

Mid Devon District Council

~~Operations Directorate~~

ENFORCEMENT POLICY

Policy Number: PH/EP/~~094/2019~~

Target audience:

Investigating Officers and Decision-Makers, Leadership Team, Cabinet, Legal Services and any person, organisation, company or business affected by regulatory action by the Operations Directorate. This includes Public Health and Regulatory Services, Street Scene Services and Housing Services

~~February 2019~~September 2020

Version Control Sheet

Title: ~~Operations Directorate Services Enforcement Policy~~
(Formerly Public Health Services Enforcement Policy PH/EP/02/16 August 2016 and
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Purpose: The purpose of this policy is to ensure compliance with Regulators' Code and the principles of good enforcement. It also serves to inform investigating officers and decision-makers of the framework under which they operate, in addition to providing information to those people, organisations and businesses which are regulated and those protected by regulation.

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Legal Services
~~Director of Operations~~ Corporate Management Team
Leadership Team
~~Legal Services~~

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CONTENTS

| | |
|---|-----------|
| PREFACE | 4 |
| 1.0 INTRODUCTION | 6 |
| 2.0 GENERAL PRINCIPLES AND STATEMENT OF INTENT | 8 |
| 3.0 CHARGING FOR ENFORCEMENT ACTIONS | 10 |
| 4.0 COMPLIANCE WITH THE PRINCIPLES OF GOOD ENFORCEMENT | 11 |
| 4.1 Transparency | 11 |
| 4.2 Accountability | 11 |
| 4.3 Proportionality | 11 |
| 4.4 Consistency | 11 |
| 4.5 Targeting | 12 |
| 4.6 Helpfulness | 12 |
| 5.0 ENFORCEMENT OPTIONS AND FACTORS | 14 |
| 5.1 Factors to be considered | 14 |
| 5.2 No action | 15 |
| 5.3 Informal action | 15 |
| 5.4 Information Notices | 15 |
| 5.5 Other Statutory Notices | 15 |
| 5.6 Fixed Penalty Notices | 16 |
| 5.7 Civil Fixed Penalty Notices | 17 |
| 5.8 Prohibition Notices and Orders | 17 |
| 5.9 Injunctions | 17 |
| 5.10 Seizure of Goods, Equipment, Food, Articles or Records | 17 |
| 5.11 Work in default | 17 |
| 5.12 Management Orders | 18 |
| 5.13 Compulsory Purchase Orders | 18 |
| 5.14 Premises Licence Review | 18 |
| 5.15 Simple Caution | 19 |
| 5.16 Evidential and Public Interest Tests | 20 |
| 5.17 Prosecution | 20 |
| 5.18 Financial (Civil) Penalties | 23 |
| 5.19 Proceeds of Crime Applications | 24 |
| 5.20 Multi-agency approaches to enforcement | 24 |
| 6.0 INVESTIGATIONS | 25 |
| 6.1 Access and Powers of Entry | 25 |
| 6.2 Notifying alleged perpetrators / offenders | 25 |
| 6.3 Liaison with and referrals to other regulatory bodies and enforcement agencies | 26 |
| 6.4 Surveillance and Human Sources: Human Rights Act 1998, Regulation of Investigatory Powers Act (RIPA) 2000 – Basis for Lawful Surveillance | 26 |
| 6.5 Enforcement on Council premises or at events organised by the Council | 28 |
| 7.0 IMPLEMENTATION, MONITORING AND REVIEW | 30 |
| 7.1 Implementation and monitoring | 30 |
| 7.2 Conflicts of interest and bribery | 30 |
| 7.3 Complaints about service | 30 |
| 7.4 Policy review | 30 |
| 8.0 PUBLICITY AND INFORMATION REQUESTS | 31 |

PREFACE

The Operations Directorate is responsible for This policy covers a number of several different broad enforcement functions across a wide range of number of services and teams:

Public Health and Regulatory Services

- **Licensing** (hackney carriage and private hire drivers, vehicles and operators, alcohol sales, entertainments, temporary events/festivals, gambling, charity collections, animal establishments, caravan sites, scrap metal dealers, sex establishments and skin piercing/tattooists)
- **Environmental Health** (food safety, health and safety, private water supplies, communicable disease control, environmental permitting, air/land quality, noise and other statutory nuisances, pest control, filthy premises and drainage)
- **Private Sector Housing** (private sector housing conditions/fitness and renewal, rogue landlords, empty homes and houses in multiple occupation)
- **Anti-social behaviour** (closure orders, civil injunctions, community protection notices and public protection orders)

Housing Services

- **Tenancy breaches** (tenancy breaches within the Council’s own housing stock, anti-social or disruptive behaviour by tenants, evictions and possession)
- **General tenancy management** (including provisions to undertake mandatory inspections and safety checks)
- **Unlawful occupation** (illegal squatting and unlawful subletting)

Street Scene Services

- Civil parking (off-street parking enforcement in Mid Devon District Council’s car parks)
- Enviro-crime (fly-tipping, Fly-tipping and littering (illegal dumping of waste, fixed penalty notices and littering, including from vehicles), dog fouling and fixed penalty notices)
- Dog fouling and stray dogs (including microchipping)
- Abandoned vehicles
- Compulsory recycling
- Civil parking (off-street parking enforcement in Mid Devon District Council’s car parks)

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Each area of work uses different legislation to ensure compliance and each has its own extensive body of regulations, codes of practice and guidance. The majority of our duties and powers are set out under criminal legislation, however there are a number of areas covered by civil legislation (i.e. an offence under this legislation is not a criminal offence). We therefore ultimately may take action through the criminal and civil courts or engage with other tribunals or formal hearings. The exact nature of procedures used in each circumstance will vary and cannot be set out in full within this policy and will be applied as relevant on a case-by-case basis.

The functions undertaken by ~~these services assists the~~ ~~Directorate assist the~~ Council in achieving its ambition by contributing towards several priority outcomes including the health and resilience of our residents, growth of the economy and fairness. It strives to accomplish this by undertaking its duties in a fair, consistent and equitable manner by requiring individuals, organisations and businesses to fulfil their legal responsibilities. It will achieve this using a combination of education, informal advice and regulation.

This policy details our approach to the use of our enforcement powers, whether that is criminal prosecution at one end of the spectrum or informal warnings and advice at the other. It also gives clarity as to how the unit will achieve compliance by setting out options and the criteria used to determine the most appropriate, effective and efficient response to breaches of legislation.

The purpose of this policy is also to ensure compliance with legal requirements and the principles of good enforcement. It also serves to inform investigating officers and decision-makers of the framework under which they operate, in addition to providing information to those people, organisations and businesses which are regulated and those protected by regulation. The policy cannot be absolutely prescriptive because the circumstances of each individual case and the evidence available are likely to vary. However, this policy should leave most readers in little doubt as to what they can expect by way of enforcement.

Particular regard has also been given to the provisions of the Regulators' Code 2014 (Department of Business Innovation and Skills), the Code of Practice Powers of Entry 2014 (Home Office) and the provisions outlined in the Legislative and Regulatory Reform Act 2006 and the Regulatory and Enforcement Sanctions Act 2008. All documents are available at <https://www.gov.uk/>. ~~This new policy document supersedes any previous enforcement policies covering individual functions within the services separately.~~

In ~~reviewing and updating~~ ~~ising~~ this policy we have considered how best we can:

- Understand and minimise negative economic impacts of our activities;
- Minimise the costs of compliance for those we regulate and ourselves as the regulator;
- Improve confidence in compliance for those we regulate; and
- Encourage and promote compliance.

The Housing Service is responsible for the management of the Council's housing stock. Our relationship with our tenants is therefore a contractual one, based on the tenancy agreement and also based on statute. We have a number of relevant policies which set out how we will enforce conditions of tenancy and these have regard to legislative and regulatory obligations as well as to good practice.

Outside of policy scope

Planning and the enforcement and management of unauthorised development in addition to debt management processes are specifically outside the scope of this policy. These functions

operate under separate adopted policy and provisions. More information is available on the Mid Devon District Council website.

1.0 INTRODUCTION

1.1 This policy seeks to ensure that the application of any enforcement is undertaken in accordance with key over-arching principles and therefore is:

- transparent and accountable;
- proportionate;
- targeted;
- consistent in approach; and
- appropriate.

1.2 Further to these principles, that enforcement has regarded to the provisions of the Regulators' Code, in that it:

- supports those we regulate to comply and grow;
- provides for straightforward way for those we regulate to engage with us;
- recognises that we base our regulatory activities on risk;
- that we share information about compliance and risk;
- information, guidance and advice is made available or signposted to help those we regulate to meet their responsibilities to comply; and
- sets out our approach to transparent service standards, the provision of information and checks on compliance

More information on how we achieve this is set out in Section 2.

1.3 Past experience in the enforcement of statute and regulations shows that, in most cases, businesses and individuals comply with the law. Any failure to comply with legislative requirements often stems from ignorance, carelessness, lack of training, lack of effective management control and sometimes, from wilfulness or malice. In a social housing context (Council housing tenants), the reasons for non-compliance may differ and can include vulnerability issues and the service is tailored to meet the needs of tenants.

1.4 This policy must therefore guide all officers who are involved in taking enforcement action, investigating cases, serving notices and recommending or deciding upon the commencement of legal proceedings, when taking tenancy enforcement action or when regulating others.

1.5 What we mean by 'Regulatory' and 'Enforcement':

- 'Regulatory' encompasses the Council's numerous powers and duties enabling the behaviour of individuals and/or organisations to be controlled in the public interest.
- 'Enforcement' includes any action carried out in the exercise of, or against the background of, statutory powers and duties of regulation. This is not limited to formal enforcement action such as prosecution in the criminal Courts or the giving of Notices. It also includes, among other things, the inspection of premises for the purpose of checking compliance with regulations or conditions, the imposition of conditions on any licence, consent or similar formal permission, the issue of fixed penalty notices, the giving of Home Office cautions and the making of applications to the Courts for Orders to control the conduct of individuals and/or organisations, possession proceedings demoted tenancy proceedings closure orders

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- 1.6** Whilst the general principles outlined below will apply in all cases it must be recognised that each individual case will vary and each must be considered on its own merits before a decision is reached. In certain instances for example, we may conclude that a provision in the Regulators' code is either not relevant or is outweighed by another provision.
- 1.7** In respect of our tenants, to ensure that any action taken to regain possession of a property is likely to succeed, Officers must be able to demonstrate that the tenant has been given an opportunity to modify their behaviour, that there is evidence to show the history and that the issues are ongoing despite attempts to resolve matters or that the matter is sufficiently serious even though limited to one incident to merit possession proceedings. The outcome sought must be reasonable and proportionate and if, for whatever reason, we decide that the chances of success are small, then we may decide not to proceed.
- 1.8** We will ensure that any decision to depart from the Code or any other of the general principles will be properly reasoned, based on material evidence and documented.

2.0 GENERAL PRINCIPLES OF ENFORCEMENT AND STATEMENT OF INTENT

- 2.1 We will carry out our activities in a way that supports those that we regulate to comply.
- 2.2 Officers will enforce against, or prosecute those who neglect, or wilfully fail, to comply with their legal obligations, where that failure constitutes a risk to the public, a breach of tenancy conditions or where action is required to minimise the risk.
- 2.3 Officers will seek to adopt efficient and effective approaches to regulatory inspection, tenancy management and enforcement, which improve regulatory outcomes, and enable us to deliver our obligations to all local residents and the wider community. The Housing Service has an obligation to provide support to those who may be vulnerable and any action taken will account of this.
- 2.4 The level of enforcement will be proportional to any alleged offence or breach of tenancy committed, consistent in application, (including consistency with other local authorities or enforcement agencies) transparent in its use and appropriate to the circumstances of the particular case in question.
- 2.5 Depending on the seriousness of a situation, the preference will be to enforce with moderation in the first instance, progressing through a graduated response to a tougher stance if offences are repeated. The nature and speed of this graduated response will vary depending on the statutory function/options available and the nature of the offence / tenancy breach. A tougher stance may also be taken for any offences or actions that have resulted in personal injury/harm, wide scale impacts on public health or to protect the vulnerable e.g. sale of alcohol to an underage child, a major food poisoning outbreak, domestic abuse or a family occupied property with Category 1 hazards.
- 2.6 Where it is applicable to our functions, we are also committed to Better Business for All (BBfA). This is a regulators alliance that includes Trading Standards, Environmental Health, Fire & Rescue along with Local Authority Economic Development Teams. It aims to:
- Simplify and rationalise business support in local areas, and ensure that national and local support offers are joined up for businesses.
 - Provide a single access point for business support, bringing together both Government offers and local offers, so businesses get what they need wherever they start their journey.
 - Bringing together public and private sector support, for example that offered by local authorities, universities, chambers of commerce and enterprise agencies.
 - Provides website/telephone/email support/the one door/no wrong door for businesses looking for business support.
 - Start-up workshops/clinics
 - Partnerships/facilitation support, working with national and local delivery partners.
 - ~~B~~FTE business advisors working across innovation centres and rural areas, organising clinics and ensuring join up with other delivery mechanisms.
- 2.7 In participating in this alliance we aim to create a local regulatory environment that helps to support business growth whilst not negating our enforcement responsibilities. The BBfA programme is an established approach to better regulation. It provides a model for partnership working between businesses and regulators focusing on

changing the culture of regulatory delivery at a local level. It encourages all parties to work together and share information to allow local economies to prosper and grow.

- 2.8** We will provide simple and straightforward ways to engage with those we regulate, and those tenants who live in our homes in order to hear their views
- 2.9** Where enforcement is necessary because of ignorance of the law (which is not of course a defence against criminal or civil proceedings), or the rights and responsibilities which derive from our tenancy agreements, rather than wilfulness, officers will give advice and attempt to facilitate the training of those involved, in addition to taking enforcement action. Will we undertake such an approach as far as is reasonable and practicable within the scope of our existing resources.
- 2.10** We believe that prevention is better than cure and therefore our role involves actively working with businesses and individuals to advise on, and assist with compliance. We will make clear not only what they have to do but, where relevant, what they do not. In practice, this means distinguishing between statutory and contractual requirements and advice or guidance about what is desirable but not compulsory, thereby minimising the cost of compliance by requiring proportionate action.
- 2.11** We will target our resources where they will have the greatest effect. We will carry out inspections only where there is a reason for doing so, for example, as a response to intelligence about particular premises or a particular issue/problem or as part of our risk assessment process. We will also undertake risk based inspections in line with at least our minimum statutory requirements. Accordingly, greatest effort will be focussed where failure to comply would pose a serious risk and there is a high likelihood of non-compliance.
- 2.12** We will apply a light touch approach to those businesses who comply with regulatory requirements and those who work with us to achieve compliance. However we will not hesitate to use the full range of enforcement tools at our disposal against those businesses or individuals whose activities are likely to cause material loss or harm to others, or endanger the health, safety and wellbeing of people or our neighbourhood. In undertaking formal enforcement action we may take into account previous informal advice and support that has not been given due diligence.
- 2.13** The Housing Service has a policy of regular tenancy audits as set out in our Tenant Inspection Policy. Some visits are carried out on a risk-assessment basis but we are still committed to visiting every property every 5 years
- 2.14** Enforcement decisions will be made in a fair, independent and objective way and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, disability, political views or the sexual orientation of the alleged perpetrator, victim, witness or offender.

3.0 CHARGING FOR ENFORCEMENT ACTIONS

- 3.1** Where the legal powers exist to recover some of the Council's costs, consideration will be given to their use.
- 3.2** The recovery of our costs will be limited to the extent of the costs incurred (full cost recovery) but not more. Therefore charging will not be punitive. The recharge should also ensure that owners are not financially encouraged to delay in complying with their legal responsibilities.
- 3.3** The powers enabling Councils to charge for these functions are set out in the specific statute and formal guidance used. These provisions also provide for the recovery of the debts which arise.
- 3.4** Where legislation allows us to set our own fees for specific regulatory functions and activities then where possible we will take into account our proactive and reactive enforcement costs in addition to normal processing costs.
- 3.5** Where we are granting a license we will only charge the administration fees for processing the application but where an applicant is successful he or she will then be charged the wider costs of running (including enforcement costs) the licensing scheme
- 3.6** We will be transparent about our fees and charges whereby we publish and make available any schedule of charges and the basis on which these have been calculated. In respect of formal, statutory actions including notices costs will include officer time, travel time and costs and compliance visits/re-visits.
- 3.7** We will also regularly review our fees and charges in connection with enforcement actions.
- 3.8** Examples of where we can currently charge for enforcement action include some Licensing activities, housing improvements under the Housing Acts and Environmental Damage regulations. These are examples only and it is not an exhaustive list.
- 3.9** The Housing Service has a recharges policy which sets out the circumstances in which we will endeavour to recharge costs from tenants.

4.0 COMPLIANCE WITH THE PRINCIPLES OF GOOD ENFORCEMENT

4.1 Transparency

- We will make it clear what must be done, distinguishing between statutory requirements and what is desirable or recommended but not compulsory in written and verbal communication;
- We will write to confirm any verbal advice if requested;
- Any written advice given shall be provided in plain, accessible language and in a range of formats and media where possible;
- Where immediate action is necessary, give an explanation of why such action is to be taken and confirm this in writing;
- Adequate information will be provided to enable reference to be made to the relevant statutory and associated documents;
- Any service standards such as the content of inspections will be available, on request;
- We will make it clear what sort of conduct they may expect when an officer visits and what rights of complaint are open to them;
- Any relevant complaints or appeals procedures will be explained.

4.2 Accountability

4.2.1 Visits and inspections are usually made unannounced but, if appropriate and where necessary, appointments will be made. Where access cannot be obtained during the day, or in other appropriate circumstances, visits will be made outside normal working hours. Unless carrying out authorised covert surveillance work (see Section 6.4), or unless health and safety reasons at the time dictate otherwise, enforcement officers will identify themselves by name and their role within the Council and will produce their identity/authorisation documentation on request.

4.2.2 Housing services do not normally make unannounced visits may do so occasionally without an appointment but if the tenant refuses to give access, we need to give them notice in accordance with the terms of the tenancy agreement.

4.2.3 The decision to visit or inspect specific premises may be taken due to complaints, or problems that have been reported, e.g. general complaints about a certain type of premises, which are in need of investigation, or the premises need to be inspected due to its risk rating (which determines the frequency of enforcement inspections for high and medium risk premises).

4.3 Proportionality

The type of enforcement action taken by officers will, in part, depend on the risk of, or actual, negative impact on others arising from the activity in question. Action taken will be proportionate to the breach/offence which has occurred. Where the law requires that risks should be controlled "as far as reasonably practicable" officers, will take into account the cost as well as the degree of risk. However, some irreducible risks may be so serious that they cannot be permitted irrespective of the economic consequences.

4.4 Consistency

4.4.1 Decisions on enforcement always entail a degree of judgement and the circumstances of each case will inevitably differ in detail. Furthermore, guidance upon which officers act does change over time and a decision made one day may differ from one made the next, for that reason. Consequently, there may be instances when enforcement may appear to be inconsistent for this reason. Officers will try to ensure that enforcement action is as consistent as possible by:

- following current internal policy, procedural and guidance notes;
- taking account of appropriate guidance from other authoritative bodies e.g. Food Standards Agency, Health and Safety Executive (HSE), Dept. of Business, Innovation and Skills (BIS), Department for Environment, Food & Rural Affairs (Defra), Environment Agency, the Institute of Licensing;
- taking due account of new case law relating to enforcement;
- taking account of any new legislation or guidance which impacts on their duties, liaising with other enforcement agencies as necessary;
- actively participating in joint local authority schemes to achieve greater consistency;
- having due regard to the HSE's Enforcement Management Model (when enforcing under Health & Safety legislation);
- having due regard for the Primary Authority Partnership Scheme;
- carrying out benchmarking and peer review exercises from time to time.
- taking into account the advice of other partners including the Police, Devon County Council and the Devon & Somerset Fire and Rescue Service.

4.4.2 The above measures will be supplemented by specific enforcement training for officers and managerial checks on performance.

4.5 Targeting

4.5.1 Enforcement generally will be targeted to those persons, premises or companies whose activities give rise to the risks that are the most serious or least well controlled. The Service therefore targets its enforcement action in three ways:

- Firstly officers carry out programmes of inspections or commence possession proceedings in cases involving tenants, on a risk rated basis. Premises or activities with the highest hazards, greatest risks, poorest compliance and worst management will be inspected more frequently than low risk premises. It follows that most of the enforcement activity arising from proactive programmes will be targeted on the cases most requiring it.
- The second targeting mechanism is the investigation of complaints where evidence, experience and this policy are used to determine enforcement action.
- The third targeting mechanism is planned, special surveys and enforcement initiatives carried out in response to national concerns as voiced by the government or its agencies, or local/regional concerns as voiced by Members of the Council, practitioner groups or resident.

4.6 Helpfulness

We will work with individuals and businesses to help them comply with the law and / or contractual obligations, in the following ways:

- Provide advice in different languages, if requested and where practicable;
- Actively advise businesses (especially small and medium sized businesses) and assist with compliance;
- Officers will identify themselves by name (always presenting an official identity card, or warrant card, which can be verified by a phone call if requested); and
- In every other way will provide a courteous and efficient service.

5.0 ENFORCEMENT OPTIONS AND FACTORS

5.1 Factors to be considered

5.1.1 The method of enforcement selected should be calculated to produce the highest reasonable standards of compliance within the least time where practicable. In assessing what enforcement action is necessary and proportionate, consideration may be given to some or all of the following factors and any others which may be relevant to a specific case or regulatory area:

- the seriousness of compliance failure;
- current business practices, including response to previous advice;
- the degree of risk from the situation;
- the particular circumstances of the case and likelihood of its continuation or recurrence;
- whether any harm was caused;
- the views of any victim/injured party, financial gain or benefit from a noncompliance;
- the general cooperativeness of the alleged perpetrator or offender;
- the past history of the person(s), company or premises involved;
- the impact of the enforcement choice in encouraging others to comply with the law or change the behaviour of the offender;
- the likely effectiveness of the various enforcement options;
- any relevant legislative provisions, policy or legal, official, professional guidance or advice;
- whether the situation undermines the licensing objectives;
- blatant or reckless disregard for the law, poor management;
- whether a conviction is likely to result in a significant sentence;
- whether the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance (e.g. safeguarding issues or complainant in a noise nuisance case);
- whether the defendant has previous convictions or cautions which are relevant to the present offence;
- whether the offence, although not serious in itself, is widespread in the area where it was committed;
- whether an officer has been obstructed;
- whether the cumulative effect of such breaches would be serious even if the breach in itself was not;
- whether prosecution will have a significant deterrent effect;
- Local priorities of the service and Council (as may change)

5.1.2 Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions may occur where there is a serious risk to public safety or the

environment or the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment.

- 5.1.3** The level of enforcement action that may be taken varies from no action through to formal proceedings in court. The main types of action that can be considered are shown below.

5.2 No action

- 5.2.1** This is appropriate when it is a minor/technical non-compliance that is rectified immediately. Any details recorded about non-compliance may be used as a basis for judgement on future enforcement action.

5.3 Informal Action

- 5.3.1** Informal action involves the offering of advice, verbal warnings, letters/emails, education, training and the issue of technical reports, including those generated on a premises or on-site following an inspection or audit.

- 5.3.2** This sort of action will be appropriate where the degree of risk (or in some cases environmental impact) from any given situation is minor, but cannot be rectified immediately. The breach of legislation is often technical but significant enough to warrant a written letter of warning. Formal action may be taken if similar infringements are found in the future. The person, business or organisation responsible would have no recent history of non-compliance and the officer would have good reason to expect them to put right the matters in question without the need for further intervention and therefore confidence in management is high.

- 5.3.3** Informal action will be recorded on departmental files and will be used as a basis for judgements on future enforcement action if there are recurrent problems with an offender or premises.

- 5.3.4** We promote a programme of food courses and training interventions which can be viewed and accessed via the Council website www.middevon.gov.uk. Where possible we will also help signpost external training and education resources. Additional, plain language information on regulations, enforcement and compliance can be found on the universal www.gov.uk website.

5.4 Information Notices

- 5.4.1** Many pieces of legislation enforced by the Council enable officers to demand information which is essential in order to serve notices or summons correctly. When the officer is uncertain about the information it holds, or where certain details are unknown, it will serve an information notice on those that have an obvious connection to the case, requiring for instance ownership confirmation, or perhaps company or premises details. Failure to comply with an information notice may hinder the Council in discharging its duties and is regarded as a serious offence, which will be pursued.

5.5 Other Statutory Notices

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5.5.1 In certain circumstances, legislation allows an officer to serve a notice requiring action to be taken or, that certain operations/activities be stopped immediately. In some instances the service of a statutory notice may be compulsory. The service of a legal notice may be followed by an investigation into the cause of the breach and further enforcement action, including prosecution may ensue, particularly where there is a deliberate failure to comply with the notice. Failure to comply with a legal notice will usually be taken as a disregard for the law and appropriate action will be taken. Legal notices are normally used where:

- there are specific legal requirements to serve a notice; and/or
- a serious threat to public health, safety, animal health, the environment or to amenity will arise or a situation deteriorate, if a breach is not remedied quickly; and/or
- there is a lack of confidence that the recipient will respond to informal approaches because of a history of non-compliance or other evidence; and/or
- an informal approach has failed, or in the opinion of the officer is likely to fail to achieve the necessary improvements; and/or
- standards are generally poor with little management awareness of statutory requirements;
- the breach is one of a number of matters prescribed under legislation.

5.5.2 Notices will not be served for minor technical contraventions. The time limit on notices will be realistic yet reflect the nature and urgency of the situation and recipients of notices will be given the opportunity, if they wish, to discuss the requirements. If a form has been prescribed this must be used.

5.5.3 Officers must have sufficient evidence to justify service and be prepared to pursue non-compliance through the courts.

5.5.4 The response of the offender will be monitored to ensure a satisfactory outcome including follow-up checks as soon as possible after expiry. In most cases there is right of appeal against a notice either to a Court or Residential Property Tribunal. Where there is a right of appeal, advice on the appeal mechanism will be set out in writing at the time the notice is served.

5.5.5 Failure to comply with a statutory notice will, in general, result in prosecution and/or work in default.

5.6 Fixed Penalty Notices

5.6.1 Certain offences are subject to Fixed Penalty Notices (FPNs) where prescribed by legislation. They are normally appropriate for offences at the minor end of the scale and avoid the defendant gaining a criminal record. Where legislation permits an offence to be dealt with by way of a FPN, we may choose to administer one on a first occasion, without issuing a warning. A FPN would not normally be appropriate for repeat offences. FPNs may be issued to offer the person or business the opportunity of discharging any liability to conviction for the offence to which the notice relates by paying a penalty.

5.6.2 There is provision for the person to be tried for the offence should he/she elect this process or the matter may proceed to trial or be dealt with by way of a simple caution should the penalty not be paid. Additionally a notice may be given, withdrawing a penalty notice if it is considered that the penalty notice ought not to have been given.

5.6.3 FPNs will, whenever possible, be served at the time of the offence or shortly afterwards.

5.6.4 The level of fine attached to a specific FPN will be applied consistently in accordance with either national or locally adopted prescriptions. Where permitted, there may be a reduced fine payable for FPNs paid quickly within a specified number of days or through other qualifying criteria. This information will be included on the FPN.

5.7 Civil Fixed Penalty Notices

5.7.1 Local authorities can issue a civil penalty notices to the keeper of a vehicle from which litter is thrown. This is may therefore by used where the identity of the person who threw the litter is not known. [More information is contained in Appendix M.](#)

5.8 Prohibition Notices and Orders

5.8.1 These powers may be used where there are statutory grounds and where the requirements of any relevant statutory Codes of Practice regarding the use of such notices are fulfilled.

5.8.2 The Council may prohibit the use of a particular piece of equipment, a treatment, or a specific activity, or it may close part or all of a premises, where the risk is more widespread. It would do so where the proprietor, owner or other responsible person or body is unwilling to voluntarily close, or the Council has a lack of confidence that a voluntary closure would be maintained as required or a voluntary closure would otherwise not be suitable.

5.8.3 There are a wide range of different statutory powers with the provision to undertake prohibition and similarly referenced actions.

5.9 Injunctions

5.9.1 Injunctions may be sought as an alternative, or in addition to other enforcement mechanisms such as prosecutions.

5.10 Seizure of Goods, Equipment, Food, Articles or Records

5.10.1 Authorised Officers will use the relevant statutory powers to take possession and detain articles, substances, records or equipment where:

- there are reasonable grounds for suspecting that the article, substance or equipment is a cause of imminent danger to human or animal health, serious personal injury or pollution of the environment; and/or
- food is suspected of failing to meet the requirements of the relevant food safety legislation; and/or
- the article or all other relevant items are required in the investigation of a potential offence or for use as evidence in proceedings; and/or
- to secure the abatement of a statutory nuisance.

5.11 Work in Default

5.11.1 Work required in the interest of public health, safety or the environment may be undertaken by a service and the cost recovered from the duty holder where the notice allows. This may be appropriate when:

- it is necessary to carry out the work in the public interest and/or the costs are not prohibitive;
- there is a failure to carry out work covered by a statutory notice;
- immediate action is required; or
- it is unlikely that the work will be carried out unless done in default.

5.11.2 The Council will make every effort to recover the full cost of the work carried out 'in default' including exercising the option of placing a land charge on a property where relevant and appropriate.

5.12 Management Orders

5.12.1 Under the Housing Act 2004, the Council may and in some circumstance must make an Interim or Final Management Order to take over the management of a licensable HMO or a property which should be subject to selective licensing under Part 3 of the Housing Act 2004. The management order allows the Council to completely take over the running of a property. Rights of appeal exist in relation to these powers and compensation provisions also arise in some cases. The purposes of the order are to secure proper management of the property

5.12.2 In some cases an authority can make an order in relation to premises which do not need to be licensed. Such an order must be authorised by the First tier Tribunal. In the case of an HMO which does not need to be licensed authorisation can only give if the order is necessary to protect the health, safety or welfare either of the occupiers or of persons in the HMO's vicinity. In the case of other premises which are occupied by tenants or licensees the tribunal must be satisfied that the anti-social behaviour of the occupiers is causing significant problems in the area and the landlord is failing to take action against it.

5.12.3 The authority may make Interim and Final Management Orders in respect of any property let in breach of a banning order under section 16 of the Housing and Planning Act 2016.

5.12.4 Under the Housing Act, the Council may also issue an Empty Dwellings Management order. The purpose of an Empty Dwelling management order is partly to bring vacant dwelling in the private sector back into occupation and partly to address the impact that empty dwellings can have on a neighbourhood. The scheme for EDMOs is similar to that for management orders.

5.13 Compulsory Purchase Orders

5.13.1 The Council may compulsorily purchase property under Section 17 of the Housing Act 1985 and other provisions. These powers may be used as a last resort to acquire empty properties in order to bring them back into use. The consent of the Secretary of State is required and compensation provisions for the owner apply.

5.14 Premises Licence Review

5.14.1 Responsible Authorities and 'Other Persons' have the power under the Licensing Act 2003 to apply to have a Premises Licence reviewed by the Licensing Committee where activities at the premises appear to be undermining one or more of the four Licensing Objectives (the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm).

5.14.2 This option is also open to officers of the Licensing Authority (Licensing Team acting as a Responsible Authority) - in such circumstances the distinct functions of the licensing authority and of the responsible authority will be exercised by different officers to ensure a proper separation of responsibilities, procedural fairness and to eliminate conflicts of interest. Officers will generally only take such action of seeking a review if they feel that there are good reasons for a licence to be the subject of a review and no other 'body' has made the relevant application.

5.14.3 Each application for a review will be considered on its own merits at a hearing by a licensing sub-committee and take into account locally adopted licensing policy. The instigation of a review may lead to the undertaking of other enforcement action by the appropriate parties. Possible review outcomes include; the modification of licence conditions, licence suspension or revocation, or removal of the Designated Premises Supervisor (DPS), exclude a licensable activity from the scope of the licence for a limited period of time only, to a maximum period of three months.

5.15 Simple Cautions

5.15.1 We may consider issuing a simple caution as an alternative to prosecution. Where there is a criminal offence, but the public interest does not warrant a prosecution, a simple caution may be an appropriate course of action. The Ministry of Justice guidance, Simple Caution for Adult Offenders sets out the aims of a simple caution:

- to offer a proportionate response to low level offending where the offender admits the offence;
- to deliver swift, simple and effective justice that carries a deterrent effect;
- to record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks;
- to reduce the likelihood of re-offending;
- to increase the amount of time officers spend dealing with more serious crime and reduce the amount of time officers spend completing paperwork and attending court, whilst simultaneously reducing the burden on the courts.

5.15.2 Before inviting an offender to receive a simple caution, the case officer must discuss the proposed action with service management and cautions can only be formally issued by authorised officers delegated to do so. In practice this means some lead officers and the service or ~~Group~~ manager.

5.15.3 The use of simple cautions will be in accordance with the guidance issued by the Ministry of Justice, Simple Cautions for Adult Offenders. There are four preconditions, which must all be satisfied if a matter is to be dealt with by simple caution, as follows:

- There is sufficient evidence to give a realistic prospect of conviction (see paragraph 5.16.1 for further guidance on the evidential test)
- The offender admits his or her guilt,

- The person being cautioned agrees to it, having been made aware by us of the consequences and having been given adequate opportunity to consider their decision and obtain legal advice if desired.
- It is not in the public interest for the offender to be prosecuted (see paragraph 5.16.2 for further guidance on the public interest test)

5.15.4 The reasons for issuing a simple caution instead of prosecution in the courts would commonly be that the offender has no previous or recent history in relation to the offence and has done everything in their power to make amends. Depending on the circumstances, this would usually entail remedial work to premises and/or taking proper steps to ensure that the offence cannot recur.

5.15.5 If a simple caution were to be offered and refused by the offender then the case would proceed to court or an alternative enforcement action considered.

5.15.6 Following the acceptance of a caution, the offender may be invited to contribute towards the Council's costs in investigating and preparing the case, if these are significant. However a caution cannot be granted on condition that the Council's costs are paid.

5.15.7 Where relevant, primary authorities and originating authorities will be notified of any caution issued.

5.16 The Evidential and Public Interest Tests

5.16.1 The Evidential Test

- We must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. In considering the evidence, officers should have regard to any lines of defence which are open to or have been indicated by the accused, as well as any other factors likely to affect the prospects of conviction including admissibility of the evidence and reliability of witnesses. This must be an objective test since a conviction will only be obtained if the Court or the jury is sure of a defendant's guilt. It should be noted that the evidence level required varies between criminal legislative cases (beyond reasonable doubt) and civil legislative cases (balance of probability).

5.16.2 The Public Interest Test

- The public interest test must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against a caution or a more serious enforcement action e.g. prosecution carefully and fairly. Public interest factors that can affect the decision usually depend on the seriousness of the offence or the circumstances of the defendant. Some factors may increase the appropriateness of a caution whilst others may suggest that another course of action would be more appropriate.

5.16.3 More consideration of both the evidential test and the public interest test is carried out as part of any final decision to prosecute for an offence (see 5.17).

5.17 Prosecution including merit and legal tests

5.17.1 Prosecution is appropriate for individuals, businesses or other duty holders who blatantly disregard the law, or refuse to achieve even basic minimum legal

requirements, often following previous contact with the authority, and who put any persons such as the public, visitors, customers or workers at serious risk.

5.17.2 The circumstances which warrant prosecution are varied and include:

- where the offence involves a significant breach of the law such that public health, safety, animal welfare or the environment is or has been put at risk; or
- where the offence involves a failure by the offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements; or
- where the offence involves the failure to comply in full or in part with the requirements of a statutory notice; and/or
- where there is a history of similar offences; or
- obstruction or assault of an officer; or
- a simple caution has been offered but has been declined; or
- providing false or misleading information to us or others; or
- failure to pay a fixed penalty notice.

5.17.3 For cases involving criminal legislation, at all times the requirements of the Police and Criminal Evidence Act 1984 (PACE) and the Criminal Procedure and Investigation Act 1996 will be adhered to. The relevant service team leader will determine the designated Authorised Officer in charge of the investigation (the case officer).

5.17.4 The case officer will consider all relevant information and evidence when circumstances may warrant their recommendation for a prosecution, to enable a consistent, fair and objective decision to be made.

5.17.5 The service manager must then carry out a **merit test** on the case officer recommendation and the case file to be satisfied, before further preparation for prosecution proceeds, that there is relevant, admissible, substantial and reliable evidence that the offence was committed by the accused. There must be a realistic prospect of conviction. A bare prima facie case is not enough. The merit test should therefore encompass a review of the following and must be completed by the service manager or another more senior officer other than the case officer who (other than in exceptional circumstances) has not been involved in the investigation or has directed management of the case:

- The case context (understand the problem/event/situation)
- The legal framework (has the relevant framework been applied/are other legal frameworks more applicable?)
- Compliance with this enforcement policy and any other internal policies as relevant
- The delegation and powers of the case/investigating officer (are these current and correct?)
- Analysis of the facts and supporting evidence in the specific context of the relevant legal framework (see also 5.16.1 and 5.17.8)

- The standard of the witness statements, continuity of evidence and overall case management
- Key strengths and any weaknesses of the facts
- The public interest test (see also 5.16.2 and 5.17.6 and 5.17.8)
- Alternative sanctions to prosecution if applicable under this policy e.g. formal caution (see 5.15) or civil penalty (see 5.18)

5.17.6 Under the **merit test** the service manager must make an initial decision that it appears to be in the public's interest to prosecute, following the guidance in the Code for Crown Prosecutors and internal or external counsel where required including:

- seriousness of the offence;
- risk to public health, safety, animal welfare or the environment;
- identifiable victims;
- failure to comply with a statutory notice served for a significant breach of legislation;
- disregard for public health, safety, animal welfare or the environment for financial reward;
- previous history of the defendant;
- offences following a history of similar offences;
- failure to respond positively to past warnings;
- whether a due diligence defence exists and the likelihood of the defendant being able to establish such a defence;
- ability of important witnesses and their willingness to co-operate;
- the willingness of the defendant to prevent a recurrence;
- the probable public benefit of a prosecution and the importance of the case e.g. whether it may create a legal precedent;
- whether other formal action would be more appropriate or effective; and
- any explanations offered by the defendant. Officers should invite the defendant to offer an explanation before a decision to prosecute is made.

5.17.7 The **merit test** should therefore conclude with a clear decision supported by reasons as to whether to:

- refer back the case to the case officer recommending further work and investigation to ensure all reasonable lines of enquiry have been followed and concluded, to address any relevant identified issues and/or ensure the case recommendation is reviewed before a further merit test is undertaken again; or
- support the case officer recommendation under the legal framework applied; or
- make an alternative recommendation such as an alternative to prosecution or prosecution under a different legal framework (for which the Council have statutory powers and officers have delegated authority);
- where appropriate, to refer the case file to the legal services team to carry out a legal test and final decision as whether to proceed with a prosecution

5.17.8 The **final decision to prosecute** will be made by the ~~Head of Group Manager~~ Legal Services ~~(and Monitoring Officer)~~ or their delegated officer within Legal Services who will review the review the merit test conclusions and also consider the following as part of a **legal test** into the case:

- Is there is sufficient evidence to provide a realistic prospect of conviction? The test must be applied to each proposed charge and for each defendant. This is a further

consideration of the evidential test as the prosecutor including the following different factors:

- Whether the evidence is admissible.
- Whether the evidence is reliable.
- Whether the evidence is credible.
- What the defence case may be and how it may impact the prospects of conviction.
- Whether there is any material that may affect the assessment of the sufficiency of evidence, including all material in the possession of the Council, and material that may be obtained as a result of further reasonable lines of enquiry being pursued.

The evidential test is not subject to the same standard as the burden of proof. The burden of proof requires a jury to be convinced of a defendant's guilt beyond reasonable doubt. The evidential stage requires only that the prosecutor must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction taking into account what the defence may be and how this is likely to affect the prospects of conviction. The test is met when the prosecutor is satisfied that an objective, impartial and reasonable jury, bench of magistrates or judge, properly directed, would be more likely to convict of the charge alleged.

- Is it in the public interest to prosecute? This is a further consideration of the public interest test as the prosecutor including the following different factors. The public interest stage only needs to be considered if the evidential stage is met and is where we must be satisfied that the public interest factors in favour of a prosecution outweigh those against. When making this decision, prosecutors must consider each of the following questions:
 - How serious is the offence committed?
 - What is the suspect's level of culpability? This question includes consideration of whether the suspect has benefitted from the alleged criminal conduct.
 - What is the harm caused to the victim and the circumstances surrounding it?
 - Was the suspect under the age of 18 at the time of the offence and what was their level of maturity?
 - What is the impact of the offence on the community?
 - Is prosecution a proportionate response?
 - Do sources of information require protecting in cases where public interest immunity does not apply?

This list of factors is not exhaustive and the weight given to the questions may vary.

5.17.9 Where appropriate, disqualification of directors may be sought under the Company Directors Disqualification Act 1986. Consideration will also be given to prosecution of directors if a significant risk continues after warnings have been given by employees (e.g. if an offence was committed with their consent, connivance or neglect).

5.17.10 Where there has been death at work resulting from a failure to comply with health and safety law, the matter may be referred to the police if the circumstances of the case might justify a charge of manslaughter. If the police decide not to pursue the case the Council would consider a health and safety prosecution. In order to ensure decisions

on investigation and prosecution are closely coordinated, the Work-Related Deaths Protocol, agreed between the relevant enforcing authorities will be followed.

5.18 Financial (Civil) Penalties

5.18.1 These are an alternative to prosecution relevant to Private Sector Housing Enforcement.

5.18.2 A financial civil penalty can only be imposed as an alternative to prosecution. The Housing and Planning Act 2016 Section 126 and schedule 9 makes provision for the Council as the local housing authority to be able to issue a financial penalty for certain Housing Act 2004 offences. It does not permit the Council to impose a civil penalty and prosecute for the same offence. If a person has been convicted or is currently being prosecuted the Council cannot impose a civil penalty in respect of the same offence. Similarly, if a civil penalty has been imposed, a person cannot then be convicted of an offence for the same conduct.

5.18.3 The offences include;

- Failing to comply with an Improvement Notice (section 30)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72)
- Offences in relation to licensing of houses under part 3 of the Act (selective Licensing) (section 95)
- Offences in relation to the contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of House in Multiple Occupation (section 234)

5.18.4 Refer to Appendix J for more details on financial (civil) penalties.

5.19 Proceeds of Crime Applications

5.19.1 Applications may be made under the Proceeds of Crime Act (POCA) 2002 for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from their criminal conduct. Proceedings are conducted according to the civil standard of proof.

5.19.2 We will only use accredited financial investigators in respect of POCA applications, where necessary.

5.20 Multi agency approaches to enforcement

5.20.1 Wherever possible we will work with other agencies to determine the most appropriate agency to take action. In some circumstances an alternative enforcing agency may be better placed to take action than the Council. Action will be taken in consultation with the other agency.

5.20.2 Where another agency is leading on taking enforcement action but requires the support from the Council we will provide the relevant expert advice.

5.20.3 Where the Council is leading on the enforcement other agencies are expected to provide support and advice as necessary.

6.0 INVESTIGATIONS

6.1 Access and Powers of Entry

- 6.1.1** At times officers may have to access premises or land to investigate or undertake inspections in accordance with legislative duties. The majority of officers exercising Licensing, Environmental Health and some Private Sector Housing functions are not legally required to give advance notice about inspections and may not therefore do so e.g. The Food Safety Code of Practice requires officers to carry out some inspections without prior notice (notices of intent to enter). Officers will give adequate notice of intended entry where practicable or required but at times dependent on the risk or to avoid alerting perpetrators may do so without prior warning. On occasion officers may have to force entry and will apply to the courts for a warrant. There will be occasional situations that would warrant prior notification such as a project based interventions. Officers may also seek entry by invitation without notice and in such circumstances the purpose and possible consequences of permitting access will be explained in advance to the relevant parties.
- 6.1.2** In respect of our housing services tenants, the provisions of our tenancy agreements state we (our employees or contractors) must be allowed access to the property at all reasonable hours to carry out repairs, improvements, planned programmes, gas servicing and any safety checks, to inspect its condition and to complete new Tenancy visits and Tenancy Home checks. If we believe there to be a risk of personal injury or a risk of damage to the property or an adjoining property or in order to comply with our statutory duties, we must be allowed immediate access to the property. In these circumstances or if we consider there to be an emergency we will force entry into the property if necessary.
- 6.1.2** In determining the need for prior notification, officers will also have due regard to the provisions for the Home Office Code of Practice (CoP) on Powers of Entry 2014 as relevant. This code sets out considerations that apply to the exercise of powers of entry including, where appropriate, the need to minimise disruption to business. It will ensure greater consistency in the exercise of powers of entry, and greater clarity for those affected by them, while upholding effective enforcement.
- 6.1.3** Overall, the officer should have regard to the Home Office CoP in determining whether a notice of intent to enter is required and in respect of the wider areas of guidance that the CoP covers, for example:

- Providing notice of rights to occupiers

- Entering premises
- Number of persons present
- Private dwellings
- Entry without consent or a warrant
- Entry under warrant
- Timing of exercise of powers
- Seizure of property
- Retention of property
- Other persons
- Conduct
- Assistance from occupiers
- Leaving premises
- Action after exercise of powers

6.2 Notifying Alleged Perpetrators / Offenders

6.2.1 If we receive information (for example from a complainant) that may lead to enforcement action we will notify those concerned as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to anyone concerned. Throughout the course of an investigation business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a court when required and/or in accordance with the Data Protection Act 2018. See also section 8.4.

6.3 Liaison with and referrals to other regulatory bodies and enforcement agencies

6.3.1 Where there is wider regulatory interest, officers will refer information received to other relevant regulators. Where appropriate, enforcement activities will be planned and coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness and consistency of any enforcement including undertaking joint or parallel investigations and inspections.

6.3.2 We will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies. These may include (but is not limited to) Government Agencies and Departments, other Local Authorities, Police ~~Services~~ ~~Forces~~ and Fire Authorities. This will be done in accordance with wider Data Protection legislation, data sharing agreements and policy as relevant.

6.3.3 Within the Council itself, officers investigating complaints and carrying out inspections may find their work has relevance to the work of other departments and services. Officers will work together as appropriate in these circumstances. Adequate liaison will be maintained and where necessary consideration given to ways of cooperation in co-ordinating investigations and outcomes.

6.3.4 In respect of health and safety matters, the Enforcement Management Model (EMM), together with the procedure for its application, provides the Council with a framework for making enforcement decisions that meet the principles of the HSE Executive Board Enforcement Policy Statement. It captures the issues officers consider when exercising their professional judgement and reflects the process by which enforcement decisions are reached.

6.3.5 Officers will liaise with Primary Authorities and Home Authorities when applicable.

6.4 Surveillance and Human Sources: Human Rights Act 1998, Regulation of Investigatory Powers Act 2000 (RIPA) – Basis for Lawful Surveillance

6.4.1 Human Rights Act and RIPA

6.4.4 Officers will endeavour to carry out the investigation using overt methods, unless the only means of effective investigation is by way of covert directed surveillance and/or using covert human information sources (in very exceptional circumstances – see 6.4.17 and in accordance with the Council's RIPA Policy).

6.4.5 Where we undertake overt surveillance including the use of recording and sampling equipment we will ensure notice is provided to those alleged to be the source of the complaint being investigated informing them of our intentions. Such notice will be no less than 24-hours before surveillance commences which may then be undertaken of over a period of up to six-months before further notice is given if required.

6.4.6 Any covert directed surveillance must be carried out in accordance with Council procedures, RIPA (Regulation of Investigatory Powers Act 2000) and The Protection of Freedoms Act 2012. This is the statutory framework for covert surveillance. Authorisation for this type of pre-planned investigation may only be given in writing by formally appointed Authorised Officers (AO) within the Council and before being formally authorised by a Justice of the Peace (JP).

6.4.7 Officers should consult the latest internal corporate RIPA policy and forms before considering covert surveillance.

6.4.8 Officers should also be mindful that in certain circumstances conducting Open Source Research (OSR) for the purpose of gathering enforcement intelligence i.e. viewing web pages, social networks, chat rooms, information networks (e.g. twitter) and/or web based electronic mail may constitute covert directed surveillance and therefore a RIPA authorisation must be considered. Particular attention will be given to repeat visits to obtain/check or review publically available information in addition to more in-depth research including where profiles/personas are created to gain access to networking sites and this may become a covert surveillance activity requiring prior RIPA authorisation. Any covert interaction with other users including making/accepting friends requests, 'poking' or commenting on post will require authorisation.

6.4.9 Surveillance of publicly accessible areas of the internet should be treated in a similar way, recognising that there may be an expectation of privacy over information which is on the internet, particularly where accessing information on social media websites. Websites and other social media accounts set up purely for commercial and/or business (including charities and the voluntary sector) are not considered to consider an assessment of privacy and will not require RIPA or other authorisation to monitor.

6.4.10 Officers will not use personal accounts for purposes of enforcement based OSR, however simple the search. An official, open service profile should be used unless covert surveillance under a RIPA authorisation is required whereby a false account or profile is required.

6.4.11 Where OSR is carried out under a RIPA authorisation then officers are required to complete an Open Source Log/Register including details of any account, profile/persona used.

6.4.12 Covert surveillance that does not require an RIPA authorisation (for example does not meet the maximum sentence threshold or is required for general purpose) may still be permissible but should be conducted under other legislation if relevant. If no other legislation is directly applicable then officers must still take into account privacy and collateral intrusion and conduct a privacy impact assessment and document this for later scrutiny if required. Therefore the same procedure should be followed for RIPA and amended RIPA authorisation forms used and approval advance obtained from an AO (subsequent approval of the court is not required in this circumstance).

6.4.13 Any application made under RIPA should meet the following minimum criteria:

- Be required for prevention and detection of crime, for the protection of health or public safety
- In the case of directed surveillance, meet the crime threshold (an offence for which the maximum sentence is 6 months + or where an offence involves the sale of alcohol to a minor). For example, it cannot be used for littering, dog control or fly-posting offences
- Be related or relevant to a specific investigation or operation
- Likely to result in obtaining private information
- In the case of CHIS (see 6.4.14), adequately consider use (what is being asked), conduct (how it gets done/clear boundaries of action) in addition to the security and welfare of the person involved and any foreseeable outcomes to others
- Adequately consider and manage collateral intrusion
- Be proportionate (are lesser/alternative means that are less intrusive available?)
- Be cost-effective
- Be in accordance with the Council's RIPA policy

6.4.14 In accordance with RIPA, authorities for directed surveillance are valid for up to 3-months from the date of the signature and up to 12-months for CHIS (1-month in the case of a minor under CHIS).

6.4.15 Further guidance on the application of RIPA including directed surveillance, CHIS and OSR is available from the Home Office/Office of Security Commissioners and the National Police Chiefs Council/College of Policing.

6.4.16 The covert recording of noise where the recording is of decibels only or constitutes non-verbal noise (such as music, machinery or an alarm), or the recording of verbal content is made at a level which does not exceed that which can be heard from the street outside or adjoining property with the naked ear. In the latter circumstance the perpetrator would normally be regarded as having forfeited any claim to privacy. In either circumstance, an authorisation is unlikely to be required or available under RIPA. Officers would in any case typically make monitoring overt (see 6.4.5).

6.4.17 Covert Human Information Sources (CHIS)

6.4.18 The use of any Covert Human Information Sources (CHIS) must also be carried out in accordance with Council procedures and RIPA. It is considered unlikely that there will be any circumstances which would require the council to use CHIS and advice should be sought from the RIPA Monitoring Officer before any authorisation is applied for or considered granted

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6.5 Enforcement on Council premises, or at events organised by the Council

6.5.1 In principle the Council cannot legally enforce against itself. Where infringements on Council premises or land including housing stock, or at events organised by the Council are identified, the matter will be formally notified to the appropriate ~~Group~~ Managerservice manager and ~~Service~~ Director. In serious cases then the Chief Executive will be advised. If the problem relates to health and safety matters then the Health and Safety Executive (HSE) will notified. If the potential breaches of the law are the responsibility of contractors employed by the Council, enforcement action will be taken against the contractor in the same way as in other cases not involving the Council.

6.5.2 With respect to Health and Safety enforcement, we recognise a potential conflict of interest may occur where Mid Devon District Council is the relevant enforcing authority in relation to premises in which it also has an ownership or management interest. Therefore we will:

- Follow the guidance in Local Authority Circular 22/10
- Carry out our enforcement policy and practice in exactly the same way we do for all other premises and duty holders;
- Have arrangements in place to identify and resolve potential conflicts of interest;
- Inform the HSE if we identify a split in enforcement responsibility e.g. in an Local Authority (LA) owned and managed shopping precinct, LA enforces within retail outlets but HSE enforces those areas under direct LA control.

7.0 IMPLEMENTATION, MONITORING AND REVIEW

7.1 Implementation and monitoring

7.1.1 This policy reflects the essential principles and requirements of good enforcement as specified in the Regulators' Code 2014 (Department of Business Innovation and Skills), the Code of Practice Powers of Entry 2014 (Home Office) and the provisions outlined in the Legislative and Regulatory Reform Act 2006 and the Regulatory and Enforcement Sanctions Act 2008. Therefore adherence to this policy by officers is essential to demonstrate compliance.

7.1.2 The ~~relevant service~~Service Director, ~~Corporate Management Team member~~Group Manager and ~~service or team leaders~~Team Leaders, will be responsible for ensuring that all officers are familiar with the requirements of and carry out their duties in accordance with, this Enforcement Policy.

7.2 Conflicts of interest and bribery

7.2.1 As with other actions, decisions and activities of the Council, undertaking enforcement work can give rise to actual or perceived potential conflicts of interest which should be avoided. Officer must therefore comply with this general principle in addition to the Financial Regulations Part 18 and internal policies including; Anti-fraud and Corruption Policy; Officer Code of Conduct and Whistleblowing Policy

7.3 Complaints about service

7.3.1 Any complaint about a service carried out by the Council including our enforcement activities should be made in accordance with our Complaint policy available at www.middevon.gov.uk or by contacting Customer First via customerfirst@middevon.gov.uk or 01884 255255.

7.3.2 Our complaints policy does not affect any other statutory rights or entitlements a person or entity may have in respect of our enforcement decisions.

7.4 Policy review

7.4.1 This policy shall be reviewed at least every ~~102~~years. Other triggers for review include any significant apparent short-coming, case law, new statutory guidance or relevant legislative demand.

8.0 PUBLICITY AND INFORMATION REQUESTS

- 8.1. We will normally publicise details of any convictions, which could serve to draw attention to the need to comply with the law or deter others. Where appropriate, the media will also be provided with factual information about charges that have been laid before the Courts, any pending formal action and any enforcement action already taken.
- 8.2 In keeping with the spirit of the Freedom of Information Act and the Environmental Information Regulations, the Council publishes an increasing amount of information on its website: www.middevon.gov.uk.
- 8.3 Anyone wishing to make an official request for information under this legislation should see the contact form on our website (under Freedom of Information) or call our Customer First team on 01884 255255.
- 8.4 During hearings, especially Licensing and Regulatory Sub-Committees, involving enforcement decisions and formal sanctions in the context of this policy, it may be necessary to pass the a resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Mid Devon District Council Constitution. This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972. The Cabinet will need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information. Reports heard and minutes made in this manner will therefore not be available for disclosure upon request and will remain confidential.
- 8.5 This policy document is freely available to the public on the Council's website, or as a paper copy on request to ~~the Group Manager for~~ Public Health and Regulatory Services, Phoenix House, Phoenix Lane, Tiverton EX16 6PP (telephone: 01884 255255), or via email health@middevon.gov.uk. A reasonable charge may apply to cover the cost of producing paper copies of this policy.

APPENDIX A

GENERAL ENFORCEMENT POLICY DECISION MATRIX (CRIMINAL LEGISLATION)

Summary of we consider when taking enforcement action for under criminal legislation?

Officer(s) carry out investigations/inspections. This can be done in response to a complaint or request for assistance, as part of routine planned inspections of business premises or survey work.

Investigating Officer discovers evidence and is satisfied that a **criminal offence** may have been committed or is about to be committed. This is called *Prima facie* evidence.

- Investigating Officer considers a range of factors including:**
- Previous History - whether any similar situation has been found before.
 - Seriousness of the alleged offence(s), including:
 - Risks to the public or the environment
 - Any intent or recklessness of the person(s) committing the offence
 - Any obstruction of the Investigating Officer
 - Whether the alleged offence(s) are considered a special area of priority by Central Government and/or Mid Devon District Council
 - Is their enough evidence to provide a realistic prospect of conviction
 - Would any further action be in the public interest

For **LESS SERIOUS** infringements of the law and/or where there is no previous history of offences/non-compliance with legislation the following options are considered:

- **Informal Action** – verbal or written advice/warning
- **Statutory Notice** – service of a legal notice that will require certain specified action to be taken by the recipient

In all cases we will advise the alleged offender what he/she needs to do in order to comply with the law.

For **MORE SERIOUS** offences the following options will also be considered:

- **Seizure of goods or equipment** – In certain cases, goods or equipment may be seized to protect the public and/or employees, for example unsafe food or sound equipment being used to cause a nuisance
- **Formal Caution** – a Formal Caution is an alternative to prosecution and can only be issued if strict criteria are met. The Home Office of Central Government sets these criteria. A Caution stays on public record for three years. If a Formal Caution is offered to an offender, but



APPENDIX B

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – LICENSING

Licensing policies

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There are a number of specific policies covering the different regulatory functions that licensing are responsible for. These include policies for the Licensing Act 2003, the Gambling Act 2005, hackney carriage & private hire licensing and sex establishments. These policies can be found here: <https://www.middevon.gov.uk/business/licensing/licensing-policies/>

General information about the full range of activities we are required to licence or regulate can be found at <https://www.middevon.gov.uk/business/licensing/>. This includes updated, temporary provisions to issue Pavement Licences under the Business and Planning Act 2020.

Licensing and Regulatory Committees

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The Licensing and Regulatory Committees are both made up of 15 elected members. The Licensing Committee is responsible for the Licensing Act 2003 and the Gambling Act 2005. The Regulatory Committee is essentially responsible for the rest, the main part of which is hackney carriage and private hire related. The Committees meet as a whole to determine policy related matters and Sub-Committees, usually made up of 3 elected members, meet to consider individual applications (including reviews of licences), breaches of conditions and any other issues which may result in an individual no longer being considered fit and proper to hold a particular licence.

Suspension or revocation licences

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The Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 provides the regulatory framework for the Council as the licensing authority to carry out its functions in respect of Hackney Carriage and Private Hire Licensing. Under this regulatory framework the Council can suspend, revoke or refuse a licence on a number of grounds. The Council's Hackney Carriage and Private Hire Licensing Policy provides in detail how the Council will approach these matters.

When a licence is to be suspended or revoked, the Council will provide clear notice of this to the individual / premises concerned, outlining any rights of appeal they may have.

Out of hours enforcement activities

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MDDC_Operations Directorate-Enforcement Policy (September 2020February 2019)

Page

Due to the nature of some of the activities authorised it is necessary to conduct out of hour visits and inspections. This can apply to late night establishments that sell alcohol / provide takeaways and also to the hackney carriage & private hire trade. Certain businesses are at their busiest during these times and late night visits allow officers of the Council to see how they function and comply with the relevant pieces of legislation and conditions 'in action'.

Overt operations

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Officers will conduct overt inspections of licensed premises, individuals and the hackney carriage & private hire trade. Such inspections may be in partnership with relevant authorities including the Police, Devon County Council and the Driver Vehicle Standards Agency (DVSA) and others.

Test purchases

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Due to the nature of certain offences it is sometimes necessary to conduct test purchases. This is normally complaint or information led and may follow on from less severe enforcement actions which have proved ineffective. Examples include test purchasing unlicensed taxi drivers and premises selling alcohol to underage individuals. Where relevant we will work with enforcement colleagues in other agencies and relevant authorities including the DVSA and Devon, Somerset and Torbay Trading Standards

Conditions

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The Council have the ability to place conditions on a number of licences either at the application stage or via a review of a licence. Although different under each piece of legislation the Council may (generally) apply standard conditions and/or tailored conditions. Standard conditions guarantee a similar standard of activity across the district (i.e. animal establishments) and tailored conditions allow for the individual nature of certain premises to be catered for (i.e. premises licence).

Byelaws

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The Byelaws for acupuncture, tattooing, ear-piercing, semi-permanent skin-colouring, and electrolysis specify the standards practitioners and premises must meet in order to get a licence to operate. Contravening a byelaw can result in a fine upon successful conviction in a Magistrates Court.

APPENDIX C

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (NUISANCES AND ANTI-SOCIAL BEHAVIOUR)

The purpose of this appendix is to provide more information on the provisions of statutory nuisance legislation under the Environmental Protection Act 1990 and its relationship with Anti-social behaviour legislation.

Statutory Nuisance Enforcement

Proactive Inspections

Whilst much statutory nuisance work will involve reactive responses to complaints from the public, the Council also has an important responsibility to carry out pro-active regulation to protect the amenity of residents. In particular, we will carry out proactive inspections, and take all necessary actions in the following circumstances:

- To control the emission of dusts, smoke, odour or effluvia where there is a very high likelihood of nuisance occurring and/or history of complaints or an on-going investigation
- To control potential nuisance from planned events, specific operations or activities, with a potential to cause significant disturbance
- To assist the Planning Department in assessing, and controlling, the impact of potential nuisance from proposed developments

Pro-active inspections may be conducted out-of-hours (e.g. during the evening or weekends) as well as normal working hours.

Reactive Investigations

Residents reporting an issue will first be asked to complete a nuisance referral form. This needs to be completed and returned to us before we begin the investigation to ensure we have all the relevant information we need to act appropriately.

The majority of our work is reactive and is likely to involve an officer turning up on site without a pre-arranged appointment in order to investigate the matter and determine if we are able to assist.

Where the issue relates to noise, or regular occurrences of actions such as bonfires, the alleged perpetrator will be written to and at the same time the person affected will be asked to keep a diary record of the issues.

If the diary is not returned within 6-weeks then it will be assumed that the issue has been resolved informally and the case will be closed.

Any resident reporting an issue is expected to give evidence in court if necessary unless there are extenuating circumstances.

Noise App and Reportable App

These two apps are available for residents to use as an alternative to diary sheets.

The Noise app is specifically for recording noise occurrences and can be submitted to us for review.

The Reportable app allows for the uploading of photos and videos.

Both apps are useful for residents to report incidences in real time and also allow the team to better triage cases for further investigation.

Out-of-hours actions

We do not operate an out-of-hours reactive complaint investigation service.

We will investigate any nuisance complaints during normal working hours and respond initially within 5-working days to request a nuisance referral form. The process detailed above for reactive investigations will be followed.

Proactive inspections may be carried out outside of normal hours if justified and we may also carry out overt surveillance i.e. where we have warned persons of our intention to carry out monitoring in advance. This may include the use of monitoring equipment such as noise recording devices, the Noise app or Reportable app services, but may also include an officer attending the site to witness the issue first hand.

Abatement Notices

We have a duty to investigate complaints related to statutory nuisance and to serve an Abatement Notice if a statutory nuisance exists. It is an offence not to comply with an Abatement Notice without a reasonable excuse.

Section 79 of the Environmental Protection Act 1990 provides that various activities and circumstances may constitute statutory nuisances if they result in a state of affairs which is "prejudicial to health" or a nuisance. These are described as follows:

- any premises in such a state as to be prejudicial to health or a nuisance;

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

The officer must be satisfied that a nuisance exists before taking enforcement action in line with this policy and there is significant case law and guidance available to assist the officer in assessing the individual circumstances of each case.

Legislation provides that various activities and circumstances which may constitute statutory nuisances if they result in a state of affairs which is "prejudicial to health" or a nuisance. This encompasses the keeping of premises; the emission of smoke, fumes, gases, dust, steam, smells, effluvia; the accumulation of material; the keeping of animals; the emanation of insects from commercial premises; the emission of artificial light; noise from premises; noise from vehicles or machinery in the street; any other matter declared to be a statutory nuisance by enactment.

The majority of statutory nuisance service requests relate to individuals and are usually due to the behaviour of a neighbour for example playing music too loud. These requests for service can be due to a clash of lifestyles or a consequence of a long standing neighbour dispute. It is expected that the complainant/s will be willing to give evidence in court if necessary unless there are extenuating circumstances.

The Council receives many complaints about different types of noise including alarms, loud music, construction sites, barking dogs, DIY, kitchen extract systems, and air conditioning units.

Moving vehicles on the highway are not relevant premises for the purposes of statutory nuisance. Parked vehicles, machinery or equipment in the street can give rise to noise nuisance under the statutory nuisance legislation.

Out-of-hours actions

We do not currently operate an out-of-hours reactive complaint investigation service. We will therefore investigate any nuisance complaints during normal working hours and respond initially within 5 working days. As indicated above, proactive inspections can be carried out outside of normal hours if justified and we can also carry out overt surveillance (i.e. where we have warned the person(s) likely giving rise to the complaint notice of our intention to carry out monitoring) including the use of monitoring equipment such as noise recording devices or our Noise app service available for smartphone users.

Nuisances and anti-social behaviour

Anti-Social Behaviour (ASB) is a broad term used to describe the day-to-day incidents of crime, nuisance and disorder. We work closely with many other agencies in Mid Devon to tackle and reduce ASB. The ASB legislation puts victims of crime first by having effective powers for tackling ASB that act as a real deterrent to perpetrators.

These enforcement powers under the Anti-Social Behaviour Crime and Policing Act 2014 include:

- Civil injunction
- Criminal Behaviour Order
- Community Protection Notice
- Public Spaces Protection Order
- Closure Powers

Many of these powers overlap with Nuisance and Licensing laws acting as an alternative less punitive/rehabilitation action against offenders, other than proceeding through the courts (a possible action with statutory nuisance cases).

When investigating nuisance complaints we will therefore work within the options available to us under both Statutory Nuisance and Anti-social behavior legislation.

Generally, Statutory Nuisance provisions will take precedence over the ASB powers. This is because there was nothing in the ASB powers that discharge the Council from its duty to issue an Abatement Notice where the behaviour is deemed to be a Statutory Nuisance. Therefore, we continue to have a duty to issue the notice, however the ASB powers are discretionary. Nonetheless, whilst we will in almost all circumstances, only need to resort to the Statutory Nuisance powers, we cannot be certain that, in some rare circumstance, we would need to issue an abatement notice AND seek an ASB injunction or other ASB provision. For example, we may still find a scenario where noise nuisance is occurring, but it might be allied to other forms of ASB by the same individual.

High Hedges

Where there is an issue with an overgrown hedge a complainant may submit to the Council a High Hedge Referral form.

The Council will only take action where the hedge has a significant impact on light to the complainant's property.

Officers must follow the approved guidance on how to measure the impact on light and only if the impact meets the level in the guidance will the Council be able to take further action and require the hedge to be reduced.

There is a fee associated with investigating and taking action in respect of high hedges.

Informal Action

In some cases the investigation may determine that the level of annoyance being caused is not sufficient to be considered a statutory nuisance. In addition there may be an underlying dispute between parties that means that low level ASB is being experienced by a number of neighbours/residents. In such cases there is no formal action that can be taken and therefore advice will be given to all those involved. The following options may also be considered:

- Mediation: In some cases, mediation may be offered as an alternative to statutory nuisance or ASB action where it is appropriate. Mediation does not necessarily mean that neighbours have to meet face to face as the Mediation service can offer a 'shuttle' service which takes messages between neighbours and act as mediators throughout the process to get an agreement.
- Neighbourhood Agreements: Neighbourhood Agreements can be used in some cases where all neighbours sign an individual agreement, but with the same conditions, agreeing to stick to certain neighbourhood behaviours/conditions. This means all neighbours are aware of what each other has agreed to adhere to and is in everyone's interest to stick to the agreement.

~~Mediation may also be offered as an alternative to statutory nuisance or ASB action where it is appropriate.~~

Offence and Defences

If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.

There is a statutory defence where the defendant can show that he used "best practical means" (BPM) to prevent the harm from occurring

The BPM concept is well established in environmental law and requires the polluter to show that he has used the best means available to reduce the harm taking into account practicalities and cost.

Procedures and closing investigations

We will follow set procedures when undertaking nuisance investigations following a common or related set of stages.

Initially where a report of an alleged nuisance has been received the person affected will be asked to complete a referral form. The case will be closed until such a time as the referral form is returned to the department.

Once the referral form has been returned a letter will be sent to the alleged perpetrator and at the same time the person affected will be asked to keep a diary record of the issues.

If the diary is not returned within 8-weeks then it will be assumed that the issue has been resolved informally and the case will be closed.

Individual action not involving the Council

If you are the occupier of premises affected by noise, you can under section 82 of the Environmental Protection Act 1990 complain directly to a Magistrates Court. You may wish to do this because you do not want to involve us or that we are unable to help having investigated your complaint.

Other legislation dealing with nuisances and harmful emissions

We may draw upon a wide range of other regulatory powers as appropriate to deal with nuisances or other harmful emissions. These include (not an exhaustive list):

- Public Health Acts 1936 and 1961 – for example in respect of sanitary complaints, noxious premises, drainage and verminous provisions
- Prevention of Damage by Pests Act 1949 – for example for dealing with damage and nuisance caused by infestations of rats and mice
- Control of Pollution Act 1974 – for example in respect of noise from construction sites
- Building Act 1984 – for example in respect of defective drainage
- Clean Air Act 1993 – for example in respect of dark smoke from chimneys and bonfires
- Environment Act 1995 – for example in respect of imminent danger of serious pollution
- Environmental Damage Regulations 2009 – for example in respect of pollution to land from commercial activities (not historic land contaminated prior these regulations coming into effect)

In applying these various regulatory powers we will take into account best practice and codes of practice issued by the relevant agencies and bodies including DEFRA, Environment Agency and Chartered Institute of Environmental Health for example.

APPENDIX D

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (PRESCRIBED PREMISES FOR POLLUTION CONTROL)

The purpose of this appendix is to give further guidance on the provisions of the above legislation.

More information regarding prescribed premises for pollution control (also known as permitted installations) can be found at

<https://www.middevon.gov.uk/residents/environment/air-quality/regulated-installations/>

Prescribed premises for pollution control

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We are one of relevant enforcing authorities for the purposes Environmental Permitting Regulations 2016 (EPR) made under the Pollution Prevention Control Act 1999 in respect of installations prescribed for local authority control within our district.

Under EPR we regulate “installations” that carry out certain industrial activities. Permits are issued for these installations containing conditions that are intended to achieve a high level of protection for the environment as a whole. The powers cover two regimes, Local authority Integrated Pollution Prevention and Control (LA-IPPC) “A2 Installations” and Local authority Pollution Prevention and Control, “Part B installations”. For A2 installations the Regulations require that emissions to air, water (including discharges to sewer) and land, plus a range of other environmental effects, must be considered in the permit and that sites that cease to be permitted are restored to their original condition. For Part B installations the Regulations require that emissions to air should be considered.

Operators of prescribed installations are required by the EPR to comply with both procedural and operational conditions. A failure to do so in either case might constitute an offence.

Enforcement of regulated installations

The purpose of enforcement is to ensure that preventative or remedial action is taken to protect the environment or to secure compliance with the regulatory system. The need for enforcement may stem from an unauthorised “incident” or activity or from a breach of the conditions of a permitted activity. Although we expect full voluntary compliance with relevant

legislative requirements or permit provisions, we will use our enforcement powers where necessary. The powers available include:

Preventative /remedial actions

- Enforcement Notices
- Suspension Notices
- Variation of permit conditions
- Revocation Notices

Criminal enforcement responses

- Prosecution
- Formal caution
- Warnings

Enforcement Notices

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

Suspension Notices

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

Under the provisions of EPR, we may also serve a Suspension Notice for non-payment of the annual permit subsistence fee (see also Revocation Notice).

Variation Notices

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

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

When issuing a Variation Notice, we will include as part of that notice a copy of the consolidated authorisation or permit. Where the operator makes an application for a variation and we decide not to vary the permit then we will notify the operator of our decision and the right of appeal against that decision.

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Revocation Notices

We may revoke a permit in whole or in part, at any time by service of a Revocation Notice for appropriate reasons. These also include non-payment of the annual subsistence fee.

When issuing a Revocation Notice the Council will provide an accompanying letter stating the reasons and effect of the Revocation Notice. We will give prior notice and appropriate warning of our intention issue a Revocation Notice giving the operator of the permitted installation appropriate notice to address the issue.

Failure to comply with permit conditions or Notices

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

Operating without a permit

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

Operating whilst under the provisions of a permit Suspension or Revocation Notice may also be considered as operating without a permit and also lead to prosecution of the operator.

Other Actions

Requisitions for Information

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

APPENDIX E

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (FOOD SAFETY)

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

We will work closely with other agencies including the FSA, Public Health England, the Department of Food and Rural Affairs (Defra), Primary Authorities and Home Authorities to ensure consistent and coherent regulation.

The ultimate purpose of the Council's food safety enforcement function is to ensure that those persons with a statutory duty manage and control risks effectively, thus preventing harm.

Food Safety information

More information on the regulation and enforcement of food safety and hygiene can be found at <https://www.middevon.gov.uk/business/food-safety-and-hygiene/>

General food safety enforcement

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The Council regards prevention as better than cure. As such officers will offer information and advice to those the Council regulates and seek to secure compliance avoiding bureaucracy or excessive cost. Individuals and businesses are encouraged to put food safety first and integrate safe and hygienic practices into normal working methods.

Enforcement action will be based primarily on an assessment of risk to public health. Formal action will be focused on situations where the public is put at risk, where food businesses are negligent of their obligations or intentionally infringe the law.

Only officers who are deemed competent by training, qualification and experience and who meet the criteria in the Statutory Code of Practice will be authorised to undertake enforcement action. The Council will also ensure that all appointed officers are trained in the use of this policy.

The purpose of enforcement is to:

- ensure that businesses take action to deal immediately with serious food safety risks;
- promote and achieve sustained compliance with the law;
- ensure that businesses which breach food safety requirements are held to account. This may include bringing alleged offenders before the courts.

The Council has a range of tools at its disposal in order to secure compliance with the law and to ensure a proportionate response to criminal offences. The powers available include:

Preventative / remedial action

- Informal action (advice, verbal action, request for action)
- Hygiene Improvement Notice
- Hygiene Emergency Prohibition Notice
- Remedial Action Notice
- Seizure/detention
- Refusal / Suspension / Removal of Approved Premises status
- Hygiene Prohibition Order

Criminal enforcement responses

- Prosecution
- Simple caution

Food safety enforcement notices

Informal action may be taken where:

- The act or omission is not serious enough to warrant formal action.
- Past history indicates that informal action can be expected to achieve full compliance.
- The officers' confidence in the management of the premises is high.
- The consequences of non-compliance will not pose a significant risk to public health.
- Even when some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach.
- The availability of a due diligence defence (acting with reasonable care).

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Statutory Notices will be used only where the guidance criteria specified in the Statutory Code of Practice is fulfilled. Authorised Officers will only sign Improvement Notices if they have personally witnessed the contravention and are satisfied that it meets the criteria given in this policy.

The use of a Hygiene Emergency Prohibition Notice will be considered when an imminent risk of injury to health can be demonstrated. The officer will consider the guidance criteria specified in the FSA Statutory Code of Practice concerning the conditions when prohibition may be appropriate before service of the Notice.

The offer of Voluntary Closure of a premises, use of any equipment, process or treatment will only be accepted where the nature and extent of the offer would have at least the equivalent effect of the service of a Hygiene Emergency Prohibition Notice.

Remedial Action Notices will be used if a continuing offence in any food premises subject to approval under Regulation 853 / 2004 requires urgent action owing to a risk to food safety. The officer will consider the guidance criteria specified in the FSA Statutory Code of Practice concerning the conditions when a Remedial Action Notice may be appropriate before service of the Notice.

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

Food detention/seizure

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

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

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

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

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

Refusal / Suspension / Removal of food approvals

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Certain food premises that handle products of animal origin require the approval under Regulation 853 / 2004 prior to conducting a business. Formal action will be taken against those premises which require approval but knowingly fail to gain approval before operation. An

establishment will be refused approval where it does not fully meet the requirements of Regulation 853 / 2004.

Where serious deficiencies are identified or production stopped repeatedly and the food business operator is not able to provide adequate guarantees regarding future production the Council will withdrawal approval and the establishment must not be used for any activities which would render it subject to approval under regulation 853 / 2004 with immediate effect. Suspension of approval will be considered where the food business operator can guarantee that it will resolve deficiencies within a reasonable time limit.

A Hygiene Prohibition Order may be imposed by the Court, following a successful prosecution, where it considers that the premises, equipment or processes put the public health at risk. The Court may also ban the Food Business Operator, and/or manager, from managing a food business.

Where an enforcement officer is satisfied that a case for prosecution is in the public interest and is supported by sufficient relevant evidence that is admissible and reliable, prosecution will be considered for:

- Non-compliance with a hygiene improvement notice, except where the remaining contraventions detailed in the notice are minor and do not pose a risk to public health or where the outstanding works are in hand
- A flagrant breach of law such that public health, safety or well-being is put at risk, or there is a serious offence under food safety legislation.
- A failure by the offender to correct an identified serious potential risk to food safety after having been given a reasonable opportunity to do so.
- The sale of the food unit for human consumption or not of the quality demanded by the purchaser.
- A failure to comply in full or part with a Statutory Notice, approval or registration.
- A continuing history of similar offences related to risk to the public.
- A Simple Caution has previously been issued for a similar offence.

A person will only receive a Simple Caution when the circumstance of the offence meet the criteria identified in Home Office Circular 016 / 2008.

APPENDIX F

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (COMMUNICABLE DISEASE CONTROL)

The purpose of this appendix is to give further guidance on the arrangements for communicable disease control under the Health Protection legislation.

General infection control enforcement

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We are actively involved in the surveillance, reporting and raising public awareness of the causes and prevention of communicable diseases across the district. A memorandum of understanding sets out the framework for a working relationship between Mid Devon District Council and Public Health England, South West Centre (PHE SWC) or its replacement organisation.

PHE SWC will lead on the development, maintenance, and dissemination of policies and procedures for the management of communicable disease and on the public health aspects of control of chemical and radiological hazards across Mid Devon. These policies and procedures will be developed as appropriate in association with other relevant local agencies including Environmental Health Departments, Environment Agency, Public Health Departments, Health and Safety Executive, primary health care, microbiology laboratories, water companies, etc. PHE SWC will also provide the gateway to a range of expert national advice in the areas of infectious diseases, chemical, radiation and nuclear hazards.

PHE SWC and Mid Devon will collaborate to provide specialist advice to health professionals, the public and the media on issues of public health protection that are of mutual concern across the district.

Notifications of infectious disease

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PHE SWC and Mid Devon recognise that effective liaison is needed and agree to collaborate with partners, e.g. Care Quality Commission, HSE, to provide advice and support for control of infection in relevant premises including community settings, residential care homes, schools, nurseries, hotels and tattoo parlours.

PHE SWC and Mid Devon will liaise where necessary with each other where either agency becomes aware of adverse conditions or situations which may have contributed to a notified single case or outbreak of infectious disease such as filthy or verminous premises, poor housing conditions, lack of fire precautions in a house in multiple occupation, overcrowded housing, poor hygiene in a communal kitchen, unsafe working conditions, dilapidated drainage system, rodent infestation, a potential statutory nuisance, etc..

We will notify PHE SWC of any infections reported to us directly through alternative sources such as GPs, members of the public, government agencies, water companies, where they have identified a potential for a person or persons to become infected and as appropriate where they come across circumstances where there is actual contamination or the potential for contamination of a person or persons from a chemical or radiological agent.

We will only investigate and enforce infection control within our field of responsibility, including:

- Investigation of individual cases of notifiable diseases as defined in the single case management plan
- Provision of advice to affected individuals
- Inspection of suspected sources including work places and food premises within our field of responsibility
- Sampling of possible sources of infection
- Leading investigations of norovirus outbreaks within non care establishments e.g. hotels with PHS SW support where required
- Supporting PHE SWC with community outbreaks of diseases that are not usually investigated by Environmental Health e.g. non-food borne/food poisoning cases, providing local knowledge
- Enforce relevant food safety and or health and safety legislation where appropriate
- Enforce the Health Protection (Local Authority Powers) Regulation 2010, the Health Protection (Part 2 A Orders) Regulation 2010 where appropriate.
- Assist in distribution of faecal pots during outbreaks
- Supporting multi agency teams
- Disseminating information
- Rodent / pest control

More information on infectious diseases can be found at <https://www.middevon.gov.uk/business/food-safety-and-hygiene/infectious-disease/>

Health protection legislation

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The revision of the Public Health (Control of Disease) Act 1984, as amended by the Health and Social Care Act 2008, and the introduction of the Health Protection Regulations 2010 require us to appoint Proper Officers to receive notifications of infectious disease but do not

need to be medically qualified. Proper Officers are not required for the implementation of Part 2A Orders.

We will appoint Proper Officers for the purposes of the Public Health (Control of Disease) Act 1984 (as amended) and associated communicable disease legislation, for the Mid Devon area. Public Health England Consultants are given delegated authority by this Council to act as Proper Officers.

These health protection powers provide us with a range of measures that can be used to prevent, protect against, control or provide a health protection response to an incident, including by chemicals and radiation, or spread of infection or contamination that presents, or could present, significant harm to health. They will be used where voluntary cooperation to avert a health risk cannot be secured and where other methods of control are ineffective, unsuitable or disproportionate to the risk involved.

Local authority powers

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Local authority powers are available for use where voluntary cooperation to avert a health risk cannot be secured and where other methods of control are ineffective, unsuitable or disproportionate to the risk involved. When exercising these powers consideration will be given to:

- Risk of transmission
- Impact of transmission
- Necessity
- Proportionality
- Context

These powers allow us to serve, vary or revoke a notice to:

- require that a child is kept away from school;
- require a head teacher to provide a list of contact details of pupils attending their school;
- disinfect/decontaminate premises or articles on request;
- request (but not require) individuals or groups to co-operate for health protection purposes;
- restrict contact with, or relocate, a dead body for health protection purposes.

Health Protection (Part 2A Orders) Regulations 2010

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We may apply to a Justice of the Peace (JP) for a Part 2A order that imposes restrictions or requirements on a person, a thing, a body or human remains, or premises. The order requires action to be taken to protect human health against infection or contamination that presents, or could present, significant harm to human health.

In deciding whether to apply for an order the officer will need to determine that the application is a proportionate, necessary and appropriate response to the risk to human health. The Public Health (Control of Disease) Act 1984 (as amended) sets out the criteria that a JP must be satisfied about before they can make an order. These are:

- that the person, thing, dead body or premises is, or may be, infected or contaminated;
- that the infection or contamination presents, or could present, significant harm to human health;

- there is a risk that the person, thing, dead body or premises might infect or contaminate others; and
- an order is necessary to remove or reduce the risk.

Evidence to support these four criteria must be provided to the court by a person suitably qualified to do so. Depending on the circumstances this may be an authorised officer, a doctor or scientist, and we will arrange for this person to provide evidence.

Request for compensation

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Exclusion is a power under regulation 8 of the Health Protection (LA Powers) Regulations 2010 where the local authority may request a person to do, or refrain from doing, something and we may offer compensation. Mid Devon District Council would only consider compensation payments in exceptional circumstances where hardship is demonstrated and providing we made the decision to exclude a person for a given period of time.

APPENDIX G

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (PRIVATE WATER SUPPLIES)

The purpose of this appendix is to give further guidance on the provisions of private water supplies and the requirements and standards for drinking water enforced through the Private Water Supplies Regulations 2016, as amended.

Private water supplies information

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A private water supply is any water supply which is supplied to a property that is not provided by a water company that may come from a spring, well, borehole, pond, river, stream or rainwater harvesting. Most of these supplies are situated in remote, rural parts of Mid Devon and can originate from a range of sources including; boreholes, natural springs, and watercourses.

We will work closely with formal guidance provided by the Drinking Water Inspectorate (DWI) to ensure consistent and coherent regulation. The DWI is the competent authority for ensuring drinking water requirements are met and has a statutory role to act as technical and scientific advisors to local authorities on all aspects of drinking water quality.

More information on our sampling and regulation of private water supplies can be found at <https://www.middevon.gov.uk/residents/environment/private-water-supplies/>

Private Water Supplies legislation

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The Water Industry Act 1991 defines the powers and responsibilities of Mid Devon District Council to act as the regulator for private water supplies across the district. Section 77 includes a requirement to check the wholesomeness and sufficiency of every private water supply within Mid Devon. Where a private water supply is deemed to be unwholesome and/or insufficient then a Section 80 notice will be served on the relevant person(s).

Under the Private Water Supplies (England) Regulations 2016, as amended, we are required to ensure that any private supply of water intended for human consumption does not constitute a potential danger to human health. We achieve this by conducting our statutory duties which includes:

- risk assessments (regulation 6);
- investigations (regulation 16);
- authorisations (regulation 17); and
- monitoring (sampling and analysis) (regulation 7)

Risk assessment

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We are required to undertake a risk assessment of all private water supplies, except supplies to single non-commercial domestic dwellings, every 5 years. The purpose is to establish whether there is a significant risk of supplying water that could constitute a potential danger to human health and to establish whether there is a risk of non-compliance with any of the standards or indicator parameter values. Risk assessments involve looking at the whole private water supply including the source, storage tanks, treatment systems and the premises using the supply.

Investigation

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Investigations are conducted whenever there is a failure to meet a standard or if it suspected for other reasons (risk assessment, operational incident, or complaint). The investigation has to determine whether the cause of the failure occurred within the private water supplier's system (raw water, treatment or distribution) or whether it occurred within the pipe work (domestic plumbing and fittings) within premises. Once the cause of the failure has been established action will be taken to restore the water quality so that it is wholesome. If we cannot secure action by informal negotiation and an authorisation has not been granted, a Section 80 Notice will be served.

Authorisation

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In exceptional circumstances an authorisation may be issued to supply water to a lower standard on a temporary basis while remedial action is taken as part of an agreed and timed programme of work. We will issue authorisations, assessed and evidenced on a case-by-case basis and only after consultation with the DWI.

Sampling and monitoring

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The type and frequency of sampling is determined by the following category and size of the supply:

Category of Water Supply

1. Commercial Supply - where the water is used for a commercial activity;
2. Large Supplies – where the average daily volume of water is more than 10 cubic meters;
3. Private Distribution System – where the water is supplied by a water undertaker or licensed water supplier and then further distributed by a another person;
4. Small Supply – where the water is supplied to more than one domestic dwelling;
5. Single Domestic Supply - a domestic dwelling.

| Category | Volume | Sample Type* | Frequency |
|---|---|---------------|----------------|
| Private Distribution System | As outlined below | | |
| Large Supplies (>10 ³ m per day) and Commercial Supplies | <10 ³ m per day | Group A and B | Once annually |
| | >10 ³ m ≤100 ³ m per day | Group A | Twice annually |
| | >10 ³ m ≤3300 ³ m per day | Group B | Twice annually |
| Small Supplies | varies | Group A and B | Every 5 years |

*Group A sampling involves looking at a suite of basic parameters and Group B sampling covers a much larger suite of parameters.

Fees and Charges

The private water supply regulations enable us to charge for risk assessments and all sampling within rules set out by the Government. The current charges reflect current service delivery and can be seen on our website at the link for private water supplies.

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APPENDIX H

**SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH
(SMOKING ENFORCEMENT)**

The purpose of this appendix is to give further guidance on the provisions of smoke free legislation prescribed by the Health Act 2006 as updated in 2015.

Part I of the Health Act 2006 makes provision for the prohibition of smoking in certain enclosed or substantially enclosed premises, and allows for regulations to be made providing for other places (which need not be enclosed) and vehicles to be smoke-free. The Smoke-free (Exemptions and Vehicles) Regulations 2007 provide for enclosed vehicles used by the public or as a workplace by more than one person to be smoke free. The Smoke-free (Private Vehicles) Regulations 2015 will require all private vehicles to be smoke-free when they are enclosed, contain more than one person and a person under 18 is present in the vehicle.

Exemptions to the requirements for premises and vehicles to be smoke free are also contained in the Smoke-free (Exemptions and Vehicles) Regulations 2007.

Smoke free enforcement

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It is our policy as the enforcing authority, to protect people working in or visiting an enclosed or substantially enclosed public place from exposure to second hand smoke. This policy also applies to vehicles used in connection with work and public service.

We will not embark upon a rigid proactive inspection programme under this legislation however, visits to check compliance will be undertaken at the same time as other enforcement visits or following receipt of a complaint. Enforcement activities by inspection will involve different approaches depending upon the circumstances including announced or unannounced inspections.

Authorised officers will assess compliance by observation within the premises, subsequently announce themselves and show appropriate identification to the person in charge of the premises at the end of the period of inspection.

Enforcement powers

Enforcement powers available include:

Preventative / remedial action

A verbal warning, an informal letter or fixed penalty notice

Licensed premises and drivers

For licensed premises and drivers matters can be referred to a Licensing or Regulatory sub-committee respectively. This will take precedence over other enforcement responses excluding preventative/remedial actions outlined above.

Criminal enforcement responses

- Prosecution
- A fixed penalty notice may be issued when an offence has been committed.
- Fixed penalty notices apply to persons who smoke in a smoke free place,
- Premises or vehicle, or where the appropriate signage is not displayed at such places.
- A fixed penalty notice will be issued at the time when the contravention is identified or if appropriate at a later date.

Where repeat breaches of the legislation are witnessed or where fixed penalty notices are not paid in full, then prosecution proceedings will be taken. Prosecution will be considered against an individual found smoking in a smoke free premise or against a person in control of a smoke free premise who fails to erect the correct signage, where informal action and fixed penalty notices have failed to secure compliance. A prosecution will be considered against a person in control of a smoke free premise who fails to prevent smoking after informal action has been taken and liaison will be undertaken with the Licensing Team in respect of any licenced premises.

A general duty of care will apply under the Health and Safety at Work etc. Act 1974. This may be applied when checking, or giving advice on, smoking shelters, ventilation of non-smoke-free rooms, and people working in non-smoke-free rooms and private dwellings.

Smoking in private vehicles

The existing smoke-free law, which makes public places and work premises and vehicles smoke-free, was extended in 2015. The Smoke-free (Private Vehicles) Regulations 2015 requires all private vehicles to be smoke-free when they are enclosed, contain more than one person and a person under 18 is present in the vehicle. It will be an offence for someone to smoke in a private vehicle with someone under age 18 present and for a driver not to stop someone smoking.

Note that electronic cigarettes and all forms of nicotine vaporisers are not included within the definition of smoking. The purpose is to protect children from the harm to their health caused by exposure to second-hand smoke in vehicles.

The police will be responsible for enforcing the legislation in vehicles on the road and have the power to serve fixed penalty notices. As the local authority, we have powers to carry out investigations together with providing information and raising awareness to ensure compliance. In doing so, we will take into account Chartered Institute of Environmental Health (CIEH) guidance: Implementation of Smoke-free Legislation in England - The Smoke-free (Private Vehicles) Regulations 2015.

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APPENDIX I

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (HEALTH AND SAFETY)

The purpose of this appendix is to give further guidance on the provisions of the Health and Safety at Work etc. Act 1974 and subordinate legislation.

Health and Safety at Work etc. Act 1974

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

We will put into place adequate arrangements and procedures for enforcement by complying with the National Local Authority Enforcement Code – Health and Safety at Work issued under section 18 (4) (b) of the Health & Safety at Work etc. Act 1974. This Council will also follow the guidance issued to local authorities by the Health and Safety Commission in its Enforcement Policy Statement.

We will only enforce health and safety within our field of responsibility, defined as;

- Activities/premises being within the Councils geographical boundary which are so stipulated in the Health and Safety (Enforcing Authority) Regulations 1988 (as amended)
- Activities/premises locally agreed with the Health and Safety Executive.
- Activities/premises which fall within the memorandum of understanding to the flexible warranting scheme. (Local agreement between local authority officers and HSE inspectors).

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

The Authorised Officer of the Council will liaise with other agencies where appropriate, including the Health and Safety Executive, local authorities involved with the Primary Authority Scheme or Lead Authority Partnership Scheme (LAPS) and any other appropriate agency before enforcement action is taken to ensure consistent and coherent regulation.

Support is given to the Health and Safety Executive / Local Authority Liaison Committee (HELA) in its role liaising between local authorities and the Health and Safety Executive to ensure that a co-ordinated and progressive approach to health and safety takes place. To secure health and safety compliance, this Council will take part in national and local initiatives depending upon the resources available.

Enforcement of regulated premises

The appropriate use of enforcement powers, including prosecution, is important both to secure compliance with the law and to ensure that those who have a duty under it may be held to account for failures to safeguard the health, safety and welfare of employees or the public. Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor to assist such claims.

The purpose of enforcement is

- to ensure that duty holders take action to deal immediately with serious risks and
- to promote and achieve sustained compliance with the law,
- to ensure that duty holders who breach health and safety requirements and directors or managers who fail in their responsibility, are held to account. This may include bringing alleged offenders before the courts.

The Authorised Officer has a number of options available to secure compliance with the law and demonstrate a proportionate response to criminal offences. The powers available include:

Preventative / remedial action

- Informal action (advice, verbal action, request for action)
- Improvement Notices
- Prohibition Notices
- Seizure

Criminal enforcement responses

- Prosecution
- Simple Caution

A person will only receive a Simple Caution when the circumstances of the offence meet the criteria identified in Home Office Circular 016/2008.

Informal action is taken where an act, omission or contravention is not serious enough to warrant formal action and previous history with the management of health and safety would suggest this will achieve compliance.

Improvement notices will be served when one or more of the criteria below apply:

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

Prohibition notices will be served in the following circumstance:

- When an officer is of the opinion that an activity (or activities) carried on at a premises involves or may involve a risk of serious personal injury.
- Whilst the risk does not have to be imminent before an immediate prohibition notice can be served; such notices will generally only be served where the risk of serious personal injury is such as to require action to be taken without delay to control that risk.
- Immediate prohibition notices may be served not only where the risk is one of traumatic (acute) injury, but also where the risk is from a long term health hazard of a cumulative nature which may ultimately contribute to damage to health.

- Deferred prohibition notices may be served when a greater risk would result if that activity was stopped immediately.

All improvement and prohibition notices served will be placed on the Authority's public register if they relate to matters of a public concern. This is a requirement of the Environment and Safety Information Act 1988.

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

Subject to the application of the evidential and public interest tests, this Council will normally prosecute in the following circumstance:

- Death was a result of a breach of the legislation;

(NOTE: Health and Safety sentencing guidelines regard death resulting from a criminal act as an aggravating feature of the offence. If there is sufficient evidence that the breach caused the death, this Authority considers that normally such cases should be brought before the court. However, there will be occasions where the public interest does not require a prosecution, depending on the nature of the breach and the surrounding circumstances of the death.)

- The gravity of the alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants prosecution;
- There has been reckless disregard of health and safety requirements;
- There have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- Work has been carried out without or in serious non-compliance with an appropriate licence;
- A duty holder's standard of managing health and safety is found to be far below what is required by health and safety law giving rise to significant risk of actual or potential harm;
- There has been a failure to comply with an improvement or prohibition notice;
- There has been a repetition of a breach that was subject to a simple caution;
- Where false information has been supplied wilfully, or there has been an intention to deceive, in relation to a matter which gives rise to significant risk;
- Inspectors have been intentionally obstructed or assaulted in the lawful course of their duties
- Where it is appropriate in the circumstances to draw general attention to the need for compliance with and maintenance of the standards required by law, and conviction may deter others from similar failures to comply with the law.

- Where a breach giving rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity

Primary Authority Partnerships

A Primary Authority Partnership allows businesses to form a statutory partnership with a single local authority, providing access to assured advice on compliance which must be respected by local regulators. It also allows for co-ordination of inspection and enforcement activity. Where there is a Primary Authority Partnership in existence with a company, contact will be made with the Authority once enforcement action is being considered.

We recognise the status of the Primary Authority Partnership scheme, made under the Regulatory Enforcement and Sanctions Act 2008. Section 25c of this Act requires an enforcing authority that wishes to take enforcement action against a business which has a primary authority, to first notify the primary authority of the proposed action. Enforcement action is widely defined for the purposes of the Act by the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009, as amended.

Statutory guidance on the scheme requires that the notification of proposed enforcement action by the enforcing authority:

- should be made via the Primary Authority Register;
- should be itemised, where multiple enforcement actions are being proposed; and
- should include specified details. These are set out in the statutory guidance and in the notification template on the Primary Authority Register.

The statutory guidance also requires that, when making a notification, an enforcing authority should ensure that, during the 5 working days following the notification, it is able to respond to requests from the primary authority for further information or clarification.

The Primary Authority has 5 working days to decide if it objects to the proposed enforcement action. If the Primary Authority or Regulated Business objects, they are entitled to refer the matter to the Secretary of State for consideration within 28 days. Secretary of State determinations must be adhered to.

The legislation recognises that there will be times when the need to act swiftly is critical and it allows for notification to the primary authority to be retrospective in certain defined circumstances. In brief, this applies for:

- Emergency prohibition notices under specified food safety legislation;
- Enforcement action that is required urgently to avoid a significant risk of harm to human health.

Investigations

The Authorised Officer of the Council shall determine whether incidents, cases of ill health, or complaints should be investigated. Investigations are undertaken in order to determine:

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

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

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

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

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

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

Decisions involving significant resources will need approval from the Service Director or Service Manager.

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

Representations to the courts

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

Death at work

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

The police and Crown Prosecution Service (CPS) have legal responsibility to pursue a charge of manslaughter if appropriate. The Council are responsible for investigating contraventions

of health and safety. If in the course of their health and safety investigation an Authorised Officer finds evidence suggesting that a manslaughter incident may have occurred, they will pass it to the police for their consideration. If the police or the CPS decide not to pursue a manslaughter case we will normally bring a health and safety prosecution in accordance with this policy.

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

Lead/Primary Authority

The Health and Safety Executive (HSE) established the Lead Authority Partnership Scheme (LAPS) to improve safety management systems of organisations with multiple outlets that are subject to local authority regulation and promote the consistency of health and safety enforcement for such organisations

Where there is a Lead Authority Partnership in existence with a company where enforcement action is taken copies of letters, notices and other relevant matters will be sent to that Authority for their information/action.

A Primary Authority Partnership allows businesses to form a statutory partnership with a single local authority, providing access to assured advice on compliance which must be respected by local regulators. It also allows for co-ordination of inspection and enforcement activity. Where there is a Primary Authority Partnership in existence with a company, contact will be made with the Authority once enforcement action is being considered (see the above paragraphs under the heading "Primary Authority Partnerships")

Regulating occupational health and safety during the coronavirus outbreak/pandemics

Duty holders have obligations to comply with health and safety at work legislation and requirements to manage and control workplace risks, including protecting workers and others from the risk of COVID-19 infection in the workplace. All workplaces will need to adapt their operations to manage the routine risk of infection and some may need to take further additional steps in the event of an outbreak associated with that setting.

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▲ Our regulatory approach will continue to take proportionate account of the risks and challenges arising from the pandemic. Public health interventions and enforcement powers will be used as a last resort and where necessary to protect public health and to secure compliance with the law.

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▲ Our activities will continue to be guided by the specific requirements and characteristics of the sectors we regulate and in line with advice from the UK Government and Public Health Bodies.

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In particular:

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- ▲ We will continue to work closely with our regulated sectors to enable businesses to put practical measures in place to enable people to work safely, while remaining compliant with public health and health and safety at work requirements

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- We will carry out work to check that appropriate measures are in place to protect workers from COVID-19 or other pandemic
- If a public health body identifies a cluster of cases in a workplace or declares a workplace outbreak, we will consider any virus transmission risk controls in the workplace, how they've been implemented and how it could affect the likelihood of virus transmission
- Where a public health body identifies infection levels of concern in a community and/or a community is in local lockdown we will work to help understand whether workplaces are contributing to transmission. Arrangements to trace and track COVID-19 or other pandemic cases will be considered
- We will support the Local Outbreak Management Plan (LOMP) that provides an outline for managing coronavirus (COVID-19) or other pandemic outbreaks in Devon to protect residents and support the most vulnerable. It sets out measures to prevent any further local outbreaks of coronavirus in Devon as well as action to respond rapidly to any outbreaks, limiting further spread

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APPENDIX J

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – PRIVATE SECTOR HOUSING

The purpose of this appendix is to give further guidance on the provisions of specific legislation and enforcement powers in respect of housing that is privately rented (excluding social housing).

Private rented homes

- On receipt of an enquiry from a tenant a 'tenant referral form' will be sent out.
- When the form has been returned the tenant, the landlord and any other relevant person will be notified of a formal inspection date.
- Following the formal inspection an assessment of the condition of the property will be undertaken and appropriate enforcement action taken if necessary.

Owner Occupied homes

- On receipt of an enquiry the owner will be contacted to provide advice.
- A formal inspection may be arranged depending on the circumstances
- Following the formal inspection an assessment of the condition of the property will be undertaken and appropriate advice or enforcement action taken if necessary.

Empty Homes

- On receipt of an enquiry the empty property will be investigated within 4 weeks.
- The person reporting the property **will not** be kept informed of progress due to the nature of such investigations and the risk of sharing personal data.
- Where intervention is required, the team will pursue the most suitable form of enforcement action to either improve the property or bring it back into use.

Houses in Multiple Occupation (HMO)

- Licensed properties will be inspected on a regular basis to check for breaches of the licence conditions. This will be determined on a risk basis.
- Where notification is received alleging a HMO it will be visited to determine if there are breaches of the Management Regulations or whether the property should be licensed.
- Identification of properties that require a licence will be carried out using local data, information from other agencies and proactive inspection programmes.
- Where an enquiry is made by a tenant in relation to disrepair or potential hazards, then the approach mentioned above (private rented homes) will be followed.

Anonymous Enquiries

- These enquiries will be risk assessed and dealt with as and when resources allow
- Where a problem is found to exist one of the approaches above will be followed depending on the circumstances.

Proactive inspections

- Notification from other agencies such as the Police or Fire and Rescue Service may result in proactive inspections of properties that lead to formal action
- Specific areas may be identified as requiring proactive targeting resulting in a number of properties in a defined area being inspected and any necessary action undertaken.

All tenure types will be investigated in the same way, however the most appropriate course of action to deal with the individual circumstances will be determined on a case by case basis as detailed in this policy. Local authority owned property will only be inspected at the request of the housing department.

Legislative Overview for Private Sector Housing

Housing Act 2004

Since April 2006, the Housing Act 2004 ("the Act") has been the primary legislative tool for dealing with private sector housing conditions. Regulations made under the Act also play a significant role. The Act is divided into a number of parts, of which the following are most relevant in this context:

Part 1: Housing conditions

This Part covers the assessment of housing conditions being the Housing Health and Safety Rating System ("HHSRS") and regulations made under section 2 prescribed this as being the method for assessing the severity of hazards.

It also introduces Category 1 and Category 2 hazards. Category 1 hazards are the most serious and likely to cause harm to health and/or safety. Where the Council has identified a Category 1 hazard it is under a mandatory duty to take the appropriate enforcement action. Where it has identified a Category 2 hazard it has a discretionary power to take action.

This Part also sets out the available enforcement options for dealing with Category 1 and 2 hazards. They include:

- Improvement Notice - requires the taking of remedial action within a specified time period. Such notices can, on service, be suspended to come into effect at a later date or at a point in time when a specified event takes place.
- Prohibition Order - prohibiting or restricting some or all uses of all or part of a residential premises. Such orders may also be suspended on service.
- Hazard Awareness Notice - highlighting that there are hazards existing on a residential premise which should be considered for further action. Such a notice does not place a legal obligation on the recipient to carry out works.
- Emergency Remedial Action – action taken by the Council where there is a hazard which involves an imminent risk of serious harm. This action can only be taken in respect of Category 1 hazards.
- Emergency Prohibition Order - prohibiting or restricting some or all uses of all or part of a residential premises with immediate effect. Such an order can only be made in respect of Category 1 hazards involving an imminent risk of serious harm.
- Demolition Order under the Housing Act 1985 ("the 1985 Act") - this option is only available for residential premises containing Category 1 hazards and is not available in respect of listed buildings.

- Clearance Area under the 1985 Act - requiring the clearing of all buildings in a specified area. Under s47 of the 2004 Act, a clearance area is applicable when all the residential premises in the area concerned contain Category 1 hazards.

Part 2: Licensing of houses in multiple occupation

This Part requires the Council to introduce a mandatory licensing regime for certain types of HMOs.

The Licensing of Houses in Multiple Occupation (Prescribed Description)(England) Order 2018 has extended the scope of mandatory licensing from that contained in the 2004 Act. Any property occupied by five or more people, comprising of two or more households where there is some sharing of facilities now requires a licence.

This Part also empowers local housing authorities (“LHAs”) to introduce “additional HMO licensing” schemes to extend the scope of mandatory licensing to those HMOs not covered by the above regulations.

Part 3: Selective licensing of other residential accommodation

This Part empowers local housing authorities to introduce “selective licensing” schemes in all or part of their area requiring all private rented accommodation to be licensed, unless it is subject to exemption. An area may be designated if it is, or may become, an area of low housing demand and/or it has a significant and persistent problem with anti-social behaviour where the inaction of private landlords is a contributory factor.

Part 4: Additional control provisions in relation to residential accommodation

This Part empowers the Council to make Interim and Final Management Orders and take over the management of privately-rented residential premises. Such orders can be made when a residential premises is not licensed and there is no prospect of it being licensed, or when there is some other management problem requiring Council intervention. Interim Management Orders can be in force for up to a year, whereas Final Management Orders can last up to five years.

This Part also provides for Interim and Final Empty Dwelling Management Orders (“EDMOs”). EDMOs are similar to Interim and Final Management Orders, but relate to empty properties and are designed to ensure that dwellings become and stay occupied.

This Part also provides for the service of overcrowding notices in respect of HMOs that are not required to be licensed.

Section 26 and Schedule 3 of the Housing and Planning Act 2016 provides that a local housing authority can also make a management order in circumstances where a banning order has been made and where a privately rented property is being let in breach of a banning order.

Part 7: Supplementary and final provisions

This Part includes a number of provisions, such as the definition of an HMO. It also empowers the Council to enforce the HMO management regulations, to authorise officers to enter premises, and to require documents to be produced.

Housing and Planning Act 2016

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The Housing and Planning Act 2016 has introduced a number of additional powers for dealing private rented accommodation.

- Banning orders – introduced by regulation in April 2018. This permits local housing authorities to seek banning orders where landlords or property agents have been convicted of a banning order offence. Refer to The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 for details on the offences.
- Database of rogue landlords and property agents - under section 30 of the 2016 Act a local housing authority must make an entry on the database where a landlord or property agent has received a banning order. They have the discretion to make entries where a landlord or property agent has been convicted of a banning order offence or has received 2 or more civil penalties within a 12 month period.
- Rent repayment orders – Chapter 4 or Part 2 of the Housing and Planning Act 2016, extends the scope of rent repayment orders to cover eviction: breach of a banning order; failure to comply with an Improvement Notice; failure to comply with a Prohibition Order and using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Financial penalties – Section 126 and schedule 9 of the Housing and Planning Act 2016 makes provisions for the local housing authority to use the power to issue a financial penalty for certain Housing Act 2004 offences as an alternative to prosecution.

The offences include:

- Failing to comply with an Improvement Notice (section 30)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72)
- Offences in relation to licensing of houses under part 3 of the Act (selective Licensing) (section 95)
- Offences in relation to the contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of House in Multiple Occupation (section 234)

Housing Act 1985

The 1985 Act empowers the making of Demolition Orders and the declaring of Clearance Areas.

Part X concerning statutory overcrowding remains in force. A dwelling is statutorily overcrowded when the number of persons sleeping in it is such as to contravene the room or space standard. These standards are described in Part X of the 1985 Act.

Section 17 of the 1985 Act concerns the compulsory acquisition of land or property for housing purposes. This power may be used to acquire under-used or ineffectively used land or property by means of a compulsory purchase order (“CPO”). Before taking such action, the Council must show that there is a general housing need in the area and that a quantitative or qualitative housing gain will be made by making the order. CPOs must be approved by the Secretary of State.

Building Act 1984

Section 59 relates to the drainage of buildings. Where drainage serving any building is defective, insufficient, or prejudicial to health or a nuisance, the Council may, by notice, require the owner of the building to remedy the situation.

If a water closet in a residential building is in such a state as to be prejudicial to health or a nuisance and cannot be adequately repaired, the Council may, by notice under section 64, require the owner of the building to reconstruct the water closet.

Section 76 makes provision for defective premises which are in such a state as to be prejudicial to health or a nuisance. If, by following the procedures set out in section 80 of the Environmental Protection Act 1990, there would be an unreasonable delay in remedying the defective state, the Council may, after having given nine days' warning to the relevant person, enter the premises to carry out the works required to remedy the defective condition.

Under section 77, the Council can apply to the Magistrates' Court for an order requiring the owner of a dangerous building to either make the building safe or (if the owner chooses) demolish it. If the owner fails to comply with the order, the Council can carry out the works-in-default and recover the reasonable expenses incurred in doing so from the owner. In emergency situations, the Council can (without obtaining a court order) take immediate steps to make safe a dangerous building under section 78. In such circumstances, the Council must, if possible, attempt to give prior notice to the owner and occupier. Again, reasonable expenses can be recovered from the owner. Although such intervention may concern private sector housing, the Council's Building Control section is responsible for action under sections 77 and 78.

Section 79 concerns ruinous and dilapidated buildings and neglected sites. If a building is, by reason of its ruinous or dilapidated condition, seriously detrimental to the amenities of the neighbourhood, the Council may serve a notice requiring the owner to carry out remedial works or (if the owner chooses) demolish the building. If the owner fails to comply with the notice, the Council can carry out the works-in-default and recover the reasonable expenses incurred in doing so from the owner. This section also makes provision for dealing with any debris resulting from the collapse or demolition of a building, which by its nature is seriously detrimental to the amenities of the neighbourhood. If this condition is met, the Council may serve a notice on the owner requiring the clearance of the site. As above, if the owner fails to comply with the notice, the Council can carry out the works-in-default and recover the reasonable expenses incurred in doing so from the owner.

Although such interventions under the Building Act may concern private sector housing, the Council's Building Control service is responsible for action under sections 77, 78 and 79.

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Public Health Act 1936

If a water closet provided in residential premises is in such a state as to be prejudicial to health or a nuisance, and it can, without reconstruction, be put into a satisfactory condition, the Council may serve notice under section 45 requiring the owner or occupier to repair or cleanse the water closet as necessary.

Public Health Act 1961

Section 17 concerns defective and blocked drainage. If it appears to the Council that a drain, private sewer, water-closet, waste pipe or soil pipe is not sufficiently maintained and kept in good repair, and can be sufficiently repaired at a cost not exceeding £250, it may, after giving

seven days' notice, carry out the necessary repairs and recover the expenses incurred from the person(s) concerned, namely the owner(s) or occupier.

In cases where the drain, private sewer, water-closet, waste pipe or soil pipe is stopped up, the Council may, by notice, require the owner or occupier to remedy the problem within 48 hours. If such a notice is not complied with, the Council may undertake the works-in-default and recover the costs incurred in doing so.

Law of Property Act 1925

In cases where the Council is owed monies, as a result of the Council undertaking works-in-default under relevant legislation and the legislation provides that the cost of carrying out the works is a charge on the property the Council can exercise the power of sale conferred by the charge to recover the money if it is not paid. There is a requirement to serve notice under section 103 of the Law of Property Act 1925. This notice explains that money is owed under charge and that if it is not paid off within 3 months, the Council may then sell the property to recover the money. Depending on the wording of the particular relevant legislation the charge maybe a priority charge. This means that the Council's charge takes precedence against all other existing charges

Local Government (Miscellaneous Provisions) Act 1976

When the Council requires information relating to the ownership of land in connection with the discharge of its statutory duties, it may, by notice under section 16, require certain persons to provide information within a specified timescale. In connection with the land concerned, such information can be demanded from any one or more of the following: the occupier, freeholder, mortgagee, lessee, any person receiving the rent (either directly or indirectly), and any managing or letting agent.

If water, gas or electricity supply to a dwelling has been cut off, or is likely to be cut off, owing to the non-payment of a bill by the owner, the Council may, under section 33, step in and make arrangements with the supplier to ensure that the supply is reconnected and/or maintained.

Local Government (Miscellaneous Provisions) Act 1982

Sections 29 to 32 relate to the protection of buildings. If a building is unoccupied, or the occupier is temporarily absent, and it is insecure or likely to become a danger to public health, the Council may take action to ensure that it is adequately secured to prevent unauthorised entry and made safe. The Council can recover the costs from taking such action from the owner of the building.

Prevention of Damage by Pests Act 1949

The Council is under a duty to ensure, as far as is practicable, that its district is kept free from rats and mice. If residential premises are in such a condition as to attract rats or mice, the Council may, by notice, require appropriate treatment to be undertaken and/or require remedial works to ensure that harbourage is no longer provided. For example, such a notice may require the removal of rubbish and furniture that has been discarded in the external grounds of a privately-owned property which has or is likely to attract rats and mice.

Health Act 2006

Under the Health Act 2006, it became an offence to smoke in public places or places of work which are enclosed or substantially enclosed. Furthermore it is an offence not to display no-smoking signs in smoke-free premises. It is also an offence to be a manager of smoke-free premises and allow persons to smoke in them.

For the purposes of private sector housing, the common parts of HMOs and the common parts of buildings containing flats are deemed to be smoke-free premises.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Private sector landlords are required to ensure that at least one smoke alarm is installed on every storey of their rented property and that a carbon monoxide alarm is installed in any room containing a solid fuel burning appliance. They also require landlords to ensure that such alarms are in proper working order at the start of each new tenancy. In addition, the regulations amend the conditions which must be included in a licence under Part 2 or 3 of the Housing Act 2004 ("the 2004 Act") in respect of smoke and carbon monoxide alarms.

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The Energy Efficiency (Private Rented Property) (England and Wales) regulations 2015

The Regulations are designed to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard for both domestic and non-domestic privately rented property, effecting and affects all tenancies, new tenancies from 1 April 2018.

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The minimum level of energy efficiency means that, subject to certain requirements and exemptions:

- a) ~~From the 1st April 2018,~~ landlords of relevant domestic private rented properties may not grant a tenancy to new or existing tenants if their property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property):
- b) ~~From the 1st April 2020,~~ landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property).

Local authorities will enforce compliance with the domestic minimum level of energy efficiency. They may check whether a property meets the minimum level of energy efficiency, and may issue a compliance notice requesting information where it appears to them that a property has been let in breach of the Regulations (or an invalid exemption has been registered in respect of it).

Where a local authority is satisfied that a property has been let in breach of the Regulations it may serve a notice on the landlord imposing financial penalties. The authority may also publish details of the breach on the national PRS Exemptions Register. A local authority may also serve a penalty notice for the lodging of false information on the Exemptions Register.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

These regulations apply to all new specified tenancies from 1st July 2020 and will apply all existing specified tenancies from 1st April 2021.

A landlord must ensure that the property meets the electrical safety standards and that the electrical installation is tested every 5 years (some installations may require more frequent testing) by a qualified person. The landlord must also ensure that the first inspection and testing is carried out before a new tenancy commences or if there is an existing tenancy the test must be completed by 1st April 2021.

A report must be obtained from the qualified person and a copy supplied to the tenant within 28 days of the inspection and test.

If the report indicates that remedial works to the electrical installation are required then the landlord must ensure these works are carried out by a qualified person within 28 days or sooner if indicated as urgent in the report.

The council has a duty to serve a remedial notice where any part of the regulations have been breached. In addition the council has the power to arrange for the remedial works to be carried out and recover reasonable costs from the landlord.

Failing to comply with these regulations may result in a financial penalty of up to £30,000.

Deregulation Act 2015 and Retaliatory eviction

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Where a tenant has a legitimate complaint about the condition of their property they are protected from retaliatory eviction. It is also a requirements that landlords provide all new tenants with information about their rights and responsibilities as tenants. This legislation has been incorporated into the tenant referral form process to ensure that both landlords and tenants are aware of their responsibilities under this Act. The effect of this legislation is that a landlord is unable to evict the tenant for 6 months using the 'no-fault' eviction procedure (a section 21 eviction) where the council has served an improvement notice or taken emergency remedial action. There are various exemptions to this contained within the Act.

Houses in Multiple Occupation

A building, or a part of a building, is an HMO if:

- It meets "the standard test"; or
- It meets "the self-contained flat test"; or
- It meets "the converted building test"; or
- It is a "converted block of flats" to which section 257 of the Act applies.

The standard test

There are six parts to the standard test. A building (or any part of a building) will meet the test if:

- a) It consists of one or more units of accommodation that are not self-contained; and
- b) It is occupied by more than one household; and
- c) It is occupied by persons who use the accommodation as their only or main residence; and
- d) The accommodation is not used for purposes other than living accommodation; and
- e) At least one person is paying rent (or providing other consideration) for their use of the accommodation; and
- f) Two or more households share one or more basic amenity, or the accommodation is lacking in one or more basic amenity.

The self-contained flat test

A self-contained flat will be an HMO if it meets tests b) to f) of "the standard test" above.

The converted building test

There are six parts to the converted building test. A building (or any part of a building) will meet the test if:

- a) It is a converted building; and
- b) It consists of one or more units of accommodation that are not self-contained (whether or not there are self-contained flats in the building); and
- c) It is occupied by more than one household; and
- d) It is occupied by persons who use the accommodation as their only or main residence; and
- e) The accommodation is not used for purposes other than living accommodation; and
- f) At least one person is paying rent (or providing other consideration) for their use of the accommodation.

Certain converted blocks of flats

This HMO definition applies to certain buildings (or parts thereof) that have been converted entirely into self-contained flats. As such, there is no sharing of basic facilities in this type of HMO. However, not all buildings converted into self-contained flats are HMOs. For a building of this type to be an HMO, it must meet both of the following tests:

- a) The building was not converted in accordance with the “appropriate building standards” (they being the Building Regulations 1991 or later versions of these Regulations); and
- b) Less than two-thirds of the self-contained flats are owner-occupied.

Single Household

A household is generally considered to be a single family unit, comprised of members of the same family. Couples whether married or not are deemed to be of the same family. Relatives that may form part of a single household include: parents, grandparents, children, grandchildren, brother, sisters, uncles, aunts, nephews, nieces, and cousins.

Basic Facilities

Toilets, personal washing facilities (e.g. showers, baths and washbasins) and cooking facilities (e.g. kitchens) are considered to be basic facilities.

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HMO declarations

Sometimes, a building (or part of a building) is not solely used as living accommodation. In this situation, the HMO tests set out above (concerning sole use as living accommodation) cannot be met. However, if the building concerned is primarily used as living accommodation, and meets all the other relevant HMO tests, it may be appropriate for the Council, in the public interest, to declare the building as an HMO.

HMO declarations can be made by the Council in respect of buildings that would otherwise meet the “the standard test”, “the self-contained flat test”, and “the converted building test”. An HMO declaration cannot be made in respect of “converted block of flats”.

A relevant person can appeal to the Residential Property Tribunal against any decision of the Council to declare a building as an HMO.

Exemptions

Schedule 14 of the Act specifies buildings which are not HMOs for the purposes of the Act. However, when considering action under Part 1 of the Act (HHSRS and enforcement of housing conditions), the specified exemptions do not apply. This allows for risk assessment to reflect the true nature of occupation. The exemptions are:

- Buildings managed or controlled by LHAs, registered social landlords (“RSLs”) and certain other public sector bodies, such as the Police.
- Buildings that are otherwise regulated under prescribed legislation, such as care homes (see Schedule 1 of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (SI 2006/373) for the full list of enactments).
- Buildings that are managed and controlled by certain educational establishments and are occupied by students. As of January 2014, only those establishments specified in The Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2013 (SI 2013/1601) are exempt. These regulations are regularly updated, usually on an annual basis.
- Certain buildings occupied by religious communities.
- Any building occupied by its owner and his/her family, and in which no more than two lodgers or tenants reside. HMOs defined by section 257 of the Act are excluded from this exemption.
- Buildings occupied by only two persons forming two households.

Exempt buildings are not subject to HMO licensing under Part 2 of the Act, or either of the two sets of HMO management regulations (see below). Furthermore, the provisions of Chapter 3 of Part 4 of the Act, which relate to the service of overcrowding notices in respect of HMOs not subject to licensing, do not apply to exempt buildings.

Public registers of housing licences

The Council is required to maintain a public register of all licences issued. The information required to be contained within a public register is prescribed by legislation.

The Council maintains a public register for mandatory HMO licensing. This can be viewed at the Council’s main offices during working hours, by appointment. Paper copies of the registers are available; for which a fee may be charged.

The public registers includes the names and addresses of all licence holders and named managers. A summary of licenced premises may be published on the Council website, however this will exclude this information.

Licensed HMO Property inspections

The Council will inspect all properties subject to licensing and make an assessment under the HHSRS. The inspection will be carried out before, or as soon as possible after, the granting of a licence; however, the timing will depend on the priorities of the Council’s inspection programme. The inspection will always take place during the licence period.

The licence holder, manager and occupiers will be given at least 24 hours' notice of the date and time that an HHSRS inspection will be undertaken. Any hazards identified will be dealt with following the enforcement principles in this policy.

The Council will also make unannounced inspections of licensed premises to ensure compliance with licence conditions and the Management Regulations.

Penalties for non-compliance with HMO licensing

There are two offences associated with HMO licensing.

Failing to obtain a licence for a property which is required to be licensed is an offence. The offence is committed by the person having control of and/or the person managing the premises. A person committing such an offence is liable on summary conviction to a fine.

Once a licence has been issued, the licence holder and any named manager (if applicable) must adhere to the licence conditions. The licence holder and/or the licence manager will commit an offence if they breach any of the licence conditions. A person committing such an offence is liable on summary conviction to a fine.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced unlimited fines for these offences.

In respect of licensing offences there is a defence of "reasonable excuse".

Prosecution

When a person fails to licence a property, or breaches a licence condition, the Council will begin an investigation to consider whether or not an offence has been committed.

Financial penalty

[Refer to housing and planning act details above.](#)

~~See above.~~

Restriction on terminating tenancies

No section 21 notice may be given in respect of unlicensed premises.

In this context, a "section 21 notice" is a notice served under section 21(1)(b) or (4)(a) of the Housing Act 1988 in order to regain possession of a property subject to a shorthold tenancy.

The following are not "unlicensed premises":

- A property subject to a valid temporary exemption notice;
- A property subject to a valid licence application that is being determined by the Council.

Rent Repayment Orders

In certain situations, the Council or a resident may make an application to the Residential Property Tribunal for a Rent Repayment Order ("RRO").

If a property is licensable under the mandatory HMO or selective licensing regimes and the Council is of the opinion that an offence has been committed the Council may make an RRO application. An application can be made irrespective of whether the Council decides to prosecute for the offence.

Council applications will concern the repayment of housing benefit monies paid in respect of an unlicensed property. Applications may only relate to periods of up to 12 months.

RROs made in favour of the Council are a local land charge and the Council may use the enforced sale procedure under the Law of Property Act 1925 to recover its debt.

As detailed above, the scope of rent repayments orders has been extended to cover more than just HMO licensing offences.

HMO Management Regulations

Section 234 of the Act provides for the making of HMO management regulations by the Secretary of State.

If a person managing an HMO does not comply with the HMO management regulations issued by the Secretary of State, they are guilty of an offence (unless they have a reasonable excuse).

The Secretary of State has issued two sets of regulations:

- The Management of Houses in Multiple Occupation (England) Regulations 2006 (SI 2006/372). These regulations apply to all HMOs, except those defined as converted blocks of flats under section 257 of the Act.
- The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 (SI 2007/1903). These regulations apply only to HMOs defined as converted blocks of flats under section 257 of the Act.

Both sets of regulations impose duties on the persons managing HMOs in respect of:

- Providing information to occupiers;
- Taking safety measures, including fire safety measures;
- Maintaining the water supply and drainage;
- Supplying and maintaining gas and electricity, including having it regularly inspected;
- Maintaining common parts;
- Maintaining living accommodation; and
- Providing waste disposal facilities.

The regulations also impose duties on occupiers to ensure that they do not hinder the effective management of HMOs.

HMO licensing is an entirely separate legislative regime. The regulations apply to all types of HMOs, both licensable and non-licensable.

Enforcement of the Management Regulations

In general terms, the Council will seek to ensure compliance with the regulations by means of an educative and informal approach. Initiating prosecution as a first response will not normally be the Council's approach. Therefore, where contraventions have been identified, the Council will usually send an informal notice to the person(s) managing the HMO, setting out the nature of the failings and requiring the taking of remedial action within prescribed timescales. Further legal action would not be taken if such a notice is complied with satisfactorily. However, failing to comply with the timescales set out in an informal notice without reasonable excuse may lead to prosecution proceedings being initiated by the Council.

In some situations, the Council may decide to initiate a prosecution without recourse to informal procedures. Immediate prosecution may be considered for contraventions that:

- Are so serious that the failings have exposed occupiers to significant risk or caused actual harm;

- Are related to other forms of enforcement action being taken by the Council; or
- Have been repeated and the manager has already been subject to informal intervention under the HMO regulations.

Charging for enforcement and other fees

There are various provisions within the legislation stated above that allow the council to recover costs, or set fees.

Detailed below are the areas that the council will make changes for and any associated penalties:

HMO Licensing – Section 63(3) of the Housing Act 2004 Act provides that the authority may, in particular, require the application to be accompanied by a fee fixed by the authority.

Charging for enforcement action – The Housing Act 2004 section 49 gives the local housing authority the power to charge for administrative and other expenses related to certain enforcement action. The provisions are clear that only the costs associated with determining whether enforcement action is necessary, identifying the type of action and the serving of the notice can be recovered.

Charges will be applied to enforcement action under part one of the Act, to improvement notices, prohibition orders, emergency remedial action, emergency prohibition orders and demolition orders.

It is not considered appropriate to charge for the service of hazard awareness notices as these do not require the work to be carried out and are placed as a local land charge.

Demand for payment of the charge will be applied where a prohibition order is served, emergency remedial action is taken or an emergency prohibition order is served.

A demand will also be sent where there is non-compliance with any part of an improvement notice.

Demolition orders will be charged for and the cost of instructing a surveyor to carry out the Neighbourhood Renewal Assessment (NRA) will also be added.

Penalty Charges for offences under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

The maximum penalty for an offence under these regulations is £5000. It is proposed that the Council introduces the maximum penalty with a 25% reduction if payment is made within 14 days of the demand for payment.

Financial penalties for offences under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Section 11 of the 2020 Regulations makes provision for the local housing authority to impose a financial penalty on an owner of a property where they have failed to comply with the electrical safety standards.

Financial penalties for offences under the Electrical Safety Standards

~~Section 123 of the Housing and Planning Act 2016 makes provision for the local housing authority to impose a financial penalty on an owner of a property where they have failed to comply with the electrical safety standards.~~

~~This part of the Act has not yet come into force however it is the intention of the council to implement the regulations and set the penalty in line with this policy.~~

Works in default

As set out by provisions contained in Schedule 3 Part 3 of the Housing Act 2004, interest is to be paid on all costs associated with carrying out works in default (including the costs of the work itself) where the demand for payment remains unpaid after the initial 28 days. A £100 administrative fee is proposed with an interest rate of 3% to be applied annually.

APPENDIX K

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – HOUSING SERVICE

The purpose of this appendix is to provide more information about how the Council, as a registered provider of social housing, will enforce tenancy breaches. The Housing Service has a contractual/statutory relationship with tenants but has certain obligations relating to the provision of support to those who may be vulnerable or who may need it for other reasons. It should be noted that work to manage and support those who breach their conditions of

tenancy should be balanced with our responsibilities to those other people who live on our estates and the wider community.

As a social landlord, the Council has statutory obligations. The following list of relevant legislation is not exhaustive; and these references are to be regarded as including references to them as amended, varied, replaced or re-enacted from time to time.

- Housing Act 1985
- Localism Act 2011
- Protection from Eviction Act 1977
- Landlord and Tenant Act 1997
- Civil Procedure Rules 1998
- Equality Act 2010
- Human Rights Act 1998
- Anti-social behaviour, Crime and Policing Act 2014
- Data Protection Act 2018

The regulatory framework for social housing, which is operated by the Regulator for Social Housing (RSH), contains a number of standards. Only those standards categorised as consumer standards apply to the Council as a registered provider of social housing, but they contain a number of required outcomes and specific expectations: <https://www.gov.uk/government/publications/regulatory-standards>

Objective

We will provide a flexible, effective and efficient tenancy management service that reflects best practice, complies with legislative and regulatory requirements and recognises the rights of our tenants, in order to manage our homes efficiently and effectively.

We will provide advice and assistance to tenants to help them to sustain their tenancy:

- To ensure we comply with all legal and regulatory requirements and standards.
- To reduce tenancy fraud and subletting within our stock.
- To seek possession of the homes in our management where appropriate
- To ensure that their security of tenure is only reduced as a result of a Court Order or by way of mutual exchange.
- To support them exercising their rights under the terms of their tenancy agreement.

Prevention of Tenancy Breaches

We will use a range of preventative measures to reduce breaches of tenancy. These will include but are not limited to:

- Identifying risk factors prior to allocating a home to a housing applicant using a home visit, wherever possible.
- Seeking landlord references and other background information in accordance with the provisions of the Devon Home Choice scheme, where possible.
- Using introductory and flexible tenancies
- Clearly explaining tenants' obligations at the start of the tenancy
- Closely monitoring new tenancies, and offering advice to new tenants, where appropriate

- Identifying tenants who need extra support and making appropriate referrals to external agencies
- Attending regular meetings and working in partnership with local Police, Early Help initiatives, and other agencies, as appropriate
- Undertaking regular inspections of properties with communal areas
- Undertaking Neighbourhood Walkabouts on a regular basis, inviting local people, Ward Councillors and other stakeholders, as appropriate
- Involving other agencies, as appropriate, to assist with addressing specific issues including those associated with non-payment of rent, anti-social behaviour, safeguarding and other serious issues
- Publicising our successes in tackling previous incidents of anti-social behaviour, in order to encourage people to report problems, and as a deterrent.

Tenancy Inspections

In accordance with our policy relating to tenancy inspections, the Housing Service will visit properties in the housing stock regularly. These visits are known as “Tenancy Home Checks”. Regular inspections allow the Council to:-

Check that tenants are complying with the terms and conditions of their tenancy:

- Investigate alleged tenancy fraud;
- Identify abandonment and non-occupancy of a property;
- Prevent unauthorised subletting or assignment;
- Identify concerns around property condition, such as potential health and safety risks such as hoarding and disrepair;
- Identify opportunities for service improvement, and tenants who wish to become involved;
- Provide support to tenants;
- Increase customer profiling information; and
- Raise concerns about the condition of a property, or safeguarding issues following an inspection

For more information, please refer to the tenant inspection policy which is available to view on the housing pages of the Council’s website:

<https://www.middevon.gov.uk/residents/housing/council-housing/strategies-and-policies/>

If tenancies are not managed effectively and monitored by use of a robust tenancy inspection regime, there could be an increase in tenant arrears and anti-social behaviour which could have a negative impact upon neighbours and other residents in the local community.

Tenure Type

Our tenancy policy sets out our approach to the use of different types of tenancy.

The Council also has an introductory tenancy policy which is available to view on the housing pages of the Council’s website:

<https://www.middevon.gov.uk/residents/housing/council-housing/strategies-and-policies/>

This type of tenancy enables the Council to closely monitor the “trial period” of a tenancy. If the tenant complies with the conditions of the tenancy agreement, they will automatically

become a flexible or secure tenant after 12 months, depending on their tenancy agreement. The introductory tenancy policy sets out how we will respond to tenancy breaches involving those who have an introductory tenancy.

The aim of the tenancy policy is to enable the Housing Service to make the best use of available social housing stock. This will include reducing overcrowding, tackling under-occupation and making best use of adapted housing for those with a disability. This will support the development of sustainable communities in the District.

For more information, please refer to the tenancy policy which is available to view on the housing pages of the Council's website: <https://www.middevon.gov.uk/residents/housing/council-housing/strategies-and-policies/>

This policy describes the different types of tenancies which are used by the Housing Service when letting properties, and the circumstances when we may use them. In particular, it explains when we might use a fixed term rather than a lifetime tenancy. It clarifies how a tenant or prospective tenant may appeal against a decision made about the type of tenancy offered.

It acknowledges that housing applicants may be vulnerable at the point when they are being allocated a new home and that this must influence the decision relating to the tenancy type which they will be offered. It states that advice and assistance will be made available to help tenants to manage their tenancies.

In addition, this policy sets out the circumstances under which flexible tenancies may not be renewed.

It is important for the Housing Service to review, to manage, to exchange or to end tenancies in accordance with relevant legislation and regulation. Failure to do so could result in delays in securing possession where this is being sought, or result in complex challenges which could be costly and which could also lead to risks associated with increased complaints and reputational damage. The Council must make best use of the housing stock and failure to manage the end of flexible tenancies, in particular, may have an impact upon the availability of suitable accommodation for those in housing need.

Tenancy Management

Our approach to tenancy management is also described in the tenancy policy. This policy states that our tenancy agreements will set out the rights and obligations of both tenant and landlord.

In addition, it defines our approach to tenancy fraud, mutual exchanges and supporting tenancies.

Our tenancy changes policy, which is available to view on the housing pages of the Council's website: <https://www.middevon.gov.uk/residents/housing/council-housing/strategies-and-policies/> reinforces our approach to dealing these and with other tenancy matters including succession rights, tenancy changes such as requests for a tenancy to become a joint one, and assignments.

It should be noted that unlawful occupation of one of our homes is not permitted. We will seek possession of the property through the County Court. The unlawful occupier will be liable for use and occupation charges along with any costs associated with legal proceedings.

Some tenants have the right to sublet their property and permission will be granted in accordance with the tenancy agreement. If a tenant does not have the right to sub-let all or part of their property, they will be in breach of the terms of their tenancy agreement. Where unlawful subletting is identified, legal action will be taken to regain possession of the property.

We will use all available tools and powers to remove any squatters found at any property in our management.

The Housing Service has a number of other policies which set out our approach to general tenancy management.

These include the following policies, which are all available to view on the housing pages of the Council's website: <https://www.middevon.gov.uk/residents/housing/council-housing/strategies-and-policies/>

- Aids and adaptation policy
- Car parking management policy
- Decant policy
- Fire risk in communal areas policy
- Garage management policy
- Gas safety policy
- Hoarding policy
- Improvements to Council properties policy
- Leasehold management policy
- Neighbourhood management policy
- Pets and animals policy
- Recharges policy
- Tenant involvement strategy
- Tenant involvement policy
- Void management policy
- Vulnerability policy

Anti-Social Behaviour in our social housing

The Housing Service of the Council is committed to prevent, investigate, respond to and monitor incidents of anti-social behaviour (ASB) involving our tenants. It states that: "By being responsive to complaints, and tackling issues in a fair, consistent and proportionate way, we can provide safe and secure environments around our homes and neighbourhoods, where people want to live".

The ASB policy and procedures can be found on the housing pages of the Council's website together with our policies relating to domestic abuse and harassment: <https://www.middevon.gov.uk/residents/housing/council-housing/strategies-and-policies/>

The ASB policy sets out how:

- we will investigate complaints of ASB and nuisance
- we will tailor action plans to take account of the circumstances of each case
- we will make best use of the remedies available
- we will involve vulnerable tenants, victims and perpetrators, to resolve ASB problems
- we will support victims, witnesses and perpetrators

- we will work in partnership with other agencies to resolve problems and to prevent ASB happening on our estates

Income Management

The Housing Revenue Account (HRA) supports the work of the Council's Housing Service. Most of the income into the HRA is derived from rents collected from tenants. The costs associated with managing and maintaining approximately 3,000 homes are significant and the HRA must balance. Therefore it is important that income is maximised in order to ensure that there are funds available to maintain the main asset of the Council, in good order.

We have an income management policy which relates to the Council's debt collection policy. These policies are able to view on the housing pages of the Council's website: <https://www.middevon.gov.uk/residents/housing/council-housing/strategies-and-policies/>

The aim of our income management policy is to create a rent payment culture, ensuring that rent and charges are collected quickly and effectively, whilst supporting our tenants in matters relating to financial inclusion and the ability to manage their money.

Our income management policy describes how we will oversee the management and recovery of arrears and other unpaid sums.

It states that we will adopt a "firm but fair" approach to recovery of rent arrears and that this will be sensitive to individuals' circumstances. It specifies that: "Proactive steps are to be taken to prevent and minimise the build-up of unpaid sums on rent and sub accounts where possible, recognising that from time to time tenants may experience financial difficulties". It states that in these circumstances: "Officers aim to support and work with tenants at the earliest opportunity to help tackle financial exclusion and to provide assistance to individuals experiencing financial difficulty".

Breaches of tenancy

We will take steps to prevent and manage breaches of tenancy quickly and effectively, taking a multi-agency approach where necessary, based on the principles of prevention, investigation, evaluation, response and monitoring.

APPENDIX L

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – STREET SCENE SERVICES (CIVIL PARKING ENFORCEMENT – OFF STREET)

The purpose of this appendix is to give further guidance on the provisions of the Traffic Management Act 2004 s82. The principles of the Civil Enforcement are clearly set out in the main Civil Parking Enforcement – off street) policy. The policy will be followed in conjunction with the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 and the Civil Enforcement of Parking Contraventions (England) Representations and Appeal Regulations 2007.

General parking enforcement

Mid Devon District Council enforces Council owned car parks and as such are considered the Enforcement Authority in those locations only. The policy set out in this document is intended to provide guidance and information to the public and Council employees carrying out car park enforcement duties. The policies and approach are consistent with current best practice and aim to provide clarity, consistency and transparency within the enforcement process and compliance with the aspirations of the legislation and associated guidance, the Traffic Penalty Tribunal (TPT) and the Local Government Ombudsman. These policies represent a foundation upon which fairness, openness, transparency and discretion can be applied. The importance of flexibility in these matters has been recognised by the courts and, as a consequence, decisions made by councils must not be unduly rigid in their application.

By carrying out Civil Parking Enforcement within its own car parks Mid Devon District Council will:

- Maintain its car parks to a standard that encourages drivers to park legally and safely thereby improving traffic flow on the highway and making the Borough a more pleasant and environmentally safe place in which to live and visit.
- Provide parking at reasonable cost to the public so as to encourage the local economy.
- Actively support the needs of disabled people bearing in mind that, in some cases, they are unable to use public transport and are entirely dependent upon the use of a car. This will ensure that people with disabilities are able to have equal access to all facilities within the District.

APPENDIX M

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – STREET SCENE SERVICES (FIXED PENALTIES, FLY-TIPPING, LITTERING (INCLUDING FROM VEHICLES) AND DOG FOULING)

The purpose of this appendix is to give further guidance on the provisions of the fixed penalty notice for offences contained within the Clean Neighbourhoods and Environment Act 2005 and the Environmental Protection Act 1990.

General Fixed Penalty Enforcement

Fixed Penalty Notices (FPNs) are a means of punishing offenders for unlawful behaviour and offer a quick, flexible means of dealing with certain offences. It avoids overloading the judicial system with unnecessary cases. They allow a person who admits to the committing of an offence to end the matter promptly, avoid Court action and possibility of a criminal record. As well as an enforcement tool the use of fixed penalty notices is intended to encourage behaviour change and bring improvements to local environmental quality and protect public safety.

FPNs can be issued for:

- Fly-tipping

- Littering
- Dog Fouling

Fly-tipping

Fly tipping is the illegal dumping of any waste onto land that has no licence to accept waste. It can vary in scale significantly from a bin bag of rubbish to a large quantity of waste dumped from a truck. Enforcement legislation is embodied within the Environmental Protection Act 1990 sections 33 and 34.

The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came into force on 9 May 2016 which amends the Environmental Protection Act 1990 to allow the issuing of fixed penalties for waste deposit offences.

Mid Devon District Council is also a contributor to the web based National Fly Tipping Database Fly Capture which has been in operation since April 2004 and will continue to report fly-tipping in its area.

All authorised District Officers in the service Environmental Enforcement Team are fully trained in enforcement procedures and receive regular update training. All delegated officers will act in accordance with this policy and will also refer to a specific Fly-tipping Policy (January 2020) when making enforcement decisions. Under the fly-tipping policy the FPNs for fly tipping were increased from £200 to £400 and the powers to use overt CCTV footage (i.e. does not require Regulation of Investigatory Powers Act 2000 (RIPA) authorisation) were also adopted to assist with enforcement.

The adopted Fly-Tipping Policy can be found under item 162 (Environment Education Policy) of the MDDC Cabinet meeting of 23 April 2020 available here:
<https://democracy.middevon.gov.uk/ieListDocuments.aspx?CId=133&Mid=1317&Ver=4>

Littering from vehicles

Mid Devon District Council is committed to reducing litter on roadsides and verges and will take enforcement action against those who litter from their vehicles. It is recognised that it can be particularly difficult for District Officers in the Environmental Enforcement Team to identify which person in the vehicle committed the offence. Recently introduced powers allow Mid Devon District Council to hold the keeper of a vehicle responsible for littering offences committed from the vehicle.

The Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018 (SI 2018/171) came into force on 1 April 2018 to introduce new fixed penalty powers for littering from vehicles. This allows local authorities outside London to issue civil penalty notices (a form of FPN) to the keeper of a vehicle from which litter is thrown.

Under the aforementioned legislation, this specific FPN is different in that it is a civil penalty and therefore a civil fine which, unlike a criminal penalty, does not carry the risk of a criminal prosecution. The 'keeper' of a vehicle is presumed to be the 'registered keeper', but evidence

may be provided showing that the vehicle was 'kept' by another person at the relevant time. The liability to pay the civil penalty rests with the keeper of the vehicle at the time of the offence.

Under section 89(1) of the EPA 1990 the District Council, as the local authority, has a general duty to keep land in its area clear of litter.

The amount of a fixed penalty is the amount specified under Section 88(6A) of the EPA 1990 for the fixed penalty for the offence of leaving litter which has been thrown from a vehicle. Mid Devon District Council has set this sum at £150. If this fixed penalty is not paid in full within the fixed penalty payment 14 days, the amount of the fixed penalty increases by 100% with effect from the day after the last day of the fixed penalty payment period.

These FPNs will be issued when District Officers in the service Environmental Enforcement Team observe offences whilst on patrol, on a pure chance basis whilst engaged on other duties, or following an approach by members of the public willing to stand as witness in any subsequent Court action. All authorised District Officers in the team are fully trained in enforcement procedures and receive regular update training. All delegated officers will act in accordance with this policy and will also refer to a specific Littering from Vehicles Policy (January 2020) when making enforcement decisions. Under the policy, powers to use overt CCTV footage (i.e. does not require Regulation of Investigatory Powers Act 2000 (RIPA) authorisation) were also adopted to assist with enforcement.

The adopted Littering from Vehicles Policy can be found under item 162 (Environment Education Policy) of the MDDC Cabinet meeting of 23 April 2020 available here: <https://democracy.middevon.gov.uk/ie/ListDocuments.aspx?CId=133&MId=1317&Ver=4>

Flyposting

Fly-posters usually advertise or promote events and are placed without permission of the owner of the property and can take the form of stickers, signs or posters. Where this is reported to us we will make enquiries into the source of the advertisements and take action if possible.

Graffiti and fly-posting are both illegal, spoil both public and private property and can be very costly to remove.

We have powers to prosecute both the people putting up the material and the businesses being advertised.

Legal measures to prevent fly-posting include:

- On-the-spot fines
- Use of fixed penalty notices
- Prosecution in a magistrates' court
- Use of Anti-Social Behaviour Orders
- Charging the offender for the cost of removing the posters

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Legislation

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It's illegal under the Advertisement Regulations to flypost on private property and under the provisions of Highway Law on Structures, Paving and Street Furniture within the Public Highway. We may attempt to secure the removal of the flyposting and advise the venue that if further incidents occur we will prosecute. As a result we will work with Highways Authority colleagues in Devon County Council if Highway Law is applicable.

Further Legislation in this area includes:

Section 43 of the Anti Social Behaviour Act 2003, which allows us to issue fixed penalty notices of for the offences of both graffiti and fly posting.

Section 48-52 of the Act enables local authorities to issue notices requiring the removal of graffiti and fly posting within 28 days from certain surface and structures. If the notice is not complied with we can undertake the work and recover costs.

Town and Country Planning Act 1990 - Section 220 (here we will work with our Planning Authority colleagues within the Council).

The Clean Neighbourhoods and Environment Act 2003 Act gives local authorities greater powers to order the removal of graffiti and fly posting - and to recover costs.

APPENDIX N

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – STREET SCENE SERVICES (STRAY DOGS)

The Environmental Protection Act (1990) (EPA) below appoints an officer "for the purpose of discharging the functions for dealing with stray dogs found in the area of the authority". The current appointed officer in Mid Devon District Council is the Environmental Enforcement Manager.

Mid Devon District Council is responsible for the seizure and transport of stray dogs:

- Patrolling the District and enforcement of dog fouling legislation;
- Encouraging responsible dog ownership through presentations and talks;

Mid Devon District Council does provide a collection service during normal working hours and will endeavour to collect the dog by the end of the day. We will also endeavour to contact a finder within an hour.

The aforementioned legislation requires a dog in a public place to be fitted with a collar and tag bearing the name and address of the owner (see also Microchipping). Where a stray dog has a form of identification, or the owner of the dog is known, the District Officer will make

every effort to return the dog to its rightful owner. However, if the owner cannot be contacted a 'notice of seizure' (s.149 (3) & (4) EPA 1990) will be issued. The notice specifies that the dog has been seized, retained at kennels and that it is liable to be disposed of if it is not claimed within seven clear days from the date of the notice.

The owner of a stray dog is 'not entitled' to the return of the animal until they have paid all the expenses incurred and a further prescribed sum (s149 (5) EPA 1990). Should the dog not be claimed or the owner declines to pay the sums outstanding, the ownership of the dog is legally transferred to the Council after seven clear days. The Council is then entitled to sell or re-home the dog (except for the purposes of vivisection) or to have it humanely destroyed.

The Environmental Protection Act 1990 specifies that in each case, a dog seized as a stray is required to be detained and a notice of seizure served upon the owner (where known). In addition, the policy of Mid Devon District Council is that, on the first occasion that a dog is seized, the District Officer will make all reasonable efforts to identify the owner and return it to them before taking it to the kennels. The District Officer carries a scanning device to identify dogs fitted with a microchip. If the address of the owner is identified, the District Officer will either visit or telephone. If contact is made, the dog will be returned to the owner.

A dog will only be returned to an address if there is someone able to receive the dog; it will not be left at an unoccupied property, for example where the owner is out or with any person under the age of 18 years of age.

Mid Devon District Council currently insists on cash or debit/credit card for the full amount (statutory fee, handling fee, kennelling fees, plus any veterinary costs incurred) before a stray dog is released to a claimant. Once all fees are paid the District Officer will arrange to deliver the dog back to the owner. The owner will be required to be at home to receive the dog and sign for its receipt.

Stray dogs will be collected out of hours until 6pm if the dog is detained or with the finder. Patrols for stray dogs will not be carried out between the hours of 5pm and 11am except in special circumstances. After 6pm details of the finder will be taken by the Council's Emergency Out-of-Hours service and arrangements will be made with the registered kennels for the dogs to be collected from a designated collection point. The dog will remain in the care of the kennels overnight and the District Officer will endeavour to make arrangements the following working day to reunite the dog with the registered owner.

Detained dogs will not be released by Mid Devon District Council until all costs incurred are paid in full. During office hours payment can be made in person at one of our community offices via debit/credit card or cash. Alternatively payment can be made on line on the Council's website.

All authorised District Officers in the service Environmental Enforcement Team are fully trained in dog handling and receive regular update training. All delegated officers will act in accordance with this policy and will also refer to a specific Stray Dogs Policy (January 2020) when making enforcement decisions.

The adopted Stray Dogs Policy can be found under item 162 (Environment Education Policy) of the MDDC Cabinet meeting of 23 April 2020 available here: <https://democracy.middevon.gov.uk/ieListDocuments.aspx?CId=133&MId=1317&Ver=4>

Microchipping

It is compulsory for all dogs to be microchipped. The Microchipping of Dogs (England) Regulations 2015 come into force on the 6th April 2016 and are made under section 12 of the Animal Welfare Act 2006.

These Regulations provide for the compulsory microchipping of dogs, the recording of a dog's identity and keeper's contact details on a database. This does not apply where a Secretary of State approved certificate has been completed by a veterinary surgeon stating that a dog should not be microchipped for health reasons (this also applies to imported dogs who must otherwise be microchipped within 30 days of being imported). The certificate must state the period for which the dog will be unfit to be microchipped. A dog is deemed to be microchipped where the implanted chip complies with requirements detailed in the Regulations and where these details are recorded on a database by a database operator as specified within the Regulations.

Under the Regulations a keeper means:

In relation to an assistance dog:

- Until the dog ceases working as an assistance dog, the body responsible for its training and allocation;
- After the dog has ceased working as an assistance dog, the person with whom it normally resides;

In relation to a new born puppy:

- The owner of the bitch which gave birth to it

In relation to any other dog:

- The person with whom it normally resides.

The Regulations also set out obligations regarding a change of keeper.

Alongside Mid Devon District Council's statutory function to seize stray dogs, District Officers also work closely with Mid Devon District Councils Licensing Department, Neighbourhood Officers and the Police.

Offences that will relate to Mid Devon District Council enforcement role are:

- Failure to transfer a dog to a new keeper without a microchip (unless a certificate has been issued stating that the dog should not be microchipped for health reasons)
- Failure to comply with a notice served by an authorised person requiring dog to be microchipped within 21 days
- Obstructing an authorised person who is arranging for the dog to be microchipped, recovering the cost of doing so and/or taking possession of a dog for the purposes of microchipping.

The above offences are punishable on summary conviction (Magistrates' Court) by a fine not exceeding level 2 (£500) on the standard scale with a 6 month time limit upon discovery of an offence to commence a prosecution).

A keeper may appeal to the First-tier tribunal against a notice served requiring the keeper to have the dog microchipped within 21 days.

All delegated officers will act in accordance with this policy and will also refer to a specific Microchipping Procedure (Appendix A) set out in the aforementioned Stray Dogs Policy (January 2020) when making enforcement decisions.

APPENDIX O

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – STREET SCENE SERVICES (ABANDONED VEHICLES)

Local authorities have a duty under Section 3 of the Refuse Disposal (Amenity) Act 1978 to remove a vehicle which is abandoned on a road (including private roads) or land in the open air, subject to certain conditions. 1.2.1 Mid Devon District Council is not required to remove an abandoned vehicle situated on open air land if the cost of removing it to the nearest highway is unreasonably high.

Relevant legislation:

- Refuse Disposal (Amenity) Act 1978
- The Removal and Disposal of Vehicles Regulations 1986
- The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 2008
- Criminal Justice Act 1982

All authorised District Officers in the service Environmental Enforcement Team are fully trained in enforcement procedures and receive regular update training. All delegated officers will act in accordance with this policy and will also refer to a specific Abandoned Vehicle Policy (January 2020) when making enforcement decisions, including processes for the assessment of vehicles and the removal, storage and disposal of a vehicles.

Under the legislation and the Abandoned Vehicle Policy, 3.10 Mid Devon District Council may recover any cost of removal, storage or disposal from the registered keeper for abandoning their vehicle. Mid Devon District Council is not permitted to recover any costs from an occupier of land upon which a vehicle has been abandoned. Current adopted costs for registered owners are: Initial removal: £150, Storage: £20 per day from the date of removal. These prices may change to reflect inflation.

The adopted Abandoned Vehicle Policy can be found under item 162 (Environment Education Policy) of the MDDC Cabinet meeting of 23 April 2020 available here: <https://democracy.middevon.gov.uk/ieListDocuments.aspx?CId=133&Mid=1317&Ver=4>

APPENDIX P

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – STREET SCENE SERVICES (COMPULSORY RECYCLING)

In November 2015 Mid Devon District Council introduced a Compulsory Recycling Policy, in line with waste and recycling legislation, aimed at encouraging residents to put their waste out in the correct containers and at the correct times, as prescribed by Mid Devon District Council.

Current recycling procedures are specified on the Mid Devon District Council website. In the autumn of 2015 Mid Devon District Council introduced a weekly food waste kerbside collection using blue food caddies and an opt-in fortnightly chargeable garden waste collection service using a brown bin. Further changes to waste and recycling arrangements may be made in the future.

One of the purposes of introducing compulsory recycling is to increase recycling performance and to reduce costs for the Council. This has had a positive effect by reducing the amount of waste.

The Environmental Protection Act 1990 legislation is aimed at encouraging everybody to use the right containers for the right kind of materials.

Education and Enforcement

Everyone should take responsibility for the waste they produce and Mid Devon District Council aims to educate local residents, businesses and visitors to increase awareness and understanding of their role in responsible waste management. This may be through targeted campaigns, the Mid Devon District Council website, leaflets, posters, events and working with community groups.

Mid Devon District Council has a statutory duty under the amended Environmental Protection Act 1990 ("the Act") to keep the streets clean and clear of litter and refuse. This legislation also gives Mid Devon District Council the powers to tackle local environmental quality issues and to undertake enforcement.

Mid Devon District Council recognises that residents may take time to get accustomed to the service requirements contained in its policies. Consequently Mid Devon District Council will adopt an approach that will always offer advice, support and guidance as the first and preferred way.

Mid Devon District Council are nonetheless aware that resorting to the use of formal powers may be necessary in some circumstances and is committed to seeing such measures applied in an open, reasonable and proportionate way.

A Notice under Section 46 (1) of the amended Environmental Protection Act 1990 needs to have been served on a property before any enforcement action can be pursued for this type of offence. This Notice formally requires the occupier to place the waste for collection in receptacles of a kind and number specified and effectively sets the ground rules for the way household waste should be managed by residents.

This Notice is in addition to the information provided on the Mid Devon District Council website.

Serving a Section 46 (1) Notice does not imply that a household is not managing their waste properly and, as such, the notices may be served on as many properties as appropriate to enable a consistent and fair approach to enforcement across the district.

All authorised District Officers in the service Environmental Enforcement Team are fully trained in enforcement procedures and receive regular update training. All delegated officers will act in accordance with this policy and will also refer to a specific Compulsory Recycling Policy (January 2020) when making enforcement decisions including the four-stage enforcement procedure set out in the latter.

The adopted Compulsory Recycling Policy can be found under item 162 (Environment Education Policy) of the MDDC Cabinet meeting of 23 April 2020 available here: <https://democracy.middevon.gov.uk/ie/ListDocuments.aspx?CId=133&Mid=1317&Ver=4>

APPENDIX L

~~SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – STREET SCENE SERVICES (CIVIL PARKING ENFORCEMENT – OFF STREET)~~

~~The purpose of this appendix is to give further guidance on the provisions of the Traffic Management Act 2004 s82. The principles of the Civil Enforcement is clearly set out in the main Civil Parking Enforcement – off street) policy. The policy will be followed in conjunction with the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 and the Civil Enforcement of Parking Contraventions (England) Representations and Appeal Regulations 2007.~~

General parking enforcement

Mid Devon District Council enforce Council owned car parks and as such are considered the Enforcement Authority in those locations only. The policy set out in this document is intended to provide guidance and information to the public and Council employees carrying out car park enforcement duties. The policies and approach are consistent with current best practice and aim to provide clarity, consistency and transparency within the enforcement process and compliance with the aspirations of the legislation and associated guidance, the Traffic Penalty Tribunal (TPT) and the Local Government Ombudsman. These policies represent a foundation upon which fairness, openness, transparency and discretion can be applied. The importance of flexibility in these matters has been recognised by the courts and, as a consequence, decisions made by councils must not be unduly rigid in their application

By carrying out Civil Parking Enforcement within its own car parks Mid Devon District Council will:

Maintain its car parks to a standard that encourages drivers to park legally and safely thereby improving traffic flow on the highway and making the Borough a more pleasant and environmentally safe place in which to live and visit.

Provide parking at reasonable cost to the public so as to encourage the local economy.

Actively support the needs of disabled people bearing in mind that, in some cases, they are unable to use public transport and are entirely dependent upon the use of a car. This will ensure that people with disabilities are able to have equal access to all facilities within the District.

APPENDIX M

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – STREET SCENE SERVICES (FIXED PENALTY POLICY – DOG FOULING, LITTERING AND FLY-TIPPING)

The purpose of this appendix is to give further guidance on the provisions of the fixed penalty notice for offences contained within the Clean Neighbourhoods and Environment Act 2005 and the Environmental Protection Act 1990.

General Fixed Penalty Enforcement

Fixed penalty Notices are a means of punishing offenders for unlawful behaviour and offer a quick, flexible means of dealing with certain offences. It avoids overloading the judicial system with unnecessary cases. They allow a person who admits to the committing of an offence to end the matter promptly, avoid Court action and possibility of a criminal record. As well as an enforcement tool the use of fixed penalty notices is intended to encourage behaviour change and bring improvements to local environmental quality and protect public safety.

Fixed Penalty notices can be issued for:

Dog fouling

Littering

Fly tipping