

Leisure and Environment Enforcement Policy

DRAFT





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Introduction

This Enforcement Policy applies to the functions of the Environmental Health and Waste and Street Scene Services in the Leisure and Environment Directorate. It details the overall approach to enforcement in accordance with relevant legislation, statutory codes of practice and other guidance.

The functions and responsibilities of the services include the environmental protection laws -including fly tipping, littering and pollution control and enforcement of food, water, health and safety, housing standards, public health, nuisance, the prevention and control of infectious diseases. The enforcement options relating to individual regularity functions are detailed in separate schedules.

This Policy has been prepared in accordance with relevant legislation and guidance and in particular the Regulators' Code. The Policy has received Cabinet approval and will be reviewed annually.

Enforcement

The Enforcement is defined as including any advice, inspection, action, instruction or warning, caution, prosecution (or other types of court action, for example a warrant) taken in relation to a person or organisation that is or is believed to be acting unlawfully.

The Directorate will take a graduated approach to enforcement of legislation where appropriate. All person(s) and companies will be encouraged to understand the nature and extent of their responsibilities and comply voluntarily. The Directorate will use a range of investigation methods including the use of CCTV and other recording devices. The Directorate will pursue prosecution where circumstances indicate a significant risk or crime, or where formal action is in the public interest.

In considering whether to initiate enforcement action the Directorate will take account of the following:

- Code for Crown Prosecutors
- Regulators' Code
- Police and Criminal Evidence Act 1984 (and associated Code of Practice)
- Criminal Procedure and Investigations Act 1996 (CPIA)
- Regulation of Investigatory Powers Act 2000 (RIPA)
- Regulatory Enforcement and Sanctions Act 2008
- Legislative and Regulatory Reform Act 2006
- Powers of Entry Code of Practice
- Other service specific codes or guidance.

Principles of Enforcement

The Directorate will ensure that its approach to regulation is underpinned by the principles of enforcement as follows:

- Proportionality in the application of the law and in securing compliance. The Directorate will ensure that any action it takes to achieve compliance or bring individuals/companies to account for non-compliance will be proportionate to risks and/or to the seriousness of the breach.
- Consistency of approach and application. The Directorate will carry out its activities in a fair, equitable and consistent manner. In each case officers will consider a number of variables including the:
 - degree of risk
 - attitude and competence of management/business operator/duty holder/individual
 - previous history of the business operator/duty holder/individual
 - seriousness of the breach.

The Directorate will ensure that it has procedures in place to promote and ensure consistency between officers, other authorities and enforcement bodies.

- Transparency on the operation of the services so that those whose activities are regulated by the Directorate know what they may expect from each service.
- Services will assist and advise duty holders to understand and fulfil their responsibilities and provide information on the Directorate role as a regulator.

Individuals or businesses have a right to query or appeal against enforcement action where there are statutory appeal mechanisms. Details of the mechanisms for query or appeal will be provided where appropriate.

- Targeting of enforcement action. The services will direct their enforcement and regulatory effort primarily towards those whose activities give rise to the most serious risk or where the risks are less well controlled. Action will be focused on those directly responsible for any breach and who are best placed to control it. Enforcement action will target the issues that most affect the residents and the environment in Hambleton and therefore will meet all the Council's priorities.

Authorisation of Officers

The Council has a system of delegation to individual officers. This delegation is contained in the Council's constitution which is available upon request or on line at: <http://democracy.hambleton.gov.uk/ieListDocuments.aspx?CId=237&MId=668&Ver=4&Info=1>

Only officers who are competent by qualification training and/or experience will be authorised to take enforcement action.

■ Offences and Penalties

Fixed penalty notices will be issued to individuals and business operators where the legislation provides as an alternative to prosecution. The courts will impose appropriate sentence/s upon conviction in accordance with provisions detailed in legislation and sentencing guidelines. The alleged offences and potential penalties will be made clear to prospective defendants throughout the investigation.

■ Investigation with other Agencies

Where an enforcement role is shared with another agency, the services will undertake joint enforcement activity in order to minimise any unnecessary duplication and delay. Joint working may be undertaken with agencies including local authorities, the Police, the Food Standards Agency or any other relevant agency as appropriate.

■ Equality and Diversity

The Directorate will ensure that decisions are not influenced by the gender, disability, religion or political belief, language, ethnicity or sexual preferences of offenders, victims or witnesses. Translators will be provided for interviews where the interviewee's first language is not English and consideration will be given to the provision of correspondence in other languages. Officers will also carry out visits outside normal office hours when the business concerned operates at those times.

When dealing with juveniles or people who are vulnerable due to learning difficulties, mental illness or any other factor, due regard will be taken.

■ Consultation and Review

The services will consult and inform their stakeholders of any changes to legislation and the implications of those changes. The services will provide the mechanisms for those whose activities are regulated by the Council to comment on the service they have received and/or the actions taken by the Council. The Council will act upon any comments or complaints about the services or the conduct of its officers in an appropriate manner and in accordance with the policies of the Council.

■ Powers of Entry

When exercising their statutory powers officers will have regard to specific legislation and codes of practice including:

- Police and Criminal Evidence Act 1984 (and associated Code of Practice)
- Regulation of Investigatory Powers Act 2000 (RIPA)
- Powers of Entry Code of Practice
- Food Law Code of Practice.

■ Primary Legislation

Primary Legislation includes:

European Communities Act 1972 and relevant Regulations made in accordance with the Act

Public Health (Control of Disease) Act 1984

Water Industry Act 1999

Food Safety Act 1990

Health and Safety at Work Act 1974

Environmental Protection Act 1990

Environment Act 1995

Housing Act 2004

Housing and Planning Act 2016

Animal Welfare Act 2006

Caravan Sites and Control of Development Act 1960

Clean Neighbourhoods and Environment Act 2005

Refuse Disposal (Amenity) Act 1978

Control of Pollution (Amendment) Act 1989

Anti-social Behaviour Act 2003

Anti-social Behaviour Crime and Policing Act 2014

Waste and Street Scene Enforcement Options

Hambleton District Council, as a Waste Enforcement Authority, has a duty placed on it by the Environmental Protection Act 1990 to manage and regulate waste. The Council is committed to maintaining a clean and safe environment for the benefit of everyone in the district. This commitment recognises its responsibility to keep the streets and local environment clear of litter, dog fouling and other local environmental quality issues. The following options will be considered when enforcing this duty:

CONTROLLING WASTE – including Flytipping; Littering; Litter clearance and Control of Street Litter; Graffiti; Flyposting; Abandoned Vehicles and Nuisance Parking; Dog Fouling	
No Action	Enforcement options shall not be considered where there is no evidence available to identify the likely perpetrator.
Informal action	May take the form of: Advice; Verbal warning; Written information <ul style="list-style-type: none"> • Where it can be reasonably expected that informal action will achieve compliance.
Fixed Penalty Notices	Where it is in the public interest to do so, the Council will endeavour to give the offender an opportunity to avoid prosecution by the payment of a Fixed Penalty Notice if appropriate. The issuing of Fixed Penalty Notices will be considered by the Council in the following circumstances - where the offence has been admitted to by the offender: <ul style="list-style-type: none"> • where the offence has not been committed by the offender before • where there is sufficient evidence to prove the case. Fixed Penalty Notices are not appropriate with repeat offenders and the Council will seek to prosecute them through the court system.
Prosecution	Prosecutions will be considered under any of the following circumstances: <ul style="list-style-type: none"> • The offence is serious and/or there is a risk to the public • There is a poor history of compliance • There has been a repetition of a breach that was subject to a simple caution • There have been repeat offences • False information has been supplied wilfully, or there has been an intent to deceive • Officers have been intentionally obstructed in the lawful course of their duties • A Fixed Penalty Notice has not been accepted

**WASTE AND STREET SCENE ENFORCEMENT ACTIONS:
MICROCHIPPING OF DOGS (ENGLAND) REGULATIONS 2015**

No Action	Enforcement options shall not be considered where there is no evidence available to identify the likely perpetrator.
Informal action	May take the form of: Advice; Verbal warning; Written information <ul style="list-style-type: none"> • Where it can be reasonably expected that informal action will achieve compliance.
Simple Caution	Simple Cautions will be used under the following circumstances: <ul style="list-style-type: none"> • To deal quickly and simply with less serious offences • To divert offenders, where appropriate, from appearing in criminal courts • To reduce the likelihood of re-offending. Simple cautions are issued in accordance with Home Office Circular 30/2005.
Prosecution	Prosecutions will be considered under any of the following circumstances: <ul style="list-style-type: none"> • The offence is serious and/or there is a risk to the public • There is a poor history of compliance • There has been a repetition of a breach that was subject to a simple caution • There have been repeat offences • False information has been supplied wilfully, or there has been an intent to deceive • Officers have been intentionally obstructed in the lawful course of their duties • A Fixed Penalty Notice has not been accepted

Food Safety

Food safety	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
No Action	Enforcement options shall not be considered where there is no risk to public health from the activities of food businesses.
Informal action This may take the form of: Advice; Verbal warning; Written information; Inspection reports	<ul style="list-style-type: none"> • The act or omission is relatively minor. • From the individual/businesses' past history it can be reasonably expected that informal action will achieve compliance. • Confidence in the individual/business's management practices is high. • The consequence of non-compliance will not pose a significant risk to those affected by the activities of the food business.
Hygiene Improvement Notice	<ul style="list-style-type: none"> • Formal action is proportionate to the risk to public health. • There is a record of non-compliance with breaches of food hygiene regulations. • The authorised officer has reason to believe that an informal approach will not be successful.
Improvement Notice	<ul style="list-style-type: none"> • Formal action is proportionate to the risk to public health. • There is a record of non-compliance with breaches of food laws relating to the matters enforced by a district council. • The authorised officer has reason to believe that an informal approach will not be successful.
Voluntary Closure (food hygiene)	<ul style="list-style-type: none"> • There is an imminent risk of injury to health. • Immediate action is required to protect public health. • Officer is confident that premises will not reopen without prior consent of the officer. • Taken in agreement with the food business operator.
Hygiene Emergency Prohibition Notice	<ul style="list-style-type: none"> • There is an imminent risk of injury to health. • Immediate action is required to protect public health. • Informal voluntary closure is considered inappropriate due to the nature or severity of the health risk conditions and that the officer is not confident that the business will remain closed voluntarily. • The service of a Hygiene Emergency Prohibition Notice will be followed by an application to the Magistrates court for a Hygiene Emergency Prohibition Order.

Emergency Prohibition Notice	<ul style="list-style-type: none"> • There is an imminent risk of injury to health. • Immediate action is required to protect public health. • Informal voluntary closure is considered inappropriate due to the nature or severity of the health risk conditions and that the officer is not confident that the business operator will mitigate the risk voluntarily. • The service of an Emergency Prohibition Notice will be followed by an application to the Magistrates court for an Emergency Prohibition Order.
Remedial Action/ Detention Notices – only applicable to approved premises.	<p>Remedial Action/Detention Notices will be considered if:</p> <ul style="list-style-type: none"> • There is a breach of the Hygiene Regulations. • An inspection under the Hygiene Regulations has been hampered. • There are indications or suspicions that food at an establishment is unsafe and requires examination. • Immediate action is required to ensure food safety. • Continuing offences require urgent action and corrective actions have been ignored.
Simple Caution	<p>Simple Cautions will be used under the following circumstances:</p> <ul style="list-style-type: none"> • To deal quickly and simply with less serious offences. • To divert offenders where appropriate from appearing in criminal courts; and • To reduce the likelihood of re-offending. • Simply cautions are issued in accordance with Home Office Circular 30/2005.
Prosecution	<p>Prosecutions may be taken under one or more of the following circumstances including:</p> <ul style="list-style-type: none"> • The offence is serious. • There are repeated offences. • There has been a failure to comply with a statutory notice or there has been a repetition of a breach that was subject to a simple caution. • False information has been supplied wilfully, or there has been intent to deceive, in relation to a matter which gives rise to significant risk. • Officers have been intentionally obstructed in the lawful course of their duties.

Seizure and Detention of Food

Officers may detain any food they suspect fails to comply with food safety requirements or food that they suspect has not been produced or distributed in accordance with hygiene laws.

The seizure and detention of food will be carried out in accordance with the administrative provisions of Section 9 of the Food Safety Act 1990.

Officers may certify any food that has not been produced, processed or distributed in accordance with the Hygiene Regulations, by use of Regulation 29 of the Food Safety and Hygiene (England) Regulations 2013, and then seize the food by the use of Section 9 of the Food Safety Act 1990.

Revisits

Revisits to check compliance in respect of contraventions of food safety legislation will be carried out in the following circumstances:

- To check compliance with statutory notices.
- To monitor compliance following inspections and other interventions.
- Where there are contraventions which might lead to risks to food safety.
- Where food business operators have been required to provide documented procedures for assessment.

The same officer who undertook the original inspection/visit will wherever practicable, undertake revisits.

Relevant legislation and guidance includes:

Food Safety Act 1990

Food Safety and Hygiene England Regulations 2013

Food Standards Agency Food Law Code of Practice and Practice Guidance.

Industry Guides to Good Hygiene Practice.

Health and Safety

Health and safety	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
No Action	Where an inspection or investigation reveals no contraventions and the existence of satisfactory management controls. Business proprietors and/or complainants will be advised accordingly.
Informal action This may take the form of: Advice; Verbal warning; Written information; Inspection reports	<p>The act or omission is relatively minor.</p> <ul style="list-style-type: none"> • From the individual/businesses' past history it can be reasonably expected that informal action will achieve compliance. • Confidence in the individual/business's management practices is high. • The consequence of non-compliance will not pose a significant risk to those affected by work activities.
Improvement Notice	<p>The breach of the law is more serious.</p> <ul style="list-style-type: none"> • There is a lack of confidence in the proprietor responding to an informal approach. • There is a history of non-compliance with informal action. • Standards are generally poor and management are not aware of the required controls/standards. • The consequences of non-compliance could result in serious risks to health and safety or inadequate welfare provision.
Prohibition Notice	<p>An activity involves, or will involve, a risk of serious personal injury.</p> <ul style="list-style-type: none"> • A notice will either prohibit the use of a premises, piece/s of equipment or process. • Prohibition will be considered when there is no confidence that the duty holder will voluntarily close the premises or cease the use of any equipment or process.
Simple caution	<p>Simple Cautions will be used under the following circumstances:</p> <ul style="list-style-type: none"> • To deal quickly and simply with less serious offences. • To divert offenders where appropriate from appearing in criminal courts; and • To reduce the likelihood of re-offending. • Simply cautions are issued in accordance with Home Office Circular 30/2005.

Prosecution	<p>Prosecutions may be taken under one or more of the following circumstances including:</p> <ul style="list-style-type: none"> • The gravity of the alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the duty holder warrants it. • There has been reckless disregard of health and safety requirements. • There have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance. • Work has been carried out without or in serious non-compliance with an appropriate licence or safety case. • A duty holder’s standard of managing health and safety is found to be far below what is required by health and safety law and poses a significant risk. • There has been a failure to comply with an improvement or prohibition notice • There has been a repetition of a breach that was subject to a simple caution. • False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk. • Inspectors have been intentionally obstructed in the lawful course of their duties.
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Death at Work

Where there has been a breach of the law leading to a work-related death a charge of manslaughter or corporate manslaughter will be considered. Investigation and prosecution decisions will be co-ordinated following a work-related death and the ‘Work-related deaths: A protocol for liaison’ will be followed. This protocol has been jointly agreed by the Health and Safety Executive, the Association of Chief Police Officers, the British Transport Police, the Crown Prosecution Service, the Local Government Association and the Office of Rail Regulation. Non-signatory organisations, such as the Maritime and Coastguard Agency, Civil Aviation Authority and the Chief Fire Officers Association, have agreed that they will take account of the protocol when responding to work-related deaths.

Seizure

Inspectors have the power to seize, render harmless, and, where appropriate, sample any article or substance that the inspector has reasonable cause to believe that such an article or substance is the cause of imminent danger of serious personal injury.

Seizure of articles or substances will be carried out in accordance with the administrative provisions of Regulation 20 of the Health and Safety at Work etc. Act 1974.

Revisits

Revisits to check compliance in respect of contraventions of health and safety legislation will be carried out in the following circumstances:

- To check compliance with statutory notices.
- Where there are contraventions which might lead to risks to health and safety.
- Where duty holders have been required to provide suitable and sufficient risk assessments.

The same officer who undertook the original inspection/visit will wherever practicable, undertake revisits.

Relevant legislation and guidance includes:

Health and Safety at Work etc. Act 1974

Health and Safety Executive Enforcement Guide;

Health and Safety Executive Enforcement Management Model;

Health and Safety Executives Mandatory Section 18 Guidance 'The Standard for Health and Safety Enforcing Authorities'

Relevant Health and Safety Executive Approved Codes of Practice (L series) and other guidance (HSG guidance)

Any other trade or best practice guidance as appropriate.

Water Supplies

Water Supplies	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
No Action	Enforcement options shall not be considered where there is no risk to public health from the activities of food businesses.
Investigation	If a water sample fails to comply with the prescribed concentrations or values, defined in the regulations, an investigation will be carried out to determine the cause of the failure/s. The relevant person will then be informed of the findings of the investigation and what further action will be necessary to ensure that the water complies with the prescribed concentration or value. Such an investigation will involve the taking of resamples from the private water supply. Depending on circumstances such samples may be taken from points on the private water supply other than was sampled previously.

<p>Informal action This may take the form of: Advice; Verbal warning; Written information; Inspection reports; Risk Assessments</p>	<p>Informal action is the first enforcement action to be considered where the water is unwholesome but not a potential danger to human health and in particular where:</p> <ul style="list-style-type: none"> • The risk to human health is not serious enough to warrant formal action (low or medium as defined in the Drinking Water Inspectorate (DWI) Risk Assessment Tool). • The previous record of the supply is such that it would be reasonable to expect compliance when informal action is taken. • Confidence in the supply's management is high. • The risk to public health as a result of non-compliance is not significant. • The action is part of an ongoing project to improve standards. • The supply is for a single domestic dwelling.
<p>Issue 'boil-notice' (Regulation 18, The Private Water Regulations 2009).</p>	<p>If the private supply of water intended for human consumption constitutes a potential danger to human health, then a notice must be served on the relevant person and the notice must:</p> <ul style="list-style-type: none"> • Identify the private supply to which it relates. • State the grounds for serving the notice. • Prohibit or restrict the use of that supply. • Specify what other action is necessary to protect human health. <p>The consumers of the supply will be informed of the notice and provided any necessary advice.</p> <p>If insufficient information is available to determine if the water constitutes a potential danger to human health, advice will be sought from Public Health England.</p>
<p>Serve a notice (Section 80, The Water Industry Act 1991).</p>	<ul style="list-style-type: none"> • The water is unwholesome or is likely to be supplied in an unwholesome state and there is potential danger to human health. • The risk to human health is serious enough to warrant formal action (high or very high risk as defined in the Drinking Water Inspectorate (DWI) Risk Assessment Tool) • There is a lack of confidence in the ability or will of the relevant person or person in control to respond to informal action. • There is previous history of non-compliance with informal action. • Standards are generally poor and there is low management awareness. <p>This notice will specify what steps are necessary to ensure that the water supplied is wholesome.</p> <p>The consumers of the supply will be informed of the notice and provided any necessary advice.</p> <p>If insufficient information is available to determine if the water constitutes a potential danger to human health, advice will be sought from Public Health England.</p>

Carry out work in default	The relevant criteria to be considered are one or both of the following: <ul style="list-style-type: none"> • Where all opportunities for appeal against the notice have expired. • Where the offence involves a failure either in full or in part with the requirements of a statutory notice.
Simple Caution	Simple Cautions will be used under the following circumstances: <ul style="list-style-type: none"> • To deal quickly and simply with less serious offences. • To divert offenders where appropriate from appearing in criminal courts; and • To reduce the likelihood of re-offending. • Simply cautions are issued in accordance with Home Office Circular 30/2005.
Prosecution	Prosecutions may be taken under one or more of the following circumstances including: <ul style="list-style-type: none"> • The offence is serious. • There is a poor history of compliance. • There has been a failure to comply with a statutory notice. • False information has been supplied wilfully, or there has been intent to deceive, in relation to a matter which gives rise to significant risk. • Officers have been intentionally obstructed in the lawful course of their duties.

Relevant legislation and guidance includes:

Water Industry Act 1991

The Private Water Supplies Regulations 2016

DWI Private Water Supplies Sampling Procedures Manual Version 1.4 August 2018

DWI Private Water Supplies Information Notes <http://dwi.defra.gov.uk/private-water-supply/regs-guidance/guidance.html>

Environmental Permitting

Environmental Permitting	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
No Action	Enforcement options shall not be considered where there is no risk to public health or the environment from the regulated activities.
Informal action This may take the form of: Advice; Verbal warning; Written information; Inspection reports	<ul style="list-style-type: none"> • The circumstances do not warrant formal action as the act or omission is relatively minor. • From the businesses' past history it can be reasonably expected that informal action will achieve compliance. • Confidence in the management practices is high. • The consequence of non-compliance will not pose a significant risk to those affected by the activities of the business. • It is expected that informal action will achieve compliance.
Warning Letters	<ul style="list-style-type: none"> • Where a permit condition is contravened, the operator maybe given a written warning to address the contravention. • The number of warnings given to the operator will vary depending on the seriousness of the situation and the decision to prosecute can be made at any time, having regard to the risk rating of the installation and history of non-compliance.
Information Notice	<ul style="list-style-type: none"> • An Information Request Notice may be served on an operator or any other person in order to obtain information relevant to enable the enforcement of the Environmental Permitting Regulations 2016 and 2018
Enforcement Notice	<ul style="list-style-type: none"> • When an operator has contravened, is contravening or likely to contravene an environmental permit condition. • If an incident or accident significantly affecting the environment has occurred as the result of the operation of the regulated facility.
Suspension Notice	<ul style="list-style-type: none"> • The operation of an installation involves a risk of serious pollution. • A suspension notice can be served in full on the entire regulated facility or in part, known as a 'partial suspension notice', whether or not the operator has breached a permit condition. • The suspension notice ceases to authorise the operation of either the entire regulated facility or, in the case of a partial suspension notice, those activities specified in the notice.

Prevent or remedy pollution	<p>A pollution 'clean-up' may be organised under the following scenarios:</p> <ul style="list-style-type: none"> • As an alternative to a suspension notice, if in the Council's opinion, the operation of a regulated facility involves the risk of serious pollution the Council may arrange for steps to be taken at the operator's expense for the risk to be removed. • If an operator commits any of the following offences which causes pollution the Council may arrange for steps to be taken to remedy the pollution at the operator's expense: <ul style="list-style-type: none"> • operating without a permit • contravening a permit condition • contravening an enforcement notice or suspension notice • failing to comply with an information notice • making false or misleading statements • making false entries • forging documents etc with intent to deceive <p>In this case the Council will give the operator at least five working days advance notice in writing of the steps the Council intends to take.</p>
Revocation Notice	<ul style="list-style-type: none"> • Appropriate where the exhaustive use of other enforcement tools has failed to protect the environment. • Revokes an environmental permit or part of a permit. • Non-payment of the annual subsistence charge.
Simple Caution	<p>Simple Cautions will be used under the following circumstances:</p> <ul style="list-style-type: none"> • To deal quickly and simply with less serious offences. • To divert offenders where appropriate from appearing in criminal courts; and • To reduce the likelihood of re-offending. • Simply cautions are issued in accordance with Home Office Circular 30/2005.

Prosecution	<p>Prosecutions may be taken under one or more of the following circumstances including:</p> <ul style="list-style-type: none"> • Serious breach of the Environmental Permitting regulations including • Operating a regulated facility without a permit. • Failure to comply with or contravene a permit condition • Failure to comply with the requirements of an enforcement or suspension notice. • Failure to supply, without reasonable excuse, information sought under a regulation 61 (1) information notice. • Making false or misleading statements. • Making false entries in any record. • Forgery and deception in relation to documents. • There is a poor history of compliance. • There has been a repetition of a breach that was subject to a simple caution. • There has been a blatant disregard for the law or reckless disregard for the environment. • Officers have been intentionally obstructed in the lawful course of their duties.
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Relevant legislation and guidance includes:

Environmental Permitting (England and Wales) Regulations 2016

The Environmental Permitting (England and Wales) (Amendment) Regulations 2018

Defra Environmental Permitting General Guidance Manuals

Secretary of State's Process Guidance Notes

Caravans and other licensable sites

Caravans and other licensable sites	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
No Action	Enforcement options shall not be considered where there is no risk to public health from the activities of caravan or other licensed sites.
Informal action This may take the form of: Advice; Verbal warning; Written information; Inspection reports	<ul style="list-style-type: none"> • The act or omission is relatively minor. • From the individual/businesses' past history it can be reasonably expected that informal action will achieve compliance. • Confidence in the individual/business's management practices is high. • The consequence of non-compliance will not pose a significant risk to those affected by the activities of caravan or other licensed sites. • To resolve any breach of the licence conditions, having regard to the site owners' apparent willingness to resolve the situation, the seriousness of the issue and potential risk. • If a non-licensed site can be licensed, the Council will work with the site owner to ensure an application is submitted within 28 days. • For non-licensed sites or sites which no-longer have a valid licence or planning permission, a referral shall be made to the planning enforcement officer and joint action considered.
Compliance Notices (relevant protected sites)	<ul style="list-style-type: none"> • A breach of license condition/s which pose a significant risk. • Persistent breaches of license conditions. • An informal approach has not achieved the desired result. • A safety critical or public health issue exists.
Emergency Action (relevant protected sites)	<ul style="list-style-type: none"> • The occupier is failing or has failed to comply with condition/s of the site license and there is an imminent risk of serious harm to the health or safety of any person who is or could be on the land.

Prosecution	<p>Prosecutions may be taken under one or more of the following circumstances including:</p> <ul style="list-style-type: none"> • Failure to comply with a compliance notice. • If the licence holder is convicted of failing to comply with a compliance notice on two or more previous occasions the Council will apply to the Magistrates' Court to have the licence revoked. • For sites which are not relevant protected sites, if a site owner is in breach of a licence condition the local authority may prosecute in the Magistrates' Court. • If the licence holder is convicted of failing to comply with a site licence condition on two or more previous occasions the Council will apply to the Magistrates' Court to have the licence revoked. • Using land for a licensable caravan site without a license. • Officers have been intentionally obstructed in the lawful course of their duties. • Failing to allow the license to be altered.
Carry out work in default (taking action with and without agreement)	<ul style="list-style-type: none"> • Where an occupier is convicted for non-compliance with a compliance notice the Council may take the steps detailed in the notice to comply with the notice. The occupier must be given reasonable notice of the Council's intentions. • Works in default are considered a more appropriate or effective remedy than prosecution. • The person served with a statutory notice starts work but then does not make satisfactory progress in accordance with stipulated timescales. • Following inspection the works carried out are not suitable to ensure compliance with the notice. • There is an ongoing risk to health or safety posed by continued non-compliance with the notice.

Relevant legislation and guidance includes:

Caravan Sites and Control of Development Act 1960

Mobile Homes Act 2013

Health and Safety at Work etc. Act 1974

Environmental Protection Act 1990

Model Standards 2008 for Caravan Sites in England

Mobile Homes Act 2013 'A best Practice Guide for Local Authorities on Enforcement of the New Site Licensing Regime'

Residential Services

Residential Services	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
No Action	Enforcement options shall not be considered where there is no risk to public health from the activities of food businesses.
Informal action Initial Assessment - verbal advice and recommendations	<ul style="list-style-type: none"> • Preliminary assessment of the complaint/information provided by EHTS including whether the matter falls within the remit/relevant powers of the service. • Based on the available information including any previous history, the appropriate course of action will be determined by EHTS as follows: <ul style="list-style-type: none"> • General advice provided. • Forwarded to another agency/enforcement authority for action. • Forwarded to officer for response within service target time or for an immediate response.
Informal action Written advice and recommendations	<ul style="list-style-type: none"> • For requests that progress to investigation, information on how the case will proceed, associated time scales, what they can expect from the service and what the service expects from them, will be sent in writing by means of an informative letter and in some cases a service leaflet. • Officers will, without prejudice to the Councils' statutory duties, exercise appropriate discretion when approaching individual cases or complaints and will initiate the type of enforcement action warranted by the nature and severity of the nuisance, risk to public health or the environment. A combination of different types of action may be appropriate, involving other organisations. • In many cases, the first contact with the alleged perpetrator will be following the receipt of an informative letter. The letter advises them to contact the service should they wish to discuss the allegation further. It provides an opportunity for them to dispute the complaint or to discuss the circumstances of the allegation. In such cases they will be given unbiased advice and guidance on how a situation may be resolved and directed towards areas where specialist advice may be obtained. • In determining the most appropriate course of action, an officer will have regard to the apparent willingness of the 'person responsible' to resolve a situation and any previous records of compliance. • For individuals classed as within a vulnerable group direct officer intervention will be offered. A vulnerable person will be someone who the officer believes is unable to correctly interpret or understand the written advice, its implications or that it is likely to cause an unreasonable amount of stress or anxiety upon that individual. • In cases where the resolution would benefit from the involvement of other organisations, the officer will consider alternative enforcement powers. • Where deemed appropriate the use of alternative dispute resolution methods such as mediation, will be considered • As the complaint progresses the officer will keep both parties updated on developments, as necessary.

<p>Informal action Written advice and recommendations</p>	<ul style="list-style-type: none"> • Further informative letters sent as part of ongoing investigation will be written in clear and readily understandable language and distinguish whether it is mandatory or advisory in nature. • Informal action will generally be taken if the cases are: <ul style="list-style-type: none"> • relatively minor in nature; • cannot be readily witnessed by a Council Officer appointed for the purpose; • not determined to fall within the defined classification of our investigation powers; or • where the offender has agreed to remedy the nuisance or defect within an agreed timescale with the investigating officer. • The consequence of non-compliance will not pose a significant risk to those affected by the activities taking place.
<p>Statutory Notice (Including CPN)</p>	<ul style="list-style-type: none"> • Formal action is proportionate to the risk to public health in that a serious statutory nuisance, public health issue or impact to the environment exists. • There is a history of non-compliance with the relevant regulations. • The authorised officer has reason to believe that an informal approach will not be successful. • The intended course of action will be notified to the perpetrator with the aim of resolving any points of difference that may affect legal proceedings. This will normally be done through a visit or direct discussion with the person responsible. It will detail the evidence upon which formal action is based, reasons for taking the action, if relevant the type of works that may be considered necessary and the time period considered reasonable to resolve the issue. These discussions may provide a valuable guide to effective enforcement and may result in an outcome acceptable to both parties.
<p>Carry out work in default</p>	<ul style="list-style-type: none"> • In circumstances where the requirements of the notice are not met, under certain regulations the Council is empowered to carry out the required works and recover the costs. The Council will generally carry out works in default when: <ul style="list-style-type: none"> • The person served with a statutory notice fails to comply with the requirements of the notice; • No appeal has been made against the terms of the notice or an appeal has not been upheld; • The Councils regard work in default as being a more appropriate or effective remedy than prosecution or where a successful prosecution has already been taken but the problem remains. • The Councils may also agree to carry out work in default on behalf of the person responsible where a written request and an undertaking to pay has been received from them. • Inspection by the Councils has deemed that the works carried out are not suitable to ensure compliance with the notice. • In deciding whether to carry out work in default, the Council will consider: <ul style="list-style-type: none"> • The urgency to rectify the nuisance/public health hazard. • Where known the wishes of the person responsible. • Where the evidence available indicates a realistic prospect of recovering its reasonable costs.

Carry out work in default	<ul style="list-style-type: none"> • Where statute allows the Council to recover the cost of the works by placing a charge on the property.
Simple Caution	<p>Simple Cautions will be used under the following circumstances:</p> <ul style="list-style-type: none"> • To deal quickly and simply with less serious offences. • To divert offenders where appropriate from appearing in criminal courts; and • To reduce the likelihood of re-offending. • Simply cautions are issued in accordance with Home Office Circular 30/2005.
Prosecution	<p>Prosecutions may be taken under one or more of the following circumstances including:</p> <ul style="list-style-type: none"> • There is a failure to comply with the requirements of a notice and there has been no appeal against the terms of the notice; or • the appeal made has not been upheld; or • Where the Council regards prosecution as likely to be a more appropriate and effective remedy than works in default alone. • The offence is serious. • There is a poor history of compliance. • There has been a repetition of a breach that was subject to a simple caution. • False information has been supplied wilfully, or there has been intent to deceive, in relation to a matter which gives rise to significant risk. • Officers have been intentionally obstructed in the lawful course of their duties.

Relevant legislation and guidance includes:

Environmental Protection Act 1990

The Noise and Statutory Nuisance Act 1993

Noise Act 1996

Clean Neighbourhoods and Environment Act 2005

Prevention of Damage by Pests Act 1949

Clean Air Act 1993

Control of Pollution Act 1974

Local Government (Miscellaneous Provisions Act) 1982

Local Government (Miscellaneous Provisions Act) 1976

The Licensing Act 2003

Public Health Act 1936

Public Health Act 1961

The Building Act 1984

Town and Country Planning Act 1990

Caravan Sites and Control of Development Act 1960

Public Health (Control of Diseases) Act 1984

Private Sector Housing

Private Sector Housing	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
No Action	Enforcement options shall not be considered where there is no risk to the health or safety of the occupiers of private sector residential properties.
Informal action This may take the form of: Advice; Verbal warning; Written information; Inspection reports	<ul style="list-style-type: none"> • The act or omission is relatively minor. • From the landlords past history it can be reasonably expected that informal action will achieve compliance. • Confidence in the landlord's management practices is high. • The consequence of non-compliance will not pose a significant risk to the occupiers.
Obtaining information/ provision of documents	<ul style="list-style-type: none"> • Any document/information required to exercise relevant functions of the Housing Act 2004. • Any document/information required for the purpose of investigating whether an offence has been committed.
Hazard Awareness Notice	<ul style="list-style-type: none"> • There is a duty to serve a notice when there are category 1 hazard/s in the property. • A notice may be served when there are category 2 hazards in the property.
Improvement Notice	<ul style="list-style-type: none"> • There is a duty to serve a notice when there are category 1 hazard/s in the property. • A notice may be served when there are category 2 hazards in the property. • Formal action is proportionate to the risk to public health. • There is a record of non-compliance. • The authorised officer has reason to believe that an informal approach will not be successful.
Prohibition Order	<ul style="list-style-type: none"> • There is a duty to serve an order when there are category 1 hazard/s in the property. • An order may be served when there are category 2 hazards in the property. • Action is required to protect the health or safety of the occupiers.
Emergency Prohibition Order	<ul style="list-style-type: none"> • There is a duty when satisfied that there are category 1 hazard/s in the property and an imminent risk to health or safety to the occupiers of the property to serve an emergency order.
Emergency Remedial Action	<ul style="list-style-type: none"> • When category 1 hazard/s exists and that the hazard involves an imminent risk of serious harm to the health or safety of the occupiers of that or any other premises.

Carry out work in default (taking action with and without agreement)	<ul style="list-style-type: none"> • Works in default are considered a more appropriate or effective remedy than prosecution. • The person served with a statutory notice starts work but then does not make satisfactory progress in accordance with stipulated timescales. • Following inspection the works carried out are not suitable to ensure compliance with the notice. • There is an ongoing risk to health or safety posed by continued non-compliance with the notice.
Grant, refuse, vary or revoke an HMO License	<ul style="list-style-type: none"> • The property is suitable to be occupied as an HMO. • The license holder and manager are fit and proper people. • Satisfactory management arrangements are in place.
Simple Caution	<p>Simple Cautions will be used under the following circumstances:</p> <ul style="list-style-type: none"> • To deal quickly and simply with less serious offences. • To divert offenders where appropriate from appearing in criminal courts; and • To reduce the likelihood of re-offending. <p>Simply cautions are issued in accordance with Home Office Circular 30/2005.</p>
Prosecution	<p>Prosecutions may be taken under one or more of the following circumstances including:</p> <ul style="list-style-type: none"> • The offence is serious. • There is a poor history of compliance. • There has been a failure to comply with an improvement notice. • There has been a failure to comply with a prohibition order. • There is a breach of the HMO Management Regulations. • There is a breach of an HMO license condition. • Operating a licensable HMO without a license. • Failure to provide documents required by notice. • There has been a repetition of a breach that was subject to a simple caution. • False information has been supplied wilfully, or there has been intent to deceive, in relation to a matter which gives rise to significant risk. • Officers have been intentionally obstructed in the lawful course of their duties.

Relevant legislation and guidance includes:

Housing Act 2004

The Management of Houses in Multiple Occupation (England) Regulations 2006

Housing Health and Safety Rating Scheme Enforcement Guidance

Housing Health and Safety Rating System Operating Guidance

Housing Act 2004 - Guidance about inspections and assessment of hazards

HDC - Houses in Multiple Occupation Amenity Standards Explained (A Guide for Owners and Managing Agents)



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DISTRICT COUNCIL

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This information is available in alternative formats and languages