

**Mid Devon District Council**

**Public Health Services unit**

**ENFORCEMENT POLICY**

**Policy Number:** PH/EP/02/16

Target audience:

Investigating Officers and Decision-Makers, Management Team, Cabinet, Legal Services and any person, organisation, company or business affected by regulatory action by the Public Health Services unit

**March 2016**

## Version Control Sheet

*Title: Public Health Services Enforcement Policy*

*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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## PREFACE

The Public Health Services Unit is responsible for several different broad enforcement functions across a number of teams:

- **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, infectious diseases, environmental permitting and quality, noise and other statutory nuisances, pest control, filthy premises and drainage)
- **Private Sector Housing** (private sector housing conditions/fitness and renewal, empty homes and houses in multiple occupation)

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 functions undertaken by this unit assist the Council in achieving its ambition by contributing toward 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 revising 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.

## **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 regard 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.

**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 regulating others.

**1.5** 'Enforcement' and 'regulatory activity' includes any action and the whole range of regulatory options and interventions available to us as taken by officers aimed at ensuring that individuals or businesses, including Local Authority managed premises, comply with the law.

**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. 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 and grow**

**2.1.1** The Public Health Services Unit 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, or where action is required to minimise the risk.

**2.1.2** Officers will seek to adopt efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens.

**2.1.3** The level of enforcement will be proportional to any alleged offence 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.

**2.1.4** 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. A tougher stance may also be taken for any offences 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 or a family occupied property with Category 1 hazards.

**2.1.5** 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.
- FTE business advisors working across innovation centres and rural areas, organising clinics and ensuring join up with other delivery mechanisms.

**2.1.6** 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.

## **2.2 We will provide simple and straightforward ways to engage with those we regulate and to hear their views**

**2.2.1** Where enforcement is necessary because of ignorance of the law (which is not of course a defence against criminal proceedings) 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.

**2.2.2** 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 requirements and advice or guidance about what is desirable but not compulsory, thereby minimising the cost of compliance by requiring proportionate action.

**2.2.3** 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.

**2.2.4** 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.

**2.2.5** 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 suspect, victim, witness or offender.

## **3.0 CHARGING FOR ENFORCEMENT ACTIONS**

**3.1** Some situations necessitate the use of formal, statutory enforcement actions and these tend to be the most problematical. It may be inappropriate to continue to provide Council's resources freely in these cases. 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** 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.
- 3.6** We will also regularly review our fees and charges in connection with enforcement actions.
- 3.7** 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.

## **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** The decision to 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 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.

**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 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 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 residents.

#### **4.6 Helpfulness**

We will work with individuals and businesses to help them comply with the law, 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**

#### **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 will be given to:

- 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 co-operativeness of the 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](http://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](http://www.gov.uk) website.

## **5.4 Information Notices**

**5.4.1** Many pieces of legislation enforced by the Public Health Services Unit 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**

**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 and where possible will be the prescribed form. 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.

**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, Residential Property Tribunal, or Employment 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 (subject to evidential and public interest tests where necessary) 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 Prohibition Notices**

**5.7.1** This power will be used where there are statutory grounds and where the situation cannot be allowed to continue because of the imminent risks involved. Examples include imminent risk to human health, animal health or harm to the environment

**5.7.2** The requirements of any relevant statutory Codes of Practice regarding the use of such notices will be fulfilled.

**5.7.3** 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.

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

## **5.8 Injunctions**

**5.8.1** An injunction may be sought from the Courts, where the circumstances of any case cause a significant and/or exceptional problem or threat to health of an individual or group of individuals. This is also where the normal process of law (statutory notices, prosecution or work in default etc.) is likely to be ineffective because the perpetrator has shown a careless disregard for earlier similar requirements, or where the process of law would take an unacceptable period of time, having regard to the particular circumstances.

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

## **5.9 Seizure of Goods, Equipment, Food, Articles or Records**

**5.9.1** 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.

## **5.10 Work in Default**

**5.10.1** Work required in the interest of public health, safety or the environment may be undertaken by the 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;
- it is unlikely that the work will be carried out unless done in default.

**5.10.2** 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.

## **5.11 Management Orders**

**5.11.1** The Council may make an Interim or Final Management Order on a licensed house in multiple occupation, which allows it 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 Council may charge for serving certain Notices and issuing any Orders under the Housing Act 2004.

## **5.12 Compulsory Purchase Orders**

**5.12.1** The Council may compulsorily purchase property under Section 17 of the Housing Act 1985. This power 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.

## **5.13 Premises Licence Review**

**5.13.1** 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).

**5.13.2** This option is also open to officers of the Licensing Authority (Licensing Team acting as a Responsible Authority) but officers will generally only take such action 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.

**5.13.3** 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).

## **5.14 Simple Cautions**

**5.14.1** 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.

**5.14.2** 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 manager.

**5.14.3** 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 three 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,
- 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.

**5.14.4** 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.

**5.14.5** A Simple Caution will also only be progressed when the case has passed both the evidential test and the public interest test as determined by the officer authorised to issue a caution. The principles outlined also apply to the other types of formal enforcement actions that are available.

- **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.

- **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.

**5.14.6** 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.

**5.14.7** 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.

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

## **5.15 Prosecution**

**5.15.1** 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 the public at serious risk.

**5.15.2** 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.

**5.15.3** The case officer and the service manager will consider all relevant information and evidence when circumstances may warrant a prosecution, to enable a consistent, fair and objective decision to be made.

**5.15.4** The case officer and the service manager must be satisfied, before 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. See also Evidential Test (5.14.5).

**5.15.5** The case officer and the service manager must decide that it is 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.

**5.15.6** Once a decision to prosecute has been made, the procedure will be implemented without undue delay. The requirements of the Police and Criminal Evidence Act 1984 (PACE) and the Criminal Procedure and Investigation Act 1996 will be adhered to. The manager will determine the designated Authorised Officer in charge of the investigation and disclosure officer.

**5.15.7** 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).

**5.15.8** Where there has been death at work resulting from a failure to comply with health and safety law, the matter will 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 Service 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.

## **5.16 Proceeds of Crime Applications**

**5.16.1** 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.

**5.16.2** We will only use accredited financial investigators in respect of POCA applications, where 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 within the Licensing, Environmental Health and Private Sector Housing Teams do not give advance notice about inspections 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.

**6.1.2** In determining the need for prior notification, officers will have due regard to the provisions for the Home Office Code of Practice (CoP) on Powers of Entry 2014. 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 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 1998. 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 Forces and Fire Authorities.

**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 Directed surveillance using the Regulation of Investigatory Powers Act (RIPA)**

**6.4.1** The Council is a public authority for the purposes of the Human Rights Act 1998. Where an investigation into the prevention or detection of crime and/or prevention of disorder is necessary, for example, following a serious incident or repeat complaints, 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.

**6.4.2** 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.

**6.4.3** Any directed covert surveillance shall be carried out in accordance with Council procedures, RIPA (Regulation of Investigatory Powers Act 2000) and The Protection of Freedoms Act 2012. Authorisation for this type of pre-planned investigation may only be given in writing by formally appointed officers within the Council and before being formally authorised by a Justice of the Peace.

## **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 Service Manager and Head of Service. 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.

## **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 Head of Service, Service Manager and 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** The Local Government Reform Joint Forum (LGRJF) publish draft guidelines for the conduct of local government employees. These include how to manage any potential or actual conflict of interest and the Council would expect these guidelines to be followed.

**7.2.2** In particular, officers are expected to conduct themselves with integrity, impartiality and honesty and their private interests should not be such as to have the potential for allegations of impropriety or partiality to be sustained thereby bringing the Council into disrepute and/or influence enforcement decisions and outcomes.

**7.2.3** All relationships with businesses, organisations, groups or individuals subject to regulatory permitting, licence or other regulation and enforcement must be made known to the appropriate manager (normally Service Manager or Head of Service). Similarly any beneficial interest or licence in respect of land which is affected by regulatory decisions must be made known to the appropriate manager.

**7.2.4** In carrying out enforcement, no special favour should be shown to any business, organisation or group particularly those run by, for example, friends, persons to whom the employee owes (or is owed) an obligation, partners or persons where a

family or personal relationship is deemed to exist (or previously existed). Where such a relationship exists then regulatory decisions should ideally be made by an alternative officer or as a minimum be made under the direction and guidance of the Service Manager or Team Leader.

**7.2.5** No part of the local community should be discriminated against through a conflict of interest or other reason.

**7.2.6** Under the provisions of the Bribery Act 2010 and in the context of this policy, it is a criminal offence to:

- Offer, promise or give someone a reward to induce them to perform their functions or activities improperly.
- Accept, agree to accept or request a reward in return for performing a relevant function or activity improperly.

**7.2.7** Officers undertaking enforcement action as defined fully by this policy should also be aware of, and comply with, internal policies such as Disciplinary, Bribery, Hospitality, Whistleblowing and any others as may be relevant.

### **7.3 Complaints about the service**

**7.3.1** If anyone wishes to complain about enforcement action they may do so initially by contacting the Public Health and Professional Services Manager by telephone on 01884 255255 or by email [health@middevon.gov.uk](mailto:health@middevon.gov.uk) or in writing to Public Health Services, Phoenix House, Phoenix Lane, Tiverton EX16 6PP.

**7.3.2** Where possible, a complaint will be investigated within 10 working days. A complainant will be advised at the outset about how the complaint will be dealt with and when to expect information on the progress of the investigation.

**7.3.3** If a complainant is dissatisfied with the result of their complaint to the Public Health and Professional Services Manager, the complaint will be reviewed by a member of our Corporate Management Team and will also be viewed by the Chief Executive. For details about the formal complaints procedure please see the Council website [www.middevon.gov.uk](http://www.middevon.gov.uk).

### **7.4 Policy review**

**7.4.1** This policy shall be reviewed at least every 3-years. Other triggers for review include any significant apparent short-coming, case law, new 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](http://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 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 Public Health and Professional Services Manager, Phoenix House, Phoenix Lane, Tiverton EX16 6PP (telephone: 01884 255255), or via email [health@middevon.gov.uk](mailto:health@middevon.gov.uk).

## APPENDIX 1

### SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – LICENSING TEAM

#### **Licensing policies**

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://new.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://new.middevon.gov.uk/business/licensing/>

#### **Licensing and Regulatory Committees**

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**

The Local Government (Miscellaneous Provisions) Act 1976 allows the Council to suspend, revoke or refuse to renew hackney carriage and private hire related licences. Examples include the immediate suspension of a vehicle licence where it has been deemed unfit for use (in licensing terms) and the immediate revocation of a drivers licence where the individual is no longer considered to be fit and proper.

The Licensing Act 2003 also allows for the suspension of a Premises Licence or Club Premises Certificate when the annual fee has not been paid by the required date.

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**

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**

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**

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.

### **Conditions**

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).

## APPENDIX 2

### SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (NUISANCES)

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.

##### **Abatement Notices**

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

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. The Council has legal powers to deal with noise that is a 'nuisance'.

Other statutory nuisances definitions are wide-ranging and complex in terms of the premises and nature of emissions to which they apply. In addition to noise from any premises, they include premises which are in such a state to be prejudicial to health or a nuisance and emissions of smoke, fumes, gases from any premises. Or dust, steam, odours or effluvia from industrial, trade or business premises. It also includes animals kept in such a way so as to be prejudicial to health or a nuisance and insects from industrial, trade or business or light

emanating from any premises. Finally, it can include any accumulation or deposit that is prejudicial to health or a nuisance.

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.

### **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 that makes many people's lives a misery. 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, which provide better protection for victims and communities, act as a real deterrent to perpetrators.

These enforcement powers 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. If we conclude at any stage during an investigation that a Statutory Nuisance is proven then we must take action under the Environmental Protection Act 1990 rather than ASB.

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

### **Defences**

Commercial businesses and other activities may have a range of statutory defences for example the use of best practicable means available to abate the nuisance or a right by prescription to commit what would otherwise be a nuisance as a result of a substantial history of operating without interruption. These are defences arising from case law and as such all current and relevant case law will be taken into account together with the specific circumstances of the nuisance in question.

## **Procedures and closing investigations**

We will follow set procedures when undertaking nuisance investigations following a common or related set of stages. These procedures are available from us upon request. We will always carry out an initial assessment and send out standard letters and diary sheets to the source of the complaint and complainant respectively alongside exploring mediation and other informal actions. If after 28 days we have resolved the complaint and/or we have received no further communication (including completed diary sheets) from the complainant then we will close the investigation and take no further action.

## **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**

The Environmental Health team 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 do so in accordance with best practice and codes of practice issued by the relevant agencies and bodies including DEFRA, Environment Agency and Chartered Institute of Environmental Health.

## **APPENDIX 3**

### **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://new.middevon.gov.uk/environment/air-quality/regulated-installations/>

#### **Prescribed premises for pollution control**

We are the relevant enforcing authority for the purposes Environmental Permitting Regulations 2010 (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.

## **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.

## **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 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.

### **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 4

### **SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (FOOD SAFETY, HEALTH PROTECTION AND PRIVATE WATER SUPPLIES)**

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 and other policies and information**

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

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

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

#### **General food safety enforcement**

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 letter
- Hygiene Improvement Notice
- Hygiene Emergency Prohibition Notice
- Remedial Action Notice
- Seizure/detention
- Refusal / revocation of Approved Premises status

### **Criminal enforcement responses**

- Prosecution
- Simple caution

### **Food safety enforcement notices**

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.

Remedial Action Notices will be used if a continuing offence in an approved premise 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**

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.

### **Revocation of food approvals**

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

The Council has the power, in certain circumstances, to revoke a premises approval. To warrant revocation of approval, the individual or organisation must have engaged in one or more of the following criteria;

- engaged in fraudulent activity,
- deliberately or persistently breached legal obligations, which were likely to cause harm to others,
- deliberately or persistently ignored written warnings or formal notices,
- obstructed an officer during the course of their duty,
- endangered, to a serious degree, the health or safety or well-being of the public.

### **Health protection and infectious diseases**

Three sets of Health Protection regulations which came into force in 2010 complement the updated Public Health (Control of Disease) Act 1984, which was substantially amended by the Health and Social Care Act 2008.

#### **Part 2A Orders**

The Regulations of the Public Health Act include legal powers, available to enforce actions to protect public health: Part 2A Orders. They are available to local authorities and involve an application to a magistrate.

We will typically use these powers in consultation with other organisations, such as Public Health England, Devon County Council Public Health consultants, the NHS or the emergency services.

In undertaking any action under the Health Protection regulation will we follow guidance published by The Department of Health and Health Protection Agency (now Public Health England), in consultation with the Chartered Institute of Environmental Health. The guidance explains notification requirements of registered medical practitioners and laboratories testing human samples as well as health protection powers available to us as the Local Authority and justices of the peace.

### **Private Water Supplies**

The Water Industry Act 1991 requires local authorities like us, to check the wholesomeness and sufficiency of private water supplies provided to premises in their area. We will work

closely with formal guidance provided by the Drinking Water Inspectorate (DWI) to ensure consistent and coherent regulation.

The regulations under which Private Water Supplies (PWS) are inspected are The Private Water Supply Regulations 2009. The regulations require us to complete a risk assessment of all private water supplies, except for supplies to single non-commercial domestic dwellings. This had to be done within five years of the regulations coming into force and subsequently every five years thereafter.

Risk assessments involve looking at the whole private water supply including the source, any storage tanks, any treatment systems and the premises using the supply.

Large supplies (greater than 10m<sup>3</sup>/day) and supplies that provide water for commercial activities require check and audit sampling to be carried out. Check sampling involves looking at a suite of basic parameters; audit sampling covers a much larger suite of parameters. The frequency of these sampling suites depends upon the volume of water used from the supply. For example:

- ≤ 10m<sup>3</sup>/day - sampling frequency 1 sample per year
- >10 ≤ 100m<sup>3</sup>/day - sampling frequency 2 samples per year
- > 100 ≤ 1,000 - sampling frequency 4 samples per year
- > 1,000 ≤ 2,000 - sampling frequency 10 samples per year

There are also procedures that we must follow if a private water supply is determined as being unwholesome under the regulations. This includes a requirement to investigate the cause of any failures, inform users of the supply if it poses a potential danger to human health and giving advice to users to minimise any such potential dangers. Additional enforcement powers are available if needed.

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 can be seen on our website at the link for private water supplies set out above.

### **What is a private water supply?**

In general terms a 'private water supply' is any water supply which is not provided by a Water Company. It is not a mains supply and no water rates are paid, although the person who owns the supply may make a charge. There are no laws controlling the charges or other conditions connected with private supplies. The owner or person who uses the supply is responsible for repairing and maintaining it. Private supplies are commonly used in the rural parts of Mid Devon.

A private water supply could serve just one property or it could be a large supply with a network of pipes supplying water to many properties. The water may come from a spring, well, borehole, pond, river or stream.

### **Quality standards for water**

Good quality water is very important to everyday life. Every house must have a good supply of clean, fresh water for it to be fit for occupation.

To make sure that water used in the home and for producing food is of the high quality required to protect public health, the government has set legal quality standards which all water used for drinking, washing and cooking or used in businesses which produce food or

drink must meet. Private supplies are more likely to be contaminated because the sources are more likely to be unprotected from contamination and they are generally not treated to the same standard as public supplies.

## APPENDIX 5

### 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**

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**

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 CIEH guidance: Implementation of Smoke-free Legislation in England - The Smoke-free (Private Vehicles) Regulations 2015.

## **APPENDIX 6**

### **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**

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 enforce health and safety law in certain workplaces within the district including offices, shops, retail and wholesale distribution centres, leisure, hotel and catering premises.

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.

#### **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 letter
- Improvement Notices
- Prohibition Notices
- Seizure

## **Criminal enforcement responses**

- Prosecution
- Simple Caution

An Improvement Notice or Prohibition Notice is served with the broad aim of dealing with serious risks to health and safety, securing compliance with health and safety law and preventing harm. The notices require offenders to cease activities in contravention of the law or give offenders reasonable time to rectify a contravention. A Prohibition Notice stops work or use of a piece of equipment in order to prevent serious personal injury.

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.

## **3. 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 Head of Service 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.

## APPENDIX 7

### SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – PRIVATE SECTOR HOUSING

#### Private Sector Housing Policies

The purpose of this appendix is to set out a number of specific policies covering the different regulatory functions and activities that private sector housing team are responsible for. These include policies for the private sector housing renewal and bringing empty homes back into use. These policies can be found here: <https://new.middevon.gov.uk/housing/private-sector-housing/>

#### Expectations of tenants, owners and landlords

In respect of private sector housing issues, the Council will specifically expect the following from tenants, owners and landlords:

##### **Tenants**

- Tenants must inform their landlord about issues within their property before contacting the Council.
- Tenants must cooperate with their landlord to get the works carried out and tell the Council of any action taken by the landlord.

Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property. This is because it is more difficult for landlords to meet their legal duty, unless they have been made aware of the problem.

Where a hazard presents an imminent risk to the health and safety of the occupants, it is expected that tenants will still try to contact their landlord, even if this is after they have contacted us. It is also expected that the tenant will provide the Council with details of any written or oral communication that they have had with the landlord regarding the hazard.

In certain situations tenants will not be required to write to their landlord first, for example:

- Where there is an established history of harassment/threatened eviction/poor management practice
- Where the tenant appears to be vulnerable or where there are vulnerable members of the household
- Where the tenant could not for some other reason be expected to contact their landlord/managing agent;
- Where the property is a House in Multiple Occupation which appears to fall within the scope of HMO licensing

Tenants are responsible for keeping us informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.), which may affect the action the Council is taking or considering taking. Tenants should also consider seeking independent legal advice about their own individual powers to resolve any dispute with their landlord.

Residential Social Landlord (RSL) tenants have standard procedures to follow if their landlord does not carry out repairs in a satisfactory manner, including a final right of appeal to the Housing Ombudsman Service. However if the RSL has not taken appropriate action within a reasonable timescale given the alleged severity of the hazard, the we will investigate and take appropriate action to ensure that the hazard is reduced to an acceptable level

### **Owners and landlords**

- The Council expect owners to maintain the properties they own
- Enforcement action will be taken if the Council considers there is an imminent risk to a person's life or likelihood of significant harm to health.

### **Owners of empty homes**

- The Council will expect owners of long-term empty homes to bring them back into use.
- Enforcement action (Compulsory Purchase Order, Interim/Final Empty Dwelling Management Orders, and Enforced Sale) will be considered if an owner does not co-operate, and the empty property has an impact on the neighbourhood.

### **Housing Health and Safety Rating System**

The Housing Act 2004 introduced the Housing Health & Safety Rating System (HHSRS). It is a calculation of the effect of 29 possible hazards on the health of occupiers and potential visitors. The legislation then provides a range of actions for addressing identified hazards.

It is a two stage calculation combining the likelihood of an occurrence and the range of probable harm outcomes to give a numerical rating for each hazard. The assessment will be based on the potential occupant who is the most vulnerable to that risk. The two stages are combined to give a numerical rating in respect of each hazard.

Hazard ratings are banded A-J. Bands A to C (ratings of 1,000 points and over) are the most severe, and are known as **Category 1 hazards**. Bands D to J, the less severe (ratings less than 1,000 points) are known as **Category 2 hazards**.

HHSRS provides a combined score for each hazard identified and does not provide a single score for the dwelling as a whole. It is applied to all residential premises, whether owner-occupied or rented.

The Council has a duty to inspect premises where the existence of a hazard is suspected.

The Council has a duty to take action in response to a Category 1 hazard. When a Category 1 hazard is identified, the Council must decide which of the available enforcement options it is most appropriate to use. These are explained in more detail below.

The Council has a power to take action in response to Category 2 hazards. If the Council decides to take action, it will consider taking action in the following circumstances:

- Where a Category 2 hazard falling within Band D or E exists in addition to one or more Category 1 hazards.

- Cases involving a member of the vulnerable age group, as defined within the specific hazard of the HHSRS, who would derive specific benefit from having Category 2 hazards (falling within Band D or E) addressed;
- Cases in which multiple Category 2 hazards, which when identified which, when considered together, create a more serious cumulative situation, or where the property fails the decent homes standard.
- Where a local house condition survey highlights specific local hazards e.g. excessive cold and dampness.
- Any other exceptional case determined by the Lead officer for Private Sector Housing in consultation with Service Manager or Head of Service.

### **Choice of appropriate enforcement action**

Unless there is an imminent risk to the health and safety of the occupant or visitors to the property, we will attempt to secure the required improvements informally, and within a reasonable timescale. Where this approach fails, officers will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case. For example the possibility of retaliatory evictions will be considered and this may be especially relevant when dealing with sub-standard migrant workers accommodation which is tied to the job.

A Statement of Reasons will be provided with any Notice served under Private Sector Housing legislation including the Housing Act 2004, explaining why it was decided to take a particular course of action.

The enforcement options available to the Private Sector Housing team are as follows:

- Improvement Notices (including Suspended Improvement Notice)
- Prohibition Orders (including Suspended Prohibition Notice)
- Hazard Awareness Notices
- Emergency Remedial Action or Emergency Prohibition Notices
- Demolition Orders
- Clearance Areas
- Service of Statutory Nuisance Notice under the Environmental Protection Act 1990.

### **Improvement Notices**

It is anticipated that Improvement Notices will be an appropriate and practical remedy for most hazards. Where we determine that an Improvement Notice should be served in respect of a Category 1 Hazard, it will require works that will either remove the hazard entirely or will reduce its effect so that it ceases to be a Category 1 hazard, and will take whichever of these two options it considers appropriate, having considered the circumstances of the case.

Where we determine that the hazard can only be reduced to a Category 2 hazard rather than removed, it intends to require works to be carried out as far as is reasonably practical to reduce the likelihood of harm.

Where we determine that an Improvement Notice should be served in respect of a Category 2 Hazard, it will require works it judges sufficient either to remove the hazard or reduce it to

an appropriate degree, and will make these decisions having considered the circumstances of the case.

### **Suspended Improvement Notice**

The Council has the power to suspend an Improvement Notice and will consider this course of action where it is reasonable, in all circumstances, to do so. The following are situations in which it may be appropriate to suspend an Improvement Notice:

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken.
- Works which cannot properly be undertaken whilst the premises are occupied and which can be deferred until such time as the premises are vacant or temporary alternative accommodation can be provided.
- Personal circumstances of occupants, for example, temporary ill-health, which suggests that works, ought to be deferred.

When deciding whether it is appropriate to suspend an Improvement Notice the Council will consider:

- The level of risk presented by the hazard(s);
- The turnover of tenants at the property;
- The response or otherwise of the landlord or owner;
- Any other relevant circumstances (e.g. whether the vulnerable age group, as defined within the specific hazard of the HHSRS, is present)

Suspended Improvement Notices will be reviewed after a maximum of 12 months and then at intervals of not more than 12 months, but suspension will not normally exceed 6 months.

### **Prohibition Orders**

Prohibition Orders can be used in respect of both Category 1 and Category 2 hazards for all or part of a dwelling and are likely to be used:

- If repair and/or improvement appear inappropriate on grounds of practicality or excessive cost (i.e. the cost is unrealistic in terms of the benefit to be derived). An example might include a dwelling or part of a dwelling where adequate natural lighting or adequate fire escape cannot realistically be provided, or
- In a house of multiple occupation (HMO), to prohibit the use of specified dwelling units or of common parts. This might, for example, be used if there are inadequate fire safety measures, or
- To specify the maximum number of persons who can occupy a dwelling where it is too small for the household's needs, in particular, in relation to the number of bedrooms, or
- In relation to premises lacking certain facilities but which are nonetheless suitable for a reduced number of occupants.

In addition to prohibiting all uses in relation to the whole or part of the premises in question (other than uses specifically approved by the Council), Prohibition Orders can prohibit

specific uses. This option may be employed to prevent occupation by particular descriptions of persons. Examples of where the use of this power may be appropriate include: premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants and premises with open staircase risers or widely spaced balustrades that make them particularly unsuitable for infants.

We will consider any written requests made for alternative uses of premises or part-premises which are subject to a Prohibition Order, and will not withhold its consent unreasonably. We will reply, in writing, to any request stating our reasons why we have approved or refused the proposed alternative uses.

### **Suspended Prohibition Order**

We have the power to suspend a Prohibition Order and will consider this course of action where it is reasonable to do so if the facts of a particular case appear to justify it.

Suspended Prohibition Orders will be reviewed after a maximum of 12 months and then at intervals of not more than 12 months, but suspension will not normally exceed 6 months.

### **Hazard Awareness Notices**

Hazard Awareness Notices may be served to notify owner-occupiers or landlords of the existence of hazards (for example where the risk from the hazard is mitigated by the longstanding nature of the occupancy). This will typically be applicable where:

- It is judged appropriate to draw attention to the desirability of remedial action;
- To notify about a hazard as part of a measured enforcement response;
- An occupant has expressed a particular view that this course of action is desirable (e.g. a tenant who, because of persistent ill-health, might not be able to tolerate works).

In all cases where the decision to serve a Hazard Awareness Notice has been determined by occupancy, the Council will review the notice at regular intervals to ensure that any change of occupancy does not put a more vulnerable occupant at risk.

### **Emergency Remedial and Prohibition Action**

The situations in which Emergency Remedial Action and Emergency Prohibition Orders may be used are specified in the Housing Act 2004. Before considering such action, we must be satisfied that:

- A Category 1 hazard exists, and that
- The hazard poses an imminent risk of serious harm to health or safety, and that immediate action is necessary

If these conditions are met then we will take appropriate emergency action. Situations in which emergency action may be appropriate include:

- Residential accommodation located above commercial premises and which lack a safe means of escape in the event of fire because there is no independent access;

- Risk of electrocution, fire, gassing, explosion or collapse.

### **Demolition Orders**

Demolition Orders are a possible response to a Category 1 hazard (where they are judged the appropriate course of action). In determining whether to issue a Demolition Order the Council will take account of Government guidance and will consider all the circumstances of the case.

### **Clearance Areas**

We can declare a Clearance Area if it is satisfied that each of the premises in the area is affected by one or more Category 1 hazard (or that they are dangerous or harmful to the health & safety of inhabitants as a result of bad arrangement or narrowness of streets).

In determining whether to declare a Clearance Area we will act only in accordance the Housing Act 1985 (as amended) and having had regard to relevant Government guidance on Clearance Areas and all the circumstances of the case.

### **Statutory Nuisance Notices served under the Environmental Protection Act 1990**

It is anticipated that the vast majority of statutory nuisances will be eliminated using the enforcement provisions of the Housing Health and Safety Rating System. Where this is not possible, such as dealing with privately rented mobile homes, consideration will be given to the service and enforcement of the use of powers under Section 80 of the Environmental Protection Act 1990.

### **Tenure**

The HHSRS applies equally to all tenures. Furthermore, it does not specify that particular approaches or solutions should be used on the basis of ownership or the occupier's status. All of the enforcement options are available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a Registered Social Landlord (RSL). However, the Council considers that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities accordingly; whereas tenants, and particularly non-RSL tenants, are not usually able to do so. For this reason we judge that it is appropriate for powers to be used differently according to tenure. Examples are given as follows:

#### **Owner-Occupiers**

The Council anticipates that Hazard Awareness Notices will frequently be the appropriate course of action and intends only to use Improvement Notices, Prohibition Notices and their emergency equivalents in cases involving:

- Vulnerable elderly people who are judged not-capable of making informed decisions about their own welfare, and/or
- Vulnerable individuals who require the intervention by us to ensure their welfare is best protected, and/or
- Hazards that might reasonably affect persons other than the occupants, and/or

- Serious risk of life-threatening harm such as electrocution or fire,
- Any other exceptional case determined by the lead officer for private sector housing and the service manager.

Unless an identified hazard is judged to pose an imminent risk of serious harm, we will contact the owner to confirm its involvement, explain the nature of the hazard and confirm the action we are intending to take. We will take account of any proposals or representations made by, or on behalf of the owner.

In addition to our own legal adult and child safeguarding responsibilities, we will ask and take account of the opinion of the relevant welfare authority in considering both the vulnerability and capability of such persons as well as in determining what action it will then take.

### **Social Landlords**

Registered social landlords (RSLs) exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant-representatives) and their performance is scrutinised by the Tenant Services Authority. RSLs normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service-failure.

On this basis we will not normally take formal action against an RSL unless it is satisfied that the problem in question has been properly reported to the RSL and they have then failed to take appropriate action within a reasonable timescale given the severity of the hazard,

Unless an identified hazard is judged to pose an imminent risk of serious harm, we will notify the RSL that a complaint has been received and/or a hazard identified and seek the RSLs comments and proposals within 14 days. Only in urgent cases or where it judges that an unsatisfactory response has been received will we take further action, and will then determine which of the available enforcement options is the most appropriate, taking into account the facts of the case.

### **Private Landlords**

The Council will proceed with enforcement action having regard to the principles of this policy overall. Formal action will be initiated immediately if a hazard in question is judged by the Council:

- To pose an imminent risk of serious harm to any person (whether or not immediate action is required, and whether the hazard(s) in question is likely to affect a tenant, an employee or a member of the public), or
- The landlord in question is known to have failed, on a previous occasion, to take appropriate action in response to an informal approach.

Where the informal approach is judged appropriate the Council will write to the landlord, (or managing agent) stating the nature of the hazard and request proposals for reducing the hazard(s) identified to an acceptable level. A joint inspection with the landlord may also be required and a Requisition for Information Notice is likely to be served at this point. Following the joint inspection, the landlord/agent will be expected to provide the Council with a

proposed timescale for completing the works. If this proposal is deemed acceptable, and the work proceeds in accordance with the agreed timetable, the Council will not normally need to take any further action.

Landlords are expected either to provide any agent acting for them with sufficient authority to act on their behalf in the event that they are contacted by the Council, or to ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to us. The failure of an agent to respond to communication from us within an agreed timescale or any failure to take appropriate action may be treated as a failure by the landlord. The agreed timescale will depend on the severity of the hazard.

If the Council receives no response from the landlord/agent or an inadequate response or proposals that were judged acceptable but which are not then completed satisfactorily, then we will proceed with formal action by taking whichever of the various available enforcement actions it judges to be the most appropriate in accordance with this policy.