

North East Derbyshire District Council

Cabinet

3 August 2016

Enforcement Policy (Joint Environmental Health Service) – May 2016

Report of Councillor M Gordon, Portfolio Holder with Responsibility for Environment

This report is public

1. Purpose of the report

- 1.1. To recommend for approval a revised Enforcement Policy for the Joint Environmental Health Service which updates the Council's existing Statement of Enforcement Policy (2007).
- 1.2. This revision is required by The Regulators' Code which was made under the Legislative and Regulatory Reform Act 2016. The Code aims to reduce regulatory burdens and encourages regulators to provide support to compliant business and growth through an open and constructive relationship between regulators and those they regulate. The Council must have regard to this Code when developing policies and operational procedures.
- 1.3. The primary purpose of environmental health is to protect public health and the Code does not detract from this core purpose but seeks to promote proportionate, open, consistent and targeted regulatory activity.

2. Report Details

- 2.1. The Policy has been developed from the existing Statement of Enforcement Policies in place for both Bolsover and North East Derbyshire District Councils.
- 2.2. It details the enforcement principles used by the Councils in determining when enforcement action will be taken. The action may be against commercial businesses or an individual member of the public.
- 2.3. The Policy outlines the main government guidance which is followed in arriving at a decision. It also provides an outline of the possible enforcement options available to the Councils. Most of the content is legal guidance that has to be included, since environmental health have law enforcement powers and as such in executing those duties they must follow the same processes as the Police, e.g. when collating evidence and interviewing offenders under caution.

- 2.4. The Policy covers all the regulatory services in environmental health such as food hygiene and health and safety, housing and pollution, licensing and environmental enforcement and outlines the hierarchy of options available to Officers ranging from advice and guidance, statutory notices, fixed penalty notices, revocation of licences right through to prosecution. As a general rule and where there are options, the level of enforcement is expected to be the minimum necessary to achieve a satisfactory solution subject to public interest considerations.
- 2.5. The Policy explains the evidential test and the public interest test and how all evidence has to satisfy these tests and how enforcement actions are determined.
- 2.6. The Policy meets a service plan target for environmental health and has been developed following wide consultation with internal and external stakeholders and with the relevant portfolio Member.
- 2.7. The main changes to the policy are:
- Inclusion of the requirements of The Regulators' Code (see section 4.7 part B);
 - Changes to formatting and number referencing (to allow for better navigation of the document);
 - An updated equalities statement, contents page and scope;
 - Corporate Plan aim update.
- 2.8. When preparing the Enforcement Policy the following information was considered:
- Government law and guidance;
 - Council's Corporate Plan 2015-19;
 - Responses from the consultation with all stakeholders;
 - Comments from Scrutiny Committee;
 - Comments from Strategic Alliance Management Team;
 - Regional and national best practice.

3. Conclusions and Reasons for Recommendations

- 3.1 The policy has been designed to meet the primary purpose of environmental health which is to protect public health and has been revised to comply with The Regulators' Code, which does not detract from this core purpose but seeks to promote proportionate, open, consistent and targeted regulatory activity.

4. Consultation and Equality Impact

- 4.1 An extensive internal and external consultation exercise has been undertaken and the Policy has been developed in conjunction with relevant managers and staff. It has been considered by the relevant Scrutiny Committee, Strategic Alliance Management Team and Cabinet Member for the Environment. All responses have been considered and included in the final document where appropriate.
- 4.2 An Equality Impact Assessment has been completed for the Policy and the Policy sets out the approach that the Council will take to deal with enforcement in line with the Council's Equality Scheme.

5. Alternative Options and Reasons for Rejection

5.1 There are no other options to consider as the Councils must have in place an enforcement policy for the environmental health service to outline the approach that will be taken in the delivery of its regulatory role.

6. Implications

6.1 Finance and Risk Implications

6.1.1 The Policy aims to provide a framework to ensure expectations can be managed and effectively delivered where appropriate and in line with our statutory duties. Without such a policy the Council could be open to risk of formal complaints, legal challenge and ombudsman intervention

7. Legal Implications including Data Protection

7.1 None arising from this report.

8. Human Resources Implications

8.1 None arising from this report.

9. Recommendations

9.1 That Cabinet approves the Enforcement Policy (Joint Environmental Health Service) May 2016.

8. Decision Information

Is the decision a Key Decision? (A Key Decision is an executive decision which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	No
Is the decision subject to Call-In? Only Key Decisions are subject to Call-In)	No
District Wards Affected	All
Links to Corporate Plan priorities or Policy Framework	Supports the Council's Corporate aim of supporting our communities to be healthier, safer, cleaner and greener (July 2015)

9. **Document Information**

Appendix No	Title	
Appendix 1	Enforcement Policy (Joint Environmental Health Service) May 2016.	
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)		
None		
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AGIN 14 (CAB 0803) Enforcement Policy/AJD

Enforcement Policy (Joint Environmental Health Service)

May 2016

CONTROL SHEET FOR ENFORCEMENT POLICY – (JOINT ENVIRONMENTAL HEALTH SERVICE)

Policy Details	Comments / Confirmation (To be updated as the document progresses)
Policy title	Enforcement Policy – (Joint Environmental Health Service)
Current status – i.e. first draft, version 2 or final version	Final version
Policy author	Environmental Health Manager
Location of policy – i.e. L-drive, shared drive	S:Drive/Environmental Health/Strategy and Policy docs
Member route for approval	Strategic Alliance Joint Committee Executive (BDC) Cabinet (NEDDC)
Cabinet Member (if applicable)	Cllr Murray-Carr (BDC) Cllr Gordon (NEDDC)
Equality Impact Assessment approval date	14/07/15
Partnership involvement (if applicable)	Full internal and external consultation undertaken
Final policy approval route i.e. Executive/ Council /Planning Committee	SAMT, Executive (BDC) Cabinet (NEDDC), Scrutiny (NEDDC and BDC)
Date policy approved	
Date policy due for review (maximum three years)	May 2019
Date policy forwarded to Customer Service and Improvement (to include on Intranet and Internet if applicable to the public)	

Bolsover District Council and North East Derbyshire District Council are committed to equalities as employers and in delivering the services it provides to all sections of the

community. Both Councils believe that no person should be treated unfairly and is committed to eliminating all forms of discrimination, advancing equality and fostering good relations between all groups in society.

	
<i>We speak your language</i>	
Polish <i>Mówimy Twoim językiem</i>	
French <i>Nous parlons votre langue</i>	
Spanish <i>Hablamos su idioma</i>	
Slovak <i>Rozprávame Vaším jazykom</i>	
Chinese 我们会说你的语言	
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1.0 INTRODUCTION

Officers are required to regulate activities across a wide range of businesses and in their professional dealings with every type of individual. Full regard will be had to the different abilities that are encountered and to the importance of the education, advice and support that they themselves are able to give to achieve compliance. Clear and consistent enforcement also helps businesses to compete fairly.

The Council recognises that most business owners, employees and the public want to comply with the law. Therefore, wherever possible, officers will seek to find solutions, which are arrived at by agreement and co-operation and will keep in mind that 'prevention is better than cure'.

Officers will take account of this policy when making enforcement decisions. It will be used alongside additional guidance covering specific areas of work.

The aim of the environmental health service is the protection of people at work, the general public and the environment from harm caused by failure to comply with the safeguards provided for in law. Whilst at the same time Officers will balance the need to provide the necessary support and advice to enable economic growth.

There will be circumstances in which enforcement is unavoidable and the Council does not shrink from using its full legal powers, including prosecution and/or injunction, where it is necessary to do so.

2.0 SCOPE

This document outlines the Enforcement Policy for the Joint Environmental Health Service for North East Derbyshire District Council and Bolsover District Council. It falls under the scope of the Council's Corporate Enforcement Policy which is an overarching document setting out the general approach to Councils enforcement duties across a range of services.

This policy covers all the regulatory areas of the Joint Environmental Health Service including food safety, health and safety, environmental protection, housing and pollution, licensing and environmental enforcement.

This policy will also cover the activities of other authorised officers of the Council who are involved in the regulatory duties of environmental health and/or assist with law compliance e.g. the issue of Fixed Penalty Notices.

3.0 PRINCIPLES

This policy supports the Councils corporate plan aim of supporting our communities to be healthier, safer, cleaner and greener (July 2015).

4.0 STATEMENT

There are two distinct arms to enforcement of legislation, which may be taken to include either of the following:

4.1 Measures To Ensure Compliance

This ensures that the Council has programmes in place for monitoring compliance by businesses and individuals with the legislation that affects them.

For example, there will be intervention programmes in place for food premises, workplaces, authorised processes and some private rented accommodation.

An intervention may include an inspection, a letter, organised seminar, mail shot guidance, telephone contact or business questionnaire.

Many such programmes are based upon risk while others require inspections at pre-determined intervals, or set annual targets for the number of inspections to be made.

The environmental health service has in place the means to arrange programmes or visits, which will satisfy the needs of their own particular legislation and monitoring mechanisms.

Because 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 intervention programmes are organised and monitored.

All such means will be purposeful and proportionate to the business activity, minimising any disruption in the interest of better business and approached in a way that supports those we regulate to comply and achieve economic growth. This will include positive feedback to businesses where applicable with a view to encouraging and reinforcing good practice.

4.2 Measures To Deal with Non-Compliance

The options for taking action against businesses and individuals, for ignoring or otherwise failing to comply with their legal obligation(s) include:

- A Compliance Advice, Guidance and Support
- B Voluntary Undertakings
- C Statutory (Legal) Notices
- D Financial Penalties (Fixed Penalty Notice)
- E Injunctive Actions, Enforcement Orders etc.
- F Simple Caution
- G Prosecution

H Review/Refusal/Suspension/Revocation of Licences

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 Regulators' Code.

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.

Enforcement action may be taken as a result of an incident, a complaint, a request for service or an inspection.

Details of the aforementioned measures to deal with non-compliance are as follows: *(These are the enforcement actions available to the Council in respect of Criminal and Civil breaches)*

A. Compliance Advice, Guidance and Support

The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter (sometimes called an 'informal caution') will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

The Council recognises that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and the Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, the Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

B. Voluntary Undertakings

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

C. Statutory (Legal) Notices

In respect of many breaches the Council has powers to issue statutory notices. These include for example, 'Stop Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default.

Works in Default (WiD) refers to the powers given to the Council under specific legislation to undertake work required in a Notice that has not been complied with in the time permitted. A charge is normally made for carrying out such work, which the person named on the Notice, would be required to pay.

The approval of line management will be sought before arrangements are made to carry out Works in Default. At the time that approval is sought, the case officer will provide full details of the perceived need to undertake the work, and be prepared to discuss alternatives.

There are two distinct types of WiD, these being:

- i) Seizure of equipment causing a nuisance, for example stereo equipment in respect of noise problems (see details below)
- ii) Physical works undertaken by the Council to abate nuisance or comply with specified standards, for example carrying out drainage works where there may be risks to health.

Seizure of Goods, Items or Documents - Some areas of legislation, for example in relation to food safety, health and safety and environmental protection, allow for the seizure and detention of goods, items or documents.

The seizure of an item may be undertaken in isolation to deal with, for example,

- i) A dangerous item of equipment quickly and effectively without the need for any further enforcement action, or
- ii) To allow for further testing, or
- iii) Continuance of noise nuisance, following service of an abatement notice

Alternatively seizure of items can be used in addition to other enforcement powers detailed in this section for example to prevent tampering with evidence.

A **statutory (legal) notice** will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

The **service of Statutory Notices** is a routine part of the work of the environmental health service. It is not appropriate to deal with the format and wording of Notices within a document such as this. However, there are some common points affecting all types of Notice, as follows:

- i) Peer Review;
- ii) Associated Documentation;
- iii) Method of Service.

Each of which is dealt with in the following paragraphs:

Peer Review:

There are occasions when speed of service is of the essence and in such cases peer review may not be practicable.

Wherever possible, the use of standardised Notices will be used when peer review is not possible, to ensure the greatest level of uniformity of approach.

When peer review is possible, and this should be in the majority of cases, each Notice will be scrutinised by a member of the Team unconnected with the case, using a checklist format produced for the purpose.

Associated Documentation:

Under normal circumstances, the following information will accompany a formal Notice:

- i) A covering letter, setting out the background to the Notice and designating a Case Officer or other point of contact;
- ii) A copy of the relevant Appeal provisions;
- iii) A separate Schedule of Works, where appropriate;
- iv) Any other information that may help the person to understand and comply with the terms of the Notice.

Method of Service:

This may be specified in individual legislation and, in such cases, the method of service will be followed exactly.

Where there is no prescribed method, any of the following may be used:

- i) **Hand Delivery:** The Notice will be given directly to the person(s) identified as being responsible or in the case of a Limited Company an appropriate member of staff. Where this method is used, the date, time, place and other relevant details will be immediately (or as soon as reasonably possible) entered into official notebooks and recorded on official copies.
- ii) **Recorded Delivery:** The Notice is sent by first class, recorded delivery post.
- iii) **Normal Post:** Where normal post is used, a short Witness Statement may be provided giving details of the contents of the envelope, the date, time, and place of posting, and the address to which sent. The Statement will be in addition to an entry into the case Officer's official notebook.
- iv) **Left at Scene:** The Notice may be left at the scene, i.e. attached to a premises or vehicle. If this method is used, service will normally be by two officers. Each will make an immediate (or as soon as reasonably possible) entry in their official notebook and each may provide a short Witness Statement giving details of the contents of the envelope left at the scene, the date, time and place of service.

D. Financial penalties (Fixed Penalty Notice)

The Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, the Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach the Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

The Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at the Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

Some areas of legislation, for example in relation to litter, dog fouling, fly tipping and smoke free premises, allow for Fixed Penalty Notices to be issued against persons committing offences. This Notice offers the individual the opportunity to release themselves from being prosecuted for that offence by payment of a Fixed Penalty set out in the relevant legislation.

No further legal proceedings will be taken by the Council for the offence if the individual pays the Fixed Penalty within the required time period set out in the Notice. The individual will be liable for prosecution for the offence if the Fixed Penalty is not paid within the current time period. Payments made by post will be regarded as having been made at the time at which the letter would be delivered to the Council Offices in the ordinary course of post.

The service of a Fixed Penalty Notice will be carried out where appropriate namely:

- i) The offence is sufficiently serious to warrant prosecution.
- ii) There is sufficient evidence of the offender's guilt to give a realistic prospect of conviction in case of non-compliance with the Fixed Penalty Notice.
- iii) The Officer believes that a Fixed Penalty Notice will prevent repeat offences.
- iv) The offender will accept the Fixed Penalty Notice and understands its significance.
- v) It is in the public interest to issue a Fixed Penalty Notice rather than instigate prosecution proceedings.

There are certain circumstances in which it may be necessary to issue a Fixed Penalty Notice to a juvenile (aged between 10 and 17 years). In these cases there will be special procedures in place which have regard to the authority's duty to safeguard and uphold the welfare of children.

Juveniles (under 17 years of age) or persons who are mentally disordered or otherwise mentally vulnerable will not be interviewed regarding their involvement or suspected involvement in an offence unless the parent(s) or other person responsible for their welfare, or an appropriate adult are present.

A Fixed Penalty Notice may be cited in prosecution proceedings in relation to a similar offence committed within three years of the date of the Notice.

Non payment of a Fixed Penalty Notice will result in consideration for prosecution provided the case meets the relevant criteria.

E. Injunctive Actions, Enforcement Orders etc.

In some circumstances the Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, the Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

F. Simple Caution

The Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Council is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how the Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance and will **never** be used simply because the evidence in a case is not robust enough to give a reasonable prospect of success in prosecution.

G. Prosecution

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute The Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s). The advice of Legal Services will be sought at the earliest opportunity in such instances.

Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully and the case must satisfy, in general terms, the following tests:

- i) Evidential test – Is there enough evidence against the defendant?
- ii) Public interest test – Is it in the public interest for the case to be brought to court?

Each of which is described in more detail below.

4.3 Evidential Test:

When deciding whether there is enough evidence to prosecute, the Council will consider what evidence can be used in court and is reliable. The Council must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

This is an objective test and means that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict each defendant on each charge.

Each prospective prosecution is scrutinised throughout the line management chain before the papers are sent to the Council's Legal Services Section recommending that legal proceedings are commenced, in accordance with procedures.

This is so that Officers not directly involved in the preparation of the case can test the evidence

The following will be borne in mind by case officers throughout the investigation:

- i) The validity and relevance of any tape-recorded interviews.
- ii) The continuity of evidence.
- iii) The quality of any notes and records kept during the investigation.
- iv) The level of compliance with the Regulators' Code, all legislation having a bearing on enforcement practice and internal procedures.

If there have been considerable departures from accepted practice on any of the above, this will be made known to line management and Legal Services, so that decisions on whether or not to proceed can be properly informed.

Officers may obtain evidence from many different sources throughout an investigation. Unused material will be disclosed in accordance with the requirements of the Criminal Procedure and Investigation Act 1996.

In considering the evidence, the following will be addressed:

- i) Any factors that might reduce the reliability of an admission made during a taped interview such as, for example, a defendant's age, or lack of understanding.
- ii) Any factors which might have a bearing on the reliability of any witness.

If, after balancing the above, it is concluded that there is not a realistic prospect of conviction, the case will not proceed to prosecution.

However, one of the alternative enforcement options listed above may still be used if appropriate.

4.4 Public Interest Test:

The Council will balance factors for and against prosecution carefully and fairly considering each case on its merits.

A number of factors will determine whether or not a particular prosecution is in the public interest and a balance in favour or against will be made between these factors, any of which might be present.

Those factors that will tend towards prosecution include positive answers to the following, which may not be an exhaustive list:

- i) Numbers of people affected by any alleged offence;
- ii) Degree to which people are/were affected (seriousness of the alleged offence);

- iii) Evidence that the offence was committed deliberately or maliciously;
- iv) Evidence that the persons affected were intimidated or harassed;
- v) Evidence of previous or continuing offences of a similar type;
- vi) Likelihood of repeated offence(s) which may be deterred by prosecution;
- vii) Abuse of position of authority or influence;
- viii) Lack of co-operation on the part of the defendant;
- ix) Offence is widespread, at least in the general area in which it was committed.

Factors which might argue **against** a prosecution will include:

- i) Court is likely to discharge the defendant or impose a small penalty on conviction;
- ii) Offence appears to have been the result of a genuine misunderstanding or mistake;
- iii) Harm done was minor and was the result of a single incident, particularly if it was caused by misjudgement;
- iv) Willingness to co-operate and ensure that no future offences of a similar nature are committed;
- v) Significant delay between offence and trial, unless:
 - The offence is serious;
 - The delay has been caused, at least in part, by the person investigated;
 - The offence has only recently come to light;
 - The complexity of the investigation results in unavoidable delays.
- vi) Persons investigated is elderly, in poor health or confused (unless there is a real possibility that the offence will be repeated);
- vii) The harm caused by the offence has so far as possible been put right.
- viii) A key witness has refused to testify or to provide a Witness Statement or, if they are the only victim, they have strongly indicated opposition to a prosecution.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the

confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

H. Review/Refusal/Suspension/Revocation of Licences

The Council issues a number of licences and permits. The Council also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, The Council may take previous breaches and enforcement action into account.

4.5 Legal Provisions

Apart from the specific laws relating to the technical aspects of environmental health and licensing work, there are a number of legal and other provisions relating to, or having a bearing on, enforcement as a whole with which authorised officers must comply:

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

These include:

- The Regulators' Code 2014 (Department for Business Innovation and Skills)
- Police and Criminal Evidence Act 1984 (PACE)
- Regulation of Investigatory Powers Act 2000 (RIPA)
- Criminal Procedure and Investigation Act 1996 (CPIA)
- Criminal Justice and Police Act 2001
- Human Rights Act 1998
- Freedom of Information Act 2000
- Data Protection Act 1998
- Environmental Information Regulations 2004
- Local Government Acts 1972 - 2000
- Equality Act 2010
- Codes of Practice/Guidance

Many of the above contain little more than a passing reference to the needs of enforcement whereas some, such as the Regulators' Code and PACE are fundamental.

Whenever possible, environmental health services will work in partnership with other agencies to achieve common objectives on matters of mutual concern or where there is a shared enforcement role. These agencies will include:

- Public Health England
- Police Authority
- Health and Safety Executive
- Food Standards Agency
- Fire Authority
- Trading Standards
- Derbyshire County Council
- OFSTED
- RSPCA
- Care Quality Commission
- Water Companies
- Environment Agency
- Department for the Environment, Food and Rural Affairs
- Department for Business Innovation and Skills
- Other government bodies and agencies
- Other Local Authorities particularly in respect of the Primary Authority principle

Some activities may result in investigations by different departments of the Council at the same time, for example Environmental Health and Planning. We will seek to co-ordinate the activity of different departments to maximise our effectiveness in dealing with complaints. We will also seek to share our enforcement intelligence and any successful action with other enforcing authorities or agencies.

All interviews of individuals under caution regarding their involvement or suspected involvement in an offence will be carried out in accordance with the requirements of the Police and Criminal Evidence Act 1984 (PACE) and in particular Code C - Code Of Practice For The Detention, Treatment and Questioning Of Persons By Police Officers made under the Act.

4.6 Specific Considerations

The enforcement policy is based on fairness and firmness. Where it is necessary, enforcement will be undertaken without fear or favour and without consideration of the race, ethnic background, religion, social status, colour, gender or sexual orientation of persons involved. Where enforcement action in respect of Council owned premises is required the matter will be referred directly to the Chief Executive Officer.

If any person exerts undue or improper pressure in an attempt to influence a decision concerning enforcement, it will be reported without delay.

As a general rule and where there are options, the level of enforcement would usually be the minimum necessary to achieve a satisfactory solution subject to public interest considerations.

4.7 The Council's Approach to Enforcement

A. Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function. The specified functions include those carried out by the Councils' environmental health and licensing services.

The Council will exercise its regulatory activities in a way which is:

Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence. Costs of compliance will be minimised to ensure that any actions required by the Council are proportional to the risks involved. Where the law allows, Officers will take account of the circumstances of a case and the attitude of the operator when considering the level of enforcement action.

Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.

A copy of this enforcement policy will be available on request and published on our websites together with our Compliments, Comments and Complaints procedure at www.bolsover.gov.uk and at www.ne-derbyshire.gov.uk

Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities. The aim is to achieve consistency in the advice given, the response to incidents and the ways in which statutory powers are used.

Consistency does not mean simple uniformity and Officers will need to take account of many variables such as the scale of the risk, the attitude and actions of those involved and any history of compliance, whether positive or otherwise.

Decisions on enforcement action are a matter of professional judgement and Officers will frequently need to use discretion. Where necessary, line manager guidance will be provided and legal opinion sought. Efforts will continue in order to develop arrangements for promoting consistency, including effective arrangements for liaison with other enforcing agencies where appropriate.

Every effort will be made to ensure consistent enforcement standards between local authorities and enforcement guidance will be followed where appropriate such as the Health and Safety Executive's Enforcement Management Model. However, local circumstances may preclude a uniform approach on all issues.

Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return. Information and advice will be published in plain language concerning the legislation that the Council is applying. Officers will be open about the work required, including any financial costs in complying, and consultation will take place as appropriate. Discussion will take place concerning general enforcement issues, specific compliance failures or problems with anyone who is experiencing difficulties. Wherever it is appropriate positive feedback will be given to regulated entities and, where applicable, their risk rating will be changed as a result of their performance.

Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities. We will also focus our resources on perceived “rogue traders” who make no attempt to comply with the law.

Procedures - advice from Officers will be clear and simple and will, on request, be confirmed in writing, explaining for example why any remedial works are necessary and the timescale for progress and completion. A clear distinction will be made between legal requirements and best or desirable practice.

Before formal action is taken, the opportunity may be provided 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, environmental protection or to prevent evidence being destroyed) and subject to any overriding public interest considerations.

In circumstances where immediate action is necessary, an explanation of why such action was required will be given at the time or, if this is not practical, within 5 working days. In some cases of immediate action such as the service of a **Fixed Penalty Notice**, a written explanation is not considered appropriate.

Except where circumstances indicate a significant risk, Officers will operate a graduated and hierarchy approach (the hierarchy of enforcement) starting with informal action such as advice, support and education and only move to more formal measures where the informal action does not achieved the desired effect.

Where there are rights of appeal against specific actions, advice on the mechanism to be followed will be given in writing. Wherever possible, this will be included with the enforcement Notice or other documentation.

Helpfulness - Officers will provide a courteous and efficient enforcement service and individual Officers will identify themselves by name and staff group.

A contact telephone number will be provided for on-going discussions. Businesses and individuals will be actively encouraged to seek advice and information relating to the staff group’s enforcement role.

Where possible Officers will endeavour to make provision for the particular interests of businesses and individuals. We will seek to ensure that everyone using our services receives equal treatment and we will take positive action to make our services accessible. For example, visits out of office hours and access to interpreters and translation letters where the first language is not English.

The particular needs and interests of consumers within the district, including business proprietors, their employees and the public will be accommodated wherever possible. The Council will carry out our activities in a way that supports those we regulate to comply and grow.

Complaints - If business operators or members of the public indicate that they wish to complain about any aspect of enforcement work, Officers will ensure that the mechanism for doing so is clearly explained. Our Compliments, Comments

and Complaints procedure is published on our websites at www.bolsover.gov.uk and at www.ne-derbyshire.gov.uk

B. Regulators' Code

The Council has had regard to the [Regulators' Code](#) in the preparation of this policy. 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.

The Code was laid before Parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006 ("the Act"). Regulators whose functions are specified by order under section 24(2) of the Act **must** have regard to the Code when developing policies and operational procedures that guide their regulatory activities. Regulators must equally have regard to the Code when setting standards or giving guidance which will guide the regulatory activities of other regulators.

If a regulator concludes, on the basis of material evidence, that a specific provision of the Code is either not applicable or is outweighed by another relevant consideration, the regulator is not bound to follow that provision, but should record that decision and the reasons for it.

The main principles of the Code are:

- i) Regulators should carry out their activities in a way that supports those they regulate to comply and grow.**
- ii) Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.**
- iii) Regulators should base their regulatory activities on risk**
- iv) Regulators should share information about compliance and risk.**
- v) Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.**
- vi) Regulators should ensure that their approach to their regulatory activities is transparent**

C. Human Rights Act 1998

The Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

D. Data Protection Act 1998

Where there is a need for the Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1998.

E. The Code for Crown Prosecutors

When deciding whether to prosecute the Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test' as detailed in this document at 4.3 and 4.4.

F. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

5.0 RESPONSIBILITY FOR IMPLEMENTATION

All authorised officers in the Joint Environmental Health service working in Bolsover District and North East Derbyshire District Council's areas are responsible for implementing and following the requirements of this Enforcement Policy. Such Officers are authorised to act in such capacity under the Council Constitution by way of a formal Delegation Scheme.

Managers of the Joint Environmental Health service are responsible for monitoring adherence to this Policy and ensuring that Officers are properly authorised and have the necessary knowledge and skills to support those that they regulate, including having an understanding of those they regulate that enables them to choose proportionate and effective approaches.

This will be achieved via the Council's performance management framework and by continuous professional development and training.

6. REVIEW

It is intended that this policy will be subject to review every three years with additional reviews as and when required to accommodate changes in legislation and local needs. We will seek the views of stakeholders when undertaking such reviews.

