

# **CORPORATE ENFORCEMENT POLICY AND ASSOCIATED GUIDANCE**

**South Derbyshire District Council**

**September 2021**

## Version Control

Version	Description of version	Effective Date
V1	Original approved Version	24/11/2016
03/19	Following the adoption of a new scheme of delegation in September 2018 and civil penalties under the Housing and Planning Act	01/03/2019
09/21	Alteration of delegations in section 10 following Leadership Team approval on 1/9/2021	01/09/2021



## 1. Introduction and Scope of Policy

1.1. Fair and effective enforcement is essential to protect the health, safety and economic interests of the public, businesses and the environment. Decisions about enforcement action carry serious implications for all involved. The purpose of this Policy is to provide guidance to ensure:

- Decisions about enforcement action are fair, proportionate and consistent;
- Officers apply current Government guidance and relevant codes of practice;
- Everyone understands the principles that are applied when enforcement action is considered.

1.2. This Enforcement Policy applies to the regulatory services provided by the development control, building control, environmental health and licensing service units. The Scheme of Delegation to Officers contained within Section 21 of the [South Derbyshire District Council constitution](#) describes which regulatory functions are delegated to which senior manager of the District Council. This enforcement policy relates to the following regulatory functions as they are described in the Constitution;

1.3. Powers delegated to the Chief Executive under Section 21, Part 3, paragraph 3.3(2) of the Constitution;

*To undertake all functions relating to licensing, including:*

- *street and house-to-house collections;*
- *amusements, lotteries and gaming;*
- *taxi and private hire licensing;*
- *alcohol, entertainment and late night refreshment;*
- *sex establishments;*
- *personal treatments i.e. tattoo, piercing;*
- *street trading;*
- *zoos;*
- *dangerous wild animals;*
- *scrap metal*
- *licensing of activities involving animals.*

1.4. Powers delegated to the Strategic Director Service Delivery under Section 21, Part 6 of the Constitution;

### 6.1 Housing Services

- *housing management;*
- *maintenance and improvement of the Council's housing stock and its environment;*
- *facilitating the provision of housing and incidental amenities;*
- *housing advice, advances and grants;*
- *mobile homes;*
- *homelessness;*
- *crime, disorder and anti-social behavior reduction, in liaison with the Police, in council housing and in general community;*
- *harassment and unlawful eviction;*
- *community involvement;*
- *housing related support services.*

### 6.2 Environmental Services and Health

*To undertake all functions relating to Environmental Services and Health, including:*

- *public health;*
- *recycling;*



- *food sales, safety and standards;*
- *caravan sites;*
- *Health and Safety at Work;*
- *cleansing of highways and other public areas;*
- *pollution control;*
- *exhumations;*
- *public conveniences;*
- *bus shelters;*
- *street name plates and signs for Council functions;*
- *street furniture and litter bins*
- *refuse collection and disposal;*
- *pest control;*
- *shops and Sunday trading;*
- *animals;*
- *litter and fly tipping – prevention and clearance;*
- *home safety;*
- *water supply, standards and safety;*
- *housing conditions, standards and safety;*
- *housing improvement and renovation;*
- *public nuisance;*
- *high hedges;*
- *drainage and sewers;*
- *dogs;*
- *smoking prohibition;*
- *environmental management;*
- *climate change;*
- *grounds and highway verge maintenance.*

## 6.5 Planning Enforcement

*To undertake all functions in relation to Planning Enforcement, including:*

- *to take any formal enforcement action in relation to cases of unauthorised Development, not covered by other specific delegated authority, in accordance with the Council's Adopted [Local Enforcement Plan](#);*
- *to serve enforcement notices, stop notices and temporary stop notices under the Town and Country Planning Act 1990;*
- *to serve requisitions for information under Section 330 of the Town and Country Planning Act 1990;*
- *to serve tree replacement notices*
- *to serve planning contravention notices under Section 171C of the Town and Country Planning Act 1990;*
- *to serve breach of condition notices;*
- *to take action under Section 224 of the Town and Country Planning Act 1990 and the Town and Country (Control of Advertisement) Regulations in respect of unauthorised advertisements;*
- *to withdraw a planning enforcement notice where planning permission for the development has subsequently been granted;*
- *to remove or obliterate posters under Section 225 of the Town and Country Planning Act 1990;*
- *to serve notices under Section 215 of the Town and Country Planning Act 1990 requiring the proper maintenance of land;*
- *to carry out any necessary changes to procedures/the Adopted Local Enforcement Plan in line with government guidance/statutory requirements;*
- *to enter land and buildings as authorised under:*
  - *Town and Country Planning Act 1990 (as may be amended);*



- *Town and Country Planning (Listed Building and Conservation Areas) Act 1990 (as may be amended);*
- *Planning (Hazardous Substances) Act 1990 (as amended);*
- *Planning (Hedgerow Regulations) Act 1997;*
- *Local Government (Miscellaneous Provisions) Act 1976, 1982;*
- *Planning (Consequential Provisions) Act 1990 (as amended).*

## 6.6 Building Control

To authorise the South Staffordshire Building Control Partnership to undertake all functions in relation to Building Control, including:

- *plans and notices deposited under the Building Regulations;*
- *site inspection of building work in progress for Building Regulation and associated legislation compliance;*
- *determination of applications and the issue of legal certificates*
- *investigation of reports of unauthorised work and the taking of appropriate action to deal with those works, along with any contravention of the regulation;*
- *to provide professional advice regarding the Building Regulations and compliance thereto;*
- *assessment and variation of charges under the Council's Scheme of Charges;*
- *Building Act 1984, Part II notices;*
- *applications for Building Regulations dispensation or relaxation;*
- *the authority to deal with the control of dangerous structures and to act as the proper officer where such emergencies make it necessary in accordance with an agreed protocol;*
- *requisitions for information;*
- *enforcement notices under the Building Act 1984;*
- *Local authority national type approval consortium scheme notices;*
- *local authority building control national partnering scheme;*
- *street naming and house numbering and fee setting thereof;*
- *to enter land and buildings as authorised under the Building Act 1984;*
- *to take all actions prescribed by Sections 77 – 81 of the Building Act 1984;*
- *to take all actions prescribed by Sections 36 and 59 of the Building Act 1984.*

1.5. This Policy supports all three of the key strategic priorities in [South Derbyshire District Council's Corporate Plan 2020-24](#).

- The Policy supports the 'Our Environment' priority by contributing to the key aim to "Reduce fly tipping and litter through education, engagement and zero tolerance enforcement action where appropriate" and to "Improve public spaces to create an environment for people to enjoy".
- The Policy supports the 'Our People' priority by contributing to the key aim to *Help tackle anti-social behaviour & crime through strong and proportionate action* and to *Ensure consistency in the way the Council deals with its service users*.
- The Policy supports the 'Our Future' priority by contributing to the key aim to *Encourage and support business development and new investment in the District*.

1.6. This Policy also provides the strategic framework to demonstrate that South Derbyshire District Council is complying with its duties under the Legislative and Regulatory Reform Act 2006. This requires that the Council in the discharge of some of its regulatory functions is to maximise efficiencies in the way Councils regulate in order to reduce the burdens on business whilst maintaining standards. The Policy is central to the way the Council deploys its regulatory services and so it ensures "that proper arrangements are in place to enable resources to be used efficiently and effectively". This duty under the Legislative and



Regulatory Reform Act specifically relates to the functions delivered by the environmental health and licensing services.

- 1.7. The Planning Enforcement function also has a separate Local Enforcement Plan which has been adopted as a local Planning Policy Statement.

## 2. Legal Status of the Enforcement Policy

- 2.1. This Policy was approved by the Environment and Development Services Committee of South Derbyshire District Council on 17<sup>th</sup> November 2016 and by the Housing and Community Services Committee on 24<sup>th</sup> November 2016. Minor iterations of the Policy which have been subsequently approved are summarised in the Document Control table at the start of the document.
- 2.2. This Policy is intended to provide guidance for officers, businesses, consumers and the public. Officers operating in a regulatory capacity for the Council are expected to act in accordance with this Policy along with the Council's Ethics Statement and any failures to do so will be investigated and addressed through the Council's Employee Code of Conduct. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.
- 2.3. The adoption and application of the Policy demonstrates the Council's compliance with the requirements of section 21 of the Legislative and Regulatory Reform Act 2006 and is a significant part of evidencing our compliance with the [Regulators Code](#).
- 2.4. The [National Local Authority Enforcement Code](#) provides direction to local authorities on how to enforce health and safety law. This Policy demonstrates the Council's compliance with this statutory Statement.

## 3. Scope and Meaning of Enforcement

- 3.1. 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or businesses that the law places duties upon, (including employers, the self-employed, employees and others) are returned to compliance or encouraged to comply with the law. This is not limited to formal enforcement action such as prosecution.
- 3.2. In certain circumstances, the Council will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.
- 3.3. The Council places great importance on the consistent use of enforcement action and does not measure itself by the quantities of enforcement action it takes and so does not set targets. The Council does not take enforcement for enforcements sake. Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be appropriate, or to assist such claims.

## 4. General Principles

- 4.1. Prevention is better than cure and the Council's role, therefore, involves actively working with businesses and residents to advise on and assist with compliance.
- 4.2. The principles of regulatory functions are stated in Section 2(3) of the Legislative and Regulatory Reform Act 2006. This states that regulatory activities should be carried out in a way that is **transparent**, **accountable**, **proportionate** and **consistent**. It also states that regulatory activities should be **targeted** only at cases in which action is needed.



- 4.3. Further details about how to meet these principles is contained in the Regulators' Code published in 2013 by the Department for Business, Innovation and Skills. Compliance by regulatory officers with this Policy is a significant factor in demonstrating that the Council is meeting the requirements of the Regulators' Code.
- 4.4. Where it is considered that formal action is necessary, each case will be considered on its own merits. Decisions will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- 4.5. Where practicable the Council will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take formal action.
- 4.6. South Derbyshire District Council is a public authority for the purposes of the [Human Rights Act 1998](#). It will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 4.7. This Enforcement Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement such as targeting enforcement actions, which improve regulatory outcomes without imposing unnecessary burdens. The Policy is also intended to provide a framework which ensures that similar social, environmental and economic outcomes are achieved by less burdensome means than direct regulation. This is in accordance with the Regulators' Code.
- 4.8. In exceptional instances the Council may conclude that a provision in the Code is either not relevant or is outweighed by another provision. The Council will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and be documented.

## 5. Resourcing Effective Regulation

- 5.1. The Regulators' Code section 3 requires that regulators ensure that "Regulators should base their regulatory activities on risk". The services covered by the Regulators Code will publish an annual Inspection Plan which will identify;
  - The frameworks used to identify the risks of relevant businesses which are subject to programmed inspections;
  - A quantification of the predicted numbers of inspections required based on the risk assessment framework and the resources necessary to deliver these;
  - A summary of service standards and performance targets for the respective services.
- 5.2. Currently the service areas which publish risk based annual inspection plans are for;
  - Food hygiene inspections;
  - Workplace health and safety inspections;
  - Industrial pollution control

Note: The Covid pandemic resulted in the cancellation of inspection plans for 2020/21 and 2021/22.

## 6. Conduct of Investigations

- 6.1. All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to South Derbyshire District Council:



- the Police and Criminal Evidence Act 1984
  - the Criminal Procedure and Investigations Act 1996
  - the Regulation of Investigatory Powers Act 2000
  - the Criminal Justice and Police Act 2001
  - the Human Rights Act 1998
- 6.2. These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.
- 6.3. The Council's authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated national and local guidance or codes of practice.

## 7. Notifying Alleged Offenders

- 7.1. If the Council receives information (for example from a complainant) that may lead to enforcement action against a business or individual it will notify that business or individual as soon as practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- 7.2. During the progression of enforcement investigations (prior to any convictions), 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 in accordance with the Data Protection Act 2018 and the General Data Protection Regulations 2018 (or subsequent amendments).

## 8. Dealing with Non-Compliance and Deciding What Level of Enforcement Action is Appropriate

### Consideration of risk in enforcement action

- 8.1. The Regulators' Code requires that regulatory activities should be based on risk. The Council uses a number of different risk models to determine the speed and frequency of our regulatory intervention;

### Proactive Inspections of Businesses

- Proactive food inspections are based on the guidance in the Food Law Code of Practice;
- Proactive health and safety inspections are based on guidance in the National Local Authority Enforcement Code;
- Proactive environmental permit inspections are based on Environmental Permitting General Guidance;
- Licensed caravan sites are currently inspected annually;
- Private hire vehicles are currently inspected every six months;
- Private hire operators are inspected annually;
- Premises holding animal licences are currently inspected on renewal and on at least one unannounced inspection during the course of the licence;
- Scrap metal sites and collectors are inspected annually;



- Licensed premises are currently inspected on a non-risk based sequential programme.

### **Responding to Allegations of Non-Compliance**

- The Council responds to approximately 3000 complaints a year. The details of the speed and nature of response are usually dependant on the relative risk of the allegation and are published in separate service standards for each of the service areas.

### **Levels of enforcement action:**

8.2. There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court, depending on increasing seriousness

- No action;
- Informal Action and Advice;
- Voluntary undertakings
- Fixed Penalty Notices;
- Penalty Charge Notices;
- Formal Notices;
- Forfeiture Proceedings;
- Seizure of goods/equipment;
- Works in default following failure to comply with a formal notice;
- Emergency works in the event of imminent risk;
- Injunctive Actions;
- Refusal/suspension/revocation of a licence;
- Simple Caution;
- Civil penalties;
- Prosecution.

8.3. Annex B of this policy summarises the nature of each of these interventions and some general commentary on when they may be used.

8.4. In assessing what form of enforcement action is the most necessary and proportionate, consideration will be given to:

- The seriousness of compliance failure;
- Past performance and current practice;
- The risks being controlled;
- Legal, official or professional guidance;
- Local priorities of the Council;
- Business size and capacity;
- Views of a Primary Authority (where one exists);
- Achieving the appropriate regulatory outcome(s) (para 8.9).



- 8.5. In most circumstances a process of escalation will be used until compliance is achieved. The intervention options available to regulatory officers and their relative positions in the scale of intervention are described in more detail in Appendix B of this Policy.
- 8.6. When dealing with incidents of non-compliance officers are expected to clearly explain the cause of non-compliance; the actions required to rectify the non-compliance; the decision taken by the Council as a result of the non-compliance and the reasons for each of these.
- 8.7. Effective communication requires a two-way flow of information. Regulatory officers are expected to behave in a way which enables the most effective possible dialogue with all relevant parties in relation to advice given, actions required, and decisions taken in relation to non-compliance. The only exception to this is where immediate enforcement action is required to prevent or respond to a serious breach, or where the dialogue would be likely to defeat the purpose of the enforcement action.
- 8.8. The Council recognises from its consultation with the business community that that one of the biggest barriers to compliance is a fear of business operators to openly discuss matters of compliance with regulatory officers. This Policy commits that the Council will not automatically trigger enforcement action where those who are regulated show a clear willingness to resolve non-compliance.

### **Outcomes of Enforcement Action**

- 8.9. Ultimately, it is the outcome of any enforcement action that is the measure of whether the activity of the regulator has been positive or not. In considering the most appropriate enforcement action the regulator should be seeking to;
  - Aim to change the behaviour of the offender;
  - Aim to eliminate financial gain or benefit from non-compliance;
  - Consider what is appropriate for any particular offender and regulatory issue, such as the risk of punishment and public stigma associated with a criminal conviction;
  - Be proportionate to the nature of offence and harm caused;
  - Aim to restore the harm caused by the non-compliance;
  - Deter future non-compliance.

## **9. Tests for Prosecution, Simple Caution or Civil Penalties**

- 9.1. Where the Investigating Officer concludes that prosecution, simple caution or civil penalty is the most necessary and proportionate enforcement action the Council applies two 'tests' to determine whether this is viable and appropriate. It follows guidance set by the Crown Prosecution Service when applying the tests. This is contained in the [Code for Crown Prosecutors](#).
- 9.2. A prosecution, caution or civil penalty will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

### **The Evidential Test**

- 9.3. The Council must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that 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 it is sure of a defendant's guilt.



### **The Public Interest Test**

9.4. The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. The Council will 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. The message sent to the community by a decision to prosecute or not and its potential to affect future levels of compliance will be given consideration.

### **Civil Penalties**

9.5. A specific process has been established to determine if it is appropriate in cases involving housing law whether to utilise civil penalties and, if so, to calculate the civil penalty to be applied. The last version of the civil penalty sanction calculation was agreed by the Council's [Housing and Community Services Committee on 8<sup>th</sup> March 2018](#).

## **10. Who Decides What Enforcement Action Is Taken**

10.1. Decisions about the most appropriate enforcement action to be taken are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by South Derbyshire District Council and/or Central Government.

10.2. In order to ensure that specific decisions to either prosecute, issue a simple caution or issue a civil penalty are robust and consistent the Council has developed an enforcement decision template. This template requires the investigating officer(s) to take due consideration of the evidential and public interest tests before submitting the case to their Head of Service with a recommendation to approve prosecution.

10.3. Where appropriate, decisions about enforcement will involve consultation between or approval from:

- Investigating Officer(s);
- Senior Managers;
- Legal Services;

10.4. The decision to prosecute or issue a civil penalty must be ratified by the relevant Head of Service.

10.5. Any enforcement decisions about activities directly operated by South Derbyshire District Council must be entirely free from any conflicts of interest. All decisions will be clearly evidenced and any of the actions under section 8 above will be signed off at Strategic Director level.

## **11. Liaison With Other Regulatory Bodies and Enforcement Agencies**

11.1. Where appropriate, enforcement activities will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

11.2. It is a statutory requirement that before any legal action is initiated against a business that has signed up to a [Primary Authority partnership](#), that the Primary Authority is consulted about the proposed legal action. A Primary Authority partnership is a legally binding agreement between a business and a local authority that is endorsed by the Office for Product Safety and Standards (OPSS) of the Department for Business Energy & Industrial Strategy (BEIS). The Primary Authority provides assured advice, giving businesses consistency of regulation and reducing duplication of inspections and paperwork.



- 11.3. Details of all Primary Authority partnerships are available on the [Primary Authority Register](#) website. Details of the statutory notification procedures when specified enforcement action is proposed against a business in a registered primary authority partnership are contained in section 9 of the Primary Authority Handbook.
- 11.4. Where an enforcement matter affects a wide geographical area beyond the boundaries of South Derbyshire District Council or involves enforcement by one or more other local authorities or organisations, where appropriate, all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.
- 11.5. The Council will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies. Data sharing will be in accordance with the principles of the Data Protection Act 2018 and the General Data Protection Regulations. Examples include:
- Government Agencies;
  - Police Forces;
  - Fire Authorities;
  - Statutory undertakers;
  - Other Local Authorities.

## 12. Considering the Views of Those Affected by Offences

- 12.1. The Council exercises its regulatory powers 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, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decisions.

## 13. Protection of Human Rights

- 13.1. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the following:
- Right to a fair trial;
  - Right of respect for private and family life, home and correspondence.

## 14. Monitoring of the Enforcement Policy

- 14.1. The Council uses a number of processes to monitor compliance with this policy and will continue to develop these.
- 14.2. The Council monitors monthly performance indicators that provide a reflection of the quality of the service delivered by the services covered by this Policy. These are reviewed annually and are either reported as Corporate Plan performance indicators (and therefore reported to Councillors) or as local indicators (and therefore reported to and scrutinised by the relevant corporate manager stated in paragraph 1.3 to 1.5 above). These indicators are reviewed annually and where appropriate published in the Service Plan produced by each relevant Strategic Director.



## 15. Review of the Enforcement Policy

- 15.1. This Policy will be fully reviewed every three years, minor amendments or changes in law will be amended at the discretion of the relevant Strategic Director and brought to the attention of the Chairman of the relevant Committee that oversees the services that deliver the functions covered by this Policy.
- 15.2. The enforcement policy covers a diverse spectrum of our services. A copy of this policy will be published on a core page of the Council's website and linked to service-specific webpages to which it relates. The core page on which the Policy will be displayed is our [Business Compliance and Regulation page](#).

## 16. Comments and Complaints

- 16.1. Where you are affected by a regulatory action with which you disagree, the Council would always encourage dialogue between all parties to ensure that the general principles of enforcement stated in section 4 and the appropriate level of enforcement action described in section 8 can be achieved.
- 16.2. Any appeals against a regulatory decision, failure to act in accordance with the Regulators' Code (where appropriate) or conduct of staff carrying out regulatory activity on behalf of the Council should be made in the first instance to the Strategic Director of the relevant service. Appeals can be made to the relevant Strategic Director via the [corporate complaint](#) process.
- 16.3. Any appeals against formal legal notices issued by the Council will need to be made through the process described on the notice. There are usually deadlines by which any appeal against a formal legal notice must be submitted and so close attention should be given to the instructions in the appeal notes.



## ANNEX A Bibliography

South Derbyshire District Council Constitution (Sept 2018)

South Derbyshire District Council, Scheme of Delegation to Council Officers

South Derbyshire District Council Corporate Plan, 2020-24

Legislative and Regulatory Reform Act 2006

Food Law Code of Practice (England), March 2021

Making a Difference...The Standard for Health and Safety Enforcing Authorities, HSE & LACORS, 04/02/2008.

Section 18 HSC Guidance to Local Authorities, HMSO 2002

National Local Authority Enforcement Code, Health and Safety at Work 2013

Setting Local Authority Priorities and Targeting Interventions, LAC67/2 (Revision 10), HSE

Human Rights Act 1998

Police and Criminal Evidence Act 1984

Criminal Procedure and Investigations Act 1996

Regulation of Investigatory Powers Act 2000

Criminal Justice and Police Act 2001

Data Protection Act 2018

General Data Protection Regulations 2018

Enterprise Act 2002

Ministry of Justice - Simple Caution for Adult Offender guidance (MoJ Guidance), revised November 2013

Proceeds of Crime Act 2002

Code for Crown Prosecutors', October 2018

Primary Authority Guidance, LBRO, 2009

Work Related Deaths, a Protocol for Liaison, 09/11



## **ANNEX B Overview of Potential Regulatory Interventions**

1. Where the law has been contravened, there is a range of enforcement options available. Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions would be where there is a serious risk to public safety or the environment or the offences have been committed deliberately, repeatedly or negligently; or involve deception; or where there is significant economic detriment.

### **No Action:**

2. In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, 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, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their wellbeing. In such cases, the Council will advise the offender of the reasons for taking no action. The decision to take no action rests exclusively with the Council and for example, the cost benefit equation described above will not rule out formal action if it is judged in the Public Interest.

### **Informal Action and Advice**

3. For minor breaches of the law, the Council may give verbal or written advice. It will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.
4. Sometimes the Council will advise offenders about 'good practice', but it will clearly distinguish between what they must do to comply with the law and what is advice only.
5. Failure to comply could result in an escalation of enforcement action.

### **Voluntary Undertakings**

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

### **Fixed Penalty Notices**

7. Certain offences are subject to fixed penalty notices where prescribed by legislation. They are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), the Council will normally administer a FPN on a first occasion, without issuing a warning. The decision about whether to issue an FPN having witnessed an offence will have regard to the appropriate level of enforcement action and the desired outcomes of the enforcement action described above.

### **Penalty Charge Notices**

8. Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the regulator in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-



payment of the debt. A PCN does not create a criminal record and the Council will normally issue a PCN without first issuing a warning.

### **Formal Notice**

9. Certain legislation allows notices to be served requiring the recipient to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.
10. All notices issued will include details of any applicable Appeals Procedures.
11. Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with (a breach of the notice) the Council may carry out any necessary works to satisfy the requirements of the notice. Where the law allows, the Council may then charge the person / business served with the notice for any cost incurred in carrying out the work. Whenever the urgency of the notice allows, the Council will ensure any works required in default are achieved, economically, e.g. by obtaining multiple competitive quotes for the work, unless it is a matter of urgency.

### **Action Taken by Agreement**

12. Schedule 3 of the Housing Act 2004 contains a specific provision which enables the local authority to agree to undertake the work required under a Housing Improvement Notice, with the recipient of the Notice. All expenses for the work must be met by the recipient of the Notice.

### **Forfeiture Proceedings**

13. This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, the Council will make an application for forfeiture to the Magistrates Courts.

### **Seizure**

14. Certain legislation enables authorised Officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When the Council seizes goods, it will give the person from whom the goods are taken an appropriate receipt.

### **Works in Default / Direct Action**

15. The Council will normally only directly carry out works where the recipient of a legal notice has defaulted on the work required and when;
  - There is an imminent risk to health or safety such that the consequences of not taking immediate and decisive action would be unacceptable, or;
  - Statute does not permit prosecution for non-compliance with a statutory notice, or;
  - There are other circumstances such that carrying out the work in default is the best course of action (for example the recipient of the Notice is a vulnerable person and considered incapable of organising the work necessary to comply with the statutory Notice).



16. This course of action will be considered irrespective of any prosecution action that might also be undertaken for the same offence. The action must be approved by the relevant manager with budget responsibilities. The costs of the works required, plus the Council's reasonable administrative charges will be charged to the responsible party and recovered through the civil court.
17. The administrative charges levied will be in accordance with the fees approved by the relevant Committee and which are reviewed annually and published as part of the Council's annual list of fees and charges.
18. Charges will be made for abortive costs in preparing to carry out any work in default where an order has been placed and the owner then carries out the work required.
19. Where there is no prospect of the revenue or capital costs of the work in default being reclaimed, the debt should, if practicable, be placed on the relevant property as a land charge. In some cases, the charge will need to include annual interest – the relevant interest rates are also included in the annual list of fees and charges.

### **Emergency Works**

20. Emergency enforcement or stop powers will only be used where there is an imminent risk of serious harm or where there is explicit provision for the use of the powers within primary legislation.
21. In such circumstances the Council will take whatever remedial action it considers necessary to remove the imminent risk. As a matter of principle, the action taken will be the minimum necessary to achieve the satisfactory mitigation of the risk, based on the best information available at the time of making the decision.

### **Injunctive Actions**

22. In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with repeat offenders, dangerous circumstances or significant consumer detriment.
23. Action under the Enterprise Act 2002; proceedings may be brought where an individual or organisation has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances, action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:
  - Informal undertakings;
  - Formal undertakings;
  - Interim Orders;
  - Court Orders;
  - Contempt Proceedings.
24. Criminal Behaviour Orders (CRIMBO) and Community Protection Notices (CPN). Where the non-compliance under investigation amounts to anti-social behaviour such as persistent



targeting of an individual or a group of individuals in a particular area then, following liaison with all relevant agencies, where appropriate, a CPN or CRIMBO may be sought to stop the activity.

### **Refusal, Suspension and Revocation of Licence**

25. The Council issues a number of licences and permits and has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions that require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence that may result in its revocation or amendment.
26. When considering future licence applications, the Council may take previous breaches and enforcement action into account.
27. The Licensing Team issues a number of licence and permits under a wide range of legislation. Specific powers are contained within each piece of legislation that permits the Licensing Authority to refuse to grant a licence application or to take action to suspend or revoke once a licence is in place.
28. Under the Licensing Act 2003, an application for a premises licence must be granted unless representations are received from any of the responsible authorities or any other persons. If representations are received, the application will be determined by the Licensing and Appeals Sub-Committee which has the power to grant the application, grant with conditions or refuse whole or part of the application.
29. Under the Gambling Act 2005, applications for a premises licence will be granted unless relevant representations are received from the responsible authorities or interested parties. The Licensing and Appeals Sub-Committee will determine any application with a relevant representation. The Sub-Committee has the power to either grant or refuse the application. If the application is granted, the Sub-Committee may attach conditions to the licence and/or exclude a default condition.
30. Under the Licensing Act 2003, where a review of a premises licence application is received from a responsible authority or any other persons, the application must be determined by the Licensing and Appeal Sub-Committee. The powers available to the Sub-Committee are:
  - To modify the conditions of the licence;
  - To exclude a licensable activity from the scope of the licence;
  - To remove the designated premises supervisor;
  - Suspend the licence for a period not exceeding 3 months;
  - Revoke the licence;
  - Issue a warning letter;
  - Take no action.
31. Under the Gambling Act 2005, where a review application is received from a responsible authority or an interested party, the application must be determined by the Licensing and Appeals Sub-Committee. The powers available to the Sub-Committee are:
  - Revoke the licence;



- Suspend the licence for a period not exceeding 3 months;
- Exclude a default condition or remove or amend an exclusion;
- Add, remove or amend any conditions;
- Take no action.

32. In relation to private hire legislation, all decisions to refuse or revoke any private hire licence will be made by the Licensing and Appeals Sub-Committee. The power to suspend a private hire licence has been delegated to Officers. Each case will be decided on its own merits.

33. If it is in the interests of public safety, any decision to revoke or suspend a private hire driver's licence may take immediate effect.

34. In relation to other areas of licensing legislation, any decision to refuse or revoke any application or licence will be made by the Licensing and Appeals Sub-Committee.

### **Simple Caution**

35. A Simple Caution includes a formally documented admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

36. For a Simple Caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prove the case;
- The offender must admit the offence;
- It must be in the public interest to use a Simple Caution;
- The offender must be 18 years or over.

37. Details on the Simple Caution process are contained in the [Ministry of Justice - Simple Caution for Adult Offender guidance \(MoJ Guidance\)](#).

38. Furthermore, South Derbyshire District Council Policy is that the offender should not have received a simple caution for a similar offence within the last two years.

39. A record of the Caution will be kept on file for five years. If the offender commits a further offence, the Caution 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 and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

### **Civil Penalty**

40. Civil penalties were introduced for housing related offences in the Housing & Planning Act 2016. This enables local housing authorities to impose a civil penalty as an alternative to prosecution for the certain offences under the Housing Act 2004.

41. The maximum civil penalty is £30,000. However, the amount of penalty must be determined by the local housing authority based on the specific circumstances in each case. In determining an appropriate level of penalty, the local housing authority must have regard to statutory guidance which sets out the factors to take into account when deciding on the appropriate level of penalty and to have developed a local civil penalty sanction policy.



42. A civil penalty can only be imposed as an alternative to prosecution. The legislation does not permit local housing authorities to impose a civil penalty and then prosecute for the same offence.
43. The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before seeking to apply a civil penalty the authority must satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction i.e. that the case can be proved 'beyond all reasonable doubt'.
44. The Council's Housing and Community Services Committee approved a civil penalty sanction Policy at its meeting of 8<sup>th</sup> March 2018.

### **Prosecution**

45. A prosecution will normally ensue where the individual or organisation meets one or more of the following criteria:
- Deliberately, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others;
  - Deliberately or persistently ignored written warnings or formal notices;
  - Endangered, to a serious degree, the health, safety or well-being of people, animals or the environment;
  - Assaulted or obstructed an Officer in the course of their duties.
  - In the case of Food or Health and Safety where death was a result of a breach of legislation
  - Where circumstances warrant it and evidence to support a case is available the Council will prosecute without prior warning or recourse to alternative sanctions.

### **Immunity from Enforcement Action**

46. Where a breach of some planning control statute has occurred undetected, and therefore without any intervention, it can become lawful by the passage of time provided that it has not been deliberately concealed. The immunity timeframes are stated in the respective statutes and case law, but in brief are four years for unauthorised building, mining or engineering or change of use of a building to a single dwelling; ten years in any other case.

### **Powers of Entry**

47. Officers have various powers to enter private land. In some cases (most usually private dwellings) this requires giving prior notice. In many cases relating to entry into trade or business premises the officers have immediate power of entry provided that they can show that they are authorised to do so by the Council. The specifics of the powers of entry are contained within the specific statute.

### **Charging for Regulatory Actions**

48. In a limited number of statutes (currently only housing law) having served a legal notice the Council has the ability to make a reasonable charge to recover certain administrative and other expenses incurred in determining whether to serve the notice. The policy for determining when any such charges are applied will be agreed with the relevant Committee.



### **Proceeds of Crime Applications**

49. Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

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