

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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