of joint concern to the new unitary and predecessor councils such as ourselves

Following on from such meetings during the month, Councillor Ebbatson advised having been informed that:

(a) The Head of Social Inclusion would be overseeing a consultation on 'area arrangements' for the new unitary in July and August. Further details were awaited.

(b) Although the Structural Change Order defers any parish elections until 2013 (a 6 year term) the Department of Communities and Local Government had issued a letter of consultation to the new unitary seeking views on whether there should be parish council elections in 2009 – coinciding possibly with the European elections in June of that year.

(c) Clearly this linked to the bid proposals which uses town and parish councils as the vehicle for community engagement and devolved powers and responsibilities. It was unclear these proposals could be progressed.

(d) This was also linked to the review of electoral boundaries for the new unitary which was to be undertaken by the Boundary Committee.

"It is the view of the Electoral Commission that a 5 year term of office is unacceptable for councillors in a new authority and an electoral review implemented at an early opportunity will ensure that the new authority is able, early in its life, to have an appropriate council size and good levels of electoral equality across its area"

Councillor Ebbatson advised being informed at a meeting with the Boundary Committee earlier in the day, that:

- The review would commence in July with a consultation on the size of the new council and determine the appropriate number of members

- The building blocks would be existing parish and town council boundaries
- No community governance reviews should be commenced during the process (July 2008 – May 2009) to avoid complications
- A decision regarding the timing of the next elections would be made at the end of the review.

(e) Councillor Ebbatson advised that the issue of Honorary Aldermen was also considered during the month. Honorary Aldermen could be elected by a 2/3 majority of a principal council. The candidates could not be sitting councillors. A predecessor authority's councillor may be considered for this position.

Further clarity was sought on:

- (1) the legal position regarding District Councils and
- (2) the criteria which should be applied for nominations. A report on this would be received at the August meeting of the CDA.

On another topic, Councillor Ebbatson advised that the Council had been informed of 2 days of action proposed by Unison. The dates were 16/17 July. She suggested that the Council Meeting arranged for 17 July be postponed to 24 July.

The Leader stated that Members would recall that the date of the Council Meeting in July was brought forward to facilitate a public discussion on any Post Office closures in the area that would be known on 1 July. The presentation by the Post Office had also been deferred to 24 July.

Councillor Ebbatson advised that the key decisions made by the Executive in May and June had been circulated.

In conclusion, Councillor Ebbatson said that it gave her great pleasure to welcome the visitors that evening, which included the nominees for the Community Awards, adding that their contribution to well being in the District was immense, although they may not always know it, and it was much appreciated. She added that the Community Awards were the Council's way of recognising that contribution and the achievements that go with it. She hoped everyone would enjoy the evening.

22. REPORTS FROM PORTFOLIO HOLDERS

a. Neighbourhood Services.

Councillor SCL Westrip reported on the following items:

Flood Defence Grant Monies

Following the floods in the summer of 2007 the Government made provision of over £108M in grant aid to Councils affected by localised flooding and this Council received a grant of £60K. The monies received had to be spent on

flood defence works to those properties specifically affected by the floods. Over 200 questionnaires were sent out to residents in the flood-hit areas to ascertain the level and extent of the flooding and as a result, 20 properties were offered grants of up to £3K to fit door and air brick guards to their properties.

Planning Committee Member Training

Councillor Westrip advised that the first of two training sessions for members of the Planning Committee was held the previous evening with a further session scheduled for 11 July 2008. He reminded Members that it was a requirement of serving on the Planning Committee that they have at least basic training.

Licensing Committee Member Training

Councillor Westrip advised that a training session for members of the Licensing Committee was scheduled for 2 July 2008 with the training aimed at new Members on the Committee or as a refresher for serving Members. A further session would be held on 9 July 2008 and he reminded Members that it was a requirement of serving on the Committee that they have basic training.

Olympic Flag Raising Event

Councillor Westrip advised that the Council had registered for a free Olympic flag to take part in the 'hand over' ceremony from Beijing to London as host of the 2012 Olympics. Leisure Services were organising a 'mini Olympic' event on this occasion and also an event on the occasion of the Paralympics handover. He added that Councillor TJ Smith would provide updates at future meetings.

Gateshead MBC

Councillor Westrip reported that the Environmental Services Team and Area Managers from Gateshead MBC would be visiting the district to see how this Council adopted and successfully implemented a Parks to Larks Policy

Green Hero Award

Councillor Westrip advised that the Council had received a Green Hero Award, presented by the Green Organisation, for consistent best practice examples with regard to communication of environmental issues to the community and local school children.

b. Regeneration and Strategic Planning

Councillor CJ Jukes reported on the following matters:

- Town Centre profile of activities being compiled

- Promotion and improvement of the Market was continuing
- Business Improvement District initiative was on track
- Sacriston Community Centre – keys for new Centre handed over
- Pelton Fell Regeneration – progress on the refurbishment of the Community Resource Centre was to plan

c. Resources and Value for Money

Councillor L Armstrong had no report but extended thanks to the Head of Corporate Finance and his dedicated team for ensuring that the Statement of Accounts for 2007/2008 was available.

d. Community Engagement and Partnerships

Councillor M Sekowski reported that over the past month he had been getting to grips with the brief for the Community Engagement and Partnerships Portfolio. The focus of the brief, alongside the other portfolios, would be to help deliver the Council's single corporate priority "People And Place."

Four Action Learning Sets had been established to deliver sustainable outcomes for this priority and Councillor Sekowski advised he would be involved in two of the Sets:

Partnership For Futures

The essence of the scheme was to harness the collective efforts of the District's businesses and educational establishments to ensure that the Council can match local people with local jobs. This would enhance the future prospects of both employers and the workforce and help to provide the area with a sound, sustainable, competitive economic base.

Councillor Sekowski advised having attended a meeting of the Steering Group on 24 June that approved the job specification for the post of Executive Director who would lead the scheme forward. An interview panel was established to make the appointment and a target start date of 1st September 2008 agreed.

Strengthening Partnerships.

Councillor Sekowski advised that the aim of the Action Learning Set was to help fill any gaps in the key partnerships to ensure that sustainable change was carried over to the new Unitary Authority.

One of the key partners was the Local Children's Board, whose terms of reference was to develop and deliver local services for children, young people and their families. The Board formed one of the theme groups of the Local Strategic Partnership and comprised a range of partners including the Primary Care Trust, providers of children's, young people and family services, Police, Schools, Connexions County Durham and Youth Engagement Service.

As the Council's representative, he attended his first meeting of the Board on 13 June to gain a feel of the subject matters involved.

Youth Council / Forum.

Councillor Sekowski advised having been involved in an initial exploratory meeting to assess the viability of setting up a Youth Council/Forum. The purpose of such venture would be to:

- Give children and young people a voice in local affairs.
- To provide a vehicle for relevant agencies and partners to consult children and young people.
- To engage with the younger generation and involve them in the design, delivery and improvement of local services
- To involve them in the democratic processes of the area.

Ongoing discussions were being held as to the structure and process of establishing a Youth Council which had the support of the Local Children's Board.

23. QUESTIONS TO LEADER AND EXECUTIVE MEMBERS

Councillor PH May referred to the report of the portfolio holder for neighbourhood services and enquired what was being done to prevent a repetition of the flooding damage caused to properties in the District.

Councillor Westrip advised he would ensure that the Director of Development Services provided Councillor May with a report on the matter.

The Chief Executive advised having held discussions on the matter with officials from the Environment Agency and Water Authority.

24. OVERVIEW AND SCRUTINY ANNUAL REPORT 2007/2008

Consideration was given to a report from the Scrutiny Officer that presented the Overview and Scrutiny Annual Report 2007/2008 copies of which had previously been circulated.

Councillor G Armstrong, Chairman of the Overview and Scrutiny Management Board, introduced the item and thanked the two members of the public who regularly attended meetings of the Overview and Scrutiny Panels. He also thanked the Scrutiny Officer and members of the Overview and Scrutiny Panels for their involvement and work during the year and advised that all Scrutiny Members would be invited to participate in Task and Finish Groups.

The Leader thanked Councillor G Armstrong, Chairmen of Overview and Scrutiny Panels and all Scrutiny Members for their hard work and reports to the Executive.

The Council RESOLVED:

“That the contents of the Overview and Scrutiny Annual Report 2007/2008 be noted.”

25. PRIVATE SECTOR EMPTY PROPERTY TRANSITIONAL POLICY

Consideration was given to a report from the Director of Development Services seeking approval to the Private Sector Empty Property Transitional Policy, appended to the report.

Councillor SCL Westrip introduced the report.

The Chief Environmental Health Officer answered questions from Members relating to probate properties, compulsory purchase and well maintained empty properties.

Councillor SCL Westrip proposed, seconded by Councillor L Armstrong, that the recommendation in the report be approved.

The Council RESOLVED:

“That the Private Sector Empty Property Transitional Policy, as appended to the report, be approved and progress of the Policy and implementation of the Action Plan be monitored by the Overview and Scrutiny Panel.”

Councillors LEW Brown, R Court and JM Proud abstained from voting on the matter.

26. MEMBER APPROVAL OF THE STATEMENT OF ACCOUNTS FOR 2007/2008

Consideration was given to a report from the Head of Corporate Finance seeking approval to the 2007/2008 Statement of Accounts as appended to the report.

The Head of Corporate Finance spoke to the report and advised that the Cash Flow Statement and associated notes which were marked copy to follow were made available to Members. In addition a revised Income and Expenditure Account was circulated as an amendment had been made to make the statement comply with the relevant accounting codes of practice.

He reported on the key messages as follows: -

General Fund Revenue Expenditure – after difficulties highlighted at the half year financial monitoring position, it was pleasing to report that the outturn for 2007/2008 was an underspend of £27,422. This had been made possible as a result of actions taken during the year to offset projected overspends in order to safeguard balances.

Housing Revenue Account (HRA) – The accounts presented to Members had been prepared taking into account the impact of the Housing Stock Transfer that took place on 4 February 2008. Attention was drawn to £1.579 million HRA balance as at 31 March 2008. It was noted, however, that this balance had been earmarked to ensure the residual cost to the General Fund following the stock transfer was cost neutral for the following five financial years.

Capital Programme – The Head of Corporate Finance assured Members that there were enough resources available in the Balance Sheet to cover existing capital commitments. However, any new capital expenditure in 2008/2009 was dependent on capital receipts from the sale of land.

Revenue Recovery – It was noted that the performance in relation to the collection rates for Council Tax and Non Domestic Rates in 2007/2008 had improved year on year. The level of arrears in relation to Rents was nil due to the Housing Stock Transfer.

Borrowing – The Head of Corporate Finance stated that the authority did not exceed its authorised limit or operational boundary during 2007/2008. As part of the arrangements to transfer the Council's housing stock, £19.85 million of debt was repaid by the government which enabled the authority to have no long-term borrowing as at 31 March 2008.

Balance Sheet – The Head of Corporate Finance drew Members attention to the Balance Sheet on page 25 of the Statement of Accounts and explained the significant year on year impact of the decision to transfer the Housing Stock to Cestria Community Housing Association Limited.

Councillor G Armstrong advised that the Audit Committee had studied the Statement of Accounts and asked a number of questions of the Officer. He asked whether there would be any cost implications to the Council as a result of staff retirements/redundancies leading up to vesting day for the new unitary authority.

The Chief Executive advised there would be a report on staff retirement/redundancy submitted to the July meeting of the Council. He added that it would be the responsibility of the Council to take decisions on these matters prior to vesting day but he was hoping for few, if any, redundancies.

Councillor LEW Brown commented that the Riverside Cricket Ground was owned by the Council, albeit held by Durham County Cricket Club on a 99 years lease, and as such should be included in the Statement as a Council asset.

Councillor L Ebbatson gave an assurance that the Council's budget took account of possible retirement/redundancy situations. She advised that any decision required on staffing would be referred to the Council. She thanked the Head of Corporate Finance and his staff for preparing the Statement of Accounts within the reduced timetable.

Councillor CJ Jukes proposed, seconded by Councillor G Armstrong, that the recommendations in the report be approved.

The Council RESOLVED:

- “1. That the Annual Statement of Accounts for 2007/2008 be approved subject to audit.
2. That the Capital Financing for 2007/2008 be determined as detailed in the report.
3. That delegated authority be granted to the Head of Corporate Finance (Section 151 Officer), in consultation with the Lead Member for Resources and Value for Money, to make any amendments to the Statement which are not material.
4. That the Annual Governance Statement for 2007/2008 be approved subject to audit.
5. That the transfer of the 2007/2008 underspend on General Fund services (£27,422) from the General Fund Reserve to Insurance Reserve as detailed in the report, be approved.”

27. CORRESPONDENCE

Councillor SCL Westrip reported receipt of a letter from Mr BJ Straughan, on behalf of the Community Awards Panel, advising that the Panel members were keen to ensure that the Civic and Community Awards were progressed in 2009 and continued by the Unitary authority.

The Council RESOLVED:

“That a letter be sent to the Unitary authority in support of the continuation of the Civic and Community Awards following vesting day in 2009.”

28. CONFERENCES

There were no invitations to attend conferences.

29. COMMON SEAL

The Council RESOLVED:

“That the action of the Officer in affixing the Common Seal of the Council to the following documents be confirmed:

Lease in duplicate relating to a single storey factory unit
Lease in duplicate relating to Bullion Hall, South Approach
Temporary Road Closure Order in respect of Sacriston Carnival, 21 June 2008.”

Following the conclusion of business, the Chairman of the Council presented Community Awards and the Civic Award to the following:

- | | | |
|--|---|---|
| Young Achiever Winners | – | Anna Collin
Sophie Forster
Scott Lowerson |
| Young Achievers Team/Group Award Winners | - | The Chester-le-Street Riverside Youth Brass Academy |
| Civic Award Winner | – | Audrey Lines |

The meeting terminated at 5.20 pm

THE DISTRICT COUNCIL OF CHESTER-LE-STREET

Report of the meeting of the Audit Committee held in the Director of Resources' Office , Civic Centre, Chester-le-Street on Tuesday 24 June 2008 at 2.00pm.

Members Present: Councillors G Armstrong, R Harrison, JM Proud and J Shiell.

Officers Present: J Elder (Acting Head of Resources), I Herberson (Head of Corporate Finance), I Small (Principal Accountant – Treasury), M Welsh (Acting Head of Internal Audit), K Roberts (Principal Internal Auditor) and C Turnbull (Democratic Services Officer).

1. APPOINTMENT OF CHAIRMAN

The Democratic Services Officer invited nominations for the appointment of Chairman.

RESOLVED: “ That Councillor G Armstrong be appointed Chairman of the Committee for the ensuing year.”

2. APPOINTMENT OF VICE CHAIRMAN

The Chairman invited nominations for the appointment of Vice Chairman.

RESOLVED: “That Councillor R Harrison be appointed Vice Chairman of the Committee for the ensuing year.

3. APOLOGIES FOR ABSENCE

There were no apologies for absence.

4. MINUTES OF MEETING HELD 3 APRIL 2008

RESOLVED: “That the minutes of the proceedings at the meeting of the Committee held 3 April 2008 copies of which had previously been circulated, be confirmed as a correct record.”

The Chairman proceeded to sign the minutes.

5 DECLARATIONS OF INTEREST BY MEMBERS

There were no declarations of interest from Members.

6. STATEMENT OF ACCOUNTS 2007/2008

Consideration was given to a report on the Statement of Accounts for 2007/2008 that the Head of Corporate Finance was submitting for approval to the Council Meeting on 26 June 2008.

The Head of Corporate Finance introduced the report and advised that the views of the Committee would be made known to the Council when it considered the report and Statement.

Questions were asked by Members on the following matters and Officers responded appropriately:

1. How does appropriate consultation with the County Treasurer take place, and is it recorded in some way for audit trail purposes?
2. How are any salary savings resulting from current vacancies being used?
3. Is there any cost implications on the District Council from any early retirement of voluntary redundancy as a result of implementing LGR?
4. The General Fund Outturn showed an under spend of £27,422 which compared with £29,354 in the previous year. What were the causes of any service overspends?
5. Are we relying on further vacancy savings to compensate for any unexpected overspends?
6. Was the actual spend over 10 months on the HRA roughly pro-rata the budget for the full year?
7. What happens to the surplus made on the DLO account?
8. How does the Council access the HRA balance?
9. Have all relevant communal rooms transferred?
10. How have Housing rent arrears been dealt with?
11. It was noted that the Capital Programme over spent by £445,000, will there be concerns with delivery of capital schemes in 2008-09?
12. Recovery levels have increased for Council Tax and NDR, but can these be maintained?
13. How have investments been managed and how has the income generated been used?

There was discussion around outstanding monies relating to Planning Section 106 Agreements and it was confirmed that these were closely monitored by an Officer Working Group and a report had recently been submitted to Corporate Management Team.

7. ANNUAL GOVERNANCE STATEMENT 2007/2008

Consideration was given to the Annual Governance Statement 2007/2008 that the Acting Head of Resources was submitting for approval to the Council Meeting on 26 June 2008.

In response to questions from Members, the Acting Head of Resources reported on the timetable and action plan in the Statement and explained the various reports and assurance evidence that had been drawn on by the Corporate Governance Steering Group in preparing the Statement.

The Acting Head of Resources advised that actions would be summarised into a Governance Action Plan for 2008-09 at the next meeting of the Corporate Governance Steering Group and monitoring arrangements would include reports to the Executive and Audit Committee. He further advised that Officers had shared governance arrangements through Local Government Review Work-Stream activity in order to ensure that robust arrangements are maintained during 2008-09 and new arrangements for the Unitary are put in place in advance of vesting day.

The meeting terminated at 3.00pm

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Chester-le-Street
District Council

Report to: Council

Date of Meeting: 24 July 2008

Report from: Chief Environmental Health Officer

Title of Report: Transitional Environmental Health Enforcement Policy

Agenda Item Number:

1. Purpose and Summary and Recommendations

- 1.1 The purpose of the report is to request Council to approve and adopt a final version of the Transitional Environmental Health Enforcement Policy which is attached as Appendix A.
- 1.2 The draft Enforcement Policy was approved by Council in December 2007 for public consultation. Although the majority of its content remains relevant to current enforcement decision-making, there have been recent changes in national legislation and guidance which are not presently reflected within the existing Enforcement Policy.
- 1.3 The draft Enforcement Policy has been revised to incorporate technical amendments to address these local and national decisions and has been the subject of public consultation. The consultation raised few points that required alteration to the draft Enforcement Policy. Responses to the consultation are summarised in Appendix B.
- 1.4 The Transitional Environmental Health Enforcement Policy amalgamates and updates existing individual policies required by legislation and Statutory Codes of Practice into a single document. It is important that the Council has a current Enforcement Policy in place which is representative of current legislation, guidance and corporate priority expectation.
- 1.5 Council is recommended to:
- (i) Consider the summary of consultation comments and responses to them and agree amendments to the draft Enforcement Policy if required as attached as Appendix B.
 - ii) Agree and adopt a final version of the revised Enforcement Policy.

2. Consultation

2.1 The consultation exercise was undertaken involving a wide range of individuals, groups and organisations across the spectrum of Environmental Health regulatory activity. These consultations included:

- Members of the Council
- Parish Councils
- Police Authority
- Home Improvement Agency – Care and Repair
- Health and Safety Executive
- Food Standards Agency
- Local Residents Associations
- Local community groups
- Members of the public through the Council's website

2.2 Internally consultation has taken place with the:

- Legal and Democratic Services Manager
- Performance and Improvement Manager regarding diversity implications
- Risk and Financial Services Manager on risk management implications

2.3 Following the consultation processes, the comments received have been considered before the final version of the Enforcement Policy was prepared. Attached at Appendix B are the details of all comments and responses received and the consideration of these comments.

3. Transition Plan and People and Place Priority

3.1 The Transitional Environmental Health Enforcement Policy does not significantly impact on the Transition Plan and People and Place Priority.

3.2 The priority to update and amalgamate existing environmental health enforcement policies in line with current legislation and guidance was determined in 2007. This fulfills the Council's statutory responsibilities to have a Policy in place against which effective enforcement decisions could be made.

3.3 The Council recognises the importance of fair and effective enforcement which is a key to safeguarding and promoting public health and well being of those living, working and visiting the District and their commitment to protect their communities through the transition to the new unitary authority.

4. Implications

4.1 Financial Implications

- 4.1.1 The financial implications of introducing the new Enforcement Policy have been assessed as minimal. Costs incurred from the publication of the approved Enforcement Policy on the Council's website and the production and distribution of a summary leaflet for the public and businesses will be met from within existing budgets.

Value for Money Statement

- 4.1.2 The adoption of the Enforcement Policy will ensure more efficient and effective approaches to regulatory inspection and enforcement which will offer protection for the consumer and improve regulatory outcomes without imposing unnecessary burdens.
- 4.1.3 The Enforcement Policy requires that a particular approach to inspection and enforcement be adopted where the benefits justify the costs and which entail the minimum burden compatible with achieving objectives.
- 4.1.4 Risk-based assessment precedes and informs all aspects of approaches to regulatory activity defined within the Enforcement Policy. This includes the selection of the most appropriate level of enforcement through to the collection of data, inspection, advice, support and sanctions.
- 4.1.5 Resources will be directed where they are most effective. This will result in reducing unnecessary inspections and data collection from low risk and compliant businesses. It will enable the identification of those businesses needing more regular inspection and the release of resources to improve broader advice and support services and to address service priorities.

4.2 Local Government Reorganisation Issues

The Enforcement Policy is viewed as an interim policy demonstrating the Council's commitment to the importance of fair and effective enforcement to protect their communities during the transition to the new unitary authority.

4.3 Legal

- 4.3.1 The Enforcement Policy acknowledges the Council's statutory duty to enforce environmental health legislation.

4.3.2 The Enforcement Policy addresses the requirements of the Regulators' Compliance Code which came into force from 6 April 2008. Section 22 of the Legislative and Regulatory Reform Act 2006 sets out that regulators, should have regard to the requirements of this statutory Code.

4.3.3 The Enforcement Policy addresses the specific statutory requirements in relation to the 'Framework Agreement for Food Safety' issued under the Food Standards Act 1999 and Health and Safety Etc. Act 1974 Section 18 Guidance, both of which require an enforcement policy.

4.3.4 The adoption of a clear, transparent Enforcement Policy against which enforcement decisions can be made will reduce the risk of a successful legal challenge when attempting to take enforcement action.

4.4 Personnel

4.4.1 There are no human resource implications arising from this report.

4.5 Other Services

4.5.1 It is not expected that the adoption of the Enforcement Policy itself will lead to any increase in workload. The Policy does not fundamentally alter the Environmental Health services approach to enforcement; rather it amalgamates and expands a number of existing documents and practices.

4.6 Diversity

4.6.1 Consultation on the diversity aspects of the Enforcement Policy was undertaken with the Performance and Improvement Manager and comments have been incorporated.

4.6.2 The range of proactive enforcement activities contained within the Enforcement Policy form an invaluable mechanism for the Council to both engage with and educate many employers and employees from minority backgrounds. Workers from minority groups can be particularly vulnerable in workplace situations. Proactive measures are essential to safeguard the health, safety and welfare of the business community and the public.

4.6.3 The Enforcement Policy commits the Council to the principles of good enforcement which include openness, fairness and consistency.

4.7 Risk

4.7.1 Lack of an up to date enforcement policy acknowledging current legislation, guidance and good practice is a significant risk. Without such an Enforcement Policy in place there is increased risk of inappropriate enforcement and enforcement actions being open to successful challenge.

4.8 Crime and Disorder

- 4.8.1 The adoption of the Enforcement Policy will enhance the delivery of a robust service in relation to environmental crime and breaches of legislation dealt with by the Environmental Health service.

4.9 Data Quality

Every care has been taken in the development of this report to ensure that the information and data used in its preparation and the appendices attached are accurate, timely, consistent and comprehensive. The council's Data Quality Policy has been complied with in producing this report.

4.10 Other Implications

- 4.10.1 There are no other implications arising from this report.

5. Background, Position Statement and Option Appraisal

- 5.1 The Council's Environmental Health Service has a statutory duty to enforce a wide range of legislation in respect of food safety, health and safety at work, pollution control, public health, pest control, contaminated land, environmental protection, housing and licensing.

- 5.2 It is important in exercising enforcement powers that they are carried out in a fair and consistent way, recognising the need to ensure proactive enforcement. The revised Environmental Health Enforcement Policy will achieve this by having a published enforcement policy in place, which lays out a set of principles that are applied to effective enforcement decision-making in compliance with current statutory Codes of Practice.

- 5.3 On 6 April 2008, a Regulators' Compliance Code (the Code) was published by the Department for Business Enterprise & Regulatory Reform (BERR). It extends to a wide variety of regulators and applies to local authorities in respect of many of their enforcement activities, including environmental health and licensing. This is a statutory Code of Practice which means that the Council must have regard to its content.

- 5.4 The Code is based upon the recommendations contained in the Hampton Report commissioned by the Government on 'Reducing Administrative Burdens: Effective Inspection and Enforcement' which was published in 2005.

- 5.5 The Councils' existing draft Enforcement Policy is based on the principles contained in an Enforcement Concordat published by the Local Government Association in 1998. The draft Enforcement Policy is comprehensive and should generally comply with the requirements of the new Regulators' Compliance Code and the draft Enforcement Policy has been reviewed and updated to ensure full compliance.

- 5.6 The Code requires that the Council have regard to five principles of good regulation. These provide for regulatory activities to be carried out in a way that is transparent, accountable, proportionate and consistent and for them to be targeted only at cases in which action is needed. The Code places a duty that Environmental Health functions have regard to the Code when determining enforcement policies.
- 5.7 The Code stresses the need for the Council to adopt a positive and proactive approach towards ensuring compliance by;
- Helping and encouraging businesses and the public to understand and meet regulatory requirements more easily and
 - Responding proportionately to regulatory breaches
- 5.8 The Food Law Code of Practice has recently been revised to reflect the principles of better regulation and to reduce burdens on business while maintaining standards of public health and consumer protection. The main changes are the replacement of the inspection focused approach to food law enforcement with a more flexible regime, involving a wider range of interventions to monitor, support and increase business compliance.
- 5.7 Current position
- 5.7.1 The draft Enforcement Policy which was formally approved by Council in December 2007 as a version suitable for public consultation was based on the principles contained within the Enforcement Concordat.
- 5.7.2 From 6 April 2008 the Enforcement Concordat has been superseded by the introduction of the Regulators' Compliance Code in relation to the regulatory functions of environmental health and the statutory Food Law Code of Practice for England has been recently revised to reflect the better regulation agenda. The Council is duty bound to take the statutory Codes into account whilst undertaking its statutory duties
- 5.7.3 The draft Enforcement Policy is comprehensive and generally complies with the requirements of the Regulators' Compliance Code. However, minor revisions have been applied to ensure compliance with current statutory requirements and the amended version of the Policy was subject to public consultation as described.
- 5.7.4 A broad range of bodies have been consulted on the draft revised Enforcement Policy. The results of the consultation along with an appraisal of comments and proposed changes to the Policy are attached as Appendix B.

6. Recommendations

6.1 Council is recommended to:

- (i) Consider the responses following public consultation and agree amendments to the draft Enforcement Policy if required as attached at Appendix B
- (ii) Agree and adopt a final version of the Transitional Environmental Health Enforcement Policy

7. Background Papers/ Documents referred to

7.1 The Enforcement Concordat, 1998

The Code of Crown Prosecutors
'Reducing Administrative Burdens, Effective Inspection and Enforcement' Philip Hampton, March 2005

The Legislative and Regulatory Reform Act 2006

The Regulators' Compliance Code, 6 April 2008

Food Law Code of Practice England, 1 April 2008

LACORS 'Guidance for Councils on the Regulators' Compliance Code,
15 February 2008

Christine A Ditchburn
Environmental Health Manager (Commercial)
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Christine Ditchburn Tel 0191 3872203
e mail christineditchburn@chester-le-stret.gov.uk

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CHESTER-LE-STREET DISTRICT COUNCIL
TRANSITIONAL ENVIRONMENTAL HEALTH
ENFORCEMENT POLICY

(DRAFT)

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Environmental Health Transitional Enforcement Policy (Draft)

1. Introduction

- 1.1 The Council has a statutory duty to enforce a wide range of legislation in order to maintain standards relating to environmental health, housing and licensing. In exercising its enforcement role the Council is not acting on behalf of any individual, but is acting in order to promote the wider public interest.
- 1.2 The Environmental Health Service (the Service) is committed to ensure delivery of its regulatory responsibilities for promoting, protecting and enhancing the health, safety, welfare and overall wellbeing of all residents, workers and visitors to the District.
- 1.3 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.
- 1.4 In certain instances, we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
- 1.5 The Service recognises that facilitating compliance through a positive and proactive approach can achieve higher compliance rates and reduce the need for reactive enforcement actions. Compliance achieved through education, support, advice and guidance will be considered in order to adopt a balanced approach to decisions regarding enforcement to those it regulates.
- 1.6 The Service considers that securing compliance with regulatory requirements using enforcement powers plays an important part in determining the most appropriate course of action. Each case is unique and must be considered on its own merits. The Service will identify those who persistently breach the law and ensure that proportionate and meaningful sanctions apply. There are, however, general principles that apply in the way each case must be approached. These principles are laid out in this Enforcement Policy (Policy) and in the Regulator's Compliance Code.

- 1.7 The Service seeks to secure co-operation avoiding bureaucracy, ensuring efficient compliance with legislation whilst, at the same time minimising the burden on businesses, individuals, organisations and the Council itself. The Service encourages individuals, landlords and businesses to put safety first and to integrate good working practices into normal working methods.
- 1.8 The Service applies this Policy so that it can make fair and consistent decisions on enforcement action and will take into account the risk to health, safety and well being of the public and the environment and the seriousness of the offence. The Service recognises that a decision on enforcement action can have serious implications for all involved affecting the general public, businesses, tenants, landlords, victims, witnesses and defendants.
- 1.9 The Service works in association with Central Government and other Regulators to help ensure coherent regulation. They will also work with voluntary and community groups and non-governmental organisations in order to achieve common goals.
- 1.10 The purpose of this Policy is to provide a general policy that outlines the overarching principles applied to making enforcement decisions and the process officers will use when deciding what action to take when carrying out their statutory duties on behalf of Council.
- 1.11 The Policy applies to enforcement activities carried out under legislation enforced under the Council's Environmental Health regulatory function. Enforcement in the context of this policy includes action carried out in the exercise of, or against the background of statutory enforcement powers.
- 1.12 The regulatory functions delivered by the Environmental Health Service are extensive and include food safety, occupational health and safety, infectious disease control, private sector housing, environmental protection (including statutory nuisance), contaminated land, air quality, pest control, public health and licensing functions.
- 1.13 The Policy does not directly concern itself with operational matters and is not a definitive procedural guide, but aims to outline the policy issues associated with enforcement decision making. It defines the approach to enforcement and instances when enforcement powers are initiated and under what circumstances. Powers relating to the specific regulatory functions delivered by the Service are detailed in the appendices to this document. Due to the individual nature of many cases considered by the Service, the Policy cannot be considered to be exhaustive.

- 1.14 Management systems will be maintained to monitor the quality and nature of enforcement activity undertaken and to ensure as far as practicable, uniformity and consistency in the approach and quality of the Service.

2. Departure from the Enforcement Policy

- 2.1 All authorised officers will abide by this Policy when making enforcement decisions.
- 2.2 Any departure from the Policy will only be accepted in exceptional circumstances, be capable of justification, and only after full consideration and authorisation by the officer with delegated power unless there is a demonstrable, significant and imminent risk to the public or environment in delaying enforcement.
- 2.3 Instances of non-compliance with this Policy will be recorded and reported directly to the relevant Director.

3. Responsibility and Authorisation

- 3.1 The Council is responsible for approval of the Policy and any amendment to it.
- 3.2 Responsibility for implementation of the Policy rests with the relevant Director.
- 3.3 Authorised officers of the Service carry out the day-to-day enforcement activities. Officers are authorised in accordance with relevant Codes of Practice or National Guidance to carry out inspections, sampling, complaint investigations, deal with requests for service and, where necessary, offer advice and training.
- 3.4 The officer with delegated power is responsible for the planning, organising and subsequent monitoring of all aspects of the Policy.
- 3.5 The Policy should be read in conjunction with the Council's Constitution, which sets out the specific areas of delegated powers and responsibilities of officers.
- 3.6 Enforcement action will be initiated by suitably qualified, experienced and competent enforcement officers. Officers who are competent through training, qualification and/or experience will be authorised in writing to undertake enforcement action.

- 3.7 Officers who undertake criminal investigations will be conversant with the provisions of the Police and Criminal Evidence Act 1984 (PACE), the Criminal Procedure and Investigations Act 1996 (CPIA), the Data Protection Act 1998, the Human Rights Act 1998, the Disability Discrimination Act 1995 and the Regulation of Investigatory Powers Act 2000.
- 3.8 All staff will recognise and comply with the Council's Corporate Equality Plan incorporating the Race Equalities Scheme and Equality Policy. The plan provides a framework setting out how the Council will promote the wide ranging equalities agenda to the community and to its employees.
- 3.9 All statutory notices will be authorised and signed by either the relevant Environmental Health Manager or investigating officer unless specific authorisation has been granted to another officer.
- 3.10 The issue of a simple caution and any decision to prosecute will only be administered or approved by the officer with delegated power after consulting with the relevant Head of Legal and Democratic Services.
- 3.11 Where a prosecution is determined in accordance with the Policy, the relevant Environmental Health Manager in consultation with an authorised officer shall consider sanctioning expert assistance from external bodies where relevant. Assistance may include reports and certificates of analysis from the Public Analyst, the Health and Safety Executive or the Environment Agency.

4. Regulation of Investigatory Powers Act 2000

- 4.1 The Service may, from time to time, undertake covert surveillance for the purpose of gathering evidence in connection with its operations in relation to planned inspections of premises, the initiation of investigations following a complaint or notification and in the use of surveys or enforcement initiatives. Any covert surveillance will be strictly controlled in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA).

5. Release of Targeted Regulatory Data

- 5.1 The Council recognises the importance of open government and the national statutory framework relating to the disclosure of information as provided by the Freedom of Information Act 2000 and the Environment Information Regulations 2004.
- 5.2 Individual requests for information will be considered on their merits having regard to the law and code of best practice.

6. Race Relations, Discrimination and Protection of Human Rights

- 6.1 The Policy recognises that the Race Relations Act 1976 (as amended by the Race Relations (Amendment Act) 2000) places a legal obligation on the Council to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups.
- 6.2 It should be considered that each case will vary and each must be considered on its own merits before a decision is reached even though the general principles will apply in all cases.
- 6.3 No one recommending or deciding upon legal proceedings or serving a statutory notice should be influenced by ethnic or national origin, gender, religious beliefs, political views, age, disability or sexual preference. They must also not be affected by improper or undue pressure from any source.
- 6.4 Regard shall be given to the Human Rights Act 1998 and the European Convention on Human Rights and Fundamental Freedoms. In particular, regard shall be had to the provisions of Article 6: the Right to a Fair Trial, Article 8: the Right to respect Private and Family Life, Article 14: the Prohibition on Discrimination and Article 1 to the First Protocol regarding Protection of Property.
- 6.5 Any interference with a convention right must be justified as being in accordance with the law and be proportionate and necessary to further a legitimate aim.

7. Data Protection

- 7.1 Authorised officers will be mindful of the requirements of the Data Protection Act 1998. The Council follows the requirements placed on it by the Act.
- 7.2 Businesses or the public may request to receive information on regulatory issues electronically. The Council will ensure that Data Protection Act requirements will be followed for the use of E mails and businesses will be asked to confirm in writing that they wish to receive information in this way.

8. Regulator's Compliance Code

- 8.1 The Regulator's Compliance Code sets out Principles of Good Regulation for consistent enforcement of regulations in a way that is fair, practical and which emphasises prevention over cure. It sets out what businesses and others being regulated can expect from enforcement officers. It commits us to target resources to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens on business, the Third Sector and the public.
- 8.2 The Policy is based around the specific obligations of the Regulator's Compliance Code, taking into account:
- Policy standards
 - Transparency and openness
 - Helpfulness to service users
 - Proportionality of the service response
 - Consistency of the service
 - Targeting of enforcement action
 - Accountability of the service
 - Complaints about the service
- 8.3 Adherence to the principles of the Regulator's Compliance Code will be demonstrated by:
- Taking all enforcement decisions in a proportionate manner
 - Remedies being appropriate to the risks posed and costs identified and minimised
 - Striving for high standards of consistency and ensuring that Government rules and standards are joined up and implemented fairly
 - Ensuring that all enforcement staff are helpful, courteous and efficient and open
 - Ensuring that officers are focused on the problems and minimise side effects

- Measuring our performance against agreed standards, where appropriate
- Justifying decisions and being subject to public scrutiny

9. Principles of Enforcement

9.1 Policy Standards

In consultation with businesses and other relevant interested parties, including experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. Details of these standards and targets together with reports will be available together with reports on performance against these stated targets. We will produce written statements defining what level of service can be expected and where performance targets exist they will be clearly stated in the Planning and Environmental Health Service Plan.

9.2 Transparency and Openness

9.2.1 Transparency and openness is vitally important in maintaining public confidence in the ability to regulate. It means helping both those regulated and others to understand what is expected of them and what they should expect from the Service. It also means making clear why an officer intends to, or has taken enforcement action.

9.2.2 Transparency is an integral part of the role of the Council's officers and the Service continues to train its staff and to develop its procedures to ensure that:

- Where remedial action is required, it is clearly explained (and confirmed in writing if requested) why the action is necessary and when it must be carried out. A clear distinction will always be made between legal requirements and best practice advice
- Opportunity is provided to discuss the circumstances of the case, clarify what is required to comply with the law and if possible, resolve any points of difference, before formal enforcement action is taken, unless urgent action is required, for example, to prevent serious harm or to prevent evidence being destroyed
- Where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event

- Written explanation will be given of any rights of appeal against formal enforcement action at the time the action is taken. This will explain the appeal procedure, where and when an appeal may be made, as well as confirming the grounds on which it may be brought. It will make clear where action will be suspended pending the outcome of the appeal

9.2.3 Every effort will be made to ensure that information and advice is provided in plain language without abbreviations or jargon and is distributed as widely as possible. The Council has interpreting and translation services available for businesses and the public who do not have English as a first language.

9.2.4 The Service will be open about how it sets about its work including any charging that it sets for any of its services and arrangements for consulting with its stakeholders will be made freely available.

9.2.5 Copies of the Policy will be made available to businesses and individuals and will be published. The Policy will be made available in alternative formats on request.

9.3 Helpfulness to Service Users

9.3.1 The provision of authoritative, accessible advice and assistance using a variety of formats and media is regarded as central to the implementation of the Policy and is used to inform both businesses and individuals of their rights and responsibilities. Help will be given to businesses, voluntary or community groups, workplace representatives and the public to assist them to comply with regulatory requirements.

9.3.2 By adopting this approach and by positively encouraging businesses and others to seek advice and information, many issues can be resolved without having to resort to the more formal levels of enforcement action.

9.3.3 A courteous approach and efficient service will be provided with all staff identifying themselves by name. The purpose of any visit will be properly explained and a contact point or telephone number for any further dealings will be given when required.

9.3.4 Applications for licenses, registrations, approvals etc. will be dealt with efficiently and promptly and every effort will be made to ensure that, wherever practicable, the Council's enforcement services are effectively coordinated to minimise unnecessary overlaps and time delays.

- 9.3.5 The Service operates a flexible approach to service delivery, which takes account of the diverse needs of the public and business community. Services will be made available by prior arrangement, out of hours and will be tailored to meet the specific needs of both individuals and businesses as far as practicable. In delivering services the Council will recognise its responsibilities in making them accessible to all.
- 9.3.6 Customer satisfaction surveys across all environmental health functions will be undertaken to check performance and to identify areas for improvement.

9.4 Proportionality of the Service Response

- 9.4.1 We will recognise the cost of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action. We will take particular care when working with small and medium-sized businesses which are predominant within the District and to voluntary and community organisations and the public to allow them to meet their legal obligations without unnecessary expense where practicable.
- 9.4.2 Some incidents or breaches of regulatory requirements cause or have the potential to cause serious damage to health or to the environment. Others may interfere with people's enjoyment or rights or the Services ability to carry out its enforcement activities. The first response will be to prevent harm from occurring or continuing. We will ensure that costs of compliance are kept to a minimum by ensuring that any enforcement action taken is strictly proportionate to the risks posed and to the seriousness of any breach of the law.

9.5 Consistency of the Service

- 9.5.1 Consistency means taking a similar approach in similar circumstances to achieve similar ends. All those involved need to know that they are being treated fairly and businesses are competing with one another on level terms. The Service will endeavour to ensure that all enforcement decisions are consistent, balanced, and fair and relate to common standards. In coming to any decision, account will be taken of the seriousness of the offence, past history, confidence in management, the consequences of non-compliance, and any evidence of genuine remorse and the likely effectiveness of the various enforcement options.

- 9.5.2 It is recognised that consistency does not simply mean uniformity. Officers need to take account of many variables, such as the scale of impact on health or the environment, the attitude and actions of those responsible and the history of previous incidents or breaches. Officers will need to exercise their professional judgment and discretion according to the circumstances of each individual case.
- 9.5.3 Arrangements are in place to promote consistency in the interpretation and enforcement of legislation through liaison with other local authorities throughout County Durham, Northumberland, Tyne and Wear and Tees Valley. We subscribe to the Local Authority Coordinating Body on Regulatory Services (LACORS) and the Health and Safety Executive/Local Authority Enforcement Liaison Committee (HELA). We also have regard to statutory Codes of Practice, the Health and Safety Executive's Enforcement Management model (EMM) and to guidance and advice provided by LACORS, HELA and from Central Government departments.

9.6 Targeting

- 9.6.1 Targeting means making sure that regulatory effort and resources are directed primarily towards those whose activities give rise to the most serious risks or where the hazards are poorly controlled or against deliberate or organised crime. Action will be primarily focused on those that break the law or those directly responsible for the risk and who are best placed to control it.
- 9.6.2 The Service has systems for prioritising regulatory effort and will ensure that resources are targeted towards responding to complaints from the community about regulated activity, the inspection of premises according to the risks posed and the gathering and acting on intelligence about illegal activities. Risk assessment precedes and informs all aspects of approach to regulatory activity
- Commercial premises will receive inspection visits in accordance with their perceived risk so that the public can be assured that potentially serious risks continue to be effectively managed
 - Houses in Multiple Occupation operated by private sector landlords will be risk assessed and proportionate regulatory effort pursued
 - Action will be primarily focused on lawbreakers and those who are directly responsible for the risk and who are in the best position to carry out controls

9.7 Accountability of the Service

- 9.7.1 It is accepted that despite best efforts users may occasionally be unhappy with the service provided. We recognise the role service complaints can play in identifying areas for improvement. To this end we will provide well-publicised, effective and timely complaints procedures easily accessible to businesses, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and likely timescales involved.

10. Levels of Enforcement Action

The objectives of the Service are underpinned by a wide range of legal duties and powers. Whilst the core aim of the Service is to safeguard public health through the provision of education and professional advice, there will be instances where enforcement action is warranted in order to protect the environment, health or the quality of life for the businesses and the public.

There are a number of enforcement options open to officers when they encounter non-compliance with legislative duties and these are summarised below:

10.1 Promotion and Prevention

- 10.1.1 The Service considers that promotion is an essential part of this Policy. It raises awareness of Environmental Health services, informs people of their legal responsibilities and encourages co-operation between officers, businesses and the general public. A strong element of self-regulation is considered essential and support for this will be provided by methods including training courses, workshops, seminars, the issuing of press releases, the Council's website, the production of leaflets, other forms of written guidance and the opportunities presented by day-to-day contact with businesses and customers.
- 10.1.2 Prevention is an important level of enforcement by ensuring policy compliance and preventing contraventions of the law by raising awareness and promoting good practice. Proactive inspections at various types of premises are carried out each year at a frequency determined by risk. This proactive approach is seen as a means of building positive relationships between the Service and the operators and proprietors of premises and is particularly applied when officers are not aware of any specific contravention of the law.
- 10.1.3 The Service provides a range of approvals, licences, authorisations and permits as specified by individual pieces of legislation. These are an important part of the preventative aspect of our work.

- Applicants will be helped to understand what is required to obtain approval through pre-application advice, published guidelines and post application discussion. However, we will not prepare or design applications in order not to compromise our independence in deciding whether to approve the application
- Applications may be approved as they are submitted, varied by agreement and then approved, approved subject to conditions or rejected. Applicants or their agents will always be notified in writing of the outcome of their application, including the reasons if rejected. Any rights of appeal will be provided at the time the decision is notified
- Depending on which service is provided, the types of circumstances in which conditions may be attached include (but are not restricted to):
 - Conditions as necessary to ensure that the purpose of an approval, licence, or registration is adhered to (for example animal welfare conditions for a Pet Shop licence), or
 - Where a food premises meets all the structure and equipment requirements for approval but does not fully comply with some other requirement
- Circumstances in which applications may be refused include (but are not restricted to):
 - Where contraventions exist
 - Where there is any reason that the applicant will not comply with the purpose of the licence or registration or any conditions attached to it (for example where there have been previous infringements)
 - Where a food business operator fails to meet all the infrastructure and equipment requirements

10.2 Informal action

10.2.1 Informal action to secure compliance with legislation includes offering advice, verbal warnings and requests for action, the use of letters and the issue of inspection reports and schedules of work, including those generated on premises following an inspection, investigation or visit. Where necessary, such information will be provided in an appropriate language or format.

10.2.2 Such enforcement action may be appropriate in any of the following circumstances:

- The act or omission is not serious enough to warrant formal action
- The individual or company's past history, suggests informal action will achieve compliance
- Confidence in the individual or company's management is high
- The consequences of non-compliance will not pose a significant risk to public health and safety or demonstrable harm to the amenity of the area
- The action is being taken on behalf of a customer, who prefers the matter to be handled informally
- Even where some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach. This may, for example, apply to enterprises associated with voluntary and community organisations using volunteers

10.2.3 Persons receiving an Informal Notice (verbal or written) will be given the opportunity to discuss the requirements with an officer and agree an appropriate work plan and timetable for completion. Regular contact with the investigating officer will be encouraged as the works progress for further clarification or query.

10.3 Formal Action

10.3.1 The use of enforcement action will at all times be consistent with the principles set out in the Regulators' Compliance Code. In considering formal enforcement action, officers will have regard to the

- The seriousness of the offence
- The individual's or company's past history in terms of compliance
- Confidence in management
- The consequences of non-compliance

10.3.2 The Service will ensure that an opportunity will be provided to discuss the circumstances of the breach with the intention of resolving points of difference and to determine the best approach. The extent of this will depend on the seriousness of the contravention, and may not be possible where immediate action is necessary, such as where there is an imminent risk to health, safety or the environment.

10.3.3 Officers who have reached a sufficient level of competence will be given the delegated authority to take formal action. Officers will interpret and apply relevant legal requirements and the Policy fairly and consistently. Formal action can take any form that the Council is empowered to take. The following actions will be the most commonly used:

10.4 Statutory Notices

10.4.1 Notices are served to require offenders to cease contravening activities, or to give offenders reasonable time to rectify a contravention. Notices may require contravening activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand this. In other circumstances, the time allowed must be reasonable, but must take into account the health, safety, and environmental damage or nuisance implications of the contravention. Information regarding any relevant appeal procedure will be made available at the time when the notice is served, as will the potential penalties for non-compliance.

10.4.2 Where there is a statutory provision that provides for the Council to levy a charge for the costs associated with the service of a formal notice, then such a charge should be made and may be pursued as a civil debt.

10.5 Works in default

10.5.1 Where provided for under specific legislation, the Council is empowered to execute works instead of, or as well as, taking enforcement action. In such cases, the expenses associated with default works will usually be recovered from the relevant party. Where appropriate these costs may be recovered by way of a land charge.

10.5.2 The Council will consider exercising work in default powers in all cases where it is legally possible and reasonable to do so. For example, in the interests of public health and safety the Council may consider an immediate remedy to a defect using its default powers rather than seeking compliance through prosecution which could result in significant delays. Alternatively, it may be appropriate to exercise default powers where a prosecution has failed to secure compliance or is unlikely to be an effective remedy.

10.5.3 Notification of the intention to do work in default will be given to all interested parties in accordance with the law wherever practicable. In certain circumstances, such as where the Council is seeking to abate a noise nuisance, it may be necessary to carry out the works and notify the person(s) responsible retrospectively.

10.5.4 Immediate action without any prior notice will only be considered in situations where there is a risk of danger or a danger to public health. Where the law allows the Council to act immediately, an explanation will be given at the time (if appropriate) and a written confirmation will be given.

10.6 Revisits of premises

10.6.1 Following a statutory notice or any written or verbal warning given, a revisit of the premises involved will generally be carried out to check compliance has been achieved. A revisit may not always be necessary for very minor contraventions and is a matter of judgment.

10.6.2 Officers will decide whether to revisit depending upon the health, safety, environmental damage, or nuisance implications of the contravention and the perceived likely response of the offender to any advice or request.

10.7 Revocation or Suspension of Licence, Authorisation, or Permit

10.7.1 In order to warrant revocation of a license, authorisations or permit, the individual or organisation must normally meet one or more of the following criteria:

- Deliberately or persistently breached legal obligations, which are likely to cause material loss or harm to others
- Deliberately or persistently ignored written warnings or formal notices
- Endanger to a serious degree, the health, safety or well being of people, animals or the environment
- Obstructed an officer while undertaking their duties
- Convicted of a breach of an absolute legal obligation

10.7.2 If revocation action is taken, the relevant parties will be made aware of any rights of appeal at the time.

10.8 Seizure

10.8.1 The Service will use powers of seizure under various pieces of legislation to:

- Seize unwholesome or contaminated food
- Seize equipment responsible for causing a noise nuisance

- Seize goods or equipment likely to cause danger to health and safety

in order to prevent them causing nuisance or harm to consumers, or other residents.

10.8.2 When officers seize goods or equipment a receipt will be supplied to the person from whom the goods are taken. The goods may subsequently be liable to forfeiture by the courts. If officers seize unfit food, it will be produced before a Magistrate as soon as possible for them to confirm the seizure and consider the fitness of the food. In certain circumstances, documents (hard copy or electronic) may be removed to ascertain if they are required by evidence. Officers will give full details of their actions to the offender when they exercise this power.

10.9 Injunctions

10.9.1 In exceptional cases, it may be considered that an injunction is the more appropriate course of action to remedy contraventions or dangerous circumstances.

10.9.2 An injunction may be sought from the courts where the circumstances of any case cause a significant problem or threat to an individual's health, and the normal process of law (statutory notices, prosecution or work in default) is likely to be ineffective due to the person responsible showing blatant disregard for earlier similar requests for action, or where the process of law would take an unacceptable period of time having regard to the particular circumstances.

10.10 Fixed Penalty Notices

10.10.1 Where legislation permits the use of fixed penalty notices, the Service will consider use of them as an alternative to prosecution. Examples of where they may be appropriate are:-

- To deal quickly and simply with less serious offences
- To divert less serious cases away from the court process
- To deter repeated offences

10.10.2 Before a fixed penalty is administered the authorised officer will ensure that there is evidence of the offender's guilt sufficient to sustain a prosecution.

10.10.3 Where legislation gives the Council flexibility to set the level of a fixed penalty charge, there will be regard to:-

- Any Government guidance on the level at which the fixed penalty is to be set
- The likely level of fine which a court would impose for a similar offence
- The need to deter offenders from opting for prosecution because they believe that the court would impose a lower level of penalty
- The cost of bringing a prosecution where fixed penalties were not paid

10.10.4 Where a fixed penalty notice is not paid within the specified time limit (usually 14 days) then the offender will always be prosecuted unless there are exceptional circumstances. Where it is decided that an unpaid fixed penalty notice should not be pursued by way of prosecution the reason for not pursuing the notice must be reported in the first instance to the head of service.

10.10.5 There is no right of appeal against a fixed penalty notice covered by this Policy as it only deals with criminal offences. A person served with a fixed penalty notice who believes they did not commit the offence has the right for their case to be heard in court.

10.11 Simple Caution

10.11.1 This procedure is used as an alternative to a prosecution. It derives from advice issued in Home Office Circular 30/2005 'Cautioning of Adult Offenders' and LACORS (Local Authority Coordinators of Regulatory Services) guidance.

10.11.2 For a Simple Caution to be issued, a number of criteria must be satisfied:

- Sufficient evidence to prove the case
- The offender must admit the offence
- The offender must agree to be cautioned
- Where the offence is not a serious one and could be dealt with swiftly to divert a less serious offence away from court

10.11.3 If the offender pleads guilty to, or is guilty of, committing another offence anywhere in England and Wales, the caution may be sited in court and this may influence the severity of the sentence that the court imposes for any subsequent offence.

11. Prosecution

- 11.1 The decision to prosecute is a serious and important part of enforcement that should be taken after full consideration of the implications and consequences. Decisions about prosecution will take account of Council policies and procedures, legal advice and opinion, specific guidance on enforcement action contained in Codes of Practice, guidance documents issued by the relevant coordinating bodies and the Code for Crown Prosecutors. Where appropriate, decisions to prosecute should be taken at the earliest opportunity.
- 11.2 The Council will only start or continue with a prosecution when the case has passed both stages of the full code test as detailed in the Code for Crown Prosecutors. These factors are not exhaustive and those, which apply, will depend on the particular circumstances of each case. The importance of each factor will be determined in the circumstances of each case and will be used to make an overall assessment.
- 11.3 As a general rule, a prosecution will not be undertaken without the offender being given a reasonable opportunity to comply with the law and every identified breach of legislation will not automatically result in the institution of legal proceedings. However, there are circumstances where a contravention is particularly serious or there is a blatant or reckless disregard for the law and it is right to prosecute without a prior warning. Failure to comply with a Statutory Notice will normally result in a prosecution, except in cases where works in default may be more appropriate.
- 11.4 When considering the particular circumstances of a case, it may be appropriate to take more than one course of action. For example, statutory notices may be used to secure compliance in addition to the prosecution of the recipient of a notice for the non-compliance with the requirement addressed by the notice.
- 11.5 Where there has been a breach of the law leading to a work-related death, the Council will liaise with the police, coroner and Crown Prosecution Service (CPS) and, if there is evidence of manslaughter, will pass the case to the police.
- 11.6 The following circumstances are likely to characterise initiation and referral to the Head of Legal and Democratic Services
- The alleged offence involves a flagrant breach of the law such that employees, the public or the environment are put at risk of harm (or where significant commercial advantage is being gained as a result of the breach)

- There appears to be reckless disregard for the health and safety of or nuisance to employees, the public, animal health and welfare or the environment
- There have been repeated breaches of legal requirements in an establishment (or in various branches of a multiple concern) and it appears that any person responsible is either unwilling or incapable of dealing with them
- The particular type of offence is prevalent in an area or activity
- There has been a serious accident, nuisance or case of ill health resulting from a substantial legal contravention
- Where a particular contravention or situation has caused serious public alarm or concern
- Where there are persistent poor standards for control of health and safety hazards, nuisance or harm to the environment
- The alleged offence or situation involves a failure by the alleged offender to correct identified serious potential risks to health and safety, nuisance or harm to the environment, after having been given a reasonable opportunity to comply with statutory requirements
- The offence involves a failure to comply in full or in part with the requirements of a statutory notice or the simple caution procedure
- Where an enforcement officer has received verbal or physical threats or has otherwise been obstructed in the performance of their duties. In this instance, the prosecution would be considered in relation to the offence of obstruction of an officer, notwithstanding the nature or extent of the remaining breaches, (if any)
- Any other relevant matters that are contained within guidance issued by Government or Official Bodies

11.7 Criminal proceedings will be taken against those persons who are responsible for the offence where necessary. Where a company is involved, it will be usual practice to prosecute the company where the offence resulted from the company's activities. Action may also be taken against such officers (as well as the company) where it can be shown that the offence was committed with their consent, was due to their neglect or they chose to ignore the offence or the circumstances leading to it. In appropriate cases, consideration will be given to seeking the prohibition of the business proprietor under the appropriate specific statutes.

11.8 Enforcement action against employees will receive special consideration. Where appropriate, a warning letter will be preferred unless the matter is serious or the employee had received a prior warning from either his employer or the Council.

11.9 All cases will be kept under review and any changes in circumstances will be considered.

12. Court Proceedings

12.1 An authorised officer involved in a case will attend a court hearing, even if a guilty plea is entered and will be prepared to assist the court where necessary.

12.2 An authorised officer involved in a case will, where appropriate inform the Chartered Institute of Environmental Health or Health and Safety Executive of every conviction and will include such other information as necessary so as to facilitate use by other Local Authorities and enforcing authorities.

12.3 An authorised officer will inform any Lead Authority or relevant agency of all formal action taken and the results of the prosecution and will notify where appropriate, any complainant or witness of the results of legal proceedings.

12.4 In cases of sufficient gravity, for example serious breaches of food safety or health and safety legislation, where circumstances allow, consideration will be given to requesting the Magistrates to refer the case to the Crown Court.

12.5 The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Council will continue to raise the awareness of the courts to the gravity of specific offences brought before them and will encourage the courts to make full use of their powers.

12.6 The Service will always seek to recover the costs of investigation and court proceedings.

13. Accepting Guilty Pleas

- 13.1 Defendants may wish to plead guilty to some, but not all of the charges put forward. Alternatively, they may want to plead guilty to a different, possibly less serious charge because they are admitting only part of the offence. The enforcement officer responsible for the case, in liaison with the officer with delegated power and the Council's Legal and Democratic Services Manager, should only accept the defendant's plea if they think the court is able to pass a sentence that reflects the seriousness of the offence. A guilty plea will never be accepted because it is convenient to do so.
- 13.2 In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.

14. Powers of Enforcement Officers

- 14.1 Enforcement officers have a variety of delegated powers to assist them in carrying out investigations. This can include the power to require answers to questions and the power to enter premises, usually during reasonable hours.
- 14.2 Access to properties is normally achieved by informal means by appointment with the occupier. If, however, there is a need to enter a premises and prior notice would be counterproductive or impracticable, a visit will be made without giving prior notice.
- 14.3 In appropriate circumstances, a Notice of Entry will be served or an application made to the Magistrates Court for a warrant to enter i.e. where access is refused, or the premises are vacant, or where giving notice would be counterproductive or impracticable.

15. Liaison and Working with Regulatory and Other Bodies

- 15.1 Where the Council has a shared or complementary regulatory role with other agencies they will liaise with that agency and inform them of an appropriate incident or occurrence.
- 15.2 External regulatory agencies include (but are not restricted to) the Police Authority, Health and Safety Executive, Other District and County Council services, Utility Providers, Fire Authority, Environment Agency and the Food Standards Agency.

- 15.3 The Service will not generally investigate or enforce where more specific legislation is enforced by another regulatory body or service. However, prompt liaison will be carried out with that other regulatory body to ensure the most efficient and effective outcome through co-ordination so as to avoid inconsistencies or duplication and to ensure that any action is taken by the most appropriate body and for the most appropriate legislative breach.

16. Home Authority Principle/ Lead Authority Partnership

- 16.1 Chester-le-Street District Council is committed to the Home Authority Principle and Lead Authority Partnership and will seek to promote them in accordance with the guidance issued by LACORS and the Health and Safety Executive where required.
- 16.2 The purpose of the scheme is to help businesses avoid contraventions of food and health and safety laws. Officers from the Council will offer advice at source, and encourage any other enforcement authority to work in liaison with the Council on enforcement issues concerning that business. These arrangements, however, can only be made where the head office is located within the district and the company has made an approach for Home or Lead Authority liaison.
- 16.3 When enforcement action is being considered against an organisation that has entered into a Home Authority partnership, officers will contact the home authority prior to the issue of proceedings or service of a statutory notice.

17. Customer Requests for Service

- 17.1 In accordance with the Council's Corporate Priority 1 – 'Customer Excellence', the Service will seek to deliver exemplary standards of customer care when dealing with customers in respect of enforcement matters.
- 17.2 This will be achieved in a number of ways depending on the circumstances of the service request and the Council will seek to investigate all requests for service promptly and in accordance with operational procedures.
- 17.3 Anonymous complaints are commonly received and reasons for wishing to remain anonymous vary. Anonymity does hinder investigation and comprehensive assessment of all relevant facts that are needed to come to a just and informed decision on the matter in many cases. However, all matters will be brought to the attention of the relevant investigating officer for any further action deemed appropriate.

18. Complaints about the Service

- 18.1 The Service undertakes regular customer satisfaction surveys and reviews all comments and complaints it receives regarding the nature and quality of its service and enforcement.
- 18.2 Complaints and expressions of dissatisfaction are seen as opportunities to identify possible weaknesses in service delivery and as a step towards making improvements. Information obtained from the investigation of complaints will be used to examine possible action to improve the service.
- 18.3 The Council has a corporate system for dealing with complaints. Complaints can be registered using the Complaints Procedure by contacting any officer within the Council, in writing, by telephone, via e-mail or face-to-face.
- 18.4 The full Corporate Complaints Procedure can be viewed on the Council's website at: www.chester-le-street.gov.uk and an explanatory leaflet 'Have your say - How to make a *compliment, comment or complaint* about the services we deliver' or can be obtained by contacting the Council in writing, by telephone, via e-mail or face-to-face.

19. Access to the Enforcement Policy

- 19.1. This Policy will be made available on the Council's web site. Hardcopy versions will also be available on request and can be made available in an alternative language or format.

20. How to Contact Us

By telephone

You can use the telephone number on any correspondence we have sent to you, or telephone the Environmental Health Service (0191 3872199) or the Council's switchboard (0191 3871919).

In person

At the Customer Services Reception located in the Civic Centre Mall in Chester-le-Street (Monday to Thursday, 8.30am to 5pm and 8.30am to 4.30pm on Friday)

In writing

You can write to us at the following address:

Environmental Health
Planning and Environmental Health Services
Chester-le-Street District Council
Civic Centre
Newcastle Road
Chester-le-Street
County Durham
DH3 3UT

By fax 0191 3872165

By e-mail envirohealth@chester-le-street.gov.uk

21. Review

This Policy will be reviewed annually.

FOOD SAFETY ENFORCEMENT

1. Introduction

- 1.1 The Council recognises that it has an important role to play in food safety enforcement. It will ensure that sufficient resources are applied to this area of activity to allow them to achieve the standards prescribed in the Food Standards Agency “Framework Agreement on Local Authority Food Law Enforcement” and Codes of Practice.
- 1.2 The Council is committed to ensuring that food and drink intended for human consumption which is produced, stored, distributed, handled or consumed within the District is without risk to the health and safety of the consumer.
- 1.3 Enforcement action, be it verbal warnings, the issue of written warnings, statutory notices or prosecution, is based primarily upon an assessment of the risk to public health. This risk is the probability of harm to health resulting from non-compliance with food safety law.

2. Food Hygiene Interventions and Inspections

- 2.1.1 The Service ensures that food meets the requirements of food hygiene law, including microbiological quality, absence of pathogenic micro-organisms and safety for consumption by delivering a food hygiene interventions programme. A range of prescribed interventions enable flexibility in the approach to action taken to drive up levels of business compliance.
- 2.1.2 The decision on an appropriate intervention will be based on the particular circumstances of the individual food establishment. Interventions will be chosen from full inspections, partial inspections, audit of food premises and sampling visits in order to verify compliance.
- 2.1.3 The Service covers all food business establishments in the district and will concentrate resources on those which present the highest risk. Food businesses identified as low risk will be included in the intervention programme and may be subject to alternative action to full inspection.
- 2.1.4 Emphasis is placed on compliance with food safety management requirements, confidence in management and the track record of performance by the management of the food business. Delivery of the food hygiene intervention programme is defined within the Planning and Environmental Health Service Plan.

2.2 Inspection of New Food Businesses

New food businesses will be considered as being due for inspection on the day the section are notified of, or discover, their existence and an inspection of the business will take place as soon as practicable.

It is not normally the policy of the Council to prosecute businesses for failure to register where there are otherwise no breaches of food safety legislation. However, businesses that continually refuse to register or where there are major breaches will be considered for formal action in accordance with this Policy.

2.3 Inspection of Council-owned Premises

Council-owned food premises will be inspected in accordance with the same procedures that apply to other commercial premises. This will mean that they will be subject to the same risk-rating and inspection interval scheme. Any breaches of legislation will be reported to the appropriate Head of Service and Director.

3. Enforcement Options

3.1 Having considered all relevant information and evidence, the choices for action are:

- To take no action
- To take informal action
- To use statutory notices
- To use simple cautions
- To prosecute
- To use a combination, thereof

3.2 Guidance on enforcement options is contained in the Food Standards Agency Food Safety Code of Practice.

3.3 Compliance should normally be achieved through letters and advice and only in the more serious instances will formal enforcement through serving Hygiene Improvement Notices and Hygiene Emergency Prohibition Notices be considered. Prosecutions are reserved for the most serious offences which either result or could have resulted in serious risk to public health or which represent a blatant disregard by employers, employees or of others in their responsibilities under food safety legislation.

4. Informal Action

- 4.1 Informal action to secure compliance with legislation includes offering advice, verbal warnings and requests for action, the use of letters, and the issue of inspection reports, including those generated on the premises following an inspection.

5. Formal Action

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

6. Formal Action: Statutory Notices

The following statutory notices can be applied in the delivery of the food safety service:

6.1 Hygiene Improvement Notices

- 6.1.1 Hygiene Improvement Notices will be issued in any of the following circumstances or a combination thereof:-

- Where formal action is proportionate to risk
- There are significant contraventions of food safety legislation
- There is a history of non-compliance
- Where an authorised officer has reason to believe that an informal approach will not be successful, such as where confidence in management is low, or where an informal approach has been tried but has not been successful
- Action needs to be taken quickly to remedy serious and deteriorating conditions

- 6.1.2 Hygiene Improvement Notices will relate to the risk to health and will not be issued for minor technical contraventions.

6.2 Hygiene Emergency Prohibition Notices

6.2.1 A Hygiene Emergency Prohibition Notice will only be considered where an imminent risk of injury to health can be demonstrated and where one or more of the following circumstances exist,

- The consequences of not taking immediate and decisive action to protect public health would be unacceptable
- The criteria specified within the relevant statutory Code of Practice concerning the conditions where prohibition may be appropriate are fulfilled
- There is no confidence in the integrity of an unprompted offer made by a proprietor voluntarily to close premises or to cease the use of any equipment, process or treatment associated with the imminent risk
- A proprietor is unwilling to confirm in writing their unprompted offer of a voluntary prohibition

6.2.2 Hygiene Emergency Prohibition Notices must only be signed by authorised competent officers holding appropriate qualifications with relevant experience and who have witnessed the matters to which the notice relates. In all but exceptional cases, a second officer authorised to serve Hygiene Emergency Prohibition Notices shall also witness the offence.

6.2.3 Where the process or treatment under consideration requires the specialist knowledge of a technical expert, authorised officers will seek an expert opinion before taking a final enforcement decision.

6.2.4 The Head of Legal and Democratic Services must be contacted as soon as a decision is reached to serve a Hygiene Emergency Prohibition Notice to enable an application to the Magistrates' Court. It is a requirement that a Hygiene Emergency Prohibition Order is applied for within 3 working days of the Hygiene Emergency Prohibition Notice. Failure to do so will entitle the proprietor of a business to claim compensation.

6.2.5 Consideration must be given to other bodies which should be notified of any formal action and its outcome. Such bodies may include 'home' and 'originating' authorities, the Food Standards Agency and LACORS.

6.3 Voluntary Closure of Food Premises

- 6.3.1 Where any premises, process, treatment or equipment involves an imminent risk of injury to health and consideration is being given to Hygiene Emergency Prohibition Notice action, the proprietor of a business may offer to close voluntarily until the health risk is removed but this will never be prompted.
- 6.3.2 The following criteria must be fulfilled before a voluntary closure agreement is reached:
- There must be no risk of the premises being re-opened without the officer's knowledge and agreement
 - The proprietor must be willing to sign the voluntary closure form
 - The person signing the form, if not the proprietor, must have the authority of the proprietor or employer to agree to such voluntary action
- 6.3.3 The officer when considering Voluntary Closure should realise that there is no legal sanction against a proprietor who reopens for business after offering to close. However, enforcement action against the actual breaches remains available.
- 6.3.4 The officer should explain that in making the voluntary offer to close any right to compensation if a Court subsequently decides to make a Hygiene Emergency Prohibition Order is lost.
- 6.3.5 The officer will monitor the premises or the process or equipment to ensure that the agreement is complied with. The frequency and timing of inspection will be based on the potential for unauthorised resumption of use. This may require monitoring outside of normal office hours.
- 6.3.6 Where the officer receives a request to reopen the business or reuse the process or equipment they will arrange to visit the premises as soon as possible. If the officer considers there to be a continuing risk to health, they must confirm in writing that the voluntary agreement cannot be lifted and remains in place.
- 6.3.7 If the officer agrees that the health risk condition requiring the premises to close or the process or equipment not be used has been removed, he must confirm in writing that there is no longer a risk to health and that the premises are allowed to reopen or equipment to be reused. All correspondence will be retained on the commercial premises file.

6.3.8 In situations where the voluntary agreement is breached officers must assess if the health risk condition remains. If so, Hygiene Emergency Prohibition procedures and other legal proceedings as appropriate in the circumstances should be taken in accordance with in the Enforcement Policy.

6.4 Seizure and Detention

6.4.1 The use of the detention and seizure powers under food safety legislation will only be initiated in accordance with the prescribed action to be taken as outlined in the statutory Food Law Code of Practice.

6.4.2 Detention powers will be used if there is good reason to suspect that food does not satisfy food safety requirements and seizure powers where there is clear evidence of such a failure. Expert advice will always be obtained when using their powers.

HEALTH AND SAFETY ENFORCEMENT POLICY

1. Introduction

- 1.1 The Council recognises that it has a vital role to play in health and safety enforcement. It will ensure that sufficient resources are applied to this area of activity to ensure improving levels of compliance and to make positive moves towards achieving the government's targets.
- 1.2 The Council is committed to protecting the health, safety and welfare of employees and to safeguard others who are not employed at a workplace, but who are affected by the work activities taking place. This will be achieved through the inspection of premises, the investigation of complaints and accidents and the enforcement of relevant health and safety legislation, as well as proactive publicity and information campaigns aimed at specific issues.
- 1.3 Officers will carry out their duties in a fair and equitable and consistent manner. While officers are expected to exercise judgement in individual cases, arrangements will be in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies such as the Health and Safety Executive and Local Authority Unit. Where there may be a shared or complimentary role with other agencies consideration should be given for effective liaison in appropriate circumstances, such as with Council-owned premises.
- 1.4 Where a Lead Authority Partnership arrangement is in place for a particular employer, the lead authority will be contacted in appropriate cases and will be kept advised on the progress and outcome of any enforcement action.

2. Approach to Enforcement

- 2.1 Having considered all relevant information in the light of the HSE Enforcement Management Model and all other evidence, the choices for action are:
 - To take no action
 - To give verbal advice
 - To take informal action
 - To use statutory notices

- To use simple cautions
 - To prosecute
 - To use a combination, thereof
- 2.2 Compliance will normally be achieved through letters and advice and only in the more serious instances should formal action using improvement or prohibition notices be considered. Prosecutions should be reserved for the more serious offences where either result or could result in serious injury or ill health or which represent a blatant disregard by employers, employees or others of their responsibilities under health, safety or welfare legislation.
- 2.3 The Council recognises the importance of achieving and maintaining consistency in their approach to making all decisions in relation to health and safety enforcement action including prosecution. To achieve this, guidance in statutory codes of practice, HELA Circulars and advice offered in relation to the Lead Authority Principle is always considered and followed where appropriate.
- 2.4 The Council as an enforcing authority will seek to secure compliance with the law. Most of its dealings on which the law places a duty (employers, the self-employed, employees and others) are informal involving the offer of information, advice and support, both verbally and in writing. However, formal enforcement mechanisms, as set out in health and safety law including improvement notices where a contravention needs to be remedied; prohibition notices where there is a risk of serious personal injury, simple caution, or ultimately prosecution.
- 2.5 The Council recognises that education, advice and training of people with responsibilities for health and safety in the workplace as being as important as inspection and enforcement. To this end, it has and will continue to adopt initiatives to ensure a better-informed business community and thus reduce the need to rely solely on the regulatory framework for compliance with health and safety responsibilities.
- 2.6 In carrying out its duties the Council will apply the principles of proportionality, transparency, consistency and openness. In particular, the Council recognises the difficulties many small businesses face and will endeavour to engage with them appropriately.

3. Statutory Notices

- 3.1 Before formal action is taken, officers will provide the duty holder an opportunity to discuss the circumstances of the case and if possible, resolve points of difference, unless immediate action is required.
- 3.2 At the time when formal action is initiated, a copy of the leaflet, such as, "What to expect when a health and safety inspector calls" will be given to the duty holder.
- 3.3 Where immediate action is taken, an explanation of why such action will be required will be given at the time and confirmed in writing in most cases.
- 3.4 An Improvement Notice will be issued only when the officer is of the opinion that there is or has been a contravention of one or more of the relevant statutory provisions at the time of the visit, in circumstances that make it likely that the contravention will continue.
- 3.5 Prohibition Notices can be issued to have an immediate or deferred effect. Notice will only be served if the officer is of the opinion that there is, or will be a risk of serious personal injury.
- 3.6 Where there are rights of appeal to an Employment Tribunal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken.
- 3.7 When an Improvement or Prohibition Notice is served, a second copy is enclosed marked for the attention of employee or their representatives.
- 3.8 Officers can consider both prosecution and notice procedures in the following circumstances:
 - In a situation where conditions are so hazardous that even when a prohibition notice is served prosecution may also be merited
 - If the prosecution is taken in the circumstances of an accident, a notice may also be used to enforce the remedy. In these situations, the information should not be laid until after the appeal period of the notice has passed. (21 days) and any appeal has been heard
- 3.9 Simple Cautions will be administered in accordance with the Enforcement Policy. This derives from advice given from the Home Office.

4. Accidents

- 4.1 All accidents reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) at workplaces where the Council are the enforcing authority will be monitored on the Incident Contact Centre (ICC) website.
- 4.2 All accidents will be investigated following departmental operational procedures and with regard to the Health and Safety Executive's Incident Selection Procedure'.
- 4.3 Investigations will be undertaken to identify underlying causes and to learn lessons in order to prevent possible recurrences and to detect legislative breaches. In order to maintain a proportionate response most resources will be devoted to more serious accidents.

5. Work- Related Deaths

- 5.1 Where there has been a breach of law leading to a work-related death, authorised officers will consider whether the circumstances of the case might justify a charge of manslaughter. They will liaise with the police and coroners and the Criminal Prosecution Service (CPS) and where they find evidence suggesting manslaughter is found they will fully co-operate with the police. Where the police or the CPS decides not to pursue a manslaughter case, officers may then proceed to prosecute under health and safety legislation if that is appropriate.

6. The Enforcement Management Model

- 6.1 The Enforcement Management Model was introduced by the HSE to improve transparency and consistency between enforcement bodies. Officers will have regard to the Model which is designed to determine the most appropriate course of action based on the circumstances of a particular case.

PUBLIC HEALTH AND HOUSING ENFORCEMENT POLICY

1.0 Introduction

1.1 The Council recognises its statutory responsibilities for promoting, protecting and enhancing the health, safety, welfare and well being of those who live in or own property within Chester-le-Street District.

1.2 The Service is responsible for enforcing a wide range of statutory provisions relating to housing and environmental conditions affecting health and safety. Our aim is to ensure that residents are protected from sub-standard housing and poor public health conditions.

1.3 The nature and scope of enforcement action applies to all forms of housing. In addition to the Housing Acts, related public health powers can be used and include:

- Regulating standards of repair, amenity and safety in the private rented sector and dealing with housing hazards
- Restoring vacant properties and bringing them back into occupation
- Regulating standards of management, repair, amenity and safety in house in multiple occupation
- Investigation and abatement of public health nuisances in relation to housing. Dealing with statutory nuisances, filthy and verminous premises, accumulations of refuse, securing unoccupied premises where they are open to access or present public health risks, drainage defects and public health infestations
- Investigation and elimination of pests and vermin infesting land and persons as may be appropriate
- Formal declaration of area priorities, such as renewal areas and clearance areas, including any action resulting from the declaration
- The use of compulsory purchase powers

2.0 Enforcement Approach

- 2.1 In exercising their duties and responsibilities, officers will seek to do so in a firm, but fair, open, consistent and helpful way when deciding what action to take to ensure that property owners, tenants, landlords and owner occupiers comply with public health and housing legislation.
- 2.2 We recognise that the majority of property owners, tenants, landlords and owner occupiers want to comply with the law. We will therefore take measures to help these people meet their legal obligations without unnecessary expense while taking action against those who attempt to avoid their responsibilities.
- 2.3 Enforcement officers, by necessity, have considerable discretion in decision making and initiating enforcement action. They will endeavour to ensure compliance with legislation is achieved through informal means, wherever possible. They will strive for a positive working relationship with individuals and businesses and will consider mitigating circumstances when considering appropriate action.
- 2.4 This policy seeks to support the Council's Corporate aims, objectives and strategies with respect to private sector housing, such as improving conditions, increasing the supply of affordable housing and the prevention of homelessness.
- 2.5 In managing the public health and housing enforcement process, the Council is committed to ensure good quality, healthy housing for all, targeting that which presents the greatest risk to health and safety. In order to achieve this priority the Council aims to:
- Work in co operation with owners, agents and tenants through the provision of clear advice, guidance, training, encouragement and the planning of improvements
 - Utilise all appropriate levels of enforcement action to achieve standards in properties found to be jeopardising the health, safety or welfare of individuals and will, where legislation allows, make an appropriate charge for doing so
 - Regularly review its policy, standards, schemes and methods of assessing risk and will in doing so, consider the views of interested parties and individuals. All such policies and standards will be made available to all interested parties
 - Carry out its professional judgement and decision making responsibilities efficiently and effectively in a way which is open, clear and helpful to owners and occupiers and affirms its commitment to achieving consistent, balanced and fair enforcement

- Liaise with other local authorities and consult government guidance to ensure a consistent approach to the interpretation and enforcement of public health and housing legislation
- Engage in partnership working where there is a shared enforcement role and where it is in the public interest to share information concerning regulatory non compliance

3.0 Levels of Enforcement

3.1 The Council is granted extensive enforcement powers to secure improvements in the areas of public health and housing. In order to achieve and maintain consistency the following range of enforcement options will be used as appropriate:

- To take no action
- To serve a Hazard Awareness Notice
- To use an Improvement Notice
- To use an Emergency Remedial Action Notice
- To use an Emergency Prohibition Notice
- To use a Demolition Order
- To declare a Clearance Order

3.2 The Housing Health and Safety Rating System (HHSRS) is a new method for assessing the living conditions in a dwelling. It is a method of assessing the risk to the health and safety of vulnerable occupants to 29 hazards.

3.3 HHSRS is a technical assessment to obtain a score. A Category 1 Hazard means a hazard that, after calculation using the prescribed method, is banded A, B, or C. Category 2 Hazards are those banded D or lower.

3.4 Authority's have a duty to act on all Category 1 Hazards following inspection and assessment. They have a discretionary power to act on Category 2 Hazards.

3.5 In the case of Category 2 Hazards, the powers of Emergency Remedial Action, Emergency Prohibition notices, Demolition Orders and Clearance Areas are not available.

3.6 The enforcement options available are explained below.

4. Hazard Awareness Notice

4.1 This notice is a method of formally notifying the person in control of a property that hazards exist. There is no appeal and the notice is not registered as a land charge.

4.2 Hazard Awareness notices will normally be used to deal with minor hazards. They may be considered to deal with Category 1 hazards where a landlord has given a written undertaking to carry out work in a specified time or to inform an owner occupier of hazards in their property.

4.3 Officers must be able to justify why a more lenient approach has been taken.

5. Improvement Notice

5.1 An Improvement Notice can be served regarding both Category 1 and 2 hazards. It must as a minimum remove all Category 1 hazards and should prevent them recurring for at least 12 months. A notice can relate to more than one hazard, and wherever possible category 1 and 2 hazards in a property will be dealt with in one notice.

5.2 Time scales for remedial works to begin must be 28 days or more from the date of the notice. Different time scales can be set for different hazards in the same notice.

5.3 Any appeal is to the Residential Property Tribunal and must be made within 21 days of the service of the notice.

5.4 Once the notice has been complied with it must be formally revoked in writing. Improvement notices are registered as land charges.

6. Emergency Measures

6.1 Where the officer is satisfied that a Category 1 hazard presents an imminent risk to the health and safety of an occupant or other person, emergency measures may be taken. This could be either:

- Emergency Remedial Action – officers may enter a property with a warrant if necessary, and take action to remove the imminent risk of serious harm. This must be followed by a formal notice within 7 days

- Emergency Prohibition Order – officers may enter a property with a warrant if necessary, to prohibit the use of part of the property. The Order takes effect immediately and copies must be served on all persons involved as soon as possible

7. Demolition Order

7.1 This is a possible course of action where Category 1 hazards are found to exist. In deciding to use this power, the Officer would need to consider the following:

- The availability of accommodation to re-house occupants
- The prospective use of the cleared site
- The impact on the local environment of a cleared site

8. Clearance Area

8.1 The Council may declare a clearance area where they are satisfied that each of the residential buildings in the area contain one or more category 1 hazards or where the residential buildings in the area are dangerous or harmful to the health or safety of the inhabitants as a result of their bad arrangement or the narrowness of the streets. Other non-residential buildings may be included in the clearance area.

9. Powers of Entry

9.1 Authorised officers have the power to enter properties to carry out their duties. A minimum of 24 hours must be given to the owner and the occupiers of the intention to enter.

9.2 If this prior notice is unsuccessful, application may be made to obtain a warrant from a Justice of the Peace. A warrant includes the power of entry by force if necessary.

9.3 A warrant may also be obtained in cases where prior warning is likely to defeat the purpose of entry.

9.4 Officers have the power, by service of notice, to require documents to be produced in connection with its enforcement. The notice will specify the consequences of not complying.

10. Non-compliance

10.1 Where a notice or order has not been complied with, the officer will consider the following options:

- Carry out the work in default
- Prosecution
- Carry out the work in default and prosecute
- Administer a Simple Caution

11. Power to Charge for Enforcement Action

11.1 Reasonable charges can be made as a means of recovering expenses incurred in serving an improvement notice or making a prohibition or demolition order.

12.0 Houses in Multiple Occupation (HMO's)

12.1 Houses in Multiple Occupation in the District will be identified and an assessment of each property under an approved risk assessment process will be conducted. The risk assessment may result in a schedule of works.

12.2 When a complaint is received regarding a House in Multiple Occupation, a similar risk assessment will be carried out.

12.3 Formal action will not be taken in relation to fire precaution works without consulting the appropriate Fire Officer.

13.0 Mandatory Licensing of Houses in Multiple Occupation

13.1 The Council will ensure that premises which require a licence under the provisions of the Housing Act 2004 are properly licensed and comply with licensing conditions in order to protect the health, safety and welfare of the occupants and those with an estate or interest in the property and in order to secure compliance with the relevant legislation. In addition to any enforcement action, a Management Order may also be made.

14.0 Empty Properties

The Council is committed to reducing the number of empty homes, thereby increasing housing choice, reducing homelessness, improving environmental condition, reducing statutory nuisance to neighbouring properties, aiding neighbourhood renewal and reducing the fear of crime.

POLLUTION PREVENTION CONTROL ENFORCEMENT

1.0 Introduction

- 1.1 The Council will strive to secure efficient and effective compliance with the requirements of the Pollution, Prevention and Control Act 2000 in a way which will ensure a high level of environmental protection and minimise the burden to businesses operating prescribed industrial processes.
- 1.2 The primary responsibility for protecting public health and the quality of the environment lies with those who create the risks, and in particular process operators need to recognise their responsibility.
- 1.3 The Council is responsible to administer the various pollution control regimes in respect of industrial installations and processes which operate in the District known as:
 - Local Authority Integrated Pollution Prevention and Control (LA-IPPC) covering installations known as A2 installations
 - Local Authority Pollution Prevention Control (LAPPC) which covers installations known as Part B installations

2.0 Enforcement Approach

- 2.1 Enforcement of local authority pollution prevention control will involve the prior consideration of an application and whether to issue or refuse a permit with conditions. The Council will work together with industry to ensure that the complex procedures from application to compliance with permit conditions and the submission of proposals for up-grading are achieved efficiently and effectively.
- 2.2 Process operators are required to comply with both procedural and operational conditions. Failure to do so in either instance could mean a technical offence has been committed. The likelihood of technical contraventions can be reduced considerably if process operators are made fully aware of, and fully understand, their responsibilities in advance.
- 2.3 The Council will give what assistance it can to inform businesses of their responsibilities, any changes resulting from National Air Quality objectives and to ensure that where possible, issues are resolved prior to the formal stages of making an application for a permit or change before submitting proposals for upgrading.

- 2.4 Following the issue of a permit, this Council will want to ensure that permit conditions are complied with. This will be achieved by a combination of self-regulation and local authority monitoring. Depending on the circumstances, this Council will use a variety of ways to ensure that process operators meet their responsibilities under the legislation and under the terms of their permit.
- 2.5 The extent to which a balance between self-regulation and monitoring will be achieved will depend on a risk assessment which will govern inspection priorities. The attitude and general record of the operator and the robustness of the systems in place to ensure compliance will influence this decision in each case.

3.0 Levels of Enforcement

The following levels of enforcement provide a framework in which this Council will determine their action. The framework of enforcement is relevant whether it be in respect of an application for initial permit, an upgrade, or compliance with permit conditions:

- Informal action
- Enforcement notice
- Suspension notice
- Revocation of permit

3.1 Informal Action

- 3.1.1 The Council will assist businesses through pre-application discussion, giving general oral advice as to standards required and advice in writing on minor defects or minor items of non-compliance requiring attention.
- 3.1.2 Premises inspection will be carried out to ensure compliance following issue of a permit through the application of a risk assessment method. Advice, discussion and requests for further action will be determined during inspections.

3.2 Enforcement Notice

- 3.2.1 Enforcement notices to achieve compliance will be applied where there are more serious breaches of conditions or repeated failure to remedy minor defects or non-compliances.

3.3 Suspension Notice

3.3.1 Suspension notices will be used only where there is concern about imminent risk of serious pollution.

3.4 Revocation of Permit

3.4.1 Revocation of a permit will only be used where other remedies would be considered inadequate or not appropriate to the circumstances.

3.5 Factors considered when deciding on appropriate level of enforcement action

3.5.1 A decision on what level of initial enforcement is necessary will take into account:

- The environmental impact of the offence
- Where the offence or circumstances leading to it are foreseeable
- The intent of the operator
- History of the operator
- Attitude of the operator

LICENSING ENFORCEMENT

1.0 Introduction

1.1 The Council as Licensing Authority is committed to protect the health, safety and welfare of the public, employees and animals who may be exposed to risks from licensed or licensable activities and where appropriate to minimise impact on the environment and community safety.

1.3 The overall aim of the licensing is to ensure that all activities required by statute are licensed and any conditions attached to those licenses are being complied with.

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

- **Regulated entertainment** involving music, singing and dancing, indoor sports, films and plays
- **Sale and supply of all alcohol** whether for consumption on or off the premises
- **Late Night Refreshment** after 23.00hrs
- **Animal health and welfare** covering animal boarding establishments, pet shops, riding establishments, dog breeding, zoos, dangerous wild animals and game dealers
- **Fund Raising Activities** including street collections and lotteries
- **Gambling activities** covering premises licences, permits and registrations
- **Hackney carriage and private hire** vehicles, drivers and private hire operators and proprietors
- **Miscellaneous activities** including sex establishments, scrap metal dealers, street trading, ear piercing, tattooing and acupuncture

2.0 Approach to Enforcement

- 2.1 Authorised officers will exercise the principles of transparency, helpfulness, proportionality, consistency and targeting in deciding on the correct enforcement approach.
- 2.2 Enforcement activities will be targeted towards situations which carry higher risks or where there is or could be a considerable impact as a result of the non-compliance with the law.
- 2.3 Enforcement activities may also be targeted towards individuals who are primarily responsible, who have the greatest responsibility to ensure compliance with the law or who have been the subject of previous enforcement action.
- 2.4 From time to time, the Council will engage in enforcement initiatives which are directed towards issues where there is a need to draw attention to the existence of legislation and its enforcement.
- 2.5 Each case shall be decided on its merits and an informed decision made which is proportionate to the alleged offence and consistent with other similar cases. When an authorised officer witnesses a breach in licensing legislation they are required to make a decision on what correct action should be taken. This will result in a judgement of the most appropriate level of enforcement to take, such as informal action, formal action and prosecution. Enforcement activities shall always be targeted towards situations which carry higher risks to the public or occupiers of the premises.
- 2.6 The most appropriate legislation and associated enforcement agency shall also be considered. Where there is a breach of planning conditions, planning enforcement may be a more suitable method of dealing with the situation. For some licensing functions, other enforcement agencies may choose to take their own enforcement action, for example, under age sales of alcohol, where Trading Standards may be a more appropriate method of dealing with the situations.

3.0 Levels of Enforcement

- 3.1 The level of enforcement will be dependant upon the degree of risk to persons at work, the public and the environment. Enforcement action may be taken as a result of an incident, a complaint or an inspection. There are two distinct facets to enforcement, which may be taken to mean either of the following:

3.1.1 Enforcement for Compliance

- This ensures that the Council have inspection programmes in place for monitoring compliance by businesses and individuals in accordance with legislation affecting their operation
- Inspection programmes may be risk-based while other inspections may be set at pre-determined intervals
- In view of the diversity of requirements under different legislation and guidance, it is not practicable in this document to be prescriptive about the ways in which inspection programmes are organised and monitored. However, programmes or visits will be arranged to satisfy the needs of particular legislation

3.1.2 Enforcement for non-compliance

- The options available for taking action against businesses or individuals for ignoring or otherwise failing to comply with their legal obligations are
 - Written warnings (sometimes known as Informal Notices)
 - Review of Premises Licences
 - Suspension or revocation of a licence/registration

5. **Written warnings**

5.1 Written warnings may result from a service request investigation or a routine inspection visit. They will be used in respect of minor offences or where there is a good record of compliance previously known and there is certainty of a written warning achieving the outcome required.

6. **Review of Premises Licences**

Certain licensing regimes in particular the Licensing Act 2003 and Gambling Act 2005 allow the Licensing authority to review licences. In the case of the Licensing Act this process can only be initiated by a responsible authority or interested party whilst the Gambling Act allows the Licensing Authority itself to request a review. In cases where a legitimate request for a review is received the matter will be referred to the Council's Licensing Statutory Committee.

7. Suspension/Revocation

- 7.1 In some circumstances, the suspension or revocation of a Licence or Authorisation may be used as an enforcement tool.
- 7.2. Whilst this is a legitimate enforcement action, it may involve the removal of livelihood. Accordingly, suspension/revocation is used only as a last resort in serious situations, when other sanctions are either inappropriate, or have been tried without success.

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इस दस्तावेज़ का अनुवाद यदि आपको अपनी भाषा में चाहिये तो कृपया निम्नलिखित नंबर डायल करके संपर्क के लिये अपना संपूर्ण विवरण दें।

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اس دستاویز کا ترجمہ اگر آپ کو اپنی زبان میں درکار ہو تو برائے مہربانی مندرجہ ذیل نمبر ڈائل کر کے رابطے کے لیے اپنی مکمل تفصیل دیجئے۔
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Consultation Responses (Questionnaires)

Consultee	Easy to Understand	Agree with the Council's approach to 'Enforcement'	Reflects the Principles of Good Regulation	Appropriate for the District as it is today and throughout period of transition to Unitary Authority	Strikes a balance between needs of local businesses and needs of local residents	Suggestions for improvement to the Policy	Further Comments
Urpeth Residents Association	Yes	Yes	Yes	Yes	Yes	No	No
Care and Repair, Durham & Chester-le-Street	Yes	Yes	Yes	Yes	Yes	No	No
Councillor Simon Westrip	Yes	Yes It is measured and contextual which is important	Yes I like the emphasis in prevention and education	Yes	Yes	Consideration of all six strands of the equality agenda	No
Chester-le-Street Central residents Association	Yes	Yes	Yes	Yes	Yes	No	No
Councillor Linda Ebbatson	Yes	Yes	Yes	Yes	Yes	No	No
Chester-le-Street Community Association	Yes	Yes	Yes	Yes	Yes	The inclusion of a paragraph reminding individuals and businesses that all have a responsibility to report any	No

Proposed Responses to Consultation Comments

Comment No	Appraisal	Suggested amendment to Policy
1	The Chief Environmental Health Manager and Performance and Improvement Manager were consulted and referred to Section 6.3 of the draft Policy which makes reference to the six strands. A diversity impact assessment will be undertaken to consider these areas.	None
2	The Chief Environmental Health Manager was consulted and referred to Sections 17 “Customer Requests for Service” and Section 18 “Complaints about the Service” of the Policy. Individuals and businesses are requested to put forward requests for service and complaints for investigation.	None
3	The Regulators’ Compliance Code is a statutory code applying to the Environmental Health function. The Code requires regulators to ensure that clear reasons for any formal enforcement action are given to the person or entity against which any enforcement is being taken at the time the action is taken. The Code requires that these reasons should be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress should be explained at the same time.	None

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Chester-le-Street
District Council

REPORT TO: Council

DATE OF MEETING: 24th July 2008

REPORT OF: Director of Corporate Services

SUBJECT: Proposed Countywide Common Early Retirement and Voluntary Redundancy Policy

ITEM NUMBER:

1 Purpose and Summary

- 1.1 On the 1st April 2009 Chester-le-Street District Council will cease to exist. On that date a new single tier unitary council will be established. While the majority of staff will be transferred over to the new unitary authority with TUPE transfer rights, there may be some staff that may be subject to redundancy and early retirement. There will be a need to resolve the futures of such individuals both before and after vesting day. Across the eight councils there are a range of different policies with different benefits. Chester-le-Street's policy is one of the best for employees, the existing County council's being one of the worst for employees. In order to address this, the Joint Implementation Team have agreed a harmonised policy that forms Appendix 1 to this report. This policy is now being considered by all councils in the county and has recently been approved by the County Council. This includes an agreement to extend the policy to 3 years after vesting day.
- 1.2 The purpose of this report is to seek Member's agreement to the adoption of a common and harmonised policy on early retirement and voluntary redundancy to aid transition to the new unitary authority.
- 1.3 The policy has been discussed with the Trade Unions both regionally and locally. In respect of Regional representation the unions would like to see a scheme which has a lifespan further than that proposed and which allows all schemes to be harmonized up to the best existing scheme i.e. Chester-le-Street's. The Unions would also like to see a no detriment clause written into the policy for employees who might suffer detriment. It is understood that the unions understand that councils would be looking for agreement within each authority. The local branch of the GMB have no issues with the proposals.
- 1.4 It is considered that while the proposed policy would not provide the maximum benefits within this council's current policy the council has never actually implemented all the discretionary benefits possible under the policy in the past and therefore there is a limited effect on potential employees 'at risk' that could be accommodated by a no detriment compromise agreement based upon any individual circumstances if

indeed any detriment existed. An assessment has been made on potential 'at risk posts' and there may be a limited number of people in the organisation that could be affected detrimentally as a result of the change. However the County Council have advised that in such circumstances any detriment would be resolved through compromise agreements prior to vesting day. It is considered that there is some benefit to employees in respect of the scheme. It will help re-organisation to move forward on management of change. Those employees who are particularly at risk may be provided with more clarity on their futures with greater security by being in a position to financially manage the transition with the agreement of the County Council. At the moment the County Council may not agree to resolve the futures of those people at risk under the councils existing policy, and particularly should all other councils agree to the harmonised proposal. There are some potentially negative impacts because the proposed scheme is not as good as the councils' existing policy. However as indicated above an assessment of impact has shown that a very small number of employees would suffer detriment and by only a limited amount. As the county council have indicated that they would offer protection to such cases overall it is considered to be of benefit to the council's employees. The council is currently seeking legal advice in terms of when redundancy could take place and the need for compromise agreements to allow redundancy but this relates as much to the council's existing policy as it does to the proposal which is the subject of this report. Should the council approve the policy it will not take effect until a month after the scheme is published.

1.5 Members are recommended to agree to:

- 1) The adoption and publication of the harmonised scheme as proposed subject to an assurance that there will be no detriment to employees as result what would have been the normal implementation of the council's own policy

2. Consultation

2.1 Trade Unions have been consulted regionally through current Programme arrangements with the Trade Unions. Their views are:

- The new scheme should be applied for 5 years after vesting days rather than 2 in the proposed policy; (Three years was agreed by the county council)
- All schemes should be harmonised up to the best in the County, i.e. Chester-le-Street;
- A no detriment clause ought to be written into the policy for employees who might suffer detriment; and
- There should be consistency in application of discretion across the organisations once agreed.

2.2 Trade Unions have been consulted locally. The local branch of the GMB have no issues with the proposals.

3. Transition Plan and People and Place Priority

- 3.1 The Transition Plan, in effect, replaces the Corporate Plan 2007/2010. The Transition Plan includes a schedule of proposals from the previous seven priorities which ought to be and can be achieved in the remaining life of the council.
- 3.2 The council's choice to move towards a single priority of '**People and Place**' priority was considered as part of the budget setting process and forms a firm part of the Transition Plan.
- 3.3 The report proposals have no specific implications to the implementation of the Transition plan and the '**People and Place**' priority. It could however have an impact on employee morale which could positively or negatively affect priority achievement based upon the retention of staff and capacity for us to deliver our priorities. It is felt that these proposals will largely be positive as it will assist in securing the futures of employees affected by potential redundancy should sufficient safeguards to prevent against detriment be implemented.

4. **Implications**

4.1 Financial implications and value for money statement

It is likely that the ultimate cost of early retirement and voluntary redundancy would be met by the new unitary authority. The County Council made provision for early retirement and redundancy in their bid document. Discretionary elements of the policy are subject to affordability. Any exercising of the policy by this council would be based on the likely costs to this councils and its ability to afford them. The acting Section 151 officer has been consulted and supports the report contents and recommendations. The Government Guidance also supports this approach.

4.2 Local Government Reorganisation Implications

The Transition Plan and the '**People and Place**' Delivery Plan is the council's response to the challenges it faces in the final year of its existence. It is considered that the plan commits the council to working within its capacity to provide human and financial resources to help establish the council while delivering 'Business as usual'. It is considered that the Plan meets the guidance and recommendations provided by the Audit Commission set out in their Annual Audit and Inspection Letter. This report specifically arises from the need to harmonise early retirement and voluntary redundancy policies as a direct result of Local Government re-organisation.

4.3 Legal

All councils are considering the revised policy. It is not felt that there are any specific legal issues to draw to the attention of members. The council is currently seeking legal advice in terms of when redundancy could take place and the need for compromise agreements to allow redundancy but this relates as much to the council's existing policy as it does to the proposal which is the subject of this report. The Head of Legal and Democratic Services has been consulted and supports the contents of the report and recommendations

4.4 Personnel

How the council supports its employees through the transition process is a key part of Transition Plan. Clearly the report will have an impact on the rights and conditions of employees of the council.

4.5 Other Services

The implementation of any agreed policy will have an impact and relevance to all services.

4.6 Diversity

There are no specific diversity issues in respect of the report..

4.7 Risk

There are clear risks to the organisation in failing to continue to maintain and improve on its progress in its remaining year. The council remains committed to improving its services although it faces difficult capacity challenges through the transition period. The council will be undertaking a strategic risk assessment once the delivery plans in relation to '**People and Place**' have been developed. A key risk to delivery of business as usual next year is the capacity of the organisation to deliver. The council is faced with depleting human resources and account will be taken as to the ability of the council to deliver by regularly reviewing the strategic planning documents. The timelining and cross cutting work currently being undertaken is intended to help evaluate the councils ability to deliver on its '**People and Place**' priority while continuing to deliver improving services to communities within the District. Securing the futures of those affected by potential redundancies should help retain such individuals within the organisation.

4.8 Crime and Disorder

It is not felt there are any specific implications of the report on Crime and Disorder.

4.9 Data Quality

Every care has been taken in the development of this report to ensure that the information and data used in its preparation and the appendices attached are accurate, valid, reliable, timely, relevant and complete. The council's Data Quality Policy has been complied with in producing this report.

4.10 Other Implications

The report does not relate to a key decision. It is considered that the information will be communicated to employees and relevant stakeholders by inclusion on the web-site.

5. **Background, Position Statement and Options Appraisal**

5.1 As a result of Local Government Reorganisation Chester-le-Street will cease to exist as a council from April 2009. The Durham County Council unitary proposal document states that savings will be achieved via 139 staff reductions in specific areas prior to

the transfer date (1 April 2009). It assumes that these reductions will consist of 84 redundancies and 55 early retirements. One-off transitional costs include a budgeted £5.455m for early retirements and £1.284m for redundancy costs. These sums are based on an average service of 20 years and have been calculated via the application of Durham County Council's own Early Retirement/Voluntary Redundancy (ER/VR) Policy. It is not yet clear whether this is an accurate reflection of actual numbers until detailed work is carried out on structures. A key message is that the majority of staff will transfer to the new unitary with TUPE protection of terms and conditions. However it is also clear that duplication will exist in a number of posts as the appointment processes take place and that redundancy situations will arise on a phased basis.

5.2 This initially raised the question of whether ER/VR for these posts should take place under the existing employer's scheme, or whether an attempt should be made to harmonise discretions across the authorities. Research has been undertaken into the implications of these options, the findings of which are discussed below. Subsequently, in June 2008, the Government has published guidance on staffing issues related to Local Government Restructuring. This document encourages Implementation Executives to consider a co-ordinated early retirement and voluntary redundancy scheme for redundancies and early retirements occurring prior to the transfer date. The final decision on approving an early retirement and voluntary redundancy application would remain with the employing authority, however, the Government expects all authorities to co-operate fully, if it is decided that a harmonised scheme is appropriate.

5.3 All Councils within Durham have implemented their own scheme outlining how they will deal with cases of redundancy and early retirement. Many issues associated with early retirement and voluntary redundancy are statutory, for example, the age at which an employee can access their pension. Therefore all the schemes are similar in these respects. The key differences between the schemes are how each authority has implemented their discretion to enhance the payment made to an employee retiring early or being made redundant. Chester-le-Street's policy is one of the best for employees, the existing County council's being one of the worst for employees

5.4 The following table demonstrates the discretions of each authority and their cost relativity, with 100% representing the most costly scheme. These figures are based on 14 fictional example cases. Costs of ER/VR vary according to different personal factors such as gender, age, length of service and current grade. Therefore the figures are purely illustrative. However, additional calculations, provided by the Head of Pensions using a wider basis of actual cases, broadly supported the cost relativity of schemes. It should be noted that assumptions have been made in respect of the discretions exercised by each authority's scheme.

Table 1: Current ER/VR Scheme Discretions

Authority	Added Years (Max)	Discretionary (multiplier)
Chester-le-Street	5	3.467
Derwentside	Payment convert	3.4

Wear Valley	0	3
Durham City	5	1
Easington	0	2.4
Teesdale	Payment convert	2.4
Durham County (SCP 41 redundancy cap)	4	2
Sedgefield	3	2

5.5 The table shows that there is a disparity of discretions across the authorities. If a harmonised scheme is not developed, authorities will be required to deal with early retirement and voluntary redundancy cases according to their existing scheme. Using a variety of different schemes to deal with early retirement and voluntary redundancy cases related to Local Government Re-Organisation could be challenged on the grounds of fairness and equality, and may lead to adverse employee and industrial relations. In addition, without any central agreement or control over which discretions are used, authorities will be able to exercise their rights to alter their schemes. This could lead to costs over and above those laid out in the original proposal and place strain on the pension fund. It could also lead to an increase in average discretions across the authorities, which may have implications for the new policy adopted by the unitary authority. Therefore it is reasonable that a harmonised scheme be developed and implemented by all authorities.

5.6 The potential problems of retaining existing policies could be avoided by creating a new policy to be adopted by the County and all districts prior to the transfer date. This policy would guide all authorities on the application of early retirement and voluntary redundancy and ensure common discretions were applied. However, the final decision on approving an early retirement and voluntary redundancy application would remain with the employing authority. As an early retirement and voluntary redundancy policy will need to be produced for the new authority in the future, this option merely brings this task forward and could ensure fairness and consistency, while saving effort in the long-term. The main issue associated with developing a harmonised scheme is implementing discretions which are both fair and affordable. A series of options have been considered by the Joint implementation Team. These have been costed, based on the 14 fictional example cases and average current discretions across authorities. The preferred option is a one which gives a maximum discretion of up to 5 added years and a multiplier on redundancy payments of 2.75.

5.7 In terms of comparison to Chester-le-Streets Scheme the following differences in areas of discretion are of note:

- Chester-le-Streets Policy allows a redundancy payment of up to 104 weeks salary in exceptional circumstances compared with the proposed policy of a maximum of only 82.5 weeks. However it is noted that this level of discretion has never been exercised since the policy was approved and the maximum agreed previously has been 66 weeks well within the maximum of the proposed policy. It is accepted however that LGR has been imposed upon the Authority and is indeed a major reorganization. It is considered that only a

limited number of Chester-le-Street employees could be adversely affected by this based upon our past practice and current knowledge of potential at risk areas.

- The proposed policy proposes a redundancy payment of 2.75 times the statutory redundancy payment. Worked out on a maximum of 104 weeks this would be equivalent to a multiplier of 3.467 in the Chester-le-Street Policy. However, as indicated above discretion to this level has never been exercised
- As now proposed the policy will be in place for 3 years after vesting day which will afford some protection from staff (although the unions would prefer 5 years)
- There is a Waive right to notice in the policy. The council has in the past made payments in lieu of notice.
- There is difference in the approach to added years. The proposed policy has a clearer sliding scale based on years' service (see paragraph 2.3 of Appendix 1) whereas the councils policy sets out percentage discretionary payments based on bands of years' service.
- Both schemes are based on an actual weeks pay with no cap (the County Council's existing scheme has a salary cap)

5.8 It is considered that while the proposed policy would not provide the maximum benefits within this council's current policy the council has never actually implemented all the discretionary benefits possible under the policy in the past and therefore there is a limited effect on potential employees 'at risk' that could be accommodated by a no detriment compromise agreement based upon any individual circumstances if indeed any detriment existed. An assessment has been made on potential 'at risk posts' and there may be a limited number of people in the organisation that could be affected detrimentally as a result of the change. However the County Council have advised that in such circumstances any detriment would be resolved through compromise agreements prior to vesting day. It is considered that there is some benefit to employees in respect of the scheme. It will help re-organisation to move forward on management of change. Those employees who are particularly at risk may be provided with more clarity on their futures with greater security by being in a position to financially manage the transition with the agreement of the County Council. At the moment the County Council may not agree to resolve the futures of those people at risk under the council's existing policy, and particularly should all other councils agree to the harmonised proposal. There **are** some potentially negative impacts because the proposed scheme is not as good as the council's existing policy. However as indicated above an assessment of impact has shown that a very small number of employees would suffer detriment and by only a limited amount. As the county council have indicated that they would offer protection to such cases overall it is considered to be of benefit to the council's employees. The council is currently seeking legal advice in terms of when redundancy could take place and the need for compromise agreements to allow redundancy but this relates as much to the council's existing policy as it does to the proposal which is the subject of this report. Should the council approve the policy it will not take effect until a month after the scheme is published.

5.9 It is considered that the council ought to progress towards a harmonized scheme. It is felt that the option under consideration is a reasonable one. It is expected that the County Council should provide assurances that anyone who could potentially suffer detriment as a result of the normal implementation of the policy will be compensated

to avoid such detriment occurring. In such circumstances it is considered that the harmonized scheme as proposed ought to be supported and adopted by the council

6. Recommendations

6.1 Members are recommended to agree to:

- 1) The adoption and publication of the harmonised scheme as proposed subject to an assurance that there will be no detriment to employees as result what would have been the normal implementation of the councils own policy

7. Background Papers/Documents referred to

- 7.1 Transition Plan March 2008
- 7.2 Corporate Plan 2007/2010 – June 2007
- 7.3 Local Government Restructuring Staffing Guidance
- 7.4 Chester-le-Street Management of Change Document

Ian Forster
Director of Corporate Services
1st July 2008
Version 2.0

Ian Forster Tel 0191 3872130 e mail IanForster@chester-le-street.gov.uk

Appendix 1

Strategic Human Resources

Early Retirement Policy and Procedure

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1. Policy Outline

1.1 What is the policy about?

The purpose of this document is to outline the Council's policy on early retirement, with or without redundancy. The key objective is to manage in a business orientated way issues related to the rationalisation of services and staff reductions, and to minimise the extent to which the Council has to resort to compulsory redundancy.

1.2 Who does the policy apply to?

This policy covers all employees except for school-based employees where schools need to give consideration to their own procedures. Consideration by school governing bodies will be made in the context of the Council's policy on the funding of severance cases in schools.

1.3 Confidentiality

All information will be handled sensitively and used only for its proper purpose.

Under the Data Protection Act 1998 individuals have the right to see their own personal data held subject to the rights of confidentiality of any third parties involved in that information.

1.4 Publicising/distribution of the policy

A copy of this policy is available from key personnel within the services and will be made available to employees on request. A copy can also be viewed via the Intranet.

New employees will be informed of the existence of this policy in recruitment and induction information.

1.5 Reviewing the policy

The Strategic Human Resources Policy Team will keep the operation of this policy under review and will make such changes to the policy as deemed appropriate following necessary consultation with the trade unions.

1.6 Equality and diversity

One of the primary values that underpins everything we do while working towards this statement is that we promote equality of opportunity. This applies both in the delivery of our services and in relation to our employment practices. We are committed to including equalities in everything we do. This includes the elimination of unlawful discrimination, promoting diversity as a positive force and valuing & celebrating our diverse workforce and community.

If necessary, an equality impact assessment will be carried out in the preparation of this policy and the assessment will be reviewed on an ongoing basis.

1.7 Alternative formats

Where any alternative format is required, any initial enquiry should be made through your line manager or by following the instructions below:

If you need this information summarised in another language or format such as Braille or talking tape, please call the number below.

إذا اردت معرفت ملخص هذه المعلومات باللغة العربية اتصل علي الرقم التالي

Arabic

আকারে এই তথ্যটি পেতে নিচের নম্বরে ফোন করুন:

Bengali

假如您需要這份資料的中文摘要，請致電下面的號碼。

Chinese

اگر آپ کو یہ معلومات اردو میں درکار ہیں تو اس نمبر پر کال کیجیے۔

Urdu

Jezeli potrzebujesz streszczenia tych informacji w jezyku polskim zadzwon prosze na ponizszy numer

Polish

ਜਾਂ ਤੁਸੀਂ ਇਹੁ ਖਬਰੁ ਦਾ ਨਿਚੋੜ ਪੰਜਾਬੀ ਵਿਚ ਚਾਹੁੰਦੇ ਹੋ, ਤਾ ਕਿਰਪਾ ਥੱਲੇ ਦਿੱਤੇ ਹੋਏ ਨੰਬਰ ਤੇ ਸੰਪਰਕ ਕਰੋ ।

Punjabi

यदि आप यह जानकारी का संक्षेप हिन्दी में चाहते हैं, तो कृपया निचे दिए हुए नम्बर में सम्पर्क करें ।

Hindi



(0191) *** ****

1.8 Further information

If you would like any further advice on this document you can contact the Strategic Human Resources Employee Relations Team on either 0191 *** **** or 0191 383 **** (Internal - Ext. ****/****).

2. Procedure

2.1 Powers

The Council will use where appropriate the powers available to it under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England & Wales) Regulations 2006 (known here as the Compensation Regulations) and the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, the Local Government Pension Scheme (Administration) Regulations 2008 and the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (all as amended) (known here collectively as the LGPS Regulations).

2.2 Coverage of the policy and procedure

This policy and procedure covers both types of early retirement proposal that the Council as an employer has to deal with. These are early retirement on the grounds of redundancy or efficiency, and those that are initiated by the employee.

2.3 Redundancy or efficiency grounds

Proposals involving voluntary redundancy will be made where this is the only reasonable alternative to compulsory redundancy, i.e. where attempts to find alternative employment of a similar and appropriate type have been exhausted. For proposals based on redundancy the Head of Strategic Human Resources would need to confirm that a post is redundant and that this post is deleted from the establishment of the service.

Redundancy for the purposes of the LGPS Regulations includes retirement in the interests of efficiency, and, where it is confirmed that these circumstances are met, accrued pension benefits under the LGPS Regulations are payable immediately.

In these circumstances, in order to provide sufficient encouragement for employees to volunteer for redundancy, the following benefits will be offered, with the essential proviso that each proposal results in clear and demonstrable savings to the Council after taking into account all the costs involved (in some circumstances, in order to achieve a saving, a lesser offer may be made):

- A voluntary redundancy payment calculated by reference to the redundancy payment matrix under the Employment Rights Act 1996. This provides for a payment based on 30 weeks statutory redundancy pay, and the Council will exercise its power to use actual pay in the calculation of weekly pay. The voluntary redundancy payment would be inclusive of the statutory redundancy sum that would otherwise have been paid in the event of a redundancy; and
- For those employees who are members of the LGPS, augmentation of service (added years) in accordance with the scale below based on the aggregate local government service of the employee.

Years of Local Government Service	Added Years
0 - <5	0
5 - <10	1
10 - <15	2
15 - <20	3
20 - <25	4
25 and over	5

- Normally in circumstances where sufficient volunteers for redundancy cannot be obtained following an offer of voluntary redundancy together with augmentation of pension under the Local Government Pension Scheme Regulations, or where such an offer is not likely to be effective or cannot be made, discretionary compensation for redundancy may be payable. The Council may exercise its discretion to pay compensation not exceeding a sum equivalent to 82.5 weeks actual pay.
- The calculation of the number of weeks of actual pay in each case would be based on the redundancy payment matrix under the Employment Rights Act 1996 (also used in the calculation of voluntary redundancy payments as above). However, in the discretionary compensation calculation, the number of weeks derived from this table would be multiplied by 2.75, and then applied to unrestricted actual weekly pay.
- Discretionary compensation if awarded would be inclusive of any statutory or voluntary redundancy payment, and is only payable where there is no proposal to augment (award added years to supplement) pension under the LGPS.

If an employee under notice of redundancy receives an offer of employment in local government or a related employer starting work within 4 weeks of leaving Council employment they are not entitled to a redundancy payment or an award of added years under this Scheme. Related employers are as set out in the Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999 (as amended).

2.4 Applications initiated by the employee

A small number of early retirement requests arise on compassionate grounds or where an employee has other personal reasons to retire early. As the employees concerned initiate these, they usually do not involve efficiencies for the service and therefore normally do not involve savings. It is the Council's policy that these applications are considered individually on merit.

Where there are no savings for the Council it is not possible to consider compensation payments or added years. There is often, however, depending on the circumstances of the applicant, a cost to the pension fund of allowing early release of pension, borne ultimately by the employer, and so each case needs to be carefully justified and considered.

Where pension benefits would potentially be reduced because the applicant is under age 65 and does not fully meet the age and service criteria required to be eligible for unreduced benefits under the LGPS Regulations, applications may be considered with the option of waiving on compassionate grounds the potential reduction, under the provisions of the LGPS Regulations, but this would add to the cost of the proposal.

Applications made by employees on compassionate grounds or otherwise must be backed by supporting evidence, including medical evidence where appropriate, and these will not proceed for decision until such evidence is made available.

2.5 Reporting and decision making

In accordance with Audit Commission guidance, the Early Retirement Sub-Committee of Human Resources Committee determines each application for early retirement, with or without redundancy. Each application is considered on its merits.

In cases involving redundancy and efficiency, proposals are unlikely to be agreed unless there are clear and demonstrable savings arising from service rationalisation and/or a reduction in the number of posts. There needs to be net savings from each proposal, after allowing for consequential costs and the costs of severance. The cost of severance may include:

- Initial costs, i.e. the cost of redundancy or of discretionary compensation in lieu of redundancy and added years.
- Annual costs, i.e. the annualised costs, calculated actuarially, of early access to pension and of added years.

In accordance with good practice, together with a statement of the annual costs and savings arising from a proposal, the estimated payback period will be reported in each case. This represents the predicted time it will take for net annual savings to repay the initial costs of termination, calculated in years. Each case should normally report a payback period of less than three years, except in exceptional circumstances where a payback period of up to five years may be allowed.

2.6 Eligibility

The following eligibility restrictions apply, based on existing legislation:

- Applicants must have two years continuous local government service before a redundancy payment or a related discretionary compensation payment can be made.
- An augmentation (added years) award cannot be made unless applicants are members of the LGPS.
- Applicants who are under 50 cannot have pension benefits released (but they can be awarded added years, which would be deferred along with accrued pension). Applicants

who are under 55 can only have pension benefits released if the leaving date is before 1 April 2010 and they joined the LGPS before 1 April 2008.

2.7 Notice waiver

Where any early retirement is agreed in accordance with this Scheme, either on the basis of redundancy or efficiency, or where it is has been initiated by an employee, it is on condition that the employee so volunteering for early retirement will waive her/his rights to the notice period stated in her/his contract of employment, and agree to a termination date set by the Council.

2.8 Relevant definitions

- The definition of 'weekly pay' in the calculation of voluntary redundancy and discretionary compensation payments will be as laid down in the Employment Rights Act 1996, but with the modifications set out in the Compensation Regulations.
- The definition of 'continuous local government service' in the calculation of voluntary redundancy and discretionary compensation will be as laid down in the Redundancy Payments (Continuity of Employment in Local Government, etc) Modification Order 1999.
- The definition of 'local government service' in the calculation of augmentation of service (added years) will be service with all employers specified in the Redundancy Payments (Continuity of Employment in Local Government, etc) Modification Order 1999. Service will be aggregated and does not need to be continuous for this purpose.

3. Statement of policy on discretions which may be granted under the Compensation Regulations 2006

3.1 Purpose

The above regulations require the Council to formulate, publish and keep under review the policy that it maintains in the exercise of its discretionary powers under paragraphs 5 and 6 of the Regulations.

This policy document explains how the Council will exercise the discretions available to it under these regulations effective from 1st October 2006.

The objective is to properly manage the severance arrangements for employees in circumstances where voluntary redundancy and early retirement in the interests of the efficiency of the service need to be considered.

In formulating the statement below, regard has been taken of the need to ensure that the policy is workable, affordable and reasonable.

3.2 Eligibility

All Council employees who are Local Government Pension Scheme members, or who would be but for a relevant disqualification (as defined in the regulations), and whose employment is terminated by reason of redundancy, are eligible to be considered for benefits in accordance with the policy discretions set out below.

Where there are clearly demonstrable savings arising from an efficiency proposal that does not involve redundancy, employees may also be entitled to compensation in these circumstances, but each case would be considered on its merits.

3.3 Power to increase statutory redundancy payments

Entitlement to a redundancy payment under the Employment Rights Act 1996 is subject to a ceiling on the weekly pay element of the calculation. In cases of voluntary redundancy the County Council will exercise its discretion to base entitlement on actual salary.

In circumstances of voluntary redundancy, payment would normally be calculated on the basis of weekly pay; continuous local government service up to a maximum of 20 years; and a maximum of 30 weeks pay in accordance with the statutory redundancy pay table. The voluntary redundancy payment would be inclusive of the statutory redundancy sum that would otherwise have been paid in the event of a redundancy.

3.4 Discretionary compensation for redundancy

The Council will exercise its power to pay discretionary compensation for redundancy in appropriate cases. This will normally be in circumstances where sufficient volunteers for redundancy cannot be obtained following an offer of voluntary redundancy together with augmentation of pension under the Local Government Pension Scheme Regulations, or where such an offer is not likely to be effective or cannot be made.

In order to provide sufficient encouragement for volunteers for redundancy or where termination would be in the interests of the efficiency of the service, the Council may exercise its discretion to pay compensation not exceeding a sum equivalent to 82.5 weeks actual pay.

The calculation of the number of weeks actual pay in each case would be based on the statutory redundancy table (also used in the calculation of voluntary redundancy payments). However, in the discretionary compensation calculation, the number of weeks derived from the statutory redundancy table would be multiplied by 2.75, and then applied to actual weekly pay.

Discretionary compensation is inclusive of any statutory redundancy payment, and is only payable where there is no proposal to augment (award added years to supplement) pension under the Local Government Pension Scheme Regulations.

3.5 Notice waiver

Where any voluntary redundancy or discretionary compensation payment is agreed in accordance with this policy statement, it will be on condition that the employee volunteering for severance will waive rights to the notice period stated in the relevant contract of employment.

3.6 Determination of severance proposals

All proposals for severance arrangements involving County Council employees, where voluntary redundancy or discretionary compensation payments are being recommended, will be determined by the Council's Early Retirement Sub-Committee of the Human Resources Committee.

3.7 Definition of 'weekly pay'

The definition of 'weekly pay' in the calculation of voluntary redundancy and discretionary compensation payments will be as laid down in the Employment Rights Act 1996, but with the modifications set out in the Discretionary Compensation Regulations 2006 referred to in the title of this document.

3.8 Definition of 'continuous local government service'

The definition of 'continuous local government service' in the calculation of voluntary redundancy and discretionary compensation will be as laid down in the Redundancy Payments (Continuity of Employment in Local Government, etc) Modification Order 1999.

4. Exercise of Employer Discretion under the Local Government Pension Scheme

4.1 Regulation 12: Power of employing authority to increase total membership of active members and Regulation 13: Power of employing authority to award additional pension

Decisions regarding the use of regulations 12 and 13 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended) will be made on the merits of each case.

The Council will only consider increasing total membership ('augmentation') under regulation 12 either:

- As part of an exercise involving the potential voluntary redundancy of scheme members and/or
- On occasion where staff rationalisation is being carried out in the interests of the efficiency of a service the Council provides.

Augmentation will only be granted where the County Treasurer and the Director of Corporate Services deem it to be in the interests of the Council and there are sound financial reasons for doing so.

The Council will only consider awarding additional pension under regulation 13 where an individual voluntarily accepts a reduced redundancy payment and the cost of awarding the additional pension does not exceed the amount of the reduction.

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