

**APPENDIX A: PROPOSED POLICY FOR  
CONSIDERATION BY CABINET**



**NORTH HERTFORDSHIRE DISTRICT COUNCIL**

**HOUSING AND PUBLIC PROTECTION SERVICE**

**STATEMENT OF ENFORCEMENT  
POLICY AND PRACTICE**

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# 1 INTRODUCTION

## 1.1 THE VISION, MISSION AND PRIORITIES FOR NORTH HERTFORDSHIRE

The *Vision* for North Hertfordshire provides a long-term view of the future of the district over the next five to ten years. This is not just the District Council's Vision, it belongs to, and was created by, all of the partners in the Local Strategic Partnership (LSP). The *Vision* has been encapsulated in the following short statement:

**Making North Hertfordshire a vibrant place to live, work and prosper**

## 1.2 THE COUNCIL'S PRIORITIES

In order to deliver the *Vision* for North Hertfordshire a number of priorities have been identified by Council:

- Town Centres
- Green Issues
- Sustainable Development

By focusing on Town Centres, Green Issues and Sustainable Development the Council has chosen three priorities that affect the everyday lives of those living, working in and visiting the district and will allow the Council to make the biggest contribution it can to achieving the Vision for North Hertfordshire.

In developing these priorities, the Council has taken into account a number of factors including national priorities (such as tackling anti-social behaviour and the Hampton Review), the financial pressures facing local authorities, and the views of local residents.

## 1.3 THE CONTRIBUTION OF PROPORTIONATE ENFORCEMENT TO THE DELIVERY OF THE COUNCIL'S VISION

The Council has a considerable number of statutory duties to discharge, and powers to exercise, in connection with maintaining standards relating to environmental health, housing, community safety, licensing and public space. In exercising its enforcement role the Council is not acting on behalf of any individual, but is acting in order to promote the wider public interest.

Businesses, the public and regulators have a mutual interest in the use of appropriate sanctions against illegal business activity; not only may this unlawful activity endanger members of the public or employees it may also allow businesses to gain an unfair competitive advantage in the market place.

Accordingly, consistent, fair and effective enforcement is essential to protect the environment, health, safety and interests of the residents, visitors and businesses of North Hertfordshire. The Council acknowledges that even in a minor case, a decision concerning formal enforcement action is likely to have serious implications for all involved: the general public, businesses, victims, witnesses and defendants.

The Council recognises the relevance of proportionate enforcement activity to the achievement of its *Vision* and this can be summarised by the following Statement of Policy:

***Our primary enforcement objective is to protect and improve the health, safety and security of all those who live, work and take their leisure in the District of North Hertfordshire. At the same time we are committed to promoting a thriving national and local economy by carrying out our enforcement functions in a fair, practical and consistent manner.***

The Council's Housing and Public Protection Service undertakes a number of key services, one of which is to undertake regulatory activities in the following areas:

- Food Safety
- Pollution Control
- Public health
- Housing Standards
- Anti-social Behaviour
- Licensing
- Pest Control
- Environmental crime
- Occupational Health and Safety
- Community Safety

Accordingly, fair and transparent regulatory activity by the Housing and Public Protection Service can directly contribute to the realisation of the Council's Vision.

## 2 TERMS OF REFERENCE

### 2.1 NORTH HERTFORDSHIRE DISTRICT COUNCIL'S REGULATORY POLICY

This enforcement policy relates directly to the statutory duties and powers associated with the Housing and Public Protection Service of the Council. However, since the Council undertakes a wide range of regulatory activity beyond the confines of the above Service it is important that this Policy is consistent with the corporate approach to regulatory matters.

North Hertfordshire District Council formally adopted the *Concordat on Good Enforcement Practice* in March 2001. The Concordat outlines the fundamental issues relating to fair, transparent and balanced enforcement decision making and this Policy reflects these principles throughout.

In March 2004 the Council adopted a corporate Enforcement Policy that sets out the policy perspective of North Hertfordshire District Council as regards all formal regulatory decision making. This Housing and Public Protection Service Statement of Enforcement Policy and Practice has regard to this corporate approach and also explicitly recognises the responsibilities of the Council arising from the Crime and Disorder Act 1998 vis-à-vis its duty to consider its impact on community crime and disorder.

### 2.2 THE GENERAL OBJECTIVES OF THIS POLICY

The Housing and Public Protection Statement of Enforcement Policy and Practice seeks to provide more detailed information on enforcement decision making within this Service rather than to supersede or replace the Council's existing policies or strategies. Indeed, a key objective of this Policy is to offer those that may be regulated by the Housing and Public Protection Service with a more relevant document that may be of assistance to them in *their* decision making. This document will also act as a central source of guidance to officers within this Service that undertake regulatory activity; by clearly identifying the principles of fair and proportionate enforcement together with the provision of examples of expected enforcement action regulatory consistency will be promoted and enforcement deficit minimised.

### 2.3 THE STRATEGIC AND POLICY FRAMEWORK

This enforcement policy has a relevance to a number of existing strategies and policies concerning the implementation of specific work programmes. The list below, which is not exhaustive, summarises existing policies / strategies of the Council (and those of local partnership bodies) that refer, either directly or indirectly, to enforcement activities:

North Hertfordshire District Council

- ❑ The Corporate Plan
- ❑ Contaminated Land Strategy
- ❑ Private Sector Housing Renewal Policy

- ❑ Housing Strategy
- ❑ Homelessness Strategy
- ❑ The Housing Allocation Policy
- ❑ The Statutory Nuisance Policy
- ❑ The Scores on the Doors Policy
- ❑ Community Safety Strategy
- ❑ Anti-social Behaviour – Minimum Response Standards
- ❑ Statement of Licensing Policy (Licensing Act 2003)
- ❑ Statement of Licensing Policy (Gambling Act 2005)
- ❑ Statement of Policy – Hackney Carriage and Private Hire Vehicle Licensing
- ❑ Regulation of Investigatory Power Act Policy
- ❑ Customer Care Strategy
- ❑ Anti Fraud and Corruption Policy
- ❑ The Data Quality Policy

Local Partnership bodies

- ❑ Hertfordshire Licensing Enforcement Protocol
- ❑ North Herts Community Safety Partnership Action Plan
- ❑ Service Level Agreement: Herts Fire & Rescue Service and Herts Local Authorities
- ❑ The Joint CCTV Partnership Agreement
- ❑ London Commuter Belt: Sub Regional Housing Strategy
- ❑ The Sustainable Communities Strategy

**2.4 NATIONAL REGULATORY PROVISIONS AND GUIDANCE**

**2.4.1 THE REGULATORS’ COMPLIANCE CODE**

In 2004 the Chancellor asked Philip Hampton, the Chairman of J Sainsbury Plc, to lead a review into regulatory inspection and enforcement with view to reducing the administrative costs of regulation to the minimum consistent with maintaining appropriate regulatory outcomes. The review engaged with numerous stakeholders including regulators, business representatives and local government and the final report was published in March 2005.

The Regulators’ Compliance Code is a statutory code of practice issued under Section 22 of the Legislative and Regulatory Reform Act 2006 and it embodies many of the recommendations of the Hampton Review. It is intended to encourage regulators to achieve their objectives in a way that minimises the burdens on business. The purpose of the Code is to embed a risk-based, proportionate, targeted and flexible approach to regulatory inspection and enforcement among the regulators to which it applies. This approach will ensure that regulators are efficient and effective in their work, without imposing unnecessary burdens on those they regulate.

In particular, the Code reflects the following 7 main themes:

□ **Economic progress**

The Council recognises and promotes the positive economic benefits that arise from effective, proportionate and necessary regulatory activity. The Council will undertake activities and assign resources associated with environmental health, licensing and environmental crime enforcement consistent with the objectives stated within the Code. This approach will be kept under regular review.

Furthermore, the Council will have particular regard to the challenges faced by small businesses when considering its enforcement options.

□ **Risk assessment**

The Council undertakes both inspection and enforcement activity having regard to an assessment of risk, informed by evidence concerning non-compliance (and the harm that this poses) with regard to relevant legislation. This approach (see 3.2 for more information on planned inspections) informs the operational and strategic planning of enforcement activity in order to target the areas of potential highest risk. The reliability of information associated with strategic planning will be consistent with the Council's Data Quality Policy.

□ **Advice and guidance**

The provision of appropriate advice and guidance is a cornerstone of the Council's approach to delivering compliance in respect of housing and public protection legislation. In particular, the Council has made a significant investment in its website ([www.north-herts.gov.uk](http://www.north-herts.gov.uk)) so that information on regulatory compliance is available, free of charge, to businesses and members of the public 24 hours a day. Emphasis has been placed on the provision of advice and guidance that is clear and concise – this is particularly helpful to small businesses.

Officers of the Housing and Public Protection Service will offer duty holders information, or advice, face to face or in writing (including any warnings) and provide information on particular aspects of the law. Officers will, if asked, write to confirm any advice, and to distinguish between legal requirements and best practice advice.

However, the Council appreciates that a boundary exists between the appropriate provision of free business advice (in terms of marginal cost to the recipient) and the delivery of consultancy services to businesses. It is not appropriate for the latter to be provided by the Council at tax payers' expense.

❑ **Inspections and other visits**

Customer satisfaction surveys (see 3.3 as regards LPI27 and NI182) show that businesses have a positive view of inspections undertaken by this Council as regards environmental health and licensing issues. Inspections will be undertaken having regard to compliance risk (see 3.2 in respect of planned inspections).

Where the Housing and Public Protection Service has two or more regulatory interests in a particular business, efforts will be made to coordinate or rationalise visits so as to minimise burdens on the duty holder. For example, inspections associated with the Health Act 2006 in respect of smoke free premises will be integrated in to planned or reactive food safety, health & safety and licensing inspections.

❑ **Information requirements**

The Council has rationalised the data returns requested of businesses in order to minimise regulatory burdens. This data will be used across the Housing and Public Protection Service to reduce the need for unnecessary additional contact with traders.

❑ **Compliance and enforcement actions**

The Housing and Public Protection Service Statement of Enforcement Policy and Practice clearly states how enforcement decision making will be undertaken by officers of this Council (see Section 4 for more information).

❑ **Accountability**

North Hertfordshire District Council is a transparent and accountable regulator as regard housing and public protection matters. It has good internal challenge processes in place to scrutinise new regulation and policies. It consults effectively with stakeholders (including representatives of the business community) and considers using alternative regulatory approaches such as educational campaigns, where appropriate. Regular reviews concerning regulatory activity are undertaken after they have been implemented.

The Council, via its website, will not only publish this *Housing and Public Protection Statement of Enforcement Policy and Practice* document but also instances of formal enforcement action undertaken in the preceding year (this will commence in April 2011 as regards action taken in 2010/11). For the definition of formal enforcement action please see 5.4.

However, the Code explicitly recognises that there will be circumstances where its provisions need not be followed because they are either not relevant or are outweighed by other relevant considerations. This Statement provides examples of the limited circumstances where the Council's actions in respect of environmental health, licensing, community safety and environmental crime matters fall into this category.

The Code also makes clear that the Council's duty to have regard to the Code is subject to any other legal requirement affecting the exercise of its regulatory function, including EC law obligations.

#### **2.4.2 NATIONAL GUIDANCE**

This document identifies and, where appropriate, adopts the principles set out in a number of guidance documents provided by national agencies concerning sector specific enforcement activity. For example, this Policy confirms the adoption of the LACORS (Local Authorities Co-ordinators of Regulatory Services) guidance on Food Safety Enforcement Polices and HELA (Health and Safety Executive Local Authority Enforcement Liaison Committee) guidance on health & safety at work enforcement activity.

#### **2.5 LIMITATIONS OF THIS STATEMENT OF POLICY**

This Policy does not directly concern itself with operational matters but aims to state the policy issues associated with enforcement decision making. Due to the individual nature of many of the cases considered by the Housing and Public Protection Service, this Policy cannot be considered to be exhaustive.

Much modern legislation is goal setting – setting out what must be achieved, but not how it must be done. Guidance on how to achieve these goals is often set out in Codes of Practice (CoP) and there is also a wide variety of advisory material describing good practice. Neither codes nor guidance material are provided in terms which necessarily fit every case. In considering whether good practice has been adopted, officers will take relevant codes and guidance into account, using reasoned judgement about the extent of the risks posed and the control measures that have been applied to counter them.

Sometimes the law is prescriptive – spelling out in detail what is expected of citizens or organisations; for example, failure of a citizen to clean up after their dog has fouled in a prescribed area is likely to result in the issue of a Fixed Penalty Notice. Prescriptive law can limit the discretion of both the duty holder and the enforcer.

#### **2.6 RACE RELATIONS, DISCRIMINATION AND HUMAN RIGHTS**

This Policy recognises that the Race Relations Act 1976, as amended, places a legal obligation on the Council to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity.

It should be recognised that each individual case will vary and each must be considered on its own merits before a decision is reached even though the general principles herein will apply in all cases.

No one recommending or deciding upon legal proceedings or the service of notices should be influenced by ethnic or national origin, gender, religious beliefs, political views, age, disability or sexual preference. They must also not be affected by improper or undue pressure from any source.

Consideration shall be given to the Human Rights Act 1998 and the European Convention on Human Rights and Fundamental Freedoms. In particular, regard shall be had to the provisions of: Article 6, the Right to a Fair Trial; Article 8, the Right to Respect for Private and Family Life; Article 11, the Right to Freedom of Association and Assembly; Article 14, the Prohibition on Discrimination and Article 1 to the First Protocol regarding protection of property. Any interference with a convention right must be justified as being in accordance with the law and be proportionate and necessary to further a recognised legitimate aim.

## **2.7 PROVISION FOR PARTICULAR INTERESTS**

The Housing and Public Protection Service will make arrangements, where reasonable and practicable, to meet the particular interests of local stakeholders.

These arrangements include, but are not limited to, the following:

- ❑ Planned and reactive out-of-hours services for noise and other statutory nuisances
- ❑ Out-of-hours visits to deal with inspections and complaints relating to businesses operating outside normal office hours
- ❑ Out-of-hours monitoring of compliance with regard to licences and other approvals
- ❑ The provision of a range of information, training and guidance to all enforcement and support staff within the Service relating to disability, cultural, religious, language and diversity issues.

## 3 ENFORCEMENT ACTIVITY

### 3.1 OVERVIEW

In a society that recognises that rights must be considered against responsibilities it is essential to establish the ownership of these responsibilities. Accordingly, every individual, business or organisation has the duty to comply with legal standards associated with any given activity or undertaking – this duty cannot be transferred to the regulatory community. The role of regulators is to monitor that these duties or obligations are being adequately discharged and, where they are not, to determine how best to bring about compliance.

However, inappropriate or unwarranted regulatory action is both a burden to the business sector and to residents and other tax payers. Therefore the key challenge of this enforcement document is to deliver an optimal enforcement framework that delivers the necessary level of regulatory intervention at the lowest sustainable cost.

In practice the allocation of scarce regulatory resources is divided between the following broad approaches to enforcement:

- ❑ The planned inspection of premises
- ❑ The initiation of investigations following a complaint or notification
- ❑ The use of surveys or enforcement initiatives
- ❑ The release of targeted regulatory data

Many of the areas of enforcement undertaken by the Housing and Public Protection Service are shared with our partners within the regulatory community such as other local authorities, the Police, Registered Social Landlords, Environment Agency, Food Standards Agency, Health and Safety Executive, Trading Standards, Tenant Services Authority, and others. In order to provide both high standards of customer care and to reduce unnecessary regulatory burdens it is important that there are appropriate information exchange arrangements between all interested parties.

These issues are explored in more detail below.

### 3.2 PRIORITISATION OF RESOURCES

The Housing and Public Protection Service discharges regulatory duties with respect to a wide range of activities. However, no two cases are entirely the same and therefore it is important that regulatory activity is not directed at those persons or organisations that act appropriately at the expense of those that do not. In order to assess objectively the likelihood of future compliance performance, and to allocate scarce resources wisely, it is appropriate to employ robust risk assessment techniques:

*Risk assessment is an essential means of directing regulatory resources where they can have the maximum impact on outcomes. Undertaking risk assessment makes regulators take proper account of the nature of businesses, and all external factors affecting the risk the business poses to regulatory outcomes. On the basis of this information, regulators can direct their resources where they can do most good. They can end unnecessary inspections or data requirements on less risky businesses, identify businesses who need more inspection, and release resources to improve broader advice services.*

Hampton Review, March 2005

North Hertfordshire District Council fully recognises the conclusions of the Hampton Review and embraces the use of risk assessment, where practical and appropriate, in the planning of regulatory activity. Furthermore, risk assessment is also employed as regards the Council's approach to non-organisational enforcement such as the management of anti-social behaviour. The Council's approach to resource allocation as regards the mission of the Housing and Public Protection Service is summarised below:

Area	Activity	Risk Assessment Methodology
Food Safety	Food hygiene inspections	LACORS
Health and Safety	Premises inspections	HSE:HELA
Pollution Control	Permitted Processes Contaminated Land	DEFRA Bespoke system
Licensing	Licensing Act 2003 premises	LACORS
Housing	Houses in Multiple Occupation	Bespoke system
Anti Social Behaviour	Prioritisation of cases	Hertfordshire Constabulary model

Risk rating will be determined in accordance with advice and guidance issued by the Government or nationally recognised advisory/professional bodies. Where no formal advice exists the Council will develop its own risk prioritisation methodology based on accepted assessment techniques.

To ensure that the Council obtains a fair and representative picture of regulatory compliance, officer visits will be undertaken at appropriate times (including during the early morning, in the evening and at weekends) and generally without prior notification.

However, not all inspection activity can be programmed with reference to a risk assessment model. For example, some premises require periodic inspection associated with their time-limited licences (e.g. sex establishments) or where the number of regulated entities are so limited that risk assessment would be impractical.

In order to monitor performance with regard to programmed inspections (both risk assessed and non-risk assess), the Housing and Public Protection Service maintains a performance management system employing a Local Performance Indicator (LPI) – see overpage.

Performance Indicator Ref.	Summary description
LPI 27	The percentage of Environmental Health programmed inspections completed on time.

Beyond this specific LPI, general management reports are generated by the Council's data management system, ACOLAID NV, relating to the various planned inspection programmes undertaken by the Service. This performance information is reviewed regularly by the Service Management Team (SMT) within North Hertfordshire District Council.

### 3.3 RESPONSE TO COMPLAINTS AND NOTIFICATIONS

Whilst the careful planning of premises inspections is an efficient way of allocating enforcement resources it is unlikely that this approach will deal with every compliance issue. Accordingly, the Housing and Public Protection Service retains a reactive enforcement capacity in order to investigate complaints from residents, businesses, visitors or other regulatory bodies concerning the conduct of third parties.

Complaints (described as *Requests for Service*) may take many forms. For example, a resident may wish to contact the Community Safety Team concerning the anti-social behaviour of their neighbour; alternatively, the Commercial Team may receive a statutory notification from another enforcement agency, such as a food alert from the Food Standards Agency.

North Hertfordshire District Council is committed to improving communication channels with residents, businesses and our partners and this objective has been secured by the Service@North-Herts initiative. Service@North-Herts aims to provide our customers and other stakeholders with a streamlined single point of contact.

A service request or complaint can be made via the following channels:

Website: [www.north-herts.gov.uk](http://www.north-herts.gov.uk)  
 Email: [Service@north-herts.gov.uk](mailto:Service@north-herts.gov.uk)  
 Customer telephone enquiries: 01462 474000  
 Business telephone enquiries: 01462 474840  
 Textphone: 01462 474800  
 Fax: 01462 474546  
 Letters: Council Offices  
 Gernon Road  
 Letchworth Garden City  
 Hertfordshire  
 SG6 3JF

When such a request for service is received by the Housing and Public Protection Service it will be recorded on ACOLAID NV. A decision on how best to respond to this request for service will then be made by officers having regard to best practice, policies and procedures pertinent to the subject area.

The Service has the following performance indicators regarding customer satisfaction associated with those activities:

Performance Indicator Ref.	Summary description
LPI 27	The percentage of domestic Environmental Health customers who completed a customer survey questionnaire within the monitoring period, and rated the service received as "very good", "good" or "satisfactory".
NI182	Satisfaction of business with local authority regulation services

These performance indicators are reported at SMT and disseminated widely.

### 3.3.1 SPECIFIC NOTES RELATING TO REQUESTS FOR SERVICE

#### STATUTORY NOTIFICATIONS

Legislation relating to the work of the Housing and Public Protection Service often provides for formal notifications to be made to the Council, from a variety of other agencies, regarding important information or occurrences. This Policy recognises the importance of these statutory notifications by confirming that they will be dealt with as a matter of priority, with receipt and actions relating to their response recorded on ACOLAID NV. Statutory notifications include:

Area	Statutory Notification
Food Safety	<input type="checkbox"/> Food Alerts
Health and Safety	<input type="checkbox"/> RIDDOR notifications <input type="checkbox"/> LOLER notifications <input type="checkbox"/> Cooling tower notifications
Pollution Control	<input type="checkbox"/> Contaminated land notifications from the Environment Agency
Licensing	<input type="checkbox"/> Counter notices relating to Temporary Event Notices
Miscellaneous	<input type="checkbox"/> Infectious disease notifications

#### CONFIDENTIALITY AND ANONYMITY OF COMPLAINANTS

The Council understands that people making complaints may not wish their identity to be made known to the party about whom the complaint is being made. Accordingly, the Housing and Public Protection Service will take care to respect the confidentiality of complainants and will only pass on their identity and contact information to other Council departments or agencies with their permission (for more information on data protection please see 3.7.1). However, some types of formal enforcement action, such as a prosecution, cannot take place unless the complainant is prepared for their identity to be revealed in court. The Service will endeavour to make it clear whether or not complainant confidentiality can be maintained in these circumstances.

Some requests for service require an investigation to be mounted and this may, on occasion, require a regular dialogue with the complainant in order to establish evidence. Accordingly, it is not possible for the Service to initiate such an investigation where the complainant does not wish to provide their name and contact details. Therefore, anonymous complaints will only be investigated wherever it is appropriate, practicable and in the public interest to do so.

#### **3.4 SURVEYS AND ENFORCEMENT INITIATIVES**

Thematic inspections, surveys or enforcement activities will be undertaken from time to time that aim not only to secure compliance with legislative requirements by targeting high risk activities (or geographic areas where compliance is generally poor) but also seek to highlight the public significance of specific offences.

#### **3.5 EVIDENCE GATHERING**

The Housing and Public Protection Service may, from time to time, undertake covert surveillance in connection with its operations as described in 3.2, 3.3 and 3.4, above. Any covert surveillance will be strictly controlled in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA) and the Council's policy on such matters.

#### **3.6 RELEASE OF TARGETED REGULATORY DATA**

North Hertfordshire District Council recognises the importance of open government and the national statutory framework relating to the disclosure of information as provided by the Freedom of Information Act 2000 and the Environment Information Regulations (EIR) 2004.

Individual requests for information will be considered on their merits having regard to the law and code of best practice.

The Housing and Public Protection Service will explore all opportunities for promoting legislative compliance including the programmed release of data. For example, the Council's *Scores on the Doors* scheme publishes information relating to the food hygiene standards (including assessments relating to compliance with statutory requirements) of premises operating within the district.

#### **3.7 USE OF PUBLICITY AS A DETERRENT**

Publicity is an important tool in the prevention of crime as it highlights the work of the Council's Housing and Public Protection Service and can also act as a deterrent. On obtaining a conviction, or other serious legal intervention, the Council will seek to maximise any associated publicity via local, or national, media channels.

### 3.8 SHARED ENFORCEMENT

The range of enforcement matters dealt with by the Council in this policy area is such that there may well be occasions when there is a need to work with other enforcement agencies such as the Health and Safety Executive or Environment Agency.

In the interests of effective and efficient regulation this Council has entered into a number of agreements with other key regulators concerning the division of enforcement responsibility:

- ❑ The Hertfordshire Licensing Enforcement Protocol
- ❑ Service Level Agreement with the Hertfordshire Fire and Rescue Service (regarding fire safety in HMOs)
- ❑ Enforcement agreement with the Highway Authority (Hertfordshire County Council)
- ❑ Shared enforcement powers with the Health and Safety Executive

In determining the most appropriate form of investigation and/or enforcement action, officers will have regard to any potential or existing action of other Council services or external regulatory agencies.

Where matters are identified by, or reported to, officers of this Council that are the enforcement responsibility of another Council service or outside agency, interested parties involved will, as far as is reasonably practicable, be informed that the matter will be referred to the appropriate regulator.

Where enforcement action is being taken by another Council service or external body, all reasonable assistance, including the production of witness statements and the collection and dissemination of evidence, will be offered.

Shared enforcement matters as regards other environmental health regulators in the sub-region will be reviewed on a regular basis by the Hertfordshire and Bedfordshire Environmental Health Group (HEBEG). HEBEG exists to promote enforcement best practice across the two counties as well as developing innovative solutions, including the sharing of resources, in order to achieve better enforcement outcomes. North Hertfordshire District Council is also a committed member of the East of England Regulatory Services Partnership (EERSP) that works to bring about consistent enforcement action and the release of tailored guidance to regulated entities.

#### 3.8.1 DATA COLLECTION AND EXCHANGE

The exchange of data with external agencies will have regard to any data sharing protocol that the Council has adopted and the legislative requirements of the Data Protection Act 1998.

In addition, the Council will comply with legislation that protects the rights of persons subject to legal action, which controls how evidence against offenders

may be obtained and which preserves the confidentiality of personal information, in particular:

- ❑ The Human Rights Act 1998
- ❑ The Regulation of Investigatory Powers Act 2000
- ❑ The Police and Criminal Evidence Act 1984
- ❑ The Criminal Procedure and Investigations Act 1996

## 4 ENFORCEMENT OPTIONS

### 4.1 OVERVIEW

The objectives of the Housing and Public Protection Service are underpinned by a wide range of legal duties and powers. Whilst the core aim of the Service is to safeguard public health, safety and protection of the environment through the provision of education and professional advice, there will be instances where enforcement action is warranted.

There are a number of enforcement options open to officers of the Housing and Public Protection Service when they encounter statutory offences and these are summarised below:

- ❑ Advice
- ❑ No action
- ❑ Verbal warning
- ❑ Written warning
- ❑ Formal Notice or Order
- ❑ Works in default
- ❑ Fixed Penalty Notices
- ❑ Seizure
- ❑ Simple Caution
- ❑ Prosecution
- ❑ Forfeiture Proceedings
- ❑ Revocation of Licence, Permit or Authorisation
- ❑ Injunction

However, the above sanctions are not universally available for all types of contravention since they exist by virtue of a specific legislative provision. More information on these sanctions is provided in 4.2, below, as is a summary of the key legal and policy tests that must be satisfied before formal action can commence.

In the majority of cases this Council is at liberty to determine the most appropriate course of action in connection with legislative breaches. However, where a business participates in a national regulatory arrangement such as the Primary Authority scheme (as provided for by the Regulatory Enforcement and Sanctions Act 2008) then the Council will liaise with the appropriate regulatory body to secure compliance.

## 4.2 NOTES RELATING TO SPECIFIC ENFORCEMENT OPTIONS

Each enforcement option is explained in more depth within this section. Each option is presented individually but they should not be viewed as being necessarily mutually exclusive. That is to say, for example, if the Council becomes obliged to secure compliance by undertaking work in default, it is also at liberty to prosecute for the offence.

### 4.2.1 ADVICE

Where an infringement occurs inadvertently, and there is a negligible impact associated with this, and the individual or business is receptive to advice to prevent repetition, this will be the preferred method of resolution.

### 4.2.2 NO ACTION

In very exceptional circumstances, contraventions may not warrant any action. This can be where the cost of compliance *significantly* outweighs the detrimental impact of the contravention, or where the cost of the required enforcement action to the Council *significantly* 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 an organisation has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their well being.

### 4.2.3 VERBAL WARNING

For minor breaches of the law it may be appropriate to verbally advise the offender, clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the harm associated with the contravention.

### 4.2.4 WRITTEN WARNING

For some contraventions, officers of the Housing and Public Protection Service will send the offender a letter clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. In addition, recommendations of 'best practice' may be listed but these are advisory only. Failure to comply with the contraventions could result in a notice being served or more severe enforcement action being taken. The name of the case officer will be stated any letter.

### 4.2.5 FORMAL NOTICE

Notices are served that require offenders to cease contravening activities, or to give offenders reasonable time to rectify a contravention. Notices may require contravening activities to cease immediately where the circumstances relating to health, safety, environmental damage, or nuisance demand this. In other circumstances, the time allowed must be reasonable, but must also take into

account the implications of the contravention. Information regarding any relevant appeal procedure will be made available at the time that the notice is served, as will the potential penalties for non-compliance.

Where there is a statutory provision that provides for the Council to levy a charge for the costs associated with the service of a formal notice, then such a charge will be made and may be pursued as a civil debt.

#### **4.2.6 WORKS IN DEFAULT**

Under some legislation the Council is empowered to execute *works in default* instead of, or as well as, taking enforcement action. In such cases the expenses associated with default works will usually be recovered via the issuing of an invoice to the relevant party. Where appropriate, these costs may be recovered by way of a charge against land.

The Council will consider exercising its *works in default* powers in all cases where it is legally possible and reasonable to do so. For example, in the interests of public health and safety the Council may consider an immediate remedy to a defect using its default powers rather than seeking compliance through a prosecution, which could result in significant delays. Alternatively, it may be appropriate to exercise default powers where a prosecution has failed to secure compliance or is unlikely to be an effective remedy e.g. where the defendant has moved abroad after the offence has been committed.

Where the Council takes such action it will seek a value for money solution and undertake to notify all interested parties in accordance with the relevant legislation; any contractors will be appointed in accordance with the Council's Contract Standing Orders and Financial Regulations. In all cases the Council will seek to recover all costs reasonably incurred.

In calculating the recovery of costs incurred when undertaking *works in default* the Council will have regard to the following:

- ❑ Contractor's costs or expenses
- ❑ Costs associated with officer time (including overhead costs)
- ❑ Additional legal costs or expenses

An administration fee of 15% of the total costs, above, will be added to the Council's incurred expenses and will be reclaimed as a civil debt.

An exception to this recharge policy will be the recovery of costs associated with intervention under Part IIA of the Environmental Protection Act 1990 with regard to the remediation of contaminated land. The Council has adopted a specific policy relating to this area that is consistent with the spirit of this Statement of Enforcement Policy and Practice.

#### **4.2.7 FIXED PENALTY NOTICE (FPN)**

Certain legislation allows for an authorised officer of the Council to issue a FPN once the details of the person permitting (or causing the offence to continue) are

known. The issue of a FPN gives an offender the opportunity to avoid a prosecution by the payment of set fine within a specified period; therefore, FPNs will only be issued when there is adequate evidence to support a prosecution. If the fine is not paid in full within the stated period then the Council is likely to mount such a prosecution.

In law, FPNs can be issued to anyone over the age of 10. Before issuing FPNs to juveniles (i.e. children between the age of 10 and 17) officers will have regard to DEFRA Guidance "Issuing Fixed Penalty Notices to Juveniles" so that the rights of young people are respected.

The Council believes that 16 and 17 years olds are responsible for their actions and, accordingly, FPNs will be issued to this age group in a similar way to adults. If there is doubt as to the age of the offender the procedure for 10 – 15 years olds will be followed.

#### **4.2.8 SEIZURE**

The Council has powers under certain legislation to:

- ❑ Seize unwholesome or contaminated food;
- ❑ Seize equipment responsible for causing a nuisance;
- ❑ Seize goods or equipment likely to cause danger to health or safety;
- ❑ Seize animals responsible for causing a nuisance or a danger to public safety.

When officers of the Housing and Public Protection Service seize goods or equipment a receipt will be supplied to the person from whom the goods are taken. The goods may be subsequently liable to forfeiture by the courts. If officers seize unfit food, it will be produced before a Magistrate as soon as possible for them to confirm the seizure and consider the fitness of the food. In certain circumstances documents (hard copy or electronic) may be removed to ascertain if they are required as evidence. Officers will give full details of their actions to the offender when they exercise this power.

#### **4.2.9 SIMPLE CAUTION**

Simple Cautions may also be referred to as Formal Cautions as they are identical in terms of their enforcement significance. This procedure is used as an alternative to a prosecution and it derives from advice issued by the Home Office (Circular 30/2005) and has already been successfully used by this Authority to deal with contraventions of Environmental Health legislation. For a Simple Caution to be issued a number of criteria must be satisfied:

- ❑ There must be sufficient evidence to prove the case;
- ❑ the offender must admit the offence;

- ❑ the offender must agree to be cautioned;
- ❑ where the offence is not a serious one and could be dealt with swiftly to divert a less serious offence away from court.

If 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 for any subsequent offence.

A record of the Simple Caution will be kept on file for 3 years. If the offender commits a further offence, the Simple Caution may influence the Council's decision to take prosecutory action.

#### **4.2.10 PROSECUTION**

In order to take forward a prosecution, the individual or organisation should normally meet one or more of the following criteria:

- ❑ Engaged in intentional, fraudulent, repeated, negligent or reckless actions;
- ❑ Deliberately 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;
- ❑ Endanger, to a serious degree, the health, safety or well being of people, animals or the environment;
- ❑ A specific impact on young persons or other vulnerable groups;
- ❑ A significant adverse economic impact on other businesses;
- ❑ Obstructed an officer whilst undertaking their duties.

The above do not preclude considering prosecution in other instances where the circumstances warrant it.

#### **4.2.11 FORFEITURE PROCEEDINGS**

This procedure may be used in conjunction with a prosecution:

- (i) Where there is a need to dispose of goods in order to prevent them re-entering the market place, if it is unlikely that the defendant will agree to sign over the goods to the Council for appropriate disposal; or
- (ii) Where the equipment responsible for causing a nuisance may be used again.

An application for forfeiture will be made to the Magistrates court following a successful prosecution.

#### **4.2.12 REVOCATION OR SUSPENSION OF LICENCE, AUTHORISATION OR PERMIT**

In order to warrant revocation of a licence, authorisation or permit, the individual or organisation must normally meet one or more of the following criteria:

- ❑ Deliberately 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
- ❑ Endanger, to a serious degree, the health, safety or well being of people, animals or the environment
- ❑ Obstructed an officer whilst undertaking their duties
- ❑ Convicted of a breach of an absolute legal obligation

If revocation action is taken, the relevant parties will be made aware of any rights of appeal, etc., at that time.

#### **4.2.13 INJUNCTION**

If the Council's Legal Service advise that a High Court injunction is the most appropriate course of enforcement action, then an application will be made to the appropriate court. This enforcement action will only be used in exceptional circumstances.

### **4.3 ENFORCEMENT DECISION MAKING**

The Council's Statement of Enforcement Policy provides information on the criteria that will normally be considered when deciding whether enforcement action should be initiated. This Policy does not seek to depart from the Council's policy statement but the following text aims to provide additional clarity on the objectives and key tests that must be satisfied before enforcement action can take place.

#### **4.3.1 ENFORCEMENT OBJECTIVES**

The Council will be guided, *et al*, by the conclusions of the Macrory Review ('Regulatory Justice: Making Sanctions Effective') published in December 2005. In particular, enforcement decision making will focus on the following Macrory principles, i.e. it will:

- aim to change the behaviour of the offender
- aim to eliminate any financial gain or benefit from non-compliance
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and

the public stigma that would be associated with a criminal conviction

- be proportionate to the nature of the offence and the harm caused
- aim to restore the harm caused by regulatory non-compliance, where appropriate
- aim to deter future non-compliance

Also, the Council will have due regard to the contents of the *Code for Crown Prosecutors* when arriving at its enforcement decisions.

#### **4.3.2 THE PUBLIC INTEREST TEST**

The public interest must be considered in each case where there is sufficient evidence to provide either a) a realistic prospect of success, or b) support enforcement action, such as the service of a statutory notice, in the event of an appeal. A prosecution will usually take place unless there are public interest factors against prosecution which clearly outweigh those in favour. Although there may be public interest factors against prosecution in a particular case, this need not inhibit a prosecution since it is a matter for the court to decide on whether these factors are significant in the event of sentencing.

#### **4.3.3 THE EVIDENTIAL TEST**

In accordance with North Hertfordshire District Council’s Constitution, the Head of the Housing and Public Protection Service and the Legal Services Manager must both be satisfied that there is enough evidence to provide a ‘realistic prospect of conviction’ against each defendant on each charge before a prosecution can be authorised. It is an objective test that means 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 similar principle applies to the service of formal enforcement notices or order. Whilst the burden of proof is different to that of a prosecution, no notice or similar enforcement action should be undertaken unless the authorised officer considering such action can demonstrate that it is likely to survive an appeal or review.

## 5 OFFICER RESPONSIBILITIES AND FORMS OF REDRESS

### 5.1 OVERVIEW

The Audit Commission in its report 'Towards a Healthier Environment – Managing Environmental Health Services' in 1991, stated:

*“Elected Members should decide in general policy terms what attitude an authority should take to flagrant breaches of the law, whether in housing, food, hygiene or pollution. But having determined the policy, members should not thereafter need to be involved in detailed consideration of individual cases (other than in very exceptional circumstances). The decision to prosecute, based on the available evidence and professional judgement, should be left to the officers responsible”.*

This Policy document seeks to integrate the Audit Commission's guidance having regard to the Council's Constitution and Scheme of Delegation.

### 5.2 AUTHORISATION OF OFFICERS

Officers will only be authorised to undertake formal enforcement action, including the service of routine statutory notices or fixed penalty notices, where their competence can be demonstrated through the possession of appropriate qualifications and/or relevant experience. The limitations and scope of delegated authority will be detailed within the current Scheme of Delegation and Records of Delegation. However, in general, the following enforcement actions shall **not** proceed without the approval of the Head of Housing and Public Protection Service (or other such senior officer as may be authorised):

- ❑ Works in default (unless in response to an emergency or an out-of-hours issue);
- ❑ Seizure of equipment;
- ❑ Revocation or suspension of a licence, permit or authorisation;
- ❑ The forced closure of premises or the agreement to a Dispersal Order request;
- ❑ Interpretation of this Enforcement Policy relating to a generic enforcement issue;
- ❑ The service of a statutory notice with compliance costs that are likely to be in excess of £10,000;
- ❑ Covert surveillance (as defined The Regulation of Investigatory Powers Act 2000).

The following enforcement actions shall not proceed without the approval of the Head of Housing and Public Protection Service **and** the Legal Services Manager (or Strategic Director in their absence):

- ❑ Commencement of a prosecution
- ❑ The offer of a Simple Caution
- ❑ An application for an Anti Social Behaviour Order (ASBO)
- ❑ An application for an Anti Social Behaviour Closure Order (ASBCO)
- ❑ An application for a Drink Banning Order (DBO)

**5.3 EXCEPTIONS TO THIS POLICY**

Whilst every effort has been made to make this Enforcement Policy relevant to all regulatory issues and circumstances, there may be occasions when the Council is obliged to undertake enforcement action that is not specifically covered by this policy document. Any departure from the Policy must be exceptional, capable of justification and, before the decision is taken, shall be considered by the Head of Housing and Public Protection except where a significant risk to occupiers, neighbours and/or the general public would arise as a result of any delay. No negative inference should be drawn as to the legitimacy of such enforcement action.

**5.4 MONITORING OF THIS POLICY**

It shall be the duty of all officers that undertake enforcement activity to adhere to this Policy. Managers are required to monitor the implementation of this Policy by their officers and to make any necessary suggestions and recommendations for its improvement. Any enforcement action that is undertaken in variance to the Policy should be reported to the Head of Housing and Public Protection at the earliest opportunity; remedial action, such as the provision of additional training or corrective action under the Council’s managing misconduct procedure, shall be undertaken as appropriate.

Systematic reporting on formal enforcement action will be a key aspect of performance management within the Housing and Public Protection Service. ACOLAID NV reports on all formal regulatory interventions will be generated regularly throughout the civic year and each case will be reviewed having regard to this enforcement policy.

In the interests of clarity, *formal enforcement action* will be defined as the following actions:

- ❑ The service of a statutory notice (including a Fixed Penalty Notice);
- ❑ The revocation or suspension of a licence, authorisation or permit;
- ❑ The seizure of goods or equipment;
- ❑ The closure of premises;
- ❑ The undertaking of works in default;
- ❑ The forfeiture of goods or equipment;

- ❑ The administration of a Simple Caution;
- ❑ The securing of an Anti Social Behaviour Contract, Order or Drink Banning Order;
- ❑ A prosecution;
- ❑ The granting of an injunction.

Please note that the above definition of *formal enforcement action* does not necessarily mirror the statutory definition of this term as contained within Section 28 of the Regulatory Enforcement and Sanctions Act 2008.

## 5.5 OPERATIONAL MATTERS

In the interests of consistency and operation efficiency it is appropriate that a number of general or thematic guides and procedures are developed in order to assist officers with their enforcement decision making. These documents will be carefully drafted and be entirely consistent with the latest iteration of the *Housing and Public Protection Service Statement of Enforcement Policy and Practice*.

Officers should have regard to documented policies, guides and procedures when carrying out their enforcement duties.

Officers will carry means of identification at all times and will offer these for scrutiny when visiting people or requesting access to premises. All authorisations of enforcement officers will be in writing, specifying the limits of their authorisation.

The Council has a duty of care as regards the health, safety and welfare of its staff and therefore enforcement action should only take place when the risks associated with this have been explored, and where necessary, mitigated. Officers should have regard to the relevant Housing and Public Protection Service risk assessments when undertaking their duties.

## 5.6 REVISIONS TO THIS POLICY

It is important that the Council should monitor its performance in the application of this Policy so that it can assess its impact and effectiveness with regard to the fulfilment of the Council's objectives.

Accordingly, this Policy will be reviewed from time to time in order to reflect changing legislation, guidance, case law, best practice and the priorities of the Council. In any event, this Policy should be formally reviewed at least every 5 years.

In order that this Policy retains its balanced approach to enforcement matters the Council would very much like to receive the views of all interested parties on how it can be improved. Please forward your comments and suggests to:

The Head of Housing and Public Protection  
Planning, Housing and Enterprise Directorate  
Council Offices  
Gernon Road

Letchworth Garden City  
Hertfordshire  
SG6 3JF

Telephone: 01462 474000

Email: [service@north-herts.gov.uk](mailto:service@north-herts.gov.uk)

## **5.7 REVIEW MECHANISMS**

It shall be the responsibility of all officers, particularly Service Managers, to monitor the appropriateness of this Policy and to bring suggestions for its improvement to the attention of the Head of Service. The Head of Housing and Public Protection shall instigate the necessary amendment or commission a full review should this be deemed necessary.

Relatively minor amendments to this Policy shall be undertaken by the Head of Service in consultation with the relevant Portfolio Holder and in accordance with the Council's Constitution.

## **5.8 COMMENTS, COMPLIMENTS OR COMPLAINTS ABOUT THE SERVICE**

North Hertfordshire District Council operates a BSI accredited corporate customer care review system ("3Cs"). This service is available for any individual, group or business that wished to express a view on the standard of a Council service.

For further information of the 3Cs system please contact:

Telephone: 01462 474000

Fax: 01462 474633

e-mail: [reception@north-herts.gov.uk](mailto:reception@north-herts.gov.uk)

Web: [www.north-herts.gov.uk](http://www.north-herts.gov.uk)

In person: Council Offices, Gernon Road, Letchworth Garden City

Further information on the Council's policies in connection with customer care and service delivery can be found on the Council's website.

## **5.9 THE LOCAL GOVERNMENT OMBUDSMAN**

Where a person considers that they have been subject to maladministration they have the opportunity of contacting the Local Government Ombudsman:

Address: The Local Government Ombudsman  
Mill Bank Tower  
Millbank  
London

SW1P 4QP

Telephone: 020 7217 4620

Fax: 020 7217 4621

e-mail: [enquiries.london@lgo.org.uk](mailto:enquiries.london@lgo.org.uk)

## APPENDIX A: FOOD SAFETY

### A.1. SCOPE

This is a documented policy on food safety enforcement including prosecution. This Policy will be reviewed periodically and in response to new legislation, the Food Standards Agency, LACORS, Department of Health, DEFRA and other guidance etc as necessary. This document encompasses the principles of the Regulators' Compliance Code.

This Policy directs that enforcement action, be it verbal warnings, the issue of written warnings, statutory notices, or prosecution, is based primarily upon an assessment of risk to public health. This risk is the probability of harm to health occurring due to non-compliance with food safety law. Formal action should not, therefore, be the normal response to minor technical contraventions of legislation.

This Policy encompasses the guidance set out in the Food Standard Agency publication 'Framework Agreement on Local Authority Food Law Enforcement' and the Code of Practice issued under Section 40 of the Food Safety Act 1990.

Where appropriate this Policy will be read in conjunction with this Authority's Health and Safety Enforcement Policy.

### A.2. OTHER RELEVANT CONSIDERATIONS

In this context, formal action means a Simple Caution (in line with LACORS guidance, ref. FS2 92 3), or a prosecution in line with the Food Safety Act Code of Practice and guidance issued in Sections 3, 6 and 7 of this document.

The competency of officers specialising in food safety must follow the guidance in the Food Safety Act Code of Practice and other guidance issued from time to time by recognised bodies.

Signing of Improvement Notices under the Food Safety Act 1990 will only be undertaken by officers who have been authorised to do so by the Council. These must be qualified officers with experience in food law enforcement, in accordance with the Food Safety Act Code of Practice i.e.

- a. Environmental Health Officers enforcing food hygiene
- b. Holders of the Higher Certificate in Food Premises Inspection who are authorised to carry out food hygiene inspections
- c. Holders of the Ordinary Certificate in Food Premises Inspection in relation to the premises they are authorised to inspect

The officer who signs the notice must have witnessed the contravention and be satisfied that it constitutes a breach of the Food Hygiene (England) Regulations 2006.

Service of Improvement Notices by hand will be made by any person who is capable of explaining the meaning and legal status of the notice. Any notices sent by post will be by recorded delivery.

Emergency Prohibition Notices should be signed only by Environmental Health Officers who have two years post qualification experience in food safety matters, are currently involved in food law enforcement and who are properly trained, competent and duly authorised. The Officer will ensure a second opinion is obtained prior to the notice being issued.

The Council will ensure that any authorised officer is competent to take action under the Food Safety Act 1990, is fully qualified, and possess experience in a variety of food enforcement situations which would allow him / her to undertake the duties for which he/she has been authorised.

The Council recognises and affirms the importance of achieving and maintaining consistency in their approach to making all decisions which concern food safety enforcement action, including prosecution. To achieve and maintain consistency, it is important that the guidance in statutory Codes of Practice, LACORS circulars and advice offered in relation to the Home Authority Principle is always considered and followed where appropriate.

The Council will seek to ensure that enforcement decisions are always consistent, balanced, fair and relate to common standards that ensure that the public is adequately protected. The Council will base all enforcement decisions on an assessment of risk to the public health and will consider a number of factors set out in the Food Safety Act Code of Practice including seriousness of offence, the enterprise's past history, confidence in management, the consequences of non-compliance and the likely effectiveness of the various enforcement options.

Officers should be aware of possible conflicts of interest that may arise in an enforcement situation as a result of Primary, Home or Originating Authority responsibilities or through the promotion of North Herts District Council services.

In premises where North Herts District Council are the proprietor of a food business any breaches of the law must be brought, without undue delay, to the attention of both the Head of Service and the appropriate Strategic Director.

Having considered all relevant information and evidence, the choices for action are:-

- to take no action
- to take informal action

- ❑ to use statutory notices
- ❑ seizure of food
- ❑ to use Simple Cautions
- ❑ to prosecute

or a combination thereof.

Guidance on enforcement options is contained in the Food Safety Act Code of Practice made under Section 40 of the Food Safety Act 1990.

Where the Council is considering taking enforcement action which is not consistent with current guidance or not subject of guidance, the matter should be brought to the attention of the Hertfordshire and Bedfordshire Food Liaison Group and where consensus cannot be reached to LACORS.

Compliance should normally be achieved through letters and advice, and only in the more serious instances should formal enforcement through Improvement or Prohibition Notices be considered. Prosecutions should be reserved for the most serious offences which either result or could have resulted in serious risk to public health or which represent a blatant disregard by employers, employees or others of their responsibilities under food safety legislation.

### **A.3. THE USE OF FORMAL ENFORCEMENT TOOLS**

#### **A.3.1. TAKE NO ACTION**

See 4.2.2

#### **A.3.2. INFORMAL ACTION**

Informal action to secure compliance with legislation includes offering advice, the voluntary closure of premises, verbal warnings and requests for action, the use of letters and the issue of inspection reports, including those generated on a premises following an inspection.

Informal action may be used in the following circumstances:-

- ❑ The act or omission is not serious enough to warrant formal action.
- ❑ From the individual / enterprise's past history it can be reasonably expected that informal action will achieve compliance.
- ❑ Confidence in the individual / enterprise management involved is high.
- ❑ The consequences of non-compliance will not pose a significant risk to those affected by work activities.

When an informal approach is used to secure compliance with Food Safety legislation, it is important that any written documentation issued:

- ❑ Contains all the clear, unambiguous information necessary to understand what work is required, why it is necessary, and which Regulation has been contravened.
- ❑ Indicates the measures which will enable compliance with the legal requirements, an indication of the time-scale suggested for completion of works, and that other means of achieving the same effect may be chosen.
- ❑ Clearly indicates any recommendations of good practice , under an appropriate heading, to show that they are not a legal requirement.
- ❑ Ensure that the recipient is aware that the context of the written documentation is not exhaustive.

The need to clearly differentiate between legal requirements and matters which are recommended as good practice, should be recognised in all enforcement action, even if only giving verbal advice.

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice.

**A.3.3. FORMAL ACTION**

Before formal action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

**A.3.3.1. STATUTORY NOTICES**

**IMPROVEMENT NOTICES**

The use of an Improvement Notice is only appropriate if one or more of the following criteria apply:

- a) There are significant contraventions of the legislation – it is not appropriate to issue a Notice for minor technical contraventions.
- b) There is a lack of confidence in the proprietor or enterprise to respond to an informal approach.
- c) There is a history of non-compliance with informal action.

- d) Standards are generally poor, with little management awareness of statutory requirements.
- e) The consequences of non-compliance could be potentially serious or deteriorating.

Notes

In general, the use of Improvement Notices should relate to risk of health.

Improvement Notices may only be issued by Authorised Officers (see Section 2 on Authorisation).

The Notice should be signed by the Authorised Officer who has witnessed the contravention and is satisfied that it is significant, and that the above criteria have been met and satisfied. The file copy of the Notice shall be countersigned by the Commercial Team Manager, or in his absence by another Authorised Officer of the Commercial Section.

A copy of the NHDC Improvement Notice Checklist shall be completed for each Notice served and retained with the relevant premises file.

Sufficient evidence in the form of photographs, diagrams, or detailed notes made at the time of inspection should be available in case of appeal or non-compliance with a Notice.

The officer serving the notice will have followed the guidance in the Code of Practice on the service of Improvement Notices, and referred to any LACORS guidance regarding the use of Improvement Notices, together with any case law relating to appeals against Improvement Notices.

Prior to service of the Notice the Authorised Officer should discuss with the proprietor realistic time limits for compliance with Notices.

A revisit will be made to a premise within 5 days of expiry of an Improvement Notice. Primary, Home and Originating Authorities should be consulted and advised of formal action, including the outcome.

**EMERGENCY PROHIBITION NOTICES**

The use of an Emergency Prohibition Notice is only appropriate if there is an imminent risk of injury to health, and one or more of the following criteria apply:-

- a) The consequences of not taking immediate and decisive action to protect the public health would be unacceptable.
- b) An imminent risk of injury to health can be demonstrated. This may include evidence from a relevant expert including a food analyst or food examiner.

- c) The guidance criteria specified in the Food Safety Act Code of Practice concerning the conditions when prohibition may be appropriate are fulfilled.
- d) There is no confidence in the integrity of any unprompted offer made by the proprietor voluntarily to close premises or cease the use of equipment, processes, or treatments associated with the imminent risk.
- e) A proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition.

**A.3.3.2. SIMPLE CAUTIONS**

In certain circumstances the Council will issue a Simple Caution. The procedure adopted and the form and content of the caution will be in accordance with current LACORS guidance (see FS7 94 2) and Home Office circular 18/1994. Any internal guidance will also be considered.

The officers authorised to issue formal cautions are The Head of Housing and Public Protection and the Head of Legal Services.

**A.3.3.3. PROSECUTION**

The Authority recognises that the following are circumstances which are likely to warrant prosecution:

- i) The alleged offence involves an obvious breach of the law such that the public health, safety or well-being is or has been put at risk.
- ii) The alleged offence involves a failure by the suspected offender to correct an identified serious potential risk to food safety, having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
- iii) The offence involves a failure to comply in full or in part with the requirements of a statutory notice.
- iv) There is a history of similar offences, related to risk to public health.

The Officer, must be satisfied that there is relevant, admissible substantial and reliable evidence that an offence has been committed by an identifiable person / company.

The following guidance criteria contained in the relevant Food Safety Act Code of Practice must be followed when decisions are being taken on whether to prosecute. The factors to be considered are:

- i) the seriousness of the alleged offences;

- ii) the previous history of the party concerned;
- iii) the likelihood of the defendant being able to establish a due diligence defence;
- iv) the ability of any important witnesses and their willingness to cooperate;
- v) the willingness of the party to prevent a recurrence of the problem;
- vi) the probable public benefit of a prosecution and the importance of the case;
- vii) whether other action (Simple Cautioning, improvement notices) will be more appropriate or effective.

Once a decision to prosecute has been made, the matter should be referred to the Head of Legal Services to institute legal proceedings, as appropriate. The decision document will be signed by both the Head of Housing and Public Protection and the Head of Legal Services.

The court may impose a prohibition order following certain prosecutions, if they are satisfied that there is a risk of injury to health. The Officer will therefore need to take the necessary action to enable the court to come to an appropriate decision regarding the existence of risk or injury to health.

The necessary action to be taken and the information required by the court should be documented

The Primary, Home or Originating Authority should be advised of formal action, including the outcome.

The Officer should ensure that decisions to prosecute and results of any legal proceedings are notified to all interested bodies, for example LACORS.

Details of all enforcement actions should be logged in the departmental computerised information system.

## **APPENDIX B: OCCUPATIONAL HEALTH & SAFETY**

### **B.1. SCOPE**

This section of the Policy directs that the enforcement of health and safety law should be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach, targeting of enforcement action and transparency about how the regulator operates and what those regulated may expect.

This document provides detailed guidance applicable to the various options for enforcement action.

### **B.2. OTHER RELEVANT CONSIDERATIONS**

Officers will carry out duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, arrangements will be in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Health and Safety Executive (HSE), Local Authority Unit (LAU), HELA and the Hertfordshire and Bedfordshire Environmental Health Officers' Enforcement Liaison Group.

Where there may be a shared or complimentary enforcement role with other agencies (e.g. The Health and Safety Executive ) consideration should be given to liaison in appropriate circumstances (e.g. enforcement in Council owned premises).

Where a Primary or Lead Authority Partnership arrangement is in place for a particular employer, the Primary or Lead Authority will be contacted in appropriate cases and will be kept advised of the progress and outcome of any formal action.

Health and safety enforcement action may only be initiated by duly authorised officers. The Council will ensure that officers who are appointed under Section 19 of the Health and Safety at Work etc. Act 1974 are authorised to initiate enforcement action, are competent to do so, are suitably qualified and have relevant and adequate experience in health and safety enforcement, in accordance with guidance set out in HSC(G)4 and Annex 1 of Section 18 Guidance Note 5.

### **B.3. THE USE OF FORMAL ENFORCEMENT TOOLS**

Having considered all relevant information in the light of the HSE Enforcement Management Model and all other evidence, the choices for action are:

- to give verbal advice
- to take no action
- to take informal action
- to use statutory notices

- ❑ to use Simple Cautions where local policy dictates
- ❑ to prosecute
- ❑ to use other relevant provisions of legislation, for example to seize or destroy unsafe items, plant or equipment
- ❑ or a combination thereof

Where the Council is considering taking enforcement action which is in an unfamiliar area presently not subject to guidance the matter should be discussed with the relevant body e.g., ELO, the LAU and FOD or the Hertfordshire and Bedfordshire Environmental Health Officer's Enforcement Liaison Group.

Compliance should normally be achieved through letters and advice, and only in the more serious instances should formal enforcement through improvement or prohibition notices be considered. Prosecutions should be reserved for the most serious offences which either result or could have resulted in serious injury or ill health or which represent a blatant disregard by employers, employees or others of their responsibilities under health, safety, or welfare legislation.

The Council recognises and affirms the importance of achieving and maintaining consistency in their approach to making all decisions that concern health and safety enforcement action, including prosecution. To achieve and maintain consistency, it is important that the guidance in statutory Codes of Practice; HELA circulars and advice offered in relation to the Primary or Lead Authority Principles is always considered and followed where appropriate.

The Council will ensure that enforcement decisions are always consistent, balanced, fair and relate to common standards that ensure that persons affected by work activities are adequately protected. In coming to any decision the Council will consider many criteria including seriousness of offence, the enterprise's past history, confidence in management, the consequences of non-compliance and the likely effectiveness of the various enforcement options.

**B.3.1. TAKE NO ACTION**

If entirely satisfactory conditions are found at the time of the inspection the officer may still give advice in any case.

**B.3.2. INFORMAL ACTION**

Informal action to secure compliance with legislation includes offering advice, verbal warnings and requests for action, the use of letters and the issue of inspection reports, including those generated on a premises following an inspection. Informal action may be used in the following circumstances:

- ❑ The act or omission is not serious enough to warrant formal action
- ❑ From the individual/enterprise's past history it can be reasonably expected that informal action will achieve compliance

- ❑ Confidence in the individual/enterprise's management involved is high
- ❑ The consequences of non-compliance will not pose a significant risk to those affected by work activities

When an informal approach is used to secure compliance with health and safety legislation, it is important that any written documentation issued:

- ❑ Contains all the information necessary to understand what work is required and why it is necessary.
- ❑ Indicates the measures which will enable compliance with the legal requirements and that other means of achieving the same effect may be chosen; and
- ❑ Clearly indicates any recommendations under an appropriate heading, to show that they are not a legal requirement.
- ❑ Ensures that the recipient is aware that the context of the written documentation is not exhaustive.
- ❑ Makes it clear that the person receiving the letter has the right to a written explanation of what needs to be done, when and why.
- ❑ When a letter is sent following an inspection a second copy must be enclosed, marked for the employees.

### **B.3.3. FORMAL ACTION**

Any enforcement action will be directed against duty holders responsible for the breach. This may be employers in relation to employees or others; the self-employed; owners of premises; suppliers of equipment; designers of equipment or clients of projects; or employees themselves. Where there are several duty holders enforcement authorities may take action against more than one.

#### **B.3.3.1. STATUTORY NOTICES**

Before formal enforcement action is taken, officers will provide the duty holder an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection, or to prevent evidence being destroyed).

At the time when formal enforcement action is initiated a copy of the leaflet '*What to expect when a health and safety inspector calls*' will be sent to the duty holder.

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

An Improvement Notice will be issued only when the officer is of the opinion that there is or has been a contravention of one or more of the relevant statutory provisions at the time of the visit in circumstances that make it likely that the contravention will continue.

Prohibition Notices can be issued to have an immediate or deferred effect. The Notice will only be served if the officer is of the opinion that there is, or will be a risk of serious personal injury.

Where there are rights of appeal to an Employment Tribunal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken. The duty holder will be told: how to appeal, and be given a form with which to appeal and; where and within what period an appeal may be brought and; that the remedial action required by an Improvement Notice is suspended while an appeal is pending.

The officer will provide employees or their representatives with certain information where it is necessary for the purpose of keeping them informed about matters affecting their health, safety and welfare. The type of information that an officer will provide includes matters which an inspector considers to be of serious concern and details of any action taken. Depending upon the circumstances, the officer may provide this information orally, or in writing.

When an Improvement or Prohibition Notice is served, a second copy must be enclosed, marked for the attention of employees or their representatives.

Officers can consider both prosecution and notice procedures in the following circumstances:-

- (i) occasionally a situation may be so hazardous that even when a prohibition notice has been issued prosecution may also be merited; and
- (ii) if a prosecution is taken due to the circumstance of an accident, a notice may also be used to enforce the remedy.

In these situations the information should not be laid until after the appeal period for the notice has passed (21 days) and any appeal has been heard. It is highly undesirable that there should be a hearing in a court where a possibly contrary decision could be reached subsequently in the Employment Tribunal. On occasions, however, this will be unavoidable where a tribunal has agreed to accept a late appeal.

Non-compliance with a served Notice will normally result in prosecution.

**B.3.3.2. SIMPLE CAUTIONS**

Authorities may use a Simple Caution procedure in enforcing health and safety. The procedure derives from advice issued by the Home Office. Before issuing a Simple Caution the officer will ensure that certain criteria are satisfied, namely:

- (i) The evidence available will comply with the Attorney General's guidelines on criteria for prosecution, i.e. a conviction would be more likely than an acquittal before a court;
- (ii) The offender must admit the offence;
- (iii) The offender must agree to be cautioned;
- (iv) Where the offence is not a serious one and could be swiftly dealt with to divert a less serious offence away from court.

### **B.3.3.3. PROSECUTION**

The most serious offences where, in the public interest and following an investigation, a prosecution would be the appropriate course of action as in the following circumstances:

- (i) where there is a death as a result of a breach of the legislation;
- (ii) where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage to those who disregard it;
- (iii) when there appears to have been reckless disregard for the health and safety of work people or others;
- (iv) where there have been repeated breaches of legal requirements in an establishment, or in various branches of a multiple concern, and it appears that management is neither willing nor structured to deal adequately with these. An examination of the company safety policy, if any, would be particularly useful in such a situation;
- (v) where a particular type of offence is prevalent in an activity or an area;
- (vi) where, as a result of a substantial legal contravention, there has been a serious accident or a case of ill health;
- (vii) where a particular contravention has caused serious public alarm;
- (viii) where there are persistent poor standards for control of health hazards.
- (ix) where there has been failure to comply with an improvement or prohibition notice; repetition of a breach that was subject to a Simple Caution.
- (x) inspectors have been intentionally obstructed in the lawful course of their duties.

- (xi) where inspectors are assaulted, enforcing authorities will seek police assistance with a view to seeking prosecution of offenders.

The decision to prosecute in the above cases does not preclude the issue of notices as well.

A prosecution should not ordinarily be taken where there is a known defence in law that a potential defendant is likely to successfully rely on in court. Equally, cases should not be taken unless inspectors consider they have sufficient evidence to prove the case. Inspectors must include evidence in their prosecution reports to show that the defendant had failed to take reasonable steps to prevent the contravention.

In deciding whether there is sufficient evidence inspectors must satisfy themselves that there is a realistic prospect of conviction; bare *prima facie* case is not enough. However, where the circumstances justify prosecution, it should not be avoided just because the case is difficult and a conviction may not be completely certain.

#### **B.3.3.4. PROSECUTION WITHOUT PRIOR WARNING**

As a general rule a person or a company should be given a reasonable opportunity to comply with the law, although in some circumstances it is right to prosecute without giving prior warning. Examples of such circumstances include those where the contravention is a particularly serious one, or where there has been a particularly blatant disregard by employers, employees or others of their responsibilities under health and safety legislation. For example, the commission of an offence, similar to one for which a Notice has previously been issued to that person or organisation, should normally result in prosecution. Failure to comply with an Improvement Notice or a Prohibition Notice should normally result in prosecution and unless this happens the value of notices will be seriously undermined.

#### **B.3.3.5. PROSECUTION FOLLOWING AN ACCIDENT**

Seriousness of the contravention (not the severity of the accident) is the prime consideration in deciding whether to take a prosecution following an accident. The extent to which management was responsible for the circumstances which led to the accident, and whether the employer had been previously warned of a similar infringement, are also relevant. An important question for inspectors to ask themselves is what they would have done if they had discovered the contravention in the absence of an accident. However, an accident may contribute to the strength of the evidence and therefore to the chances of achieving a successful prosecution, it may therefore provide a useful occasion for a salutary prosecution of a generally unco-operative employer. In cases where there is any possibility of a charge of manslaughter being made the matter must be referred to the Crown Prosecution Service, having regard to the HSE/CPS document "Work-Related Deaths: A Protocol For Liaison"

#### **B.3.4 ENFORCEMENT ACTION AGAINST EMPLOYEES**

Enforcement action may be taken against employees and others, including managers, company officers etc., under HSW Act s.7, 8, 36(1) and 37(1).

When inspectors discover a contravention of HSW Act s7, it will be their duty to consider what action (if any) they should take in regard to the employee, by way of warning or prosecution. A letter warning any employee about subsequent contraventions may be desirable in some cases.

The issue of a notice against the employee may also be appropriate on occasions although the value of the notice is limited since in general a continuing obligation should not be imposed. For example, notices should not be served on employees requiring them to wear goggles. Not only can employees be required by HSW Act s.7 (1) to use appliances provided for their health and safety, but they can be required to co-operate in a more general way, e.g., by adjusting a guard properly or by reporting promptly a defect in the arrangements for health and safety which comes to their notice.

In certain circumstances proceedings against an employee may be appropriate if there is evidence of negligence on their behalf. In such cases consultation with workers' representatives will be undertaken prior to any decision to prosecute. Prosecution will be considered only if the employee had been warned before (either by an inspector or by the business) or if the employer can demonstrate that he/she has taken all reasonably practicable steps to see that safety devices were used and the offence by the employee was flagrant.

# APPENDIX C: POLLUTION CONTROL

## C.1. SCOPE

The Housing and Public Protection Service undertakes regulatory duties relating to the following pollution control areas:

- ❑ Noise pollution arising from both domestic and commercial premises (including noise/vibration from construction sites) and, in certain circumstances, equipment or vehicles in the street.
- ❑ Out of hours service for statutory noise nuisances.
- ❑ Air pollution control, including smoke, odour and dust statutory nuisances.
- ❑ Statutory nuisances associated with excess artificial light.
- ❑ Permitting of industrial processes having the potential to release harmful pollutants to the air.
- ❑ Enforcement of controls over contaminated land, to ensure that contaminants do not interfere with human health, animal/plant health or the built environment. Also to assess whether contaminants are likely to affect rivers, aquifers or other controlled water courses.
- ❑ Local Air Quality Management (LAQM) duties as regards the Environment Act 1995

This section of the Housing and Public Protection Statement of Enforcement Policy and Practice provides specific guidance on regulatory activities associated with pollution control. However, the Council has separate policies relating to contaminated land enforcement: (a) financial support for householders affected by contamination, and (b) the scope and extent of formal enquiries. Further policies are expected to be adopted in order to address other specific circumstances that may arise as a result of the implementation of Part IIA of the Environmental Protection Act 1990.

## C.2. OTHER RELEVANT CONSIDERATIONS

In addition to the Regulators' Compliance Code this Policy is designed to reflect the following sources of legislation, advice and guidance:

- ❑ Parts IIA and III of the Environmental Protection Act 1990 (as amended)
- ❑ The Control of Pollution Act 1974
- ❑ Environment Act 1995
- ❑ Pollution, Prevention and Control Act 1999

- ❑ Noise Act 1996
- ❑ Clean Air Acts 1956/1968/1993
- ❑ Noise and Statutory Nuisance Act 1993
- ❑ Anti Social Behaviour Act 2003
- ❑ Clean Neighbourhoods and Environment Act 2005
- ❑ Neighbourhood Noise Policies and Practice for Local Authorities: A Management Guide

**C.3. THE USE OF FORMAL ENFORCEMENT TOOLS**

The general principals relating to enforcement decision making are explained within Section 4 of this Policy.

**C3.1. ENFORCEMENT ACTIVITY RELATING TO STATUTORY NUISANCES**

Abatement notices can be an effective and quick method of securing compliance with the requirements of the Environmental Protection Act 1990 in that they require problems to be rectified without the potential delays and uncertainty of going to Court.

On the rare occasions when abatement notices are breached the above legislation provides for a number of enforcement sanctions. C3.1.1 to C3.1.2 indicate the likely response of North Hertfordshire District Council when a notice is breached in a residential situation. However, the Council reserves the right to consider the use of all enforcement mechanisms in accordance with the principles outlined in Section 4 of this Policy.

**C3.1.1. SEIZURE OF NOISE MAKING EQUIPMENT FROM DOMESTIC PREMISES**

Where the requirements of the notice are not carried out, in many instances the Council is empowered to do whatever is necessary to abate the nuisance. This can include the seizure of noise making equipment.

In domestic settings the Council is likely to favour the seizure of noise-making equipment for the first evidenced breach of an abatement notice as this is likely to offer rapid relief to those adversely affected by the noise in question. Furthermore, this intervention is likely to be a more cost effective approach than formal prosecutory action.

If appropriate, the Council will seek a warrant from a Magistrate authorising entry to premises, if necessary by force, to facilitate seizure of noise making equipment. In accordance with 4.2.6. the Council will seek to recover the full costs associated with the seizure of noise making equipment.

**C3.1.2. FORFEITURE OF NOISE MAKING EQUIPMENT**

If, after noise making equipment has been returned to the recipient of the abatement notice or a successful prosecution has taken place, further breaches

are witnessed the Council is likely to repeat the seizure of equipment and seek permission from a Magistrates' Court for its permanent forfeiture.

**C3.2. ENFORCEMENT ACTIVITY RELATING TO CONSTRUCTION SITE NOISE**

A certain amount of noise is inherent in most types of construction and building operations, which can rarely be completely prevented. However, noise from construction and demolition sites can be very disturbing.

The Council can control excessive noise from construction and demolition sites by using powers available to it under the Control of Pollution Act 1974 (COPA) and the Environmental Protection Act 1990 (EPA). Contractors can apply for a 'prior consent' under COPA which sets out allowable working hours and noise limits – the Council encourages the use of prior consents since they represent a proactive method of pollution control.

The Council can serve a notice imposing requirements as to how construction works should be carried out so as to minimise noise and disturbance. The notice can cover working hours and noise limits; failure to comply with this notice can result in a fine of up to £20,000.

Whilst each construction site is different (and will be assessed as such) the generally acceptable hours for *noisy* work within populated areas of the District are:

Monday to Friday:	08:00-18:00
Saturdays:	08:00-13:00
Sundays and Bank Holidays:	At no time

For particularly noisy work, e.g. piling and de-watering, it may be necessary for authorised officers of the Housing and Public Protection Service to further restrict these times.

However, the Council recognises that some operations, for safety or practical reasons, cannot always be undertaken within the above time restrictions. Operations outside of the above hours may, however, be agreed by the Council if it can be demonstrated that the works cannot be carried out at any other time and that items of plant and equipment are operated and maintained so that their use causes the minimum amount of noise.

Sometimes, emergency works have to be undertaken, for example a burst water main. In such circumstances the normal daytime hours of operation would not apply. The work would be undertaken as soon as possible, which if undertaken at night, may cause some disturbance.

Also, works on main roads would normally be undertaken outside peak times in order to minimise traffic congestion. Therefore evening and night-time working may be permitted. Noise would however be kept to as low a level as reasonably practicable.

### **C3.3. ENFORCEMENT ACTIVITY RELATING TO PERMITTED PROCESSES**

Regulation 23 of the Pollution Prevention and Control (PPC) Regulations 2000 places a duty on local authorities to take the necessary action to ensure that permit conditions are complied with. North Hertfordshire District Council recognises that appropriate regulation of organisations covered by the PPC pollution control regime is necessary in order to protect local communities and the wider environment; the following type of offences will be considered for enforcement action:

- ❑ Operating without a permit
- ❑ Failure to comply with a condition
- ❑ Failure to notify a relevant change in operation
- ❑ Failure to supply without reasonable excuse information requested under the regulations
- ❑ Making false or misleading statements
- ❑ Making false entries in any record
- ❑ Forgery and deception in relation to documents
- ❑ Failure to comply with a court order
- ❑ Obstruction of Council officers in carrying out their duties

If, in the opinion of authorised officers of the Council, the operation of the installation (or part of an installation) poses an imminent risk of serious pollution, the Authority will serve a suspension notice unless it intends to carry out the works in default under regulation 26 (this will involve the recovery of costs).

Failure to comply with statutory notices is likely, other than in exceptional circumstances, to result in prosecution and/or works in default accompanied by enforcement action for the recovery of costs.

## **APPENDIX D: PEST CONTROL**

### **D.1. SCOPE**

The Council offers a comprehensive pest control treatment service for a variety of pests to assist land and property owners in meeting their legal obligations to keep their premises free from vermin and pests. However, in a situations were the land and/or property owner does not meet their legal obligations the Council will consider enforcement action.

### **D.2. OTHER RELEVANT CONSIDERATIONS**

In addition to the Regulators' Compliance Code this Policy is designed to reflect the following sources of regulation, advice and guidance:

- ❑ The Prevention of Damage by Pests Act 1949
- ❑ The Public Health Act 1961

### **D.3. THE USE OF FORMAL ENFORCEMENT TOOLS**

On the first notification of a confirmed infestation where the responsible person fails to take remedial action the Council will require, in writing, action to eradicate the infestation.

Where the responsible person fails to act upon the written notification, the Council will serve the appropriate notice in accordance with the provisions of the appropriate legislation.

Where the responsible person subsequently fails to comply with the provisions of the legal notice, the Council will consider undertaking works in default in addition to a decision on whether to proceed with prosecutory action in a Magistrate's Court.

## **APPENDIX E: LICENSING**

### **E.1. SCOPE**

The purpose of licensing is, in the majority of cases, the protection of the general public. In order to achieve this, legislation requires licences, permits or registrations to be obtained for a wide range of activities. These administrative documents are normally subject to certain conditions, imposed either by legislation or the Council. The Housing and Public Protection Service undertakes the Council's licensing functions, as outlined in E1.1. to E1.6., below.

#### **E.1.1 ANIMAL LICENSING**

- Animal Boarding Establishments
- Dog Breeding
- Dangerous Wild Animals
- Pet Shops
- Riding Establishments
- Zoos

#### **E.1.2. FUND RAISING**

- House to House Collections
- Street Collections
- Lotteries and Amusements

#### **E.1.3. PREMISES AND EVENT LICENSING (LICENSING ACT 2003)**

- Sale of Alcohol
- Provision of Regulated Entertainment
- Late Night Refreshment

#### **E.1.4. GAMBLING (GAMBLING ACT 2005)**

- Premises Licences
- Permits
- Registrations

#### **E.1.5. TAXIS**

- Hackney Carriage Drivers
- Hackney Carriage Vehicles

- ❑ Private Hire Drivers
- ❑ Private Hire Vehicles
- ❑ Private Hire Operators

**E1.6. MISCELLANEOUS LICENSING**

- ❑ Game and Game Dealers
- ❑ Scrap Metal Dealers
- ❑ Motor Salvage Operators
- ❑ Sex Establishments
- ❑ Street Trading

**E.2. OTHER RELEVANT CONSIDERATIONS**

In addition to the Regulators' Compliance Code this Policy is designed to reflect the following sources of legislation, advice and guidance:

- ❑ Licensing Act 2003
- ❑ Gambling Act 2005
- ❑ Local Government (Miscellaneous Provisions) Act 1976/1982
- ❑ Hertfordshire Licensing Enforcement Protocol (HLEP)
- ❑ Animal Boarding Establishments Act 1963
- ❑ Breeding of Dogs Act 1973 & 1991
- ❑ Riding Establishments Act 1964/70
- ❑ Dangerous Wild Animals Act 1976
- ❑ Zoo Licensing Act 1981
- ❑ Scrap Metal Dealer Act 1964
- ❑ LACORS

**E.3. THE USE OF FORMAL ENFORCEMENT TOOLS**

The general principles relating to enforcement decision making are explained within Section 4 of this Policy.

**E.3.1 ENFORCEMENT ACTIVITY RELATING TO THE LICENSING ACT 2003**

To promote consistent and proportionate enforcement of the Licensing Act 2003 across Hertfordshire this Council became, in July 2006, a signatory to the Hertfordshire Licensing Enforcement Protocol (HLEP). This protocol seeks to improve understanding of regulatory duties and responsibilities amongst all of the Responsible Authorities and Licensing Authorities within the county and, accordingly, this Policy statement should be read in conjunction with the HLEP.

**E.3.2. ENFORCEMENT ACTIVITY RELATING TO TAXIS**

Information on the Council's approach to enforcement as regards taxis can be found in the *Statement of Policy – Hackney Carriage and Private Hire Vehicle Licensing*, available on the Council's website.

## APPENDIX F: PRIVATE SECTOR HOUSING

### F.1. SCOPE

This Policy applies to those enforcement functions administered by the Council's Private Sector Housing Team. These will include:

- ❑ Regulating standards of repair, amenity and safety in the private rented sector and dealing with housing hazards.
- ❑ Restoring vacant properties and bringing them back into occupation.
- ❑ Regulating standards of management, repair, amenity and safety in houses in multiple occupation.
- ❑ Administration of the Council's Houses in Multiple Occupation Licensing Scheme introduced in April 2006.
- ❑ Inspection of bed and breakfast establishments and any private accommodation used for the temporary housing homeless and asylum seekers as appropriate.
- ❑ Investigation and abatement of public health nuisances relating to housing.
- ❑ Investigation and elimination of pests and vermin infesting land, premises and persons as may be appropriate.
- ❑ Regulation of standards in relation to mobile home sites

### F.2. OTHER RELEVANT CONSIDERATIONS

In addition to the Regulators' Compliance Code and the Enforcement Pledges, this Policy is designed to reflect the following sources of legislation, advice and guidance:

- ❑ Housing Act 2004 and associated orders and regulations
- ❑ Housing Act 1985 (as amended)
- ❑ Housing Act 1988
- ❑ Housing Act 1996 and Housing (HMO) Order 1997
- ❑ Housing (Fitness Enforcement Procedures) Order 1996
- ❑ Private Sector Renewal – DoE Guidance
- ❑ The Housing (Maximum charge for Enforcement Actions) Order 1996

- HHSRS Operating Guidance
- LACORS

### **F.3. STATEMENT ON ENFORCEMENT OPTIONS: HOUSING ACT 2004**

#### **F.3.1. HOUSING HEALTH AND SAFETY RATING SYSTEM CATEGORY 1 HAZARDS**

The Housing Act 2004 puts authorities under a duty to take appropriate action in relation to a Category 1 hazard found under the Housing Health and Safety Rating System (HHSRS). A 'Category 1' hazard arises when a hazard reaches a score of 1000, or more, under the HHSRS. In such cases the Authority *must* take the most appropriate of the following courses of action:

- to serve an Improvement Notice;
- to make a Prohibition Order;
- to serve a Hazard Awareness Notice;
- to make a Demolition Order in accordance with s265 of the Housing Act 1985;
- to declare a clearance area in accordance with s289 of the 1985 Act;
- to serve an Emergency Remedial Action notice;
- to make an Emergency Prohibition Order.

Only one of these courses of action can be taken at any one time (except for emergency measures). It is for the local authority to decide which course of action is the best in all the circumstances. The basis of this decision will be provided with each notice served in the format of a "Statement of Reasons". The views of the manager and occupier of the property should, if possible, be considered in the decision making process.

A 'Category 2' hazard arises when a hazard reaches a "significant" score of up to 999 under the HHSRS; the Authority *may* take enforcement action in these circumstances.

Where there are concerns about a vulnerable person the appropriate agencies should be consulted to help make a decision regarding the appropriate enforcement action.

The Fire Authority must be consulted where a fire hazard exists in an HMO or in any common parts of a building containing one or more flats.

#### **F.3.2. HOUSING HEALTH AND SAFETY RATING SYSTEM CATEGORY 2 HAZARDS**

Authorities have similar powers to deal with Category 2 hazards as those listed in above, except that they cannot use the emergency measures and can make a

Demolition Order, and declare a clearance area, **only** in circumstances prescribed in Regulations. In deciding whether to take action to address Category 2 hazards (where action is discretionary) the following factors should be considered:

- ❑ Where the owner is being asked to deal with ‘Category 1’ hazards the ‘Category 2’ hazards should be dealt with at the same time where they materially affect the comfort of the occupying tenant or they cause the property to be in serious disrepair
- ❑ Multiple hazards may be found which on their own are not too serious but in combination present a more serious situation than one single ‘Category 1’ hazard
- ❑ If the hazard relates to fire safety the Fire Authority should be consulted and the appropriate action taken based on their recommendations
- ❑ If the hazard or combination of hazards materially affects the comfort of the occupying tenant or causes property to be in serious disrepair the appropriate enforcement action should be taken.

#### **F.4. THE USE OF FORMAL ENFORCEMENT TOOLS**

##### **F.4.1. HAZARD AWARENESS NOTICES**

Hazard Awareness Notices can be used in the following circumstances:

- ❑ In relation to Category 1 and 2 Hazards under section 28 and 29 Housing Act 2004
- ❑ Where the hazard is remote or minor
- ❑ Where the property is in owner occupation (unless there are concerns about the owner’s ability to look after themselves. In such cases the appropriate agencies should be consulted prior to making a decision regarding enforcement action)
- ❑ Where the circumstances of the occupier weighed up against the risk presented result in a decision that the occupier cannot tolerate the works
- ❑ If the property is vacant

##### **F.4.2. FORMAL ENFORCEMENT ACTION**

Statutory notices:

- ❑ Where notices are served the appropriate fee will be charged (where applicable) with the exception of Hazard Awareness Notices served on owner-occupiers.
- ❑ A revisit will be made to a premise as soon as practicable after expiry of a Notice
- ❑ Where appropriate, the officer will inform all interested bodies and copies of notices will be sent to all parties as required under legislation

**F.4.3. WORKS IN DEFAULT**

Where a notice, order or licence has not been complied with this Council will consider, where the legislation makes provision, to carry out works to secure compliance with the notice.

Except in urgent cases the owner/person responsible must be served with:

- i. The relevant notice of intention; and
- ii. Information which clearly states the effect of the proposed action and its subsequent costs, including administration charges, and details of how such sums may be recovered, or made a charge on the property.

Immediate action: this includes the power to take emergency action by entry to a premises, if necessary, and make safe areas or articles which are a cause of imminent danger of serious harm under section 40 and 43 Housing Act 2004.

**F.5. OTHER ENFORCEMENT MATTERS**

**F.5.2 CHARGING FOR ENFORCEMENT ACTION**

Section 49 of the Housing Act 2004 gives local authorities the power to make a reasonable charge as a means of recovering certain expenses incurred in:

- ❑ serving an improvement notice;
- ❑ making a prohibition order;
- ❑ serving a hazard awareness notice;
- ❑ taking emergency remedial action;
- ❑ making an emergency prohibition order;
- ❑ making a demolition order

The expenses are in connection with inspection of the premises, subsequent consideration of action and the service of notices. A charge will be made for all eligible enforcement action where works are not commenced by the specified date, unless there are extenuating circumstances. This charge will reflect the costs incurred by the Authority.

# APPENDIX G: ENVIRO-CRIME

## G.1. SCOPE

The term 'Enviro-Crime' has an evolving definition that essentially seeks to classify actions or circumstances that degrade local amenity. The following list identifies, for the purposes of this enforcement policy, those issues that are classified as an 'Enviro-Crime' as regards the duties of the Housing and Public Protection Service:

- ❑ Littering
- ❑ Abandoning a vehicle
- ❑ Fly-posting
- ❑ Fly-tipping
- ❑ Dog fouling
- ❑ Bonfires
- ❑ Accumulation of waste
- ❑ Nuisance vehicles
- ❑ Advertising of vehicle for sale on the public highway
- ❑ Repairing of vehicles on the public highway
- ❑ Stray dogs

Please note that the above list is not exhaustive.

It is important to note that whilst enviro-Crime rarely constitutes a significant threat to public safety or health it can, nevertheless, cause a significant blight to local communities and can lead to neighbourhood decline. Nationally, incidents of environmental crime have risen dramatically over the last 10 years and its impact on local wellbeing has been the subject of much research. In recognition of the harm that enviro-crime can have on communities, central government has passed legislation (the most notable being the Clean Neighbourhoods and Environment Act 2005) to enable local authorities to tackle this problem.

In recognition of the above, this Council takes enviro-crime seriously and will use its formal enforcement powers to deal with offenders. In contrast to the incremental approach to enforcement action outlined in Section 4 of this Policy, enviro-crime offences will be dealt with more rigorously as they are a) unlikely to be inadvertent breaches of law, and b) are often associated with the pursuit of unfair competitive trading advantage by, for example, the inappropriate disposal of waste (i.e. fly-tipping), or advertising (i.e. fly-posting).

## **G.2. OTHER RELEVANT CONSIDERATIONS**

In addition to the generic guidance offered by the Regulators' Compliance Code and Enforcement Concordat this Policy is designed to reflect the following sources of legislation, advice and guidance:

- ❑ The Clean Neighbourhoods and Environment Act 2005
- ❑ The Environmental Protection Act 1990 (as amended)
- ❑ The Local Government (Miscellaneous Provisions) Acts 1976/82
- ❑ The Highways Act 1980
- ❑ The Local Government Act 1972
- ❑ The Dogs (Fouling of Land) Act 1996
- ❑ The Anti-social Behaviour Act 2003
- ❑ Environmental Offences (Fixed Penalties)(Miscellaneous Provisions) Regulations 2006
- ❑ The Refuse Amenity Act 1978
- ❑ Byelaws of North Hertfordshire District Council and Hertfordshire County Council (or their predecessors)
- ❑ LACORS
- ❑ Relevant case law

## **G.3. THE USE OF ENFORCEMENT TOOLS**

### **G.3.1 FORMAL ENFORCEMENT ACTION**

The general principles relating to enforcement decision making are explained within Section 4 of this Policy.

The most significant enforcement aspect of the Clean Neighbourhoods and Environment Act 2005 is the power of local authorities to issue Fixed Penalty Notices (FPNs). These notices can, in appropriate cases, provide a quick, visible and effective way of dealing with these types of environmental problem and offer a more cost effective alternative to more formal enforcement action such as prosecution. Furthermore, the payment of the penalty does not constitute an admission of guilt and therefore this type of enforcement tool removes the possibility of the creation of a record of a criminal conviction.

The income to the Council arising from the payment of FPNs will be used to fund environmental related expenditure in accordance with the relevant provisions of the primary legislation and the Environmental Offences (Fixed Penalties)(Miscellaneous Provisions) Regulations 2006.

Accordingly, North Hertfordshire District Council favours the use of FPNs to tackle enviro-crime. The Council, however, reserves the right to consider alternative enforcement mechanisms on a case by case basis.

FPNs will generally be served for first time offenders concerning abandoned vehicles, dog fouling, littering, graffiti, and fly-posting associated with commercial gain, as the Council does not believe that there are any circumstances under which FPNs can be deferred in these cases.

Discretion, as informed by this Policy statement, will be exercised for some enviro-crime offences. For example, the Council recognises that occasionally both individuals (e.g. a resident seeking help in finding a missing pet via a poster on a lamp column) and not-for-profit bodies (e.g. a Parish Council advertising its summer fete) use *ad hoc* signs and posters to provide information to the local community. Whilst the use of this advertising is likely to amount to a fly-posting offence, the Council will seek to control this issue by informal means such as education and the provision of advice. However, unnecessary, disproportionate, offensive or dangerous signage or posters are likely to result in formal action if informal means have not resolved matters.

Likewise, where a member of the public has left waste at a Civic Amenity Site or Recycling Facility because it is either not open or is full, the Housing and Public Protection Service will seek to deal with these cases in a sensitive manner having regard to the circumstances of each incident. However, significant deposits of waste, or repeat offences, are likely to result in formal enforcement action. Notwithstanding the above, other departments of the Council that act in the capacity of Waste Collection Authority or Principle Litter Authority may take their own enforcement action directly.

#### **G.4. OTHER ENFORCEMENT MATTERS**

Fixed Penalty Notices may be issued when an authorised officer of the Council reasonably believes a person has committed an offence as set out in above legislation and there is sufficient evidence to support a successful prosecution.

Authorised officers have the statutory power to require the name and address of an alleged offender. Failing to supply these details, or giving a false name and address, is a separate offence for which the Council is likely to seek to prosecute for (in addition to the original offence). In appropriate cases, the Council will seek landowner's permission to enter private land and to issue FPNs for offences committed there.

Photographs or CCTV images may be taken and used to support evidence of an offence and/or confirm identity of the offender whether or not the offender is under 18 years.

On-the-spot FPNs will only be issued where an alleged offender is compliant and able to understand what an FPN is. The issuing officer must also ensure that there is sufficient evidence to confirm the alleged offenders identity, age and place of residence. An FPN must be issued to, and received by, the offender. However, FPNs need not be issued at the time of the offence, but can be given just after it has been committed or within a reasonable period thereafter.

Normally offences resulting in an FPN will be witnessed directly by an authorised officer. However, an authorised officer may consider it appropriate to issue a FPN to a suspect if they have not directly witnessed the offence, but have reliable witness testimony.

A Fixed Penalty Notice may not be appropriate:

- ❑ Where the person refuses to accept an FPN, or where a suspect is non-compliant, e.g. aggressive, abusive or threatening.
- ❑ In the following circumstances every effort will be made to take, or express, the required information with the assistance of an interpreter or appropriate adult: where an alleged offender appears to be unable to understand the fact that they have committed an offence; or, where they appear not to understand the option of accepting a FPN; or, there is any doubt about their ability to understand English.
- ❑ Where no satisfactory address exists for enforcement purposes.
- ❑ Where it is known that the alleged offender has previous convictions or a caution for that or a similar offence, or has been issued with a number of FPN's, particularly if they have not been paid.
- ❑ Where the safety of the issuing officer may be compromised.

# APPENDIX H: COMMUNITY SAFETY

## H.1. SCOPE

The Housing and Public Protection Service undertakes a range of duties in connection with the community safety function. The Council recognises the value of collaborative working in this area and is a committed member of the North Herts Community Safety Partnership (NHCSPP). Accordingly, interventions aimed at reducing crime and disorder (and equally its perception) are coordinated via the Partnership’s Responsible Authorities Group (RAG – a strategic partnership group) and operationally by the Joint Action Group (JAG).

The Council deals with community safety matters in two principle ways: firstly, by means of the provision of advice, diversionary activities, community reassurance events, and the encouragement of responsible behaviour; secondly, it may make use of its enforcement powers, in an proportionate and appropriate way, to manage crime and disorder.

Aside from the strategic planning and coordination of services to tackle local crime and disorder, the Council also seeks to investigate and resolve instances of anti-social behaviour. The term anti-social behaviour has an evolving definition, but is defined within the Crime and Disorder Act 1998 as behaviour which has *"caused or was likely to cause harassment, alarm or distress to one or more persons not from the same household as himself."* Given this imprecise definition, the following list, which is by no means exhaustive, provides an indication of the sort of activities that have been described as anti-social behaviour that the Council’s Anti Social Behaviour Officer will investigate:

- Racially motivated behaviour
- Intimidation of any person involved in an Anti Social Behaviour (ASB) case
- Intimidation and harassment (in connection with sex, gender, religion, disability and age)
- Drug abuse/misuse
- Alcohol abuse/misuse
- Under age alcohol use in public
- Neighbour disputes
- Verbal abuse
- Graffiti
- Noise nuisance
- Minor damage to property
- Vehicle nuisance
- Begging
- General private or public nuisances (e.g. no ball games disputes)
- Gatherings/groups of people acting, or perceived to be acting, in an intimidatory way

One of the main features of anti social behaviour is its indiscriminate nature. People from all housing tenure types, whether they are owner occupiers, tenants (private or social) or licensees may equally be the perpetrators or victims of anti

social behaviour. Consequently, to deal with this issue effectively and efficiently, a cross tenure approach is needed in order to offer residents of North Hertfordshire appropriate protection from anti social behaviour. Given that this Council, Hertfordshire Police and landlords all have a part to play in the management of anti social behaviour, it is important that the most appropriate partner takes the lead in case investigation as this will help avoid unnecessary duplication. The existence of a lead agency does not relieve other interested parties of their powers or duties in connection with these cases.

The following considerations will influence which regulatory body will take the **lead** in tackling instances of anti social behaviour within North Hertfordshire:

- Hertfordshire Police: where an individual, or group of individuals' behaviour, results in a criminal offence being committed on any land.
- North Hertfordshire District Council: where incidents of anti social behaviour (not resulting in a criminal offence) take place on any land and are attributable to persons unassociated with a property or tenant of a Registered Social Landlord (see below).
- Registered Social Landlords: where incidents of anti-social behaviour (not resulting in a criminal offence) are attributable to persons who are residing in, or who are otherwise on, premises provided or managed by a Registered Social Landlord or persons who are in the vicinity of such a premises.

In the context of the North Herts Community Safety Partnership, the Council has published a set of minimum service standards in connection with anti-social behaviour. These standards, which are published in full on the Council's website, cover the following areas:

- **Reducing Anti-Social Behaviour**  
North Herts Community Safety Partnership recognises that anti-social behaviour remains a priority for many local residents. Partners, including the Council, will continue to work together to not only reduce anti-social behaviour, but also perceptions regarding anti-social behaviour. This will be done by using the wide range of powers and tools available against anyone who engages in, or causes misery to others, through anti-social behaviour.
- **Taking reported cases of Anti-Social Behaviour seriously**  
The Council recognises that being a victim, or witness, to anti-social behaviour can have a lasting impact as well as causing distress and concern. The Council will ensure that every case of anti-social behaviour that it receives will be dealt with in a timely, supportive and professional way.
  - Complaints will be taken seriously and investigated thoroughly

- ASB complainants will be allocated a named person to contact and will be provided with the officer's contact details
- Each case will be given a case grading and investigations will be undertaken within specified timescales
- Where appropriate, the Anti – Social Behaviour Officer will arrange to meet complainants at a mutually convenient time and date to discuss the case
- Where appropriate, ASB complainants will be provided with a diary to record details of anti social behaviour incidents

Whilst the Council is committed to dealing with anti-social behaviour, it may only do so with the support and cooperation of all interested parties. In many instances formal action cannot be taken by the Council unless key witnesses and/or complainants are prepared to engage with its investigating officers. Where this cooperation is necessary, and not forthcoming, the Council may have little option but to terminate an investigation.

The Council's services in connection with anti social behaviour will primarily be delivered during normal office hours. However, specific operations or investigations may take place outside of these times as dictated by the particulars of a case.

- **Providing support and help for victims of Anti-Social Behaviour**  
The Council understands that being a witness, or a victim, of anti-social behaviour is an unpleasant experience and therefore support will be offered to all those touched by anti-social behaviour.
- **Providing regular information to residents on what action is being taken to tackle anti-social behaviour**  
The Council will endeavour to keep residents informed not only about their individual complaint, but also to publicise to the whole district what is being done to address anti-social behaviour and other community safety matters. This will be done by publicising information relating to how the NHCSP is tackling anti-social behaviour in newsletters, the local press and through raising awareness at community events.
- **Ensuring that there are effective links between local partners to tackle anti-social behaviour in a timely manner**  
Each partner, including this Council, has its own procedures to deal with reports of anti-social behaviour; however partners will liaise with each other when a case needs a multi-agency problem solving solution. This will be done by sharing information with one another on cases that require a collaborative response and working with communities in addressing anti-social behaviour issues.

- ❑ **Providing residents with a right to complain if effective action is not taken by local agencies**  
This Council takes complaints regarding poor service delivery seriously. The mechanisms of redress are outlined in Section 5.8, above, of this Policy.

**H.2. OTHER RELEVANT CONSIDERATIONS**

In addition to the generic guidance offered by the Regulators' Compliance Code and Enforcement Concordat, this Policy is designed to reflect the following sources of legislation, advice and guidance in connection with the management of anti-social behaviour:

- ❑ Crime and Disorder Act 1998 (as amended)
- ❑ Police Reform Act 2002
- ❑ Anti Social Behaviour Act 2003
- ❑ Drugs Act 2005
- ❑ Police and Justice Act 2006
- ❑ Violent Crime Reduction Act 2006
- ❑ Policing and Crime Act 2009
- ❑ Byelaws of North Hertfordshire District Council and Hertfordshire County Council (or their predecessors)
- ❑ LACORS
- ❑ CIEH guidance
- ❑ ACPO guidance
- ❑ Home Office guidance and directions
- ❑ Relevant case law

Beyond the legislative provisions, above, there is a considerable amount of statute law that deals with behaviour that could, given the definition provided within the Crime and Disorder Act 1998, be deemed to be anti-social. The Council will endeavour to use the most appropriate legislative provision, and service area, to deal with anti-social behaviour cases in order to arrive at the best solution for members of the public and communities.

**H.3. THE USE OF ENFORCEMENT TOOLS**

The aim of the NHCSP, shared by North Hertfordshire District Council, is to improve the quality of life for all individuals and for the wider community to enjoy their neighbourhood whilst also reducing the perception of anti-social behaviour.

The Council recognises that anti-social behaviour (ASB) can be a serious problem that affects the quality of life of individuals, families and communities. It is committed to tackling anti-social behaviour and will use the range of powers

and resources available, both criminal and civil, to ensure that it, together with its partners, take an effective stand against perpetrators.

Most cases of anti-social behaviour can be resolved by informal means such as the provision of advice and guidance. However, where this is not possible or practical more direct means of enforcement will be considered as the circumstances of each case dictate. Consistent with the spirit of this Policy, enforcement interventions will therefore be proportionate and, if necessary and appropriate, progressive.

### **H.3.1. INFORMAL ENFORCEMENT ACTION**

#### **NEIGHBOURHOOD SURVEYS**

In certain cases where there is an ongoing ASB complaint or neighbourhood dispute, it may be appropriate for the Council to undertake a neighbourhood survey in order to identify the full impact of the problem on the local community. Information gathered as part of this exercise will inform the use of enforcement intervention(s), both formal and informal.

#### **GOOD NEIGHBOURHOOD AGREEMENTS (GNAS)**

A Good Neighbourhood Agreement is an informal and voluntary document between two or more parties (other than the Council) in an effort to resolve neighbourhood disputes. It seeks to identify unacceptable behaviour and prohibit its recurrence. Failure to abide by the terms of this Good Neighbour Agreement may result in formal enforcement action.

#### **ACCEPTABLE BEHAVIOUR CONTRACTS (ABCs)**

In contrast to an Anti Social Behaviour Order (ASBO) which is an official, legally binding order with *statutory* implementation, an Acceptable Behaviour Contract (ABC) is an informal procedure that seeks to eliminate anti-social behaviour by voluntary agreement. ABCs can be used in connection with children over the age of 10 years old, young adults and older adults.

The Acceptable Behaviour Contract is a formal agreement in written form which is made between an individual and most often their parent or guardian (in the case of children/young people) and the Council, or other pertinent regulatory body such as a Registered Social Landlord. They are personalised and individually written to meet individual circumstances and needs. When signed, individuals agree that they will not display or act in an anti-social manner in the future.

This Council will only enter in to an Acceptable Behaviour Contracts when:

- ❑ Advice and/or warnings have not brought about an improvement in behaviour
- ❑ Advice and/or warnings are not thought to be an effective way of bringing about an improvement in an individual's conduct
- ❑ Evidence exists as to an individual's anti-social behaviour or likely future behaviour

- The perpetrator of the anti-social behaviour (or their parent or guardian) has given an indication that they will sign an Agreement

Should the perpetrator refuse to enter in to an Agreement, or the terms of an Agreement are subsequently breached, the Council (or its regulatory partners) may take formal action such as a prosecution, an application for an ASBO, tenancy enforcement action, etc., in order to bring the anti-social behaviour in question to an end.

#### **PARENTAL AGREEMENTS (PAs)**

Similar to ABCs, Parental Agreements are voluntary and invite the cooperation of the parents or guardians to be effective. The Parental Agreement is aimed at improving the conduct of individuals under ten years of age as an individual younger than this is not responsible for his or her actions by law. The Parental Agreement outlines the expected behaviour of the child and they are usually entered into in conjunction with an ABC for children/young people. These Agreements normally last for up to 6 months.

### **H.3.2. FORMAL ENFORCEMENT ACTION**

#### **ANTI SOCIAL BEHAVIOUR ORDERS (ASBOs)**

Anti Social Behaviour Orders (ASBOs) were introduced by the Crime and Disorder Act 1998. The powers to impose ASBOs were strengthened and extended by the Police Reform Act 2002, which introduced Orders made on conviction in criminal proceedings, Orders in county court proceedings and Interim Orders. ASBOs are civil orders that exist to protect the public from behaviour that causes or is likely to cause harassment, alarm or distress. An Order contains conditions prohibiting the offender from specific anti-social acts or entering defined areas and is effective for a minimum of two years. Orders can be made against anyone who is at least 10 years of age but are not criminal penalties in themselves and are not intended to punish the offender.

However, breaches of an Anti Social Behaviour Order, once granted, can result in 5 years of imprisonment and/or an unlimited fine.

The Police, British Transport Police, this Council and Registered Social Landlords are able to seek ASBOs from a range of courts depending on the circumstances of the case. The Council sees the use of ASBOs as part of a tiered approach to the tackling of anti-social behaviour; it is unlikely to seek an ASBO until alternative measures have been exhausted. However, there may be instances where an application directly for an ASBO is appropriate.

The Council will work with its regulatory partners to identify the enforcement agency that is best placed to proceed with an Anti Social Behaviour Order, if one is warranted. Ordinarily, the Council would expect Registered Social Landlords to take the lead in cases involving their tenants, and Hertfordshire Police to do likewise where a prosecution is planned for an offence associated with anti-social behaviour.

**DISPERSAL ORDERS (DOs)**

Part IV (Sections 30-35) of the Anti-social Behaviour Act 2003 contains provisions relating to the designation of a Dispersal Order. Section 30 gives the police powers in designated areas to disperse groups of two or more where their presence or behaviour has resulted, or is likely to result, in a member of the public being harassed, intimidated, alarmed or distressed.

Dispersal Orders have two main objectives – a) the co-ordinated management of local crime, disorder and anti-social behaviour, and b) the protection of young people. The latter is an often overlooked aspect of an Order; the removal of young persons from troubled neighbourhoods or locations is aimed at preventing them from being exposed to harmful influences such as the use of illegal drugs, underage consumption of alcohol, and participation in gang behaviour.

The implementation of a Dispersal Order cannot proceed without the explicit consent of North Hertfordshire District Council. Similarly, the Council must be consulted if an Order is to be withdrawn before its natural expiry date.

This Council believes that Dispersal Orders are an important tool that can be used to tackle area based crime and disorder. Given that Dispersal Orders have a potential impact on Article 11 rights of individuals, the Council believes that they should be used sparingly and only when sufficient evidence exists for their implementation. However, in these circumstances the Council welcomes any approach by Hertfordshire Police regarding the declaration of a Dispersal Order.

Any proposal regarding a Dispersal Order will be presented to the relevant Area Committee for consideration; the Head of the Housing and Public Protection Service has delegated power to provide the Council's response to the Police on whether such an Order should proceed. Given the gravity of this decision, this function will not be sub-delegated within the Service – see Section 5.2.

**ANTI SOCIAL BEHAVIOUR CLOSURE ORDERS (ASBCOs)**

Part I of the Anti-Social Behaviour Act 2003 introduced new powers specifically designed to close 'crack houses'. The legislation enables the police to serve a closure notice, with immediate effect, on premises used in connection with the production of class A drugs (associated with the occurrence of disorder or serious nuisance) subject to obtaining a closure order in court within 48 hours. These are primarily police powers, with a requirement to consult with this Council in seeking such a closure. North Hertfordshire District Council will respond to any Part I closure consultation from the Police in a timely fashion. The Head of the Housing and Public Protection Service will take responsibility for the coordination of the Council's response to such a request.

Part IA of the Act (premises associated with persistent disorder or nuisance) was inserted by the Criminal Justice and Immigration Act 2008, and came into force in December 2008. Known as a "Part 1A Closure Order" or Antisocial Behaviour Closure Order the new sections of the 2003 Act permit the Police or this Council to apply to Magistrates to close premises where they are satisfied that within the preceding three months the premises have been associated with "*significant and persistent disorder or persistent serious nuisance to members of the public.*" The Order can be made in respect of business or residential premises. An application

for a Closure Order under this provision by the Council will only proceed if the Head of the Housing and Public Protection Service and the Council's Legal Services Manager both agree that it is in the public interest to do so (see Section 5.2 of this Policy).

**DRINK BANNING ORDERS (DBOs)**

Drink Banning Orders are civil orders imposed by the courts that can be made against an individual aged at least 16 if they have engaged in criminal or disorderly conduct while under the influence of alcohol. They were introduced on the 31 August 2009 and are a consequence of the Violent Crime Reduction Act 2006. Individuals in receipt of an Order have the opportunity to attend an approved course voluntarily in order to address their alcohol-related behaviour, and will have conditions placed upon them to prevent further disorderly conduct. Breaching the order can lead to a fine of up to £2,500.

Much like Anti Social Behaviour Orders, DBOs can be sought by the Police, British Transport Police and councils such as North Hertfordshire District Council, but not Registered Social Landlords. Members of the North Herts Community Safety Partnership will work to establish where a DBO offers any advantage over an ABC or ASBO, and if it does, which agency should make the application to a court.

**INELIGIBILITY FOR SOCIAL HOUSING**

Part VI of the Housing Act 1996 provides a power for the Council, acting in its capacity as the Local Housing Authority, to declare an applicant ineligible for social housing if that person is guilty of unacceptable behaviour. This power is exercisable only where the Council is satisfied that the behaviour in question would render the applicant unsuitable for a tenancy and that a court would support this decision vis-à-vis a Possession Order application.

Similarly, the Council's social housing allocation policy provides a mechanism for suspending the allocation of a property for persons already registered for social housing assistance if, subsequently, evidence of unacceptable behaviour comes to light.

This Council will consider the use of these powers where it comes in to possession of evidence that a person seeking a social tenancy (or a member of that person's household) has engaged in current unacceptable behaviour (of a criminal nature or otherwise).

# APPENDIX I: MISCELLANEOUS MATTERS

## I.1. ILLEGAL EVICTION

The Council has a duty to respond to instances of homelessness and to prevent it wherever possible and practicable. North Hertfordshire District Council is an enforcing authority for the Protection from Eviction Act 1977 and will exercise the discretion under this legislation to prosecute for the illegal eviction or harassment of residential tenants.

In all cases after the initial assessment has been carried out the Council will endeavour to negotiate with all involved parties in an effort to resolve the matter. If this fails the Council will consider if sufficient evidence exists to support a prosecution.

## I.2. SECURING GRANTS, LOANS, TENANCIES OR OTHER PECUNIARY ADVANTAGE BY DECEPTION

The North Hertfordshire District Council is committed to protecting public funds in order to secure Best Value services: in practice this means deterrence, prevention and detection of fraud.

In any case where the Council determines that an applicant for financial assistance has made a fraudulent claim or wilful deception or omission in their application, it will demand full repayment of any amount of assistance so obtained; further, a claim for interest from the date of payment until the date of repayment may be made. In particular, it is an offence under Section 171 of the Housing Act 1996 for a person to make a statement which is false, or knowingly withhold information from the Council which would be relevant to their application for housing assistance. Where fraud or deception is suspected, consideration will be given to the matter being referred to Hertfordshire Constabulary or relevant enforcement agency.

If, following approval of an application for assistance, the Council becomes aware that the applicant (or applicants in the case of a joint application) was not entitled to the assistance on the date on which it was approved, no payments or further payments will be made, and any amount of assistance already paid will be required to be repaid with interest.

# GLOSSARY

ASB	Anti Social Behaviour
ACPO	Association of Chief Police Officers
BVPI	Best Value Performance Indicator
CIEH	Chartered Institute of Environmental Health
COP	Code of Practice
CPS	Crown Prosecution Service
DEFRA	Department of Environment, Food and Rural Affairs
DETR	Department of Environment, Transport and the Regions
EA	Environment Agency
EERSP	East of England Regulatory Services Partnership
EHO/P	Environmental Health Officer/Practitioner
FPN	Fixed Penalty Notice
FSA	Food Standards Agency
HEBEG	Hertfordshire and Bedfordshire Environmental Health Group
HELA	<u>H</u> ealth and <u>S</u> afety <u>E</u> xecutive <u>L</u> ocal <u>A</u> uthority Enforcement Liaison Committee
HLEP	Hertfordshire Licensing Enforcement Protocol
HMO	House in Multiple Occupation
HSE	Health and Safety Executive
LACORS	Local Authorities Co-ordinators of Regulatory Services
LOLER	The Lifting Operations and Lifting Equipment Regulations 1998
LPI	Local Performance Indicator
LSP	Local Strategic Partnership
NHCSP	North Herts Community Safety Partnership
NHDC	North Hertfordshire District Council (the 'Council')
RIDDOR	The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995
RSL	Registered Social Landlord