

# Environmental Health and Licensing Enforcement Policy

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# Environmental Health and Licensing Enforcement Policy

## Version control record

Version number	Date	Author / reviewer	Comments / changes
V0.1	15/02/2024	David Fitzgerald	Revised to include new legislation and updated enforcement powers.



# Environmental Health and Licensing Enforcement Policy

<b>Author</b>	<b>David Fitzgerald, Environmental Health Manager</b>
<b>Approved by</b>	<b>Full Council</b>
<b>Approval date</b>	<b>[Approval date]</b>
<b>Review date</b>	<b>[Review date]</b>

## 1. Purpose

- 1.1 Havant Borough Council (hereafter referred to as 'the Council') aims to secure regulatory compliance.
- 1.2 The purpose of this Policy is to set out how the Council intends to implement fair and effective enforcement, which is essential to protect the health, safety, and welfare interests of the residents, visitors, businesses, and employees of the Council.
- 1.3 We recognise that most individuals, businesses, and other groups want to comply with the law. Our aim is to deliver regulatory enforcement functions in an enabling and supportive style, helping businesses and others meet their legal duty without unnecessary expense. However, we will take firm action, including prosecution where appropriate.
- 1.4 The Environmental Health and Licensing Service's principal focus will be on those activities that give rise to the most serious risks to the safety and health of the public and/or the environment, or where the duty-holder seeks a commercial advantage by breaking the law.
- 1.5 This policy outlines the Environmental Health and Licensing Service's approach to securing regulatory compliance, along with the options available within the legislation covered by the remit of the services for achieving this.



# Environmental Health and Licensing Enforcement Policy

1.6 Decisions about enforcement action can have serious implications for all involved. By applying the same principles, everyone involved in the process is helping to treat stakeholders fairly but effectively. This policy will be applied so that decisions about enforcement action will be transparent, accountable, proportionate, and consistent.

## 2. Scope

2.1. This policy applies to all legislation enforced by the Environmental Health and Licensing Service.

2.2. In relation to most areas of Environmental Health and Licensing legislation, the choice of action will be based on an assessment of the risk that the contravention poses to the health, safety, or welfare of the public, and/or employees, and/or the environment.

2.3. Enforcement, in the context of this policy includes action carried out in the exercise of, or against, the background of statutory enforcement powers. This is not limited to formal enforcement action such as prosecution and civil penalties but includes, for example, the inspection of premises to check compliance with relevant acts and regulations, and the provision of advice to help duty-holders achieve compliance. The term "duty-holder" has a wide meaning and applies to those persons on whom the law places duties (e.g., employers, self-employed, employees, and others).

2.4. The Legislative and Regulatory Reform Act 2006 (section 22) requires regulators to have regard to the 'Code of Practice' when developing policies and operational procedures that guide their regulatory activities. The Code seeks to promote the above through the development of transparent effective dialogue, and understanding between regulators and those they regulate.

2.5. Prevention is better than cure, and we should actively work with businesses, consumers, and other groups to advise and assist with compliance.

2.6. The Council undertakes its regulatory and enforcement activities fairly and without bias. We will look to minimise bureaucracy and red tape, provide help to those who need it, but we will take firm action against people who flout the law.



## 3. Executive Summary

# Environmental Health and Licensing Enforcement Policy

- 3.1. This policy sets out the general principles that inform the enforcement element of the Environmental Health and Licensing services. Our aim is to achieve a level playing field of regulatory compliance within the Borough of Havant.
- 3.2. We will achieve this through education, providing advice and by regulating activities. Providing clear advice and guidance will be our main approach to securing compliance; however, securing compliance by using enforcement powers is an important and sometimes necessary part of achieving this aim.
- 3.3. Where informal advice and guidance has not worked, or where a breach of regulatory compliance is so serious as to cause harm to our communities, we will take formal enforcement action against businesses and / or members of the public.
- 3.4. When we do take enforcement action we will do so efficiently and effectively, and in a way which is open, clear, and helpful to those against whom action is taken. We will also ensure fair and objective enforcement in accordance with the Council's Equality and Diversity Policy.
- 3.5. We believe that publishing information on our enforcement activities, where appropriate, raises awareness of the need to comply. Therefore, we will issue press releases and other publicity relating to offences and offenders, proportionate to the sanctions.
- 3.6. This policy will be reviewed every five years, or earlier, if necessary, in light of any legislative changes.

## 4. Approval

- 4.1. This policy was approved by Full Council on the **XX March 2023**, Committee Minute Reference **XXXX**.
- 4.2. Minor changes to this policy can be made with the approval of the Executive Head of Place.



# Environmental Health and Licensing Enforcement Policy

5.1 Carry out work so that it supports economic growth for compliant businesses.

We will:

- Avoid imposing unnecessary burdens through our regulatory activities and choose proportionate approaches to those we regulate.
- Support or enable economic growth for compliant businesses.
- Ensure our officers have the necessary knowledge and skills to support those they regulate.
- Ensure our officers understand the legal principles of good regulation.

5.2 Provide simple and straightforward ways to engage with those we regulate and hear their views. We will:

- Consider the impact on business and engage with business representatives.
- In responding to non-compliance, officers will clearly explain:
  - What the non-compliant item/activity is.
  - What actions are required to achieve compliance.
  - What advice is being given.
  - The decisions taken and reasons for these.
  - Provide an opportunity for dialogue, ensuring that they are acting in a way that is proportionate and consistent.
  - Consider the impact on business and engage with business representatives.

The above paragraph does not apply where the officer can show that immediate enforcement action is required.

- Provide an independent and clearly explained route to appeal against a regulatory decision, or a failure to act in accordance with this policy.
- Provide a timely explanation in writing of any right to representation or right to appeal. This will be in plain language and include practical information on the process involved.
- Make available a clearly explained complaints procedure, so that complaints can easily be made about the conduct of an officer.
- Receive and take on board customer feedback.

5.3 Base our regulatory activities on risk. We will: Take an evidence-based approach to determine our priorities and allocate our resources where they would be most effective in addressing our priorities.

- Consider risk at every stage of our decision-making processes.



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- Consider the compliance record of businesses, including earned recognition and external verification approaches when assessing risk.
- Periodically review the effectiveness of our chosen activities in delivering the desired outcomes and make any necessary changes.

5.4 We will use discretion in deciding what issues will be investigated. To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. It is neither possible nor necessary to investigate every instance of non-compliance with the law. In selecting which incidents to investigate and in deciding the level of resources to be used, the following factors will be taken into consideration:

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

5.5 Sharing information about compliance and risk. We will:

- Follow the principle of "collect once, use many times" when requesting information.
- The requirements of the UK General Data Protection Regulations and Data Protection Act 2018 will be considered prior to the sharing of data.
- Where appropriate, we will share information, in a secure manner, with other regulators about those we regulate.
- As a public body the Council is subject to the regulations governing the provision of information under the 'Freedom of Information Regulations' and the 'Environmental Information Regulations'. This means that the Council must share information unless it is prohibited or exempt under other legislation.

5.6 Clear information, guidance, and advice. We will:

- When providing information under the 'Environmental Information Regulations' we will follow our Access to Information Policy on fees and charges.



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- When providing advice and guidance, clearly distinguish between legal requirements and good practice.
- Produce guidance and information in a clear, accessible, concise format, written in plain language.
- Periodically review the guidance we produce to ensure it meets the needs of those we regulate.
- Provide reliable and sound advice to those we regulate.
- Where appropriate, work collaboratively with other regulators and have regard to their advice in reaching decisions.

## 5.7 Ensure transparency in our approach. We will:

- Set and publish clear service standards so those we regulate know what to expect from us.
- Regularly publish details of our performance against our service standards (including results of customer feedback).
- Our service standards will include clear information on the following issues: -
  - How we communicate with those we regulate and vice versa.
  - Our approach to providing information, guidance, and advice.
  - Our approach to checks on compliance (e.g. inspections, audits, monitoring and sampling visits and test purchases).
  - Our enforcement policy, explaining how we will respond to non-compliance.
  - Our fees and charges and how they have been calculated.
  - How to comment or make a complaint against service provided and ways to appeal.

## 5.8 Environmental Health and Licensing staff must be fair, independent, and objective. They must not let any personal views about the suspect, victim, witness, or offender influence their decisions. Such issues would include age, disability, gender reassignment, marriage and civil partnership, pregnancy or maternity, race, sex, religion or beliefs, political views, or sexual orientation.

## 5.9 The Environmental Health and Licensing is a public authority for the purposes of the Human Rights Act 1998. Environmental Health and Licensing Service's staff must apply the principles of the European Convention on Human Rights in accordance with the Act.

## 5.10 Environmental Health and Licensing staff must not be affected by improper or undue pressure from any source.





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5.11 Each case is unique and must be considered on its own merits. However, there are general principles that apply in the way each case is approached; these are laid out in this Enforcement Policy

5.12 The work we do must be carried out in ways that are transparent, accountable, proportionate, and consistent, and should be targeted at cases in which action is needed: -

- **Proportionality** means relating enforcement action to the risks (in this policy 'risk' is defined broadly to include a source of possible harm, the likelihood of that harm occurring, and the severity of any harm).

The action taken by Environmental Health & Licensing to achieve compliance with the law should be proportionate to any risks to health and safety, and to the seriousness of any breach, including actual or potential harm arising from the breach.

- **Consistency:** The consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
- **Transparency** means helping duty holders to understand what is expected of them and what they should expect from the enforcing authority. It also means making clear to duty holders not only what they have to do, but also where relevant what they do not **have** to do. This means distinguishing between "statutory requirements" which are their legal obligations, and "recommendations" which is generally advice or guidance given in terms of what is desirable but not compulsory.
- **Targeting** means making sure that visits/inspections carried out are targeted primarily on those activities or premises that give rise to the most serious risks or where hazards are least well controlled, and that action is focused on the duty holder.

- **Accountable:** Regulators are accountable to the public for their actions. This means that the Council must have policies and standards (such as the four enforcement principles above) against which we can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints. The Council's procedure for handling complaints is available on the Council website and will be made available to any duty holder on request.



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## 6. Training, Competency, and Authorisation

- 6.1 Only officers who are competent by training, qualification, and/or experience will be authorised to take enforcement action. Authorised officers will also have sufficient training and understanding of the departmental policies and procedures to ensure a consistent approach to service delivery. The Environmental Health Manager (**EHM**) will maintain a list of current authorisations for Environmental Health and Licensing Service.
- 6.2 Officers who undertake criminal investigations will be conversant with the provisions of the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, and the Regulation of Investigatory Powers Act 2000.

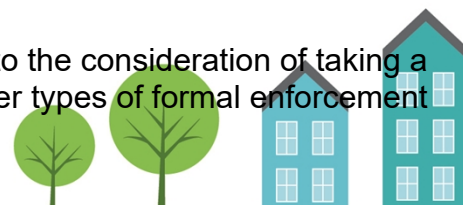
## 7. Deciding the action to take

- 7.1 Based upon the Code for Crown Prosecutors there are two issues to determine:
- 1) What level of enforcement action to take, and where the decision is to take formal enforcement action,
  - 2) Whether that action is viable and appropriate.
- 7.2 There are two stages in determining whether formal enforcement action is viable and appropriate. These are:
- Stage 1:** the evidential test  
**Stage 2:** the public interest test
- 7.3 If the case **does not** pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case **does** meet the evidential test, depending on the type of formal action being considered (e.g. prosecution, civil penalty) the Legal Service will decide if formal enforcement action is needed in the public interest.

- 7.4 Paragraphs 7.5 to 7.12 below detail how this policy applies to the consideration of taking a prosecution. The principles outlined apply equally to the other types of formal enforcement action that are available.

### The Evidential Test

- 7.5 The Council's EHM and Legal Service must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge.



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- 7.6 A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if satisfied it is sure of a defendant's guilt.
- 7.7 When deciding whether there is enough evidence to prosecute, the EHM and Legal Service must consider whether the evidence can be used, if it is reliable, and if it would be admissible as evidence in a court of law.

## The Public Interest Test

- 7.8 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Legal Service must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.
- 7.9 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution that clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead, and those factors should be put to the court for consideration when sentence is being passed.
- 7.10 The Legal Services must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

- 7.11 Detailed below are some of the common public interest factors that can generally be considered, both for and against prosecution, these are not exhaustive. The factors that apply will depend on the facts in each case.

## Common public interest factors in favour of prosecution

- 7.12 The more serious the offence, the more likely it is considered that a prosecution will be needed in the public interest. A prosecution is likely to be required if: -
- A conviction is likely to result in a significant sentence.
  - The offence was committed against a person serving the public, e.g. an officer was obstructed whilst attempting to carry out his/her duties.
  - The defendant was in a position of authority or trust.



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- The evidence shows that the defendant was a ringleader or an organiser in the offence.
- There is evidence that the offence was premeditated.
- There is evidence that the offence was carried out by a group.
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal damage, or disturbance.
- The offence was motivated by any form of discrimination against the victim's age, disability, gender reassignment, marriage and civil partnership, pregnancy or maternity, race, religion or beliefs, sex, sexual orientation, or if the suspect demonstrates hostility towards the victim based on any of those characteristics.
- There is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption.
- The defendant's previous convictions or cautions are relevant to the present offence.
- The defendant is alleged to have committed the offence whilst under an order of the court.
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.
- The offence, although not serious in itself is widespread in the area where it was committed.
- The extent to which the defendant has benefitted from the criminal conduct.
- The circumstances of and harm caused to the victim, and the impact on the community.

7.13 Where inspectors are assaulted, enforcing authorities will seek police assistance, with a view to seeking the prosecution of offenders.

## 8. Levels of enforcement action

8.1 Aside from taking prosecution proceedings, and out of court disposal may take the place of a prosecution, if it is an appropriate response to the offender and or the seriousness and consequences of the offending. Regard will be had to any relevant guidance, when deciding whether an alternative disposal, such as a simple caution, civil penalty or other appropriate regulatory proceedings should be administered.

8.2 Enforcement action can be one or more of the following actions:

- Prosecution
- Civil penalties
- Simple Caution
- Closure powers
- Banning Order



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- Rent Repayment Orders
- Management Orders (Empty Dwelling Management Orders, Interim Management Orders, Final Management Orders)
- Refusal, review, variation, suspension and/or revocation of licences, permits, consents, approval.
- Seizure, Detention or Destruction
- Works in default
- Formal Enforcement Notices & Orders (e.g. Improvement and Prohibition Notices)
- Financial Penalty
- Fixed penalty notices
- Informal Notice (written warning and advice)
- Informal verbal warning and advice
- Revisit of premises
- No action

8.3 Not all regulatory provisions covered by EH Services have access to each of the above-mentioned enforcement actions. For example, there are no current powers available to officers under the Licensing Act 2003 to serve formal notices such as Improvement or Prohibition notices.

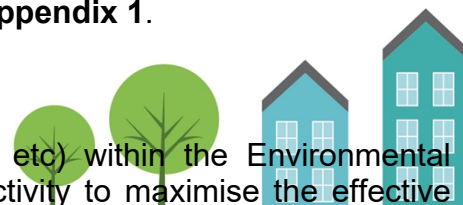
8.4 The enforcement options available in each area of Environmental Health and licensing work are listed in appendices 2 to 9, these cover the environmental health areas of food hygiene; health and safety; licensing; housing; statutory nuisances; public health, land contamination; pollution prevention and control; respectively.

A brief explanation of each enforcement action is given in **Appendix 1**.

## 9. Liaison

9.1 The enforcement services (eg: noise pollution, licensing etc) within the Environmental Health and Licensing will co-ordinate their enforcement activity to maximise the effective enforcement of any matters that are related to more than one element.

9.2 Where an enforcement matter affects a wide geographical area beyond the Borough's boundaries or involves enforcement by one or more other local authorities or organisations



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(e.g. Fire Authority, Police, Trading Standards, etc); all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

9.3 Where appropriate, the matter will be first discussed with the relevant 'Primary Authority' (if the business has a relevant Primary Authority Partnership arrangement in place) or other regulatory body before proceeding.

9.4 The EHM or Team Leaders' shall carry out monitoring (as appropriate) to ensure that appropriate and full liaison is being undertaken.

## 10. Death at Work

10.1 Where there has been a breach of the law leading to a work-related death, officers must consider whether the circumstances of the case might justify a charge of manslaughter or Corporate Manslaughter.

10.2 To ensure that decisions on investigation and prosecution are closely co-ordinated following a work-related death, the HSE, the Association of Chief Police Officers (ACPO), Local Government Association and the Crown Prosecution Service (CPS) have jointly agreed and published MOU "Work-related deaths: A protocol for liaison".

10.3 We must therefore take account of the protocol when responding to work-related deaths. In which case, officers shall liaise with the Police, Coroners and Crown Prosecution Service (CPS), and if they find evidence suggesting manslaughter, pass it on to the police. If the Police or the CPS decide not to pursue a manslaughter case, the officer will normally bring a health and safety prosecution in accordance with the HSE Enforcement Policy.

## 11. Considering the best course of formal action

11.1 Considering the best course of formal action to be taken will:

- Reflect the seriousness of the offence(s)
- Give the court adequate sentencing powers
- Pass the evidential and public interest tests, and
- Enable the offence(s) to be presented in a clear and simple way



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11.2 The agreement of the Environmental Health Manager or appropriate Team leader must be obtained before cases are put forward for enforcement actions.

## 12. Considering the views of those affected by offences

12.1 Environmental Health and licensing undertake enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test (see section 6 above), the consequences for those affected by the offence, the decision whether or not and how to take enforcement action, and any views expressed by those affected, will be taken into account.

12.2 Those people affected by the offence will be told about any decision that makes a significant difference to the case in which they are involved.

## 13. Re-starting a Prosecution

13.1 People should be able to rely on enforcement decisions taken by the Council. Normally, if a suspect or defendant is advised that there will not be a prosecution, or that the enforcement action has been stopped, that will normally be the end of the matter and the case will not start again. Occasionally there are special reasons why enforcement action will re-start, particularly if the case is serious. These reasons include:

- Rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand.
- Cases which are stopped so that more evidence that is likely to become available in the fairly near future can be collected and prepared. In these cases, the defendant will be told that the enforcement action may well start again.
- Cases that have been stopped because of a lack of evidence but where more significant evidence is discovered later.
- Cases involving a death in which a review following the findings of an inquest concludes that a prosecution should be brought, notwithstanding any earlier decision not to prosecute.

## 14. Power of Entry

14.1. Environmental Health staff are provided with specific powers of entry by a wide range of legislation. This gives them a right (usually in the form of delegated authority from the Council to named officer/s) to legally enter defined premises, such as businesses, vehicles, or land for specific purposes. Powers of entry include enabling officers to undertake





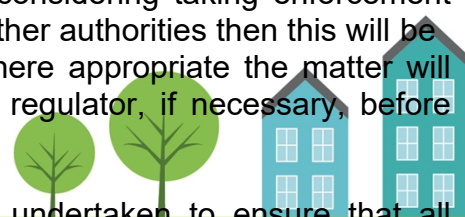
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inspections and investigations for a wide range of regulatory responsibilities including food safety, health and safety, environmental protection, and housing legislation, in addition to dealing with emergencies, searching for evidence and or gathering evidence.

- 14.2. Often, the power to enter is accompanied by what are known as 'associated powers', which set out what the officers are allowed to do once they have entered the premises. This might include, for instance, conducting a search, seizing relevant items, or collecting samples.
- 14.3. In certain cases, such as under Housing Act legislation, where entry is required to a residential property, then a period of notice is usually required to be given to the owner or occupier of the property before entry can be gained.
- 14.4. Officers also have the option to obtain a warrant from a magistrate and enter, at any time by force if necessary to ascertain if an offence has been committed, searching for evidence and or gathering evidence or to undertake emergency remedial work or works in default.
- 14.5. Officers of Environmental Health and licensing will have regard to the Code of Practice - Powers of Entry (issued under section 48 of the Protection of Freedoms Act 2012) when exercising any functions to which the Code relates. The purpose of the Code is to ensure greater consistency in the exercise of powers of entry and greater clarity for those affected by them while upholding effective enforcement.

## 15. Enforcement Policy Implementation

- 15.1. Officers must abide by this enforcement policy when making all enforcement decisions. Any departure from the policy must be exceptional, capable of justification, and be fully considered by the EHM before a decision is taken, unless it is considered that there is sufficient risk in delaying the decision, under which circumstances the officer must take the most appropriate course of action, as they see fit.
- 15.2. Should any departure from the policy result in an officer considering taking enforcement action that may be inconsistent with action being taken by other authorities then this will be discussed with the EHM and appropriate team leader. Where appropriate the matter will be discussed with relevant primary authority and/or other regulator, if necessary, before proceeding.
- 15.3. Scheduled internal performance review meetings will be undertaken to ensure that all enforcement activity is carried out in accordance with this policy.
- 15.4. Instances of non-compliance with this policy will be recorded and reported to the EHM and relevant team leader, who will instigate appropriate action.





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15.5. Where legislation permits financial charges will be made for formal enforcement action taken (e.g., The Housing Act 2004 - service of notices, and recovery of costs).

## 16. Guidance Documents

16.1. This policy considers various Guidance and Approved Codes of Practice issued by Central Government departments, and national regulators such as the Health and Safety Executive and the Food Standards Agency.

16.2. The Council fully acknowledges and endorses the rights of individuals and will ensure that all enforcement action occurs in strict accordance with the Police and Criminal Evidence Act 1984, the Human Rights Act 1998, the Equalities Act 2010, and other relevant legislation and guidance.

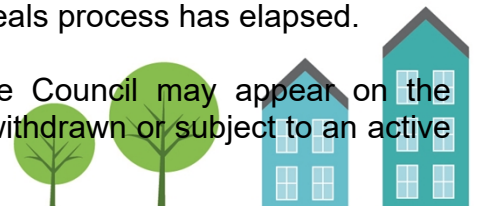
16.3. Directed covert surveillance will only be used in relation to the investigation of serious offences, defined as those with a penalty of six months imprisonment or more.

16.4. This policy has been written with regards to the content of the Regulators' Code 2014 and all the relevant parts of the Code for Crown Prosecutors 2018; the Ministry of Justice's Simple Caution for Adult Offender guidance 2015; the Criminal Procedures and Investigations Act 1996; and the Regulation of Investigatory Powers Act 2000.

## 17. Publicity

17.1 The Council may publicise cases of businesses, licensees, landlords, and individuals it successfully prosecutes for relevant offences as well as those it rewards for implementing very high standards. Names of companies and individuals convicted of offences may be published on the Council's website or through social media. Cases subject to an active appeal will not usually be published until the applicable appeals process has elapsed.

17.2 Information related to enforcement notices issued by the Council may appear on the Council's website or social media outlets. Notices that are withdrawn or subject to an active appeal will not be published.



## 18. Further Information

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- 18.1 The Code for Crown Prosecutors - (The Code) is issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985. It sets out the basic principles Crown Prosecutors should follow when they make case decisions. It is a public document, and although it's written for members of the Crown Prosecution Service it is widely used by others to understand the way in which Crown Prosecutors make decisions. The Code for Crown Prosecutors can be downloaded on the crown prosecution website at:[http://cps.gov.uk/publications/code for crown prosecutors/index.html](http://cps.gov.uk/publications/code%20for%20crown%20prosecutors/index.html)
- 18.2 The Regulators' Code is available for download from:  
<https://www.gov.uk/government/publications/regulators-code>.
- 18.3 Ministry of Justice - Simple Caution for Adult Offender guidance is available for download from <https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors>.
- 18.4 Guidance Powers of entry: code of practice. The code provides guidance and 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. Available for download from Powers of entry: code of practice - GOV.UK ([www.gov.uk](http://www.gov.uk)).
- 18.5 Ministry of Housing, Communities and Local Government - Statutory Guidance (April 2018), Civil penalties under the Housing and Planning Act 2016.
- 18.6 Ministry of Housing, Communities and Local Government - Statutory Guidance (April 2017), Rent repayment orders under the Housing and Planning Act 2016.
- 18.7 Ministry of Housing, Communities and Local Government - Non-statutory guidance (April 2018, Banning orders for landlords and property agents under the Housing and Planning Act 2016.
- 18.8 Ministry of Housing, Communities and Local Government - Statutory Guidance (April 2019), Database of rogue landlords and property agents under the Housing and Planning Act
- 18.9 Ministry of Housing, Communities and Local Government - Non-statutory guidance: Guide for local authorities: electrical safety standards in the private rented sector, Updated 7 October 2021.
- 18.10 Ministry of Housing, Communities and Local Government - Non-statutory guidance Guide for local authorities Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022: guidance for local authorities, Updated 29 July 2022.



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- 18.11 Ministry of Housing, Communities and Local Government - Non-statutory Guidance Lettings agents and property managers: which government approved redress scheme do you belong to? Updated 2 August 2018.
- 18.12 Department for Energy Security and Net Zero and Department for Business, Energy & Industrial Strategy, Guidance for landlords of domestic private rented property on how to comply with the 2018 'Minimum Level of Energy Efficiency' standard (EPC band E) Updated 13 April 2023.
- 18.13 Guidance Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022: guidance for local authorities, Updated 29 July 2022.



# Environmental Health and Licensing Enforcement Policy

## APPENDIX 1: Enforcement Action Options

The Openness of Local Government Bodies Regulations 2014 requires certain decisions made to be available to the public. Such decisions include the issued licences, permits and enforcement notices. Information made available includes: -

- The date the decision was taken.
- Details of the decision taken along with the reasons for the decision.
- Details of alternative options, if any, considered and rejected.
- Where the decision falls in the paragraph 7(2)(a) of the regulations, the names of any member of the relevant local government body who has declared a conflict of interest in relation to the decision.

Enforcement officers must seek to secure compliance with the law. Most of their dealings with those on whom the law places duties (businesses, landlords, occupiers, and individuals) are informal - officers offer information, advice, and support, both verbally and in writing.

Enforcement Officers may also use formal enforcement mechanisms as set out in law, including financial and fixed penalty notices; enforcement notices where a contravention needs to be remedied; prohibition notices where there is a risk of serious personal injury, damage to the environment, or injury to health; revocation of authorisations; withdrawal of approvals; refusal of registration; variations of licences or conditions or of exemptions; or ultimately caution, prosecution, and injunction.

### 1. Prosecution

This involves offender(s) being summoned by the Council to a criminal court to answer a charge(s) for a breach(es) of legislation enforced by this department.

When consideration is given to prosecute, regard shall be taken of the guidance contained within this Enforcement Policy, the Code for Crown Prosecutors, applicable Acts and Regulations, and relevant guidance produced by national regulators (such as the Health and Safety Executive, Food Standards Agency, Environment Agency, or specific government department).

Officers must exercise their discretion in deciding whether to initiate a prosecution. Prosecution without warning and recourse to alternative sanctions may be appropriate in certain circumstances.



# Environmental Health and Licensing Enforcement Policy

In terms of the Public Interest Test, the list of factors stated in section 7 of this policy will be taken into account when making a decision.

For non-payment of certain licence fees, or where the Council has not received payment of costs for carrying out works to remove a serious imminent risk or remedy pollution, it will pursue debts through the appropriate court, and where appropriate it will suspend/cancel the licence.

When taking a prosecution the Council will be mindful for applying for a Criminal Behaviour Order, (CBO) if the prosecution is successful. The EHM in conjunction with Legal Service, will also consider action under the Proceeds of Crime Act 2002.

## 2. Civil Penalties

The Housing and Planning Act 2016 provides powers permitting local authorities to impose a civil penalty of up to £30,000 per offence as an alternative to prosecution for a range of specified offences under the Housing Act 2004, and where a landlord or property agent has breached a banning order under the Housing and Planning Act 2016.

Ministers have made it very clear that they expected this power to be used robustly as a way of clamping down on rogue landlords.

Civil penalties can be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 relating to: -

- Failure to comply with an improvement notice
- Offences in relation to the licensing of a House in Multiple Occupation (HMO)
- Offences in relation to selective licensing under part 3 of the Housing Act 2004
- Contravention of an overcrowding notice
- Failure to comply with management regulations for HMOs Compliance Code
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)

The same criminal standard of proof (beyond reasonable doubt) is required for the issuing of a civil penalty as for prosecution. Before issuing a civil penalty, Environmental Health will satisfy itself that if the case were to be prosecuted there would be a realistic prospect of conviction. To this end, Environmental Health will work with the Legal Service.



Where a civil penalty is imposed, the recipient has the right of appeal through the First-tier Tribunal. Environmental Health would defend their decision with a view to demonstrating beyond reasonable doubt that the offence had been committed.

# Environmental Health and Licensing Enforcement Policy

In determining an appropriate level of penalty, local housing authorities will have regard to the statutory guidance issued by the Ministry of Housing, Communities, and Local Government (MHCLG) (Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing which sets out the factors to consider when deciding on the appropriate level of penalty, however, the following factors will be considered when deciding on the amount: -

- Severity of the offence.
- Culpability and track record of the offender.
- The harm caused to the tenant.
- Punishment of the offender.
- Deter the offender from repeating the offence.
- Deterring others from committing similar offences.
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

Environmental Health will have regard to the requirements of the statutory guidance issued by the Ministry of Housing, Communities, and Local Government (MHCLG) (Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities).

### 3. Closure Powers

The powers to close certain premises, both commercial and domestic, or prohibit processes, are available to authorised officers under various legislation enforced by the Services. This option is taken when there is a serious and imminent risk to health or safety to the occupants, neighbouring premises' occupants, employees, customers, or visitors.

Decisions of this nature will be based on the professional judgement of authorised officers and relevant legislation and government guidance. All cases are to be discussed with the appropriate Team leader and EHM.



### 4. Rent Repayment Orders

Local authorities and tenants can apply to the First-tier Tribunal (The Residential Property Tribunal) for repayment of up to 12- months' rent, housing benefit, or universal credit where they can prove

# Environmental Health and Licensing Enforcement Policy

beyond reasonable doubt that the landlord is guilty of one of the qualifying offences, as listed below:

- Using violence to secure entry
- Illegal eviction or harassment of tenants
- Failure to comply with an improvement notice
- Failure to comply with a prohibition order
- Control or management of unlicensed house/HMO
- Breach of banning order

Rent repayment orders are limited to money paid by the body or person making the application.

A rent repayment order can be applied for when the landlord has committed an offence regardless of whether or not the landlord has been convicted of the offence. Where an application for a rent repayment order is made and the landlord has not been convicted of the offence the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.

If successful and the tenant paid their rent themselves, then the rent will be repaid to the tenant. If rent was paid through housing benefit or through universal credit, then the rent will be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through housing benefit/universal credit, then the rent would be repaid on an equivalent basis.

Environmental Health and the Local Housing Authority will have regard to the requirements of the statutory guidance issued by the MHCLG (Rent repayment orders under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities).

## 5. Banning Orders

The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 makes provision for housing authorities to apply to the First-tier Tribunal for a banning order against a person who has been convicted of banning order offence. The Schedule of Offences to the Regulations lists the offences; these include-

- Illegally evicting or harassing a residential occupier in contravention of the Protection from Eviction Act 1977
- Using violence to secure entry under the Criminal Law Act 1977
- Offences under the Housing Act 2004
- Offence under the Health and Safety at work Act 1974, and the Gas Safety (Installation and Use) Regulations 1998 (r.36)





# Environmental Health and Licensing Enforcement Policy

- Offence under the Regulatory Reform (Fire Safety) Order 2005 (a.32)
- Banning orders are designed to tackle the most serious and prolific offenders by preventing them from being involved in renting out or management of housing in the private rented sector. Banning orders are made for a minimum period of 12-months; there is no upper limit on the length of a banning order.
- Environmental Health Services and the Housing Services will have regard to the requirements of the statutory guidance issued by the MHCLG.

## 6. Property Management orders

Part 4 of the Housing Act 2004 provides local authorities with duties and powers to make an Interim Management Order (IMO) in respect of residential property. Their functions can be exercised where a landlord (or their managing agent) fails to obtain a licence, or where it is necessary due to the hazardous condition of the property. Upon the expiry of an IMO the local authority can make an application to the Residential Property Tribunal to make a Final Management Order and take over the management of the property for a period of up to 5 years. This disables the landlord's ability to manage the property and can also have a significant financial impact on its operation.

Interim Management Orders (IMO)- Local authorities are under a statutory duty to make an IMO under s.102 Housing Act 2004 where:

- a) The property is a House in Multiple Occupation (HMO) or other licensable dwelling, and the relevant person has failed to obtain a licence and the LA considers that there is no reasonable prospect of it being licensed in the near future.
- b) It is necessary for the purposes of protecting the health, safety or welfare of persons occupying the property (s.104).

An IMO can be in place for up to 12-months after which it ceases to have effect unless it is revoked before the end of the period. The IMO allows the local authority to:

- Have the right to possession of the property.
- Have the right to do, in relation to the property, anything that a person having an estate or interest in the property would be entitled to do such as repairs and collection of rent etc.
- To spend monies received through the collection of rent for carrying out its responsibilities of management and administration.
- To create new tenancies (with the consent of the landlord).

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Final Management Orders (FMO) - On expiry of an Interim Management Order the local authority has the power to make a Final Management Order (FMO) under s.113 Housing Act 2004 by





# Environmental Health and Licensing Enforcement Policy

application to the RPT. Once the FMO is made, it usually takes effect for a period of up to 5-years. This means that the landlord has no control of the property for duration of that period. The general effects of an FMO are similar to those of an IMO. IMOs and FMOs have extensive consequences on the management of a landlord's property, the most noticeable effect will be the financial consequences of the order as the landlord will not directly receive rental income from the property for that period. Rental monies can be used by the local authority to subsidise any relevant expenditure that is reasonably incurred in connection to it performing its duties under the legislation.

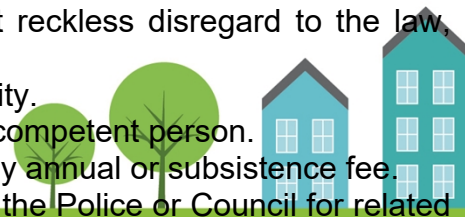
Through the duration of the FMO the LA must periodically review the operation of the order and the management scheme and consider whether keeping the order in force is the best alternative available to it.

## 7. Review, variation, suspension and/or revocation of licences or permits.

These powers are contained in legislation where local authorities issue licences or permits to businesses. Examples include the Licensing Act 2003, the Gambling Act 2005, the Pollution Prevention and Control Regulations 1999, and the Local Government (Miscellaneous) Provisions) Acts 1982 and 1976.

Powers to review, suspend, or revoke licences or permits and vary with the legislation and the Council's Scheme of Delegation. In terms of deciding to review, vary, suspend, or revoke licences or permits, one or more of the following non-exhaustive criteria will be used:

- a) The operator or personal licence holder has been convicted of a relevant offence(s).
- b) The potential for considerable harm.
- c) The seriousness of the offence(s).
  
- d) The history of compliance of the offender(s), i.e. apparent reckless disregard to the law, persistent poor standards, repeated breaches, etc.
- e) A person/organisation has been engaged in fraudulent activity.
- f) The operation is no longer being managed by a technically competent person.
- g) Failure of the operator, licence holder, to pay the Council any annual or subsistence fee.
- h) Where a licensed premises has been temporarily closed by the Police or Council for related reasons.
- i) Where a successful prosecution has been obtained for a breach(es) of licence condition(s).



# Environmental Health and Licensing Enforcement Policy

With reference to hackney carriage and private hire drivers and operators, licensed under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976, consideration to suspend or revoke a licence will be based on whether the applicant or licensee is 'fit and proper' to hold a licence.

Under section 61(1) of the Local Government (Miscellaneous Provisions) Act 1976, the Council may suspend or revoke or (on application therefor under section 46 of the Act of 1847 or section 51 of this Act, as the case may be) refuse to renew the licence of a driver of a hackney carriage or private hire vehicle on any of the following grounds:

a) that he has since the grant of the licence—

(i) been convicted of an offence involving dishonesty, indecency or violence; or

(ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act; or

(aa) that he has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty; or

(b) any other reasonable cause.

The possibility of refusal to renew, suspension or revocation will only arise where matters have been raised under section 61 which bring into question whether the licence holder is no longer considered to be a fit and proper person to hold a driver's licence. A licensing committee will then have to decide, on the balance of probabilities, whether the licence holder is no longer a fit and proper person.

The Council will have regard to relevant case law regarding the 'fit and proper' standard, and any guidance issued by the Department for Transport, in determining whether to suspend, revoke or refuse to renew a licence.

## 8. Seizure, detention and destruction powers

Authorised officers have powers to formally seize items, such as food, and equipment (including musical systems) which will or could cause an imminent risk to health, safety, or a nuisance to any person(s). Decisions of this nature will be based on the professional judgement of authorised officers and relevant legislation and government guidance.

We will always give full details of our actions to the offender(s) when we exercise this power.

# Environmental Health and Licensing Enforcement Policy

This power exists where an authorised officer considers a relevant and serious issue requires urgent work to be carried out. This can occur in relation to statutory nuisances, actual or imminent risks of serious environmental pollution, public health issues or serious housing defects where non-compliance exists and persists.

Recovery of costs from the offender(s) will occur by placing a charge on the property or seeking the recovery of the costs.

## 10. Simple Caution

This option is used as a formal warning and as an alternative to prosecution. Guidance has been issued by the Ministry of Justice entitled 'Simple Cautions or Adult Offenders' (April 2015). For a formal caution to be issued the following criteria must be satisfied:

- a) Sufficient evidence must be available to prove the case, so that if the caution is refused prosecution can be considered.
- b) The offender must admit the offence.
- c) The offender must agree to be cautioned.
- d) The offence must not have been committed by the offender before.

If the offender commits a further offence within 3-years of receiving a formal caution, this may influence our decision to take a prosecution. If during the time the caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England or Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

## 11. Formal Notices

Formal or legal notices are available to use in most Environmental Health legislation. They are served on the offenders requiring them to stop the contravention of their statutory duties.

Some notices allow an offender a reasonable length of time to remedy the contravention(s). Other notices may require a business, process, or state of affairs to cease immediately, or cease trading/operating immediately, where there is an imminent risk to health, safety, or environmental pollution to employees, members of the public, etc.



# Environmental Health and Licensing Enforcement Policy

Where legislation permits (e.g. The Housing Act 2004) financial charges will be made for any formal enforcement action that the Council takes. For 2024/25 the costs will be £650 for the service Improvement Notice, Prohibition Order, Emergency Prohibition Order, Improvement Notice, Emergency Remedial Action.

## 12. Community Protection Notices

Community protection notices (CPNs) are designed to stop a person aged 16 or over, business or organisation committing antisocial behaviour (ASB) which spoils the community's quality of life. The CPN can deal with a range of behaviours, including noise nuisance. Grounds for issuing a CPN include instances in which an individual's behaviour:

- 1) has a detrimental effect on the quality of life of those in the locality.
- 2) is unreasonable and
- 3) is of a persistent nature or continuing nature.

Before a CPN can be issued, the person, business or organisation must be informed of their problem behaviour, requesting them to stop, and the consequences of continuing. The warning must detail that a breach of a CPN is a criminal offence.

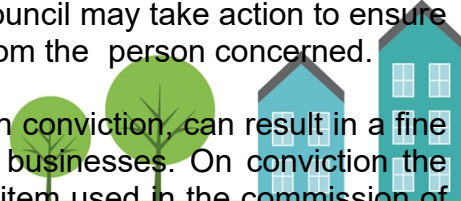
Failure to comply with the warning can lead to the issue of a community protection notice. The notice will list the following requirements: -

1. A requirement to stop doing specified things and/or to do specified things
2. A requirement to take reasonable steps to achieve specified results.

An appeal against a CPN or its terms can be made to a magistrates' court within 21 days of issue. If a recipient of a CPN fails to comply with the requirements, the Council may take action to ensure that the failure is remedied and may recover the cost of doing so from the person concerned.

Failure to comply with a CPN can lead to a court summons and, on conviction, can result in a fine of up to Level 4, currently £2,500 for individuals, or £20,000 for businesses. On conviction the Magistrates' have power to order forfeiture and destruction of any item used in the commission of the offence

## 13. Penalty Charge Notice



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The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 make provision for the service of Penalty Charge Notices (PCN), up to a maximum of £5,000, on landlords who breach a remedial notice served on them under regulations.

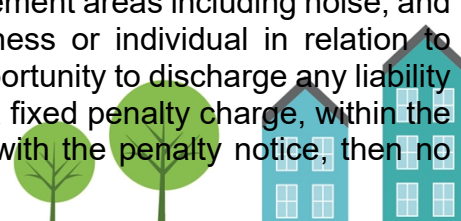
When Environmental Health has reason to believe that a landlord is in breach of the duties relating to smoke alarms or carbon monoxide alarms, it will serve a Remediation Action Notice (RAN) on the landlord within 21 days of the breach being identified.

The RAN will specify the actions that the landlord must take to remedy the breach/es. The landlords will have 28 days from the date the RAN was served to carry out the works. If the landlord does not carry out the works specified on the RAN the Council will ensure compliance by undertaking the work in default within 28 days if it has the necessary consent to do so. In addition to doing the works the Council may serve a PCN, which must be served within six weeks. Where the landlord does not pay the FPN, consideration will be given to prosecution for the original offence.

The landlord has a right to request the Council to review the PCN and has 28 days to make their representation to the Senior Environmental Health Manager. If the landlord is dissatisfied with the review they may appeal to the First Tier Tribunal.

## 14. Fixed Penalty Notices

Fixed Penalty Notices (FPNs) exist in Environmental Health enforcement areas including noise, and smokefree legislation. They are legal notices served on a business or individual in relation to observed contraventions of legislation. FPNs offer a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a fixed penalty charge, within the time specified in the notice. If the penalty is paid in accordance with the penalty notice, then no proceedings for the offence can be brought.



When issuing an FPN, there must be sufficient evidence to prove the offence, as non-payment of the penalty notice may lead to prosecution.

## 15. Informal notices (written warning)

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For some contraventions, we will send the offender a firm but polite letter clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Informal notices/letters are not part of the statutory procedure, and no offences are committed by not complying with them.

Although, failure to comply could result in a formal notice(s) being served or more severe enforcement action being taken, depending on the seriousness of the breach(es). The time allowed must be reasonable but must also consider the implications of the contravention(s) in respect of the legislation being enforced.

## 16. Revisits

Following the service of a Formal Notice, we shall revisit the premises to check compliance has been achieved.

Following the service of an Informal Notice the investigating officer shall use their professional judgement to follow up the matter and depending upon the legislative implications of the contravention, and the perceived likely response of the offender, shall where necessary revisit the premises to check compliance has been achieved.

Following the provision of verbal warning and advice, the investigating officer shall use their professional judgement to follow up the matter, and depending upon the legislative implications of the contravention, and the perceived likely response of the offender, shall where necessary revisit the premises to check compliance has been achieved.

## 17. No action

In exceptional circumstances, contraventions may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community.

A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances. A decision to take no action must be recorded in writing and must consider the legislative implications of the contravention.



# Environmental Health and Licensing Enforcement Policy

## APPENDIX 2: Food Hygiene Enforcement Action Options

The range of enforcement action options available includes:

- a) Prosecution
- b) Closure powers
- c) Seizure
- d) Simple cautions
- e) Formal notices
- f) Informal notices – Reports of Inspection left at premises/confirmation letters
- g) Informal verbal warnings
- h) Revisits
- i) No action

## APPENDIX 3: Health and Safety Enforcement Action Options

The range of enforcement action options available includes:

- a) Prosecution
- b) Closure powers
- c) Seizure
- d) simple cautions
- e) Formal notices
- f) Fixed penalty notices (under smoke free legislation)
- g) Informal notices - Reports of Inspection left at premises/confirmation letters
- h) Informal verbal warnings
- i) Revisits
- j) No action

## APPENDIX 4: Licensing Enforcement Action Options

This Appendix relates to enforcement options available to authorised officers under the Licensing Act 2003, Gambling Act 2005, the Town Police Clauses Act 1847, and Local Government (Miscellaneous) Provisions Acts of 1976 (taxi, and private hire driver and vehicle licences), and 1982 ("special treatment" licences), Street and House to House Collection licensing, and various animal welfare legislation.

The range of licensing enforcement action options available includes:





# Environmental Health and Licensing Enforcement Policy

- a) Prosecution
- b) Closure powers
- c) Review, variation, suspension or revocation of licences and consents
- d) Simple cautions
- e) Informal notices
- f) Informal verbal warnings
- g) Revisits
- h) No action

## **APPENDIX 5: Private Sector Housing Enforcement Action Options**

The range of enforcement action options available includes:

- a) Prosecution
- b) Civil Penalties
- c) Banning orders
- d) Revocation of HMO licences
- e) Rent Repayment Orders
- f) Closure powers
- g) Penalty charge notices
- h) Works in default
- i) HMO/property Management orders
- j) Simple cautions
- k) Formal notices
- l) Informal notices
- m) Informal verbal warnings
- n) Revisits
- o) No action

## **APPENDIX 6: Statutory Nuisance, Public Health and Anti-Social Behaviour, Crime and Policing Act 2014 Enforcement Action Options**

The range of enforcement action options available includes:

- a) Prosecution
- b) Seizure
- c) Works in default
- d) Simple cautions
- e) Formal notices





# Environmental Health and Licensing Enforcement Policy

- g) Informal notices
- h) Informal verbal warnings
- i) Revisits
- j) No action

## APPENDIX 7: Land Contamination Enforcement Action Options

This appendix relates to enforcement options available to authorised officers under Sections 78A to 78YC (inclusive) of Part IIA of the Environmental Protection Act 1990 and Regulations made under it; the Environment Act 1995; and the Law of Property Act 1925.

The range of enforcement action options available include:

- a) Prosecution
- b) simple cautions
- c) Formal notices
- d) Works in default
- e) Informal notices
- f) Informal verbal warnings
- g) Revisits
- h) No action

## APPENDIX 8: Pollution Control Enforcement Action Options

This appendix relates to enforcement options available to authorised officers under the Pollution Prevention and Control Act 1999 and Regulations made under it, and the Environmental Protection Act 1990 and Regulations made under it. Provisions relating to enforcement options applicable to Part IIA of the Environmental Protection Act 1990 are detailed within appendix 8.

The range of pollution control enforcement action options available includes:

- a) Prosecution
- b) Review, variation, suspension, and revocation of licence/permit
- c) Works in default
- d) Simple cautions
- e) Formal notices
- f) Informal notices
- g) Informal verbal warnings
- h) Revisits
- i) No action



## APPENDIX 9: Animal Welfare Enforcement Action Options

# Environmental Health and Licensing Enforcement Policy

This appendix relates to enforcement options available to authorised officers under the Animal Welfare Act 2006 and Sections 149 - 150 of Environmental Protection Act.

The action options available include:

- a) Prosecution
- b) Seizure of the Animal
- c) Service of Notices
- d) Variation, suspension or revocation of licences
- e) Simple cautions
- f) Formal notices
- g) Informal notices
- h) Informal verbal warnings
- i) Revisits
- j) No action

