



Norfolk County Council

Enforcement Policy

Community and Environmental Services



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1 Introduction

- 1.1 This document applies to the enforcement activities carried out by the Community and Environmental Services (CES) Directorate of Norfolk County Council, including Trading Standards, Highways, Planning and the Norfolk Fire and Rescue Service (Fire Safety).
- 1.2 Where appropriate, additional enforcement protocols or policy may be developed to support this policy, for example where there are national requirements regarding a particular enforcement process. These will be appended to this policy as required. When read in conjunction with Annex 1 this policy constitutes the Local Enforcement Plan for Norfolk County Council Planning Services, as recommended by Paragraph 207 of the National Planning Policy Framework.
- 1.3 This Policy has been developed in conjunction with a range of stakeholders, including business representatives and is subject to annual review and approval.
- 1.4 The purpose of this Policy is to provide a framework to ensure that local authority enforcement is delivered in an equitable, practical and consistent manner. This is in line with the principles of good enforcement, as set out in the Legislative and Regulatory Reform Act 2006, and regard has been given to the associated [Regulators' Code](#) (the Code) in the preparation of this policy. In certain instances it may be concluded that a provision in the Code is either not relevant or is outweighed by another provision. Any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
- 1.5 Compliance with this Policy will ensure that we will strive to be fair, impartial, independent and objective. We are committed to ensuring that the decisions we take and the services we deliver take proper account of equality issues and, where necessary, put actions in place to address any barriers faced by protected groups.
- 1.6 Within the context of this Policy, 'enforcement' includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action, such as prosecution or issue of notices, and so includes inspection to check compliance with legal or other requirements and the provision of advice to aid compliance.
- 1.7 For the purposes of this document 'formal action' includes: Prosecution, Simple Caution, Injunctive Action, Enforcement Order, Issue of Notices, Monetary Penalties, Seizure, Suspension, Withdrawal, Recall, Forfeiture, Revocation/Suspension of a licence, registration or approval, Disqualification of weighing or measuring equipment, Works in Default, Criminal Behaviour Orders, or any other criminal or civil/injunctive proceedings or statutory sanctions, applied either separately or in any other combination.
- 1.8 Where appropriate we will seek to recover our enforcement costs, including making formal applications for costs through the Courts.

Commented [NS1]: Clarification

Commented [NS2]: This has been re-worded to reflect the intention to engage with stakeholders as part of the 2018 review of this Policy

Commented [NS3]: Clarification this means inclusive of

Commented [NS4]: clarifies that formal actions include Injunctive Actions, withdrawal and recall of illegal products, Disqualification of weighing or measuring equipment' and Criminal Behaviour Orders

2 Principles of Inspection & Enforcement

2.1 Proportionality

2.1.1 We are committed to avoiding the imposition of unnecessary regulatory burdens and will endeavour to minimise the cost of compliance by ensuring that any action taken, or advice offered, is proportionate to the seriousness of the breach, as well as the risk to people, businesses, other organisations, animals, property, the community or the environment. In doing so we will choose approaches that are based on relevant factors including, for example, business size and capacity.

Commented [NS5]: Re-worded to clarify scope of risk considerations in applying equally to businesses, other organisations and animal health and welfare, also to align with Suffolk CC Enforcement Policy

2.1.2 We will usually give notice of our intention to carry out routine inspection visits, unless we are required by law to visit unannounced, or we have a specific reason for not giving prior notice. For example, this would include where the identity of the person or premises is unknown, or where it would defeat the objectives of the inspection visit to give such notice. Similarly, routine or reactive inspections of the highway and blue badges are not normally subject to such notice.

Commented [NS6]: Clarification that this includes blue badge enforcement

2.1.3 As far as the law allows, we will take account of the circumstances of the case and attitude of the people involved when considering action. We will take particular care to work with businesses and individuals so that, where practicable, they can meet their legal obligations without unnecessary expense, to support and enable economic growth.

2.1.4 The most serious formal action, including prosecution, will be reserved for serious breaches of the law.

2.2 Accountability

2.2.1 We will actively work with businesses and individuals to advise and to assist with compliance and requests for help. Contact points and telephone numbers will be provided for business and public use.

2.2.2 We will aim to carry out visits and inspections at a reasonable time and where appropriate to do so. In most cases our staff will show their identification (and authority if requested) at the outset of every visit and explain the reason for the visit. However, so that we can see things from the point of view of a customer or ordinary member of the public, we may carry out informal visits or arrange to buy goods or services and not introduce ourselves. Where we have to use a young person to carry out work on our behalf, such as in attempting to purchase age-restricted products, we will always use the latest Code of Best Practice.

Commented [NS7]: Re-worded to clarify circumstances in which ID would not be shown on informal visits, test purchasing etc, also to better align with Suffolk CC Enforcement Policy

2.2.3 Out of hours contact for services will be provided where there is a need for an immediate response/risk to public health, safety or damage to property, infrastructure or the environment.

2.2.4 The whole range of enforcement activities will be dealt with as promptly and efficiently as possible in order to minimise time delays.

2.2.5 Where appropriate, feedback questionnaires will be used to gather and act upon information about the services we provide.

2.2.6 We will include information to highlight new legal requirements on our website, with letters sent after an inspection or visit; and by providing or signposting advice and information to help businesses and individuals keep up to date.

2.2.7 We will have regard to fairness and individuals' human rights in all of our enforcement work through conforming to the European Convention on Human Rights (as implemented by the Human Rights Act 1998).

Commented [NS8]: Clarification on applicability of Human Rights Law

2.3 Consistency

2.3.1 All officers are required to act in accordance with this enforcement policy and our published service standards.

2.3.2 We will carry out our enforcement and advisory functions in an equitable, practical and consistent manner. We will adopt and adhere to relevant policy and guidance and will ensure that our officers are suitably trained, qualified and authorised to undertake their enforcement duties, and understand the principles of good regulation.

2.3.3 Where appropriate, we will publish clear service standards providing information on:

- a) How we communicate and how we can be contacted
- b) Our approach to providing information, guidance and advice
- c) Our risk assessment methodology used to determine inspection activity, clearly setting out what can be expected from us at the time of visit
- d) Any applicable fees and charges; and
- e) How to comment or complain about the service provided and the routes to appeal.

2.4 Transparency

2.4.1 In most circumstances we will seek to ensure that people affected by formal action are informed of what is planned, and allow for discussion and time to respond before the action is taken. We will also give them a named officer's contact details. These arrangements must have regard to legal constraints and requirements.

2.4.2 When a notice is served it will say what needs to be done, why, and by when, and that in the officer's opinion a breach of the law has been committed and why the notice is necessary. We will also make a clear distinction between legal requirements and recommended works.

2.4.3 As part of our commitment to equality we will communicate in a clear, accessible, concise, format using media appropriate to the target audience, in plain language. Where businesses or the public do not have English as a first language we offer translations of correspondence on request.

2.4.4 This Enforcement Policy is published via the Norfolk County Council website and we may also publish further guidance about specific/technical areas, such as the use of civil sanctions.

2.4.5 The publicity generated by legal proceedings acts as a deterrent to others, and reassures the general public that we take a serious view of illegal behaviour. We therefore publish the outcome of court

proceedings, including undertakings; as part of this we include the name of the defendant(s), unless directed not to do so by the Courts.

2.4.6 We will routinely publish the names and trading addresses of traders subject to legal proceedings, including prosecutions, enforcement orders, undertakings or the administrative issue of penalties/fines.

Commented [NS9]: Clarification that legal outcomes will be routinely published

2.4.7 We may also publish the names and trading addresses of traders who act in ways that represent a significant risk to consumers or the interests of legitimate businesses, subject to the following conditions:

- There is no risk of prejudice to legal proceedings or other formal enforcement action, and
- The evidence of unfair or illegal trading is conclusive, and
- It is in the public interest to do so, taking into account the personal circumstances of the offender and community cohesion, and
- To do so does not breach Human Rights or Data Protection Law, or the Children and Young Persons Act 1933.

Commented [NS10]: Clarification that a traders details may also be published where there is a significant risk to consumers or the interests of legitimate businesses, subject to all 4 of the conditions being met.

2.4.8 Examples of the current published enforcement action is via the [Norfolk Trading Standards web pages](#).

2.5 Targeted (Intelligence and Risk Led) Enforcement

2.5.1 Enforcement will be primarily targeted towards those situations that give rise to the most serious risks, and against deliberate/organised crime. Other determining factors will include local priorities, Government targets and priorities, new legislation, national campaigns and public concerns.

2.5.2 By having a coherent and risk based intelligence system, effective strategies can be formed to enable and co-ordinate solutions to particular problems. This enables the identification of new, current and emerging issues, allowing provision of strategic and tactical direction on how the issues can best be tackled. Subject to the provisions of Data Protection and Human Rights Law, we may also refer cases and/or share information and intelligence with other law enforcement agencies.

Commented [NS11]: Additional clarification that we may refer cases and/or share information and intelligence where it is legally permissible to do so

2.6 Supporting the local economy

2.6.1 We recognise that a key element of our activity will be to facilitate and encourage economic progress against a background of protection.

2.6.2 Wherever possible, we will work in partnership with businesses and individuals, and with parish councils, voluntary and community organisations, to assist them with meeting their legal obligations without unnecessary expense.

2.7 Reducing enforcement burdens

2.7.1 If there is a shared enforcement role with other agencies, e.g. the Police, Environment Agency or other local authorities, we will consider co-ordinating with these agencies to minimise unnecessary overlaps or time delays and to maximise our overall effectiveness. We will also liaise with the other regulators to ensure that any proceedings instituted are for the most appropriate offence.

- 2.7.2 We will follow the principle of “collect once, use many times” and share information that we collect with other local authority regulatory services to minimise business impact.
- 2.7.3 When conducting farm visits, we will have due regard to the [Farm Regulators’ Charter](#), which makes sure visits are carried out consistently across regulators. The charter covers all inspection types and visits of agricultural and aquaculture activities carried out by Farm Regulators.

3 Primary Authority Partnerships

- 3.1 Primary Authority is a statutory scheme established by the Regulatory Enforcement and Sanctions Act 2008. It allows an eligible business to form a legally recognised partnership with a single local authority in relation to the provision of tailored advice, guidance and assistance relating to regulatory compliance. The single local authority (known as the “Primary Authority”) is registered with the [Office for Product Safety & Standards](#) (OPSS), via the Primary Authority Register.
- 3.2 The Primary Authority then acts as the single point of contact between its partner business and the local authorities that regulate it. The Primary Authority can issue assured advice upon which the business can rely and can also, where appropriate, devise inspection plans for businesses. The inspection plan can place specific requirements on other local authorities and can require feedback on their checks to be given to the Primary Authority.
- 3.3 Where an enforcing local authority is considering enforcement action against a business that has a Primary Authority it is required to make a statutory notification to the Primary Authority. In most cases, this notification must be made before the action can be taken. However, in certain circumstances the notification can be retrospective. These currently include:
- abatement notices the Environmental Protection Act 1990
 - emergency prohibition notices under specified food hygiene legislation
 - prohibition notices under the Regulatory Reform (Fire Safety) Order 2005
 - notices of emergency remedial action under the Housing Act 2004
 - emergency prohibition orders under the Housing Act 2004
 - enforcement action that is required urgently to avoid a significant risk of harm to human health, the environment or the financial interests of consumers; and
 - enforcement action where the ‘pre-notification’ requirements of the scheme would be wholly disproportionate.
- 3.4 If another local authority proposes enforcement action which the Primary Authority deems to be inconsistent with the assured advice, the Primary Authority may seek to block the enforcement action. Where this is the case but is disputed, or there is a need for further considerations, the matter would be referred to the [Office for Product Safety & Standards](#) (OPSS) for their consideration/determination.

Commented [NS12]: The OPSS has replaced 'Regulatory Delivery'

Commented [NS13]: The OPSS has replaced 'Regulatory Delivery'

4 Enforcement Actions

Commented [NS14]: This section has been partly re-numbered for clarity

- 4.1 Nothing in this policy shall be taken to compel us to take enforcement action. In certain instances we may conclude that an enforcement response is not appropriate given the circumstances.
- 4.2 In deciding what enforcement action to take, we will have regard to the following aims:
- to change the behaviour of the offender
 - to eliminate financial gain or benefit from non-compliance
 - to be responsive and consider what is the most appropriate sanction for the particular offender and the regulatory issue concerned
 - to be proportionate to the nature of the offence and the harm/potential harm caused
 - to repair the harm caused to victims, where appropriate to do so
 - to deter future non-compliance.
- 4.3 Any decision to undertake formal enforcement action will be taken in the context of operational priorities, this policy and the [Council Constitution and scheme of delegations](#). Such decisions will include the use of intelligence in determining the nature of any response, as well as being subject to ongoing monitoring and review.
- 4.4 Where a right of appeal against a formal action exists other than through the courts, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken.
- 4.5 ~~Where it is necessary to carry out a full investigation, the case will be progressed without undue delay.~~ All investigations into alleged breaches of legislation will be conducted in compliance with statutory powers, time limits and all other relevant legislation (and relevant Codes of Practice), including the requirements of:
- Police and Criminal Evidence Act 1984 (PACE)
 - Criminal Procedure and Investigations Act 1996 (CPIA)
 - Regulation of Investigatory Powers Act 2000 (RIPA)
 - Investigatory Powers Act 2016 (IPA)
 - the Criminal Justice and Police Act 2001 (CJPA)
 - Human Rights Act 1998 (HRA).
- 4.6 As part of any criminal investigation process, persons suspected of having committed a criminal offence will, wherever possible,
- be formally interviewed in accordance with PACE
 - be given the opportunity to demonstrate a statutory defence
 - have the opportunity to give an explanation or make any additional comments about the alleged breach
 - be offered translation/interpretation services ([language and British Sign Language](#)) where English is not their first ~~language~~.
- 4.7 As part of our enforcement function we may exercise a wide variety of powers, including the power to enter premises and inspect goods, to require the production of documents or records and, when necessary,

Commented [NS15]: This is has been removed as it is already a requirement arising from the legislation listed under 4.5

Commented [NS16]: New legislation and now in force

Formatted: Highlight

Commented [NS17]: This section has been amended as a result of consultation feedback – see committee report

Commented [NS18]: Amended from 'Officers' to 'our' to clarify this includes officers of the Council and any other person legally delegated to enforce the law on behalf of the Council

the power to seize and detain such material where they believe it may be required as evidence.

4.8 We may also take with us such other persons as may be necessary as part of our enforcement function. This may include Police Officers where there is the possibility of an arrest. In certain cases, we may exercise an entry warrant issued by a Magistrate in order to gain access to premises.

4.9 We may also use investigation equipment whilst undertaking our their duties, including hand held and Body-Worn Video (BWV) cameras. BWV devices are capable of recording both visual and audio information and can provide a number of benefits to enforcement agencies, including a deterrent to aggressive, verbal and physical abuse towards officers, and in providing additional evidence to support investigations. BWV will usually be deployed on an overt basis for a specific purpose, and where it is necessary and proportionate to do so. Any decision to deploy BWV on a covert basis will be made in accordance with the Regulation of Investigatory Powers Act (RIPA), related legislation, Codes of Practice and associated Council Policy.

Commented [NS19]: Clarified to include deployment via young people for Test Purchasing

4.10 Immediate Formal Action

4.10.1 Whilst recognising that most people want to comply with legal requirements, we also recognise that some will operate outside the law (both intentionally and unintentionally). Where possible, a staged approach to enforcement will be adopted, with advice and informal action explored to resolve the matter in the first instance. However, we will consider taking immediate formal action for the most serious breaches, including any of the following circumstances:

- Where the infringement causes or is likely to cause actual or emotional damage, or substantial loss or prejudice to people, businesses or other organisations
- Where there is a significant risk to public health, safety or wellbeing, or damage to property, infrastructure or the environment.
- Fraud, aggressive or deceptive/misleading practices/equipment, or practices seeking an unfair 'competitive advantage'.
- Illegal practices targeted at vulnerable people, including young people and the elderly.
- For matters where there has been recklessness or negligence, or a deliberate or persistent failure to comply with advice, warnings or other enforcement action.
- Where food fails food safety requirements.
- Any act likely to affect animal health or welfare, disease prevention measures, or the integrity of the food chain.
- Obstruction or assault (including verbal assault) of an officer in the execution of their duties.

Commented [NS20]: Amended to clarify the impact of actual or emotional damage to people, businesses etc

Commented [NS21]: Includes aggressive practices

Commented [NS22]: Not needed as covered by Fraud

Commented [NS23]: To clarify that immediate disqualification of weighing or measuring equipment may be necessary where the equipment is found to be so inaccurate as to be misleading and/or seeking an unfair competitive advantage

4.11 Advice, Guidance and Support

4.11.1 We are committed to using advice, guidance and support as a first response to the majority of breaches of legislation, subject to any need to take immediate formal action for the most serious breaches (see paragraph 4.10 above).

Commented [NS24]: Amended to clarify this is subject to 4.10 (Immediate Formal Action)

4.11.2 Any initial requests for advice from individuals or businesses on non-compliance will not necessarily ~~in themselves directly~~ trigger enforcement action. In such cases we will seek to assist in rectifying such breaches as quickly and efficiently as possible, where there is a clear willingness to resolve the matter.

Commented [NS25]: Amended for clarification

4.11.3 Any correspondence will clearly differentiate between legal requirements and good practice, and indicate the regulations contravened and the measures which will enable compliance.

4.11.4 Follow up checks will be carried out on a risk and intelligence-led basis and where a similar breach is identified in the future, previous advice will be taken into account in considering the most appropriate enforcement action to take on that occasion.

4.12 Where more formal enforcement action has previously been taken, such as a simple caution or prosecution, we recognise that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

4.13 **Verbal or written warning**

4.13.1 Compliance advice can be provided in the form of a verbal or written warning. In doing so we will clearly explain what should be done to rectify the problem, and how to prevent re-occurrence. Warnings cannot be cited in court as a previous conviction, but may be presented in evidence. ~~Failure to comply with warnings or advice could result in more serious enforcement action being taken.~~

Commented [NS26]: Amended for clarification

4.14 **Statutory (Legal) Notices**

4.14.1 Statutory Notices are used as appropriate in accordance with relevant legislation. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default.

4.14.2 A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process for such notices will be provided to the recipient.

4.15 **Monetary penalties**

4.15.1 Fixed or variable monetary penalties may be issued where there is a specific power or delegated authority to do so and under the following circumstances:

- To provide an effective and visible way to respond to less serious crimes without going to court
- As a response to genuine problems or as part of a wider enforcement strategy.

4.15.2 Specific guidance for legislation, which includes the power to issue monetary penalties, may be produced to support this policy. Such guidance will be published alongside via our website. ~~An example of this is Norfolk County Council guidance for the enforcement of the Single Use Carrier Bags Charges (England) Order 2015, which is available [here](#).~~

Commented [NS27]: Other more recent guidance is available e.g secondary ticketing so no longer relevant to include this an example

4.15.3 Where the offender fails to discharge their liability resulting from any monetary penalty issued, alternative enforcement action will automatically be considered under this policy (including prosecution of the initial offence). Where prosecution is brought; an assessment will be made of other offences that may also have been committed in order that those charges may be considered at the same time.

Consideration will be given to the adoption of alternative remedies to the issue of a monetary penalty, such as those involving dedicated advice and training sessions, which aim to change the behaviour of the offender, whilst remaining proportionate to the nature of the offence and the harm/potential harm caused.

4.16 Licences, registrations and approvals

Local authorities have a role to play in ensuring that appropriate standards are met in relation to licences, registrations and approvals. We may ~~refuse to grant,~~ seek to review, temporarily remove, suspend or revoke any licence, registration or approval if we are made aware that actions have been carried out which undermine scheme objectives and/or would be unlawful. This includes those issued by other agencies.

Commented [NS28]: Amended for clarification

4.17 Seizure and Destruction

4.17.1 Some legislation permits our Officers to seize items such as goods and documents that may be required as evidence. When we seize goods, we will give an appropriate receipt ~~or other record of seizure~~ to the person from whom they are taken. On some occasions we may also ask a person to voluntarily surrender and transfer ownership of illegal goods to us.

Commented [NS29]: clarification of other types of record of seizure

4.17.2 Where we seize food for failing food safety requirements, or animal feed for non-compliance with feed law, an application will be made to the Court for a condemnation order, for the illegal product to be destroyed. We will provide details of where and when this application will be made to allow interested parties to attend the hearing.

4.17.3 Where products are found to present a serious risk we may seek to destroy or otherwise render them inoperable by virtue of EC Regulation 765/2008, the Regulation on Accreditation and Market Surveillance (RAMS).

Commented [NS30]: Clarification of this specific provision under EC Regulation 765/2008

4.18 Detention

4.18.1 Where food is suspected of failing food safety requirements, or where animal feed does not comply with specified feed law, it may be detained to allow further investigation.

4.18.2 When food or animal feed is detained, a notice of detention will be provided, detailing the detention arrangements, including the location where the product(s) will be detained.

4.19 Forfeiture

4.19.1 Where an accused has not agreed to voluntarily surrender any infringing goods then, on successful conclusion of legal proceedings, forfeiture may be applied for.

4.19.2 Where illegal goods have been seized but there is insufficient evidence of a defendant's identity or other circumstances which do not justify any other course of action, proceedings may be instituted for the forfeiture of those goods. This action is by way of a complaint to the Magistrates Court.

4.19.3 This does not preclude us from taking forfeiture proceedings in their own right in any other appropriate circumstances. We may also seek to recover costs of forfeiture proceedings from the defendant(s).

Commented [NS31]: Amended to include provision for destruction of illegal goods outside of parallel legal proceedings

Commented [NS32]: Clarification that we may also seek to recover costs of forfeiture proceedings from the absent defendant(s).

4.20 Injunctive Actions, Enforcement Orders etc

4.20.1 We will consider formal civil enforcement action in pursuance of breaches of law which have a detrimental impact on the collective interests of consumers or businesses.

4.20.2 When considering formal civil enforcement action, an Officer will, where appropriate, first discuss the circumstances with those suspected of a breach and, through consultation, attempt to resolve any issues. Alternatively, we will look to redress detrimental practices via a range of enforcement actions. These include the following:

- informal and formal undertakings
- interim and other court orders
- contempt proceedings.

We may ask the Court to consider other remedies as part of any proceedings, including compensation for victims.

4.21 Other Sanctions or Interventions

Commented [NS33]: This section has been amended as a result of consultation feedback – see committee report

4.21.1 We will consider other sanctions or interventions where legally available and appropriate to do so, including criminal behaviour orders under the Anti-Social Behaviour, Crime and Policing Act 2014, injunctions under the Local Government Act 1972 or equivalent orders to disrupt and/or prevent activities that may contribute to crime or disorder. This may also include arranging for the removal of websites where it is clear they are being used for illegal purposes.

4.22 Taking animals into possession/banning orders

4.22.1 Under the Animal Welfare Act 2006, if a veterinary surgeon certifies that 'protected animals' are suffering or are likely to suffer if their circumstances do not change, we will consider taking them into our possession and applying for Orders for re-imburement of expenses incurred and subsequent disposal. We may also look to other legislation where appropriate to ensure that similar standards of care and/or control

of animals is properly maintained. In some circumstances we will also consider applying to the Court to ban a person(s) from keeping animals.

4.23 Simple Cautions

4.23.1 In certain cases a simple caution may be offered as an alternative to a prosecution, for example for first time offending. The purpose of a simple caution is to deal quickly with less serious offences, to divert less serious offences away from the Courts, and to reduce the chances of repeat offences.

Commented [NS34]: Reflects Home Office Guidance on first time offenders

4.23.2 Officers will comply with the provisions of relevant Home Office Circulars. The following conditions must be fulfilled before a caution is administered:

- The offender has made a clear and reliable admission
- There is a realistic prospect of conviction
- It is in the public interest to offer a simple caution; and
- The offender is 18 years old or older at the time that the caution is to be administered.

4.23.3 A simple caution may appear on the offender's criminal record. It is likely to influence how we and other enforcement agencies deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment, or wishes to travel or move to certain countries. Simple cautions will be issued with regard to Home Office and other relevant guidance.

Commented [NS35]: clarification that for some less serious offences this does not necessarily result in a criminal record

Commented [NS36]: Clarifies restrictions on travel/residency in some countries arising from a Simple Caution

4.24 Prosecution

4.24.1 We may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as statutory notices have failed to secure compliance. The Council recognises that the decision to prosecute is significant and could have far reaching consequences on the offender.

4.24.2 Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated, a report compiled by the Investigating Officer and the file reviewed by a Senior Manager for legal decision. A prosecution will only be considered if the sufficiency of the evidence and the public interest falls within the guidelines as laid down by the Attorney General and Crown Prosecution Service [Code for Crown Prosecutors](#).

Commented [NS37]: Clarifies that the legal decision will always rest with a Senior Manager

4.24.3 Before making a decision whether or not to prosecute, consideration will also be given to:

- How well the prosecution supports our aims and priorities
- The factors contained in paragraphs 4.2 and 4.10 of this policy
- Action taken by other enforcement agencies for the same facts
- The nature and extent of any harm or loss, including potential harm and loss, and any offer of redress made by the offender to victims
- The willingness of the alleged offender to prevent a recurrence of the infringement

Commented [NS38]: Amended (numbering only)

- The likelihood of the alleged offender being able to establish a statutory defence
- The calibre and reliability of witnesses
- The probable public benefit of a prosecution and the importance of the case, e.g. the possibility of establishing legal precedent
- Cost effectiveness of a prosecution
- The scope for alternative routes for redress for 'victims' and their likelihood of success
- The impact of the intervention on small businesses in particular, to ensure action is proportionate.

A conviction can result in a criminal record and the court may impose a fine and, for particularly serious breaches, a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of assets. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors (see 4.26 below).

Commented [NS39]: clarification that for some less serious offences a conviction does not necessarily result in a criminal record

4.25 Proceeds of Crime Actions

4.25.1 Where appropriate, we will seek to recover the benefit that the offender has obtained from their criminal conduct through financial investigation.

4.25.2 Financial investigations will be undertaken in accordance with the Proceeds of Crime Act 2002. Such investigations may include applications to the Court requiring financial information to be provided (production orders) or in serious cases applications to freeze and/or confiscate criminal assets (restraint and confiscation orders). Where appropriate, consideration will also be given to seek compensation for victim losses as part of this process.

4.26 Directors

On the conviction of a Director connected with the management of a company the prosecutor will, in appropriate cases, draw to the Court's attention their powers to make a Disqualification Order under the Company Directors Disqualification Act 1986.

5 Complaints, Compliments and Comments

Commented [NS40]: This section has been amended as a result of consultation feedback – see committee report

5.1 If you are unhappy with the service you have received, or we have failed to live up to our promises, managers are always willing to discuss with you the cause of your dissatisfaction, and will try to find a solution.

5.2 If you wish to make a complaint or send us a compliment or comment about our service please use our online procedure by going to:

www.norfolk.gov.uk/compliments_and_complaints

Complaints can also be submitted by telephone to 0344 800 8020 or in writing to the Compliments and Complaints Team, at:

Norfolk County Council
County Hall

Martineau Lane
Norwich, NR1 2DH

If you are still not satisfied, and feel you have been caused injustice, our complaints process explains how the matter will be escalated, including how to complain to the Local Government Ombudsman.

- 5.3 If you wish to appeal against any enforcement action taken or have any other comments about this policy, you should write to The Executive Director - Community and Environmental Services, using the address in 5.2 above.

6 Conflict of Interest in Enforcement Matters

- 6.1 Where a breach is detected in which the enforcing authority is itself the responsible operator, for example operating as a food business, the following protocol will be followed:

- Where a breach of law is sufficiently serious to warrant more than the provision of advice, information, assistance or a written warning, or where the response to remedy the breach is considered insufficient, an additional authorised officer from another local authority will be requested to assist in the decision making process as to the action required. Senior Managers of the Council will be informed of serious breaches without delay.
- The additional officer's role is to assist and challenge the decision making process to ensure that appropriate, proportionate and consistent action is taken to remedy the breach, prevent re-occurrence and to minimise the risk of 'conflict of interest' for the enforcing authority. An auditable record of the additional officer's involvement will also be kept.

Commented [NS41]: Clarification that this is an additional officer

Commented [NS42]: Clarifies process

7 Where to get further information

- 7.1 Copies of this document and other information/advice are available from by writing to the Trading Standards Service using the address in 5.2 above.
- 7.2 We will make this policy available on tape, in Braille, large type, or in another language on request.

Commented [NS43]: This section has been changed to reflect the same postal address as paragraph 5.2



LOCAL MONITORING AND ENFORCEMENT PROTOCOL

**For the Extraction and Processing of
Minerals, Waste Management Facilities and
for County Council Development under
Regulation 3 of the Town and Country
Planning General Regulations 1992**

in

Norfolk

September 2018

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1.0 BACKGROUND

- 1.1 This document provides supplemental guidance to the County Council's Enforcement Policy (Community and Environmental Services) and is provided in the context of specific requirements arising from planning legislation and the National Planning Policy Framework (NPPF).
- 1.2 The National Planning Policy Framework, March 2012 (NPPF) replaced previous Planning Guidance from Central Government, including PPG18 on Planning Enforcement. Paragraph 207 of the NPPF states, 'Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local Planning Authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.' In conjunction with the overarching CES Enforcement Policy, this Annex represents Norfolk County Councils Local Enforcement Plan for planning.
- 1.3 Schedule 1 to The Town and Country Planning Act 1990 as amended sets down the responsibilities for Town Planning within a two tier Planning Authority in England and Wales. Regulation 3 of The Town and Country Planning General Regulation 1992 authorises an authority to determine (subject to regulation 4), an application for planning permission by an interested planning authority to develop any land of that authority, or for development of any land by an interested planning authority or by an interested planning authority jointly with any other person, unless the application is referred to the Secretary of State under section 77 of the 1990 Act for determination by him.
- 1.4 The Development Plan for the County comprises the Norfolk Core Strategy and Minerals and Waste Development Management Policies Development Plan Document (DPD) 2010 -2016 (Adopted 2011), Norfolk Waste Site Specific

Allocations DPD, Norfolk Minerals Site Specific Allocations DPD (both adopted in 2013) and the adopted Borough and District wide Local Plans, including Development Plan Documents and Area Action Plans. Adopted Neighbourhood Plans which have been developed by local communities, also form part of the Development Plan. The County Council maintains an up-to-date list of local planning authority policy documents and Neighbourhood Plans.

2.0 GENERAL STATEMENT

- 2.1 Section 19 of The Waste (England and Wales) Regulations 2011 makes it a duty that where a Planning Authority has planning functions in relation to establishments or undertakings carrying on disposal or recovery of waste, the Planning Authority must ensure that appropriate periodic inspections of those establishments or undertakings are made.
- 2.2 There are two elements within this plan. The first being periodic inspections (Section 3.0), the second being the investigation and enforcement of planning breaches (Sections 4-8).
- 2.3 Planning breaches are normally not criminal offences and no sanction can usually be imposed. However, failure to comply with a formal notice is a criminal offence and making the person committing the breach liable to prosecution.
- 2.4 Where a planning breach occurs a Local Planning Authority (LPA - 'the Authority') is required to consider the expediency of formal enforcement action. Formal enforcement notices may be issued, including a Breach of Condition Notice, Enforcement Notice, Temporary Stop Notice, Stop Notice, Injunction, or Direct Action (following failure to comply with an Enforcement Notice). Enforcement action may result from any of the above or a combination of the above.
- 2.5 The Service of a Planning Contravention Notice constitutes formal action but does not in itself constitute enforcement. Rather it is a request for information relating to interests in the land and the nature of the alleged planning breach, although failure to comply with notice may lead to enforcement action as may the

information contained in the response.

- 2.6 Similarly the serving of a notice requesting information on land ownership and occupation under Section 16 of Local Government (Miscellaneous Provisions) Act 1976 is not considered to be enforcement.
- 2.7 The taking of formal enforcement action is discretionary. The Authority may choose to take no action, but will need to justify any decision not to enforce, and equally, any decision to take proportionate enforcement action. Any decision will be taken in line with the County Council's Communities and Environmental Services policy on enforcement.

3.0 MONITORING INSPECTIONS

- 3.1 To ensure confidence in the planning control system it is essential that the public and operators are conscious of a fair and effective system of monitoring all authorised and unauthorised development.
- 3.2 Monitoring of permitted sites is an essential tool of controlling development and preventing problems from developing. It is this 'pro-active' approach that often enables officers to anticipate likely breaches of planning control arising before they occur. It enables them to take immediate action to ensure that deterioration in the situation does not arise.
- 3.3 There are currently 213 operational and active mineral and waste sites in Norfolk. As there are no reserves of hard rock in Norfolk recycling of concrete and other rubble is a significant source of sub-base and fill material. The scale of an operation being undertaken at a site is not an accurate yardstick for allocating resources; experience will often show that small recycling and waste transfer sites can give rise to more complaints and the need for more officer time, in comparison with large sites.
- 3.4 Following an inspection of the site and relevant planning permissions, a report shall

be prepared and copied to the operator/owner usually within two weeks of such inspection taking place. The report shall amongst other matters detail any breaches identified and specify timescales for compliance with conditions that have been breached.

- 3.5 The Monitoring and Control Team will be consulted on all proposals to permit development by the Development Control Team in particular they will be consulted on the planning conditions intended to be attached to the planning permission.

MONITORING FEES

- 3.6 On 6 April 2006 The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2006 came into force. This amendment, together with subsequent updates, enables Mineral and Waste Planning Authorities (MWPAs) to charge operators, where sites have planning permissions for mineral extraction and/or waste landfill, for the re-imbusement of the average costs calculated over all MWPAs providing a monitoring service.

- 3.7 The Authority has agreed a guidance note with minerals and waste operators on the charging regime for minerals and waste site inspections. The guidance note sets out the categories of sites and associated fees, the methodology for agreeing the number of site visits and the monitoring regime.

4.0 INVESTIGATION AND ENFORCEMENT

- 4.1 In seeking to secure the highest possible level of compliance with relevant legislation whilst conforming with The Human Rights Act 1998, The Police and Criminal Evidence Act 1984 (P.A.C.E.) the Enforcement Concordat, the Code for Crown Prosecutors the principal enforcement activities of the Authority are directed towards avoidance of infringements. It is nevertheless inevitable that breaches and offences will occur and the purpose of this protocol is to ensure that they are resolved in a consistent, transparent, balanced and fair manner.

- 4.2 Similarly, where an operator carries out development without complying with the conditions attached to a planning permission and this gives rise to problems leading to an unacceptable injury to amenity, the County Council's approach will be

to seek to remedy the injury in the first instance by negotiation and persuasion.

- 4.3 All enforcement action, be it verbal warnings, the issue of written warnings, statutory notices, or prosecution, is primarily based upon assessment of risk to public health, public safety, harm to amenity, economic well being or the environment.
- 4.4 Where appropriate, this Authority will endeavour to recover money under the Proceeds of Crime Act 2002.
- 4.5 This Authority will ensure that all clients subject to any enforcement action are informed of what is expected and the procedures that will be followed. This is to aim to avoid any misunderstandings and ensure transparency of all enforcement action.
- 4.6 This Authority, in exercising its function of ensuring compliance with planning control will:
- where there is serious harm caused to the amenity, take immediate action against a breach of planning control to stop further damage;
 - in all other instances, seek to resolve any problems within a reasonable timescale by discussion and negotiation without the need to resort to legal action;
 - only take enforcement action where it is necessary to do so to protect the public interest or to protect the environment, people and transport systems and the amenity of the area in accordance with the provisions of the local development framework;
 - ensure that action is always commensurate with the breach of planning control;
 - Give due regard to current legislation, policy framework, instructions, appeal decisions and relevant judicial authority;
 - where appropriate take into account comments made by the general public and consultees;
 - enable acceptable development to take place, even though it may initially have been unauthorised;
 - maintain the integrity of sites having interests of acknowledged importance;
 - where appropriate maintain liaison and contact with the general public, and

mineral and waste operators.

5.0 THE RELEVANT ENFORCING AUTHORITY

- 5.1 There is often an overlap of enforcement of activities involving waste disposal and recycling between the Authority, the District and Borough Councils' Environmental Health Departments (EHO) and the Environment Agency (EA). Where the unauthorised activity results in, or has the potential to result in, pollution, the EA will normally be the lead Authority. Where the activities involve a statutory nuisance the District Council EHO may be better placed to take action. In all cases that potentially involve the above bodies, consultations and discussions will take place to see which Authority is in the better position to lead the investigation and if necessary, take action.
- 5.2 The Authority will have regard to the fact that unauthorised development and some breaches of planning conditions involving wastes may be a criminal offence under legislation enforced by the EA and the Authority will liaise with the EA accordingly. The EA may be in a stronger position to ultimately remedy harm to amenity by way of prosecution and enforcing cessation of the harmful activities. In cases where unauthorised development causes or has the potential for serious harm to human health the Authority will have regard to the fact that it may be more appropriate for the HSE to be the lead Authority and will liaise with them accordingly.
- 5.3 Norfolk County Council is a two-tier Authority with seven District, Borough and City Councils; King's Lynn and West Norfolk Borough Council, Breckland District Council; North Norfolk District Council; South Norfolk District Council; Broadland District Council; Norwich City Council and Great Yarmouth Borough Council. All of whom are also planning authorities. In addition to these councils the Broads authority also has planning responsibilities for the Norfolk and Suffolk Broads area.
- 5.4 It is the intention of the County Council to work closely with other regulatory bodies when investigating and remedying an alleged breach of planning control. The County Council in dealing with all complaints concerning an alleged breach of planning control will identify the authority responsible for taking action and redirect

complaints to other regulating bodies where necessary.

6.0 GENERAL GUIDANCE

6.1 The County Council will have regard to the provisions of the Norfolk minerals and Waste development framework and relevant local plans and any other material considerations in the enforcement of planning control.

6.2 This Authority remains committed to fostering business enterprise and prosperity, provided that the necessary development can take place without unacceptable harm to local amenity. The regional 'Better Business for all' working group actively seeks to promote this aim. Whilst the Authority has a general discretion to take enforcement action when they regard it expedient, it does not condone wilful breaches of planning law. Moreover, in some cases effective enforcement action is likely to be the only appropriate remedy where a breach is causing unacceptable harm. The Authority will be guided by the following considerations:-

- (i) The Commissioner for Local Administration (the local ombudsman) has held, in a number of investigated cases, that there is "maladministration" if an Authority fails to take effective enforcement action which was plainly necessary or where an Authority fails to consider whether to take formal enforcement action or not and be able to show their reasoning for not initiating formal action, often resulting in an award of compensation payable to the complainant for the consequent injustice;
- (ii) The planning regulatory provisions are to ensure proper land use and to resolve breaches of planning control by removing unacceptable impacts on the environment and the amenity of the area. This ensures a 'level playing field' for legitimate businesses to develop and prosper.
- (iii) Enforcement action should always be commensurate with the breach of planning control to which it relates (for example, the Authority would

usually consider it inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site); and

- (iv) Where the Authority's initial attempt to persuade the owner or occupier of the site voluntarily to remedy the harmful effects of unauthorised development fails, negotiations will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop.

- 6.3 It is not an offence to carry out development without first obtaining planning permission for it. If the Authority's initial assessment indicates it is likely that planning permission would be granted for development which has already taken place, the person responsible will be asked to submit a retrospective planning application. However this initial assessment is not binding on the Authority's subsequent decision to grant or not grant planning permission.
- 6.4 While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice will not normally be issued solely to "regularise" development which is acceptable on its planning merits, but for which permission has not been sought. This would only apply to development which would be granted without any planning conditions being attached to control the development.
- 6.5 The Authority will not normally invite an owner or operator to submit a planning application if the unauthorised development is contrary to development plan policies or if it appears that any actual or potential harm cannot be made acceptable by the imposition of planning conditions; however we cannot prevent a landowner who is determined to apply for permission retrospectively.
- 6.6 If an operator or owner submits a planning application that the Authority has requested, the Authority will not normally consider formal enforcement action whilst the application is being considered. If agreement can be reached between the operator and the Authority about the operation being reduced to an

acceptable level (e.g. hours of operation, use of plant and equipment, routing of vehicles etc) during any period between a planning application being submitted and its determination, and the person concerned honours the agreement, formal enforcement action may be avoided

- 6.7 Where the Authority considers that development has been carried out without the requisite planning permission, but the development could be made acceptable by the imposition of planning conditions the owner or occupier of the land will be invited to submit an application, and pay the appropriate application fee, voluntarily. However, if, after a formal invitation to do so, the owner or occupier of the land refuses or fails to submit a planning application in these circumstances within a reasonable timescale, the Authority will consider whether to take formal enforcement action.
- 6.8 Accordingly, where an owner or occupier of land refuses or fails to submit a planning application which would enable the LPA to grant conditional planning permission, the Authority will be justified in issuing an enforcement notice if, in their view, the unauthorised development has resulted in any harm, or has the potential to cause harm, which can only be satisfactorily removed or alleviated by imposing conditions on a grant of planning permission for the development.
- 6.9 If the location of the unauthorised development is unacceptable, but relocation is feasible, it is not the Authority's responsibility to seek out and suggest an alternative site to which the activity might be satisfactorily relocated. However, if an alternative site has been suggested, the Authority will make it clear to the owner or occupier of the site where unauthorised development has taken place that he is expected to relocate to the alternative site within a reasonable timescale. In such circumstances the Authority will usually agree a reasonable time-limit within which relocation should be completed.
- 6.10 What is reasonable will depend on the particular circumstances, including the nature and extent of the unauthorised development; the time needed to negotiate for, and secure an interest in, the alternative site; submit a planning application (if required) for the alternative site; consultation timescales; and the need to avoid

unacceptable disruption during the relocation process. If the owner or operator fails to provide justification for a suggested timescale, the Authority will set a timescale it considers reasonable. If a timetable for relocation is ignored, or it is evident that appropriate steps are not being taken to progress the relocation, the Authority will consider formal enforcement action. In that event, the compliance period in the notice will specify what the Authority regard as a reasonable period to complete the relocation.

- 6.11 Nevertheless if the unauthorised development is causing unacceptable harm to the environment or amenity, the Authority will consider issuing an Enforcement Notice and/or Stop Notice even if an alternative site has been identified and steps have been made towards relocation. The Authority considers that any difficulty or delay with relocation will not normally be a sufficient reason for delaying formal enforcement action to remedy unacceptable unauthorised development.
- 6.12 Where the Authority considers that unacceptable unauthorised development has been carried out, and there is no realistic prospect of its being relocated to a more suitable site, the owner or occupier of the land will be informed that the Authority is not prepared to allow the operation or activity to continue at its present level of activity, or (if this is the case) at all. If the development nevertheless provides valued local employment, the owner or occupier will be advised how long the Authority is prepared to allow before the operation or activity must stop, or be reduced to an acceptable level of intensity. If agreement can be reached between the operator and the Authority about the period to be allowed for the operation or activity to cease, or be reduced to an acceptable level, and the person concerned honours the agreement, formal enforcement action may be avoided. However the Authority will have regard to the possibility of intensification of the development after expiry of the statutory period for enforcement action. If no agreement can be reached, the issue of an enforcement notice will usually be justified, allowing a realistic compliance period for the unauthorised operation or activity to cease, or its scale to be acceptably reduced.

7.0 INVESTIGATION PRIORITIES

7.1 Investigating and remedying alleged breaches of control is labour intensive and the quality of the service is directly proportional to the resources available for regulating planning control. The resources allocated both in terms of staff and equipment (including noise monitoring equipment, topographical survey systems, IT and GIS based recording systems) for this purpose will, therefore, need to be reviewed on a regular basis as local circumstances change to take account of a fluctuating workload, advances in technology etc.

COMPLAINTS

7.2 A complaint/incident is an event or matter that is either brought to the Authority's attention or that monitoring and control officers may become aware of as part of their duty, and which may have a planning related impact. The type of complaints/incidents received by the Authority are split into 3 priorities:

7.3 Priority 1

Immediate or irreparable harm to the environment or immediate and substantial harm to amenity. Harm would be assessed in relation to impact on the environment. E.g. the impact of mineral, waste and Regulation 3 development would often be greater in an area close to residential amenities than it would be in the open countryside. The Authority will respond to the complainant within 24 hours and investigate the complaint within 3 working days.

7.4 Priority 2

On-going low-level harm to amenity or moderate and reparable impact on the environment. E.g. HGV's occasionally going in the wrong direction, and causing the road verge to break up. The Authority will respond to the complainant within 3 working days and investigate the complaint within 1 working week.

7.5 Priority 3

Occasional harm to amenity or the raising of long-standing issues leading to low level impact on the environment e.g. concerns about the permitted type of material (sand or waste) stored on a site with permission, but in the wrong place or slightly higher than the agreed height. The Authority will respond to the

complainant within 3 working days and investigate the complaint when the relevant officer is next in the area, but no later than one month of the receipt of complaint.

INVESTIGATION OF COMPLAINTS/INCIDENTS

- 7.6 A response to the complaint or incident will also require a record of the outcome of investigation. Where there is continued non-compliance and this results in further visits and investigation then these should additionally be recorded. (i.e. record as if they were new complaints/incidents). However, where the operator is taking known action to resolve the problem then this is classified as an ongoing event. It is not necessary to record this as a new complaint/incident.
- 7.7 Where separate members of the public report complaints/incidents about different issues relating to a site then these should be additionally recorded. Where multiple residents complain about the same incident then this is recorded as one complaint.
- 7.8 As part of our regular monitoring of planning permissions there are matters identified by officers that if reported to us separately would have been dealt with and recorded as a complaint/incident. These should now be recorded and information captured. The same applies as above in that, where there is continued non-compliance then this will be reported as a complaint/incident. However, where there is known action to resolve this then this would be considered an ongoing event and not separately recorded as a complaint/incident.
- 7.9 The Monitoring and Control Team will liaise with the Legal Services; Environment Agency; District Council or any other relevant Authority as necessary throughout the investigation.
- 7.10 When complaints about alleged breaches of planning control are received, they will be properly recorded and investigated. If the Authority decides to exercise its discretion not to take formal enforcement action it should be prepared to explain its reasons to the complainant, including where complaints are attributable to

repeated allegations from vexatious complainants and they have been previously proved unsubstantiated.

- 7.11 The Authority will ensure that anyone who does complain about a breach of planning control is dealt with in a polite, efficient and responsive way. All complaints that are received although confidential will be recorded and stored on a complaints register, which is an electronic and paper based system. The complaints register will enable the receiving officer to detail both the nature of the complaint and the action the Authority has taken to resolve it. Keeping a record of complaints will enable the Authority to assess and improve its overall service.
- 7.12 It may not always be necessary to visit sites to satisfactorily resolve a complaint. However, in most cases it may be necessary to establish whether there has been a breach of planning control by visiting the site. Where, following the investigation of a complaint, the Authority decides not to take formal enforcement action to resolve a substantive issue, the matter being satisfactorily resolved by other methods, the reason for this decision will be explained to the complainant. If, however, the Authority elects to instigate enforcement proceedings against the offender the complainant will be notified of the progress of that action.
- 7.13 The County Council in dealing with all complaints concerning an alleged breach of planning control within their responsibility will:
- treat them confidentially as far as practical;
 - ensure that they are acknowledged and actioned within the timescales prescribed in the priority rating;
 - deal with them expeditiously in a professional and efficient manner;
 - visit the site where necessary, and establish whether there has been a breach of planning control;
 - notify the complainant upon request of the progress of any action taken to resolve substantive matters forming the basis of the complaint;
- notify the complainant if the authority elects to commence enforcement action against the alleged breach of planning control and be prepared to explain the reason in the event formal enforcement action has not been taken.

8.0 PROSECUTIONS

8.1 Persons who fail to comply with a formal notice will normally be prosecuted if the non-compliance meets both of the following criteria:

(i) Evidential test i.e. where the evidence is sufficient for a realistic prospect of successful prosecution; and

(ii) Public Interest test i.e. where the prosecution is in the public interest.

9.0 MONITORING OF REGULATION 3 DEVELOPMENT

9.1 A procedure has been agreed between Norfolk County Council's Children's Services Department and the Monitoring and Control Team where by Schools development which falls within Regulation 3 of The Town and Country Planning General Regulation 1992 can be monitored and a fee levied.

9.2 The developments to be pro-actively monitored will fall into one or more of the following categories:

- Developments where planning permission was granted after 1 January 2009 and includes permanent external substantial building works.
- Major developments where planning permission was granted prior to 1 January 2009 and construction is still in progress.
- Developments where planning permission was granted prior to 1 January 2009, include permanent external substantial building works, and remain unlawful due to the failure to discharge pre-development conditions.

9.3 Prior to the inspection taking place, notification will be passed to the applicant informing them that an inspection will be scheduled for a given school. An initial list of developments has been agreed with Children's Services and notification of future inspections will be sent out to individual applicants.

9.4 Where a development has been permitted on an open school an appointment will be made prior to inspection. This generally ensures that the school will allow the

officer onto the site without issue and, if required, allocate a member of staff to accompany the officer. This will also allow the inspecting officer to check that work has begun prior to going on site.

- 9.5 Where a planning permission is found not to have been implemented it will be removed from the list and an invoice will not be raised. It is generally agreed that a single chargeable inspection will be required for smaller developments such as extensions, although a second non-chargeable visit may be required after completion of the development.
- 9.6 For major developments, such as new schools, two chargeable visits per year for the life of the construction phase will be required. A final chargeable visit to check completion and landscape implementation will also be required.
- 9.7 Failure to comply with all planning conditions could result in further chargeable visits being undertaken until full compliance is achieved. There will be a maximum of two chargeable visits per school in any one financial year.
- 9.8 Once the report has been completed, it will be sent to the applicant along with a copy of the planning permission and an invoice for payment.

10. MEMBER PROTOCOL

- 10.1 Local Norfolk County Council members will be informed when an Enforcement Notice is served in their division.
- 10.2 Members of the Council will be presented on a regular basis of not less than once per year with a report detailing the decisions made under delegated authority, performance statistics and enforcement update for the work of the Monitoring and Control Team.

September 2018

Norfolk County Council Flood and Water Management Enforcement Protocol

1.0 Introduction

This document provides supplemental guidance to Norfolk County Council's Community and Environmental Services (CES) Enforcement Policy, and is provided in the context of specific requirements arising from the Flood and Water Management Act 2010 and the Land Drainage Act 1991.

Norfolk County Council (NCC) is the Lead Local Flood Authority (LLFA) for the county. This role is fulfilled by the Flood and Water Management team.

This Protocol and guidance note has been adapted from best practice identified within local authorities in England. It is intended for use as guidance by Risk Management Authorities, developers and landowners.

2.0 Regulation of Ordinary Watercourses

The Lead Local Flood Authority has powers under the Land Drainage Act 1991 to exercise its regulatory powers in relation to watercourses outside of Internal Drainage Board areas and where they are not Environment Agency designated main rivers.

The Lead Local Flood Authority will take a risk-based and proportionate approach to exercising its regulatory powers under the Land Drainage Act 1991, taking into account the location and nature of any nuisance caused by;

- the failure to repair or maintain watercourses, bridges or drainage works
- un-consented works
- impediments to the proper flow of water

This approach will take into account whether the contraventions have or are likely to increase flood risk and what the consequences of any increase in risk may be. Where works are un-consented the Lead Local Flood Authority would require the landowner, person and/or Risk Management Authority responsible for the works to prove that the un-consented works would not cause a nuisance or increase flood risk.

With regards to the causes of the nuisances described above, the Lead Local Flood Authority has powers under Sections 21, 24 and 25 of the Land Drainage Act 1991 to serve notice on individuals who have caused contraventions.

In issuing a notice the Lead Local Flood Authority may set out the works required to resolve the contravention to an acceptable standard and the date by which the works should be completed.

If the works are not completed by the date set out in the notice, the Lead Local Flood Authority may take action to remedy the effect of the contravention or failure and seek to recover the costs incurred, as well as pursue any necessary prosecution.

3.0 Guiding Principles

Enforcement under the Land Drainage Act, 1991 will be carried out using the guiding principles as set out in the CES Enforcement Policy.

4.0 Process

a) Initial response

Where the Lead Local Flood Authority receives a complaint in relation to an ordinary watercourse, we will carry out an initial assessment to establish whether the actual or potential flood risk meets our threshold for intervention. We aim to complete this assessment within 21 days. However, there will be occasions when it is necessary to extend the period of assessment for more complex matters and/or to accommodate exceptional circumstances e.g. weather, flood conditions, etc. At the outset the complainant will be informed of the case officer who will follow up the enquiry and of the outcome of the assessment.

b) Initial assessment

The threshold for intervention will be based on the Lead Local Flood Authority's [impact criteria](#).

To assess the potential impact the initial assessment will consider the on-site conditions, any available historical data and high level indicators of potential risk, such as Environment Agency (EA) Flood risk maps for surface water flooding and flooding from rivers. It will also consider any other status of land e.g. conservation designations, common land etc.

To substantiate incidents of actual flooding as part of the initial assessment we will need to be provided with one or more of the following types of evidence:

- I. An insurance claim
- II. Records of emergency services and utility companies i.e. fire brigade attending to pump out a property
- III. Dated photos of the event
- IV. Written report from a Risk Management Authority

The evidence supplied will be determined in line with the guiding principles as set out in the CES Enforcement Policy.

The Lead Local Flood Authority may close an enforcement case file, where there is a lack of physical evidence to corroborate the impact of a flood event. If further relevant evidence was to come forward then the Lead Local Flood Authority may re-open the case file and undertake a further investigation.

C) Further Investigation

Where the initial assessment has identified an actual or potential risk of flooding that exceeds the adopted impact criteria, but where a site inspection has failed to identify the primary cause of the problem the authority may;

- consult with other organisations including other local authorities, Highway Authorities, Environment Agency, Natural England as appropriate.
- require or commission appropriate site surveys and inspections.

In deciding whether or not to carry out the above steps the LLFA will consider whether it is in the public interest to do so. Having regard to the actual and potential impacts of the flooding, the costs of carrying out the works and the likelihood of obtaining sufficient evidence to enable enforcement activity. Where the Lead Local Flood Authority is made aware of breaches of other legislation it will advise the appropriate authorities.

D) Outcome of initial assessment/Further Investigation

Once an initial assessment/further investigation has been carried out the complainant will be informed in writing as to the next course of action and this may include;

- I. Informing relevant party(s) of works that are required to be undertaken within the set timescale OR
- II. No further action by the LLFA and:
 - Providing advice to those affected on referral to the [First Tier Tribunal \(Property Chamber\), Agricultural Land and Drainage \(AL&D\)](#) or other relevant organisation, where appropriate
 - Informing relevant parties of their [riparian responsibilities](#)

Where it is considered that further action needs to be taken by the relevant landowner, person and/or Risk Management Authority responsible this will be explained within the letter that sets out the outcome of the initial assessment/further investigation. This will include the following:

- An explanation of the problem and the remedy required in accordance with the Land Drainage Act 1991.
- Depending on the nature of the problem we aim to ensure that remedial work is carried out within the timeframe specified in the letter (between 7 and 21 days of the date of the letter). However, there will be occasions when it is necessary to extend the period of compliance for more complex matters and/or to accommodate exceptional circumstances e.g. weather, flood conditions, etc. The time allowed will be reasonable in the circumstances. The extent of the work required will be proportionate to the scale of the problem.

- In certain circumstances practicalities may not allow for works to be done within the timeframe specified in the letter. The Lead Local Flood Authority will assess the circumstances with regards to enforcement and whether any works need to be deferred or amended to take into account the impacts of any works on wildlife. Examples where this may occur include:
 - Seasonal farming practices and Environmental Schemes can restrict access or time schedules to carry out works;
 - The nesting season for some birds occurs between the 1 March and 31 August and works might cause disruption if nests are present;
 - Presence of protected species will influence when it is most appropriate to carry out work.

Seeking resolution prior to serving notices

The Lead Local Flood Authority will seek to resolve the situation by means of negotiation with the person responsible and obtain compliance with a request to satisfactorily undertake the work required.

Serving notices under the Land Drainage Act 1991

If a positive response to the Lead Local Flood Authority's letter has not been received within the timescale specified and on inspection no work has been satisfactorily undertaken as required, a notice under the relevant section of the Land Drainage Act 1991 will be served. The notice will include the nature of the work to be carried out, the period within which it is to be carried out and any relevant right of appeal to a magistrates' court within 21 days of service of the notice (where applicable). A Notice under the Land Drainage Act 1991 is a legal document formally requiring specific work to be carried out within a set timescale.

A letter will accompany the notice and inform the responsible person that in the event of their failure to satisfactorily undertake the work, the Lead Local Flood Authority may carry out the work itself and recover from the person responsible the expenses reasonably incurred in doing so which will include recovering the costs of pursuing the case.

Enforcement of notices

Following service of the notice, one of four things will happen:-

- The responsible person will carry out the work to the satisfaction of the council.
- The responsible person may appeal the notice.
- The responsible person will fail to carry out the work to the satisfaction of the Lead Local Flood Authority and the Lead Local Flood Authority will seek to recover their expenses; and /or

- The Lead Local Flood Authority will, where appropriate, decide whether to take a prosecution against the responsible person, in addition to carrying out the work and seeking to recover the costs of that work.

Completion of proceedings

If the responsible person complies with the notice and completes the work to the satisfaction of the Lead Local Flood Authority, the Lead Local Flood Authority will write to the responsible person confirming the closure of the case and the end of the action.

No further action

The Lead Local Flood Authority may take no action where:

- there is no actual or potential risk to properties or infrastructure; and/or
- that the matter complained of is not the cause of the drainage problem; and/or
- the matter is trivial in nature

If this is the case, the complainant will be advised accordingly and a written communication will be sent to the complainant explaining the reason why no action is to be taken. The complainant will also be referred, where appropriate, to the [First Tier Tribunal \(Property Chamber\), Agricultural Land and Drainage \(AL&D\)](#) or other relevant organisation. The riparian owner will also be informed, as appropriate.

Examples of matters not requiring action may include minimal silting of the watercourse, slight vegetation overgrowth, the accumulation of a small quantity of debris etc

Advice

The Lead Local Flood Authority will provide basic information and advice to individuals of their riparian ownership responsibilities and of the route for appeal against other riparian owners where appropriate. The Lead Local Flood Authority may suggest that independent legal and/or technical advice is sought, where appropriate.

Data Protection

Information may be shared with [Risk Management Authorities](#) under Section 13 and 14 of the Flood and Water Management Act 2010 in order to exercise flood and coastal erosion risk management functions.

This information will be held securely and any processing will be performed in line with the requirements of the Data Protection Act 1998 and the General Data Protection Regulation from 25 May 2018. Norfolk County Council is registered as a Data Controller with the Information Commissioner's Office. Further details about how we process personal data can be found in our [Privacy Notice](#).

Further Information

Please consult the [Glossary of terms](#) document which supports this protocol.

Norfolk Fire and Rescue Authority

Fire Safety Policy Directive

ENFORCEMENT POLICY STATEMENT (England and Wales)

Introduction

We are approachable and want to engage with and hear from you.

The following pages explain our enforcement policy. This document is supported by other documents required by the Regulators Code, namely our Service Standards and our Challenges, Appeals and Complaints procedure. This guidance has been produced in consultation with the Better Regulation Delivery Office (now Regulatory Delivery). This policy aims to explain our approach to our regulatory functions in relation to fire safety and public safety in our communities. It also explains the behaviours that business can expect receive from us and legal constraints and frameworks under which we operate.

Quick-guide

1. Introduction

The Norfolk Fire and Rescue Authority (the Service) (and its officers) will exercise its regulatory functions in accordance with the principles of better regulation and will comply with all relevant laws. Business should have a mainly positive experience of being regulated by the Service. To learn more, [click here](#).

2. Principles

The Service is tasked with seeing that people are safe in case of fire and believes that deaths and injuries caused by fire in regulated premises are preventable, if the right measures are taken. The Service and its officers will engage and work with business, in preference to enforcing fire safety standards. To learn more, [click here](#).

3. Regulation

The purpose of enforcement action is to bring about improvements in safety and in attitudes to providing safety. While the Service has laid down procedures for its officers, we will take each case on its merits. To learn more, [click here](#).

4. Helping Those We Regulate (Transparency)

The Service aspires to help regulated businesses and to work with them to resolve fire safety problems but will robustly enforce where the risk to people is highest and when those responsible refuse to help them. To learn more, [click here](#).

5. Targeting

The regulatory policy of the Service focuses on risk in case of fire and in places where we will be most effective in saving life. To learn more, [click here](#).

6. Accountability To Those We Regulate

The Service is accountable for its actions and is open to analysis and questioning of our regulatory work. To learn more, [click here](#).

7. Principles of Enforcement Action

A range of relevant factors will be considered before any enforcement action is taken by the Service. When action must be taken to improve safety, the Service will be clear about what is required. To learn more, [click here](#).

8. Our Enforcement Action

The Service would rather work with business to make places safe than enforce against them. When enforcement is needed; we will be clear about what must be done. Letters or notices may be sent to confirm what business needs to do to. All enforcement will be proportional to the risk. To learn more, [click here](#).

9. After Enforcement Action

The Service encourages dialogue and open communication during and after the enforcement process. Requirements for safety and how to challenge what we are asking for will be made clear. To learn more, [click here](#).

10. Failure to Comply With Requirements

When the Service makes an enforcement decision, there might be a route to appeal or challenge what we have said. How to do this (and how to complain about our behaviour) will be made clear. Business can talk to us. To learn more, [click here](#).

11. Simple Cautions and Prosecution

If an offence has been committed, it means the law has been broken and the Service can take the matter to court. In addition to going to court, there are other actions that the Service can take. To learn more, [click here](#).

12. Public Register

The Service must enter details of certain notices (called “relevant notices”) into a register to which the public have access. (In accordance with the Environment and Safety Information Act 1988). Further details are available on request or from the [CFOA public register web pages](#)

13. Other Duties of the Service

As well as ensuring that people are kept safe in case fire, the Service is also responsible for some other laws relating to public safety. To learn more, [click here](#).

14. Data Protection

The Service will comply with data protection laws. To learn more, [click here](#).

15. Freedom of Information

The Service is subject to the Freedom of Information Act, which provides a right of access to regulatory information held by the Service. To learn more, [click here](#).

-End-

More on the Introduction

1.1 This statement sets out the service that business and others being regulated by the Norfolk Fire and Rescue Authority (the Service) can expect from its regulatory and enforcement function and its appointed inspectors. It goes some way to satisfying the Regulators' Code by committing the Service and appointed inspectors to the principles of good enforcement with the assistance of effective procedures and clear guidance, which can be viewed by businesses and members of the public. [Procedures and Guidance](#)

1.2 This Enforcement Policy Statement has been prepared with regard to the following legislation and statutory guidance:

The Regulators Code - [\[more\]](#)

The Regulatory Enforcement and Sanctions Act 2008 - [\[more\]](#)

The Legislative and Regulatory Reform Act 2006 - [\[more\]](#)

The Legislative and Regulatory Reform (Regulatory Functions) Order 2007 - [\[more\]](#)

The Environment and Safety Information Act 1988 - [\[more\]](#)

The Regulatory Reform (Fire Safety) Order 2005 - [\[more\]](#)

The Licensing Act 2003 - [\[more\]](#)

The Explosive Regulations 2014 - [\[more\]](#)

The Petroleum (Consolidation) Regulations 2014 - [\[more\]](#)

1.3 The primary function of the regulatory part of the Service is to achieve safety in case of fire (in premise to which fire safety law applies).

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More on Our Principles

2.1 Fire safety regulation is founded on the principle that people should be kept safe in case of fire. We regulate to help secure this safety and through our regulation, we aim to provide a consistently high quality service to those we regulate. Our regulatory activity generally extends to premises in which there is a trade, business or other undertaking.

2.2 Non-compliance with fire safety law will mean that, in our view, people are at risk in case of fire. Where we identify people at risk in case of fire, we will respond

proportionately to that risk; taking account of the likelihood and severity of the risk, in line with our service standards.

2.3 The Service believes in firm but fair enforcement of fire safety standards. We aim to achieve this by:

- proportionally applying the law to secure safety;
- being consistent in our approach to regulation;
- targeting our resources and enforcement action on the highest risk;
- being transparent about how we operate and regulate; and
- being accountable for our actions.

2.4 We will have regard to the Regulators Code when developing the policies and procedures that guide our regulatory activities. We will encourage and promote fire safety while minimising the associated costs of providing safety from fire.

2.5 We believe that by fostering good relationships with our business community and by working with them, we can improve public safety, business resilience, and can remove any unnecessary burdens of complying with fire safety law.

2.6 The Service will endeavour to engage with the business community, to seek their views about our policies and practices. (Details of engaging with us are available on request and on our website)

2.7 In the most serious cases of danger in case of fire, we will take immediate and decisive action to secure safety, for example by serving a prohibition notice that can stop people from using the premises.

For more information see [\[CFOA fire safety law web pages\]](#).

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More on the way we approach regulation

3.1 In accordance with the Regulators Code, the Service takes enforcement action (and imposes sanctions and penalties) to:

- (a) change the behaviour of the offender;
- (b) change societal attitudes to the risks from fire;
- (c) eliminate financial gain or benefit from putting people at risk in case of fire;
- (d) exercise a proportionate response to the nature of the offence and the harm caused;
- (e) restore safety to premises where fire safety risks were found; and
- (f) encourage fire safety to be secured in future.
- (g) impose an appropriate sanction for the particular offender, which can include punishment through the courts (and the public stigma that should be associated with a criminal conviction);

[Click here for more information on the Regulators Code](#)

3.2 Avoiding fires is better than protecting people when fire occurs. Where fire is likely and / or the consequences of fire pose a hazard to people, it becomes necessary for us to take action (against the responsible person / duty holder) to reduce the risk. We have a wide range of enforcement action available to us. The actions we may take include:

- (a) no action;
- (b) providing advice;
- (c) informal action;
- (d) formal action (including enforcement, alterations and prohibition notices);
- (e) taking samples of dangerous materials or extracts of recorded information; and
- (f) securing information to prepare for prosecutions.

3.4 The enforcement actions listed above are not written in an absolute order of escalation. Enforcement action taken by the Service is scalable and appropriate to the risk to people in case of fire.

3.5 When formal enforcement action is necessary, each case will be considered on its merits. All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.

3.6 All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the statutory powers of the officer and all other relevant legislation, including but not limited to the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, and the Regulation of Investigatory Powers Act 2000, and in accordance with any formal procedures and codes of practice made under this legislation so far as they relate to the regulatory activity of the Service.

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More on helping those we regulate

4.1 We will help those responsible for delivering safety in case of fire (responsible persons and duty holders) to understand what is expected of them and what they should expect from the Service. Legal requirements will be clearly distinguished from best practice or non-statutory fire safety advice. We will publish guidance in a clear, accessible, concise, format using media appropriate to the target audience, in plain language.

4.2 (Details are available on request and on our website).

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More on Targeting

5.1 Our policy on inspections will be to focus primarily on those whose premises and activities give rise to the most serious risk to life in case of fire. In making an assessment of risk, we will take into account the fire safety record of those we regulate and the current risks to people in case of fire.

5.2 We will maintain a strategy that will identify and evaluate risks in premises as well as to the wider community and allocate resources to carry out inspections accordingly. We want to see fire safety provided in buildings and may take action against those regarded as putting people at risk in case of fire.

5.3 Earned recognition may be awarded to businesses for assurance of safety, including for example external verification of safety systems / practices.

5.4 Our Service Standards and plans including details of our risk-based approach to risk and are available on request.

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More on our Accountability

6.1 The Service is accountable to its community for its actions. This means we must have policies and standards against which we can be judged, and an effective and easily accessible mechanism for dealing with comments and for handling complaints.

6.2 (Details are available on request and on our website [\[Complaints\]](#))

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More on the Principles of Enforcement Action

7.1 In assessing necessary and proportionate enforcement action, consideration will be given to (amongst other things):

- the safety history at the premises,
- the history of operational attendances and false alarms at the premises,
- safety referrals to the premises from other authorities / interested parties,
- any Primary Authority relationship that might be in place with the business,
- the adequacy of fire safety arrangements at the premises,
- the attitude of the responsible person / duty holder to providing safety,
- statutory guidance,
- codes of practice, and
- legal advice.

7.2 Certain enforcement action, such as the decision to use a Simple Caution and / or the decision to investigate for prosecution, is further and specifically informed by those matters set out below at section 11

7.3 In every case, when we require action to remedy unsafe conditions, we will explain the nature of the unsafe conditions to those responsible and will confirm the same in writing.

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7.4 Because, subject to any letter or notice we give, work must be done to improve or secure the safety of people in case of fire; we will agree reasonable timescales within which the work must be completed that are agreed with those responsible.

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More on Our Enforcement Action

8.1 The Service will offer duty holders information and advice both verbally and / or in writing. This will include an explanation of why any specified work is necessary and a time period within which the specified work should be completed. Educating, informing and advising responsible persons and duty holders about their duties under fire safety legislation will form a fundamental element of our enforcement regime. The Service will fulfil its obligation under section 6(2) of the Fire and Rescue Services Act 2004 to give on request, advice on fire safety free of charge.

8.2 Where we find risks to safety, we may deal with them by informal means or (where appropriate) we may take formal action by serving alterations, enforcement and / or prohibition notices. We may also issue Simple Cautions, and (in the most serious cases) may prosecute. Before formal enforcement action is taken, inspectors will provide the person responsible with an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference without recourse to formal enforcement action (unless immediate action is required to reduce the risk to life or to prevent evidence from being destroyed).

8.3 In certain circumstances, after evaluating the safety at premises, no action may be required. This will be the case when the safety of people in case of fire has been adequately secured.

8.4 If the likelihood of fire is high and the consequences in case of fire are low, advice may be given on how the likelihood can be reduced. Advice may also be given where the consequences of fire might cause harm to people but can be simply avoided. Advice can also be given to point out good practice or to

signpost business continuity advice or other business protections, for example protection from flooding.

- 8.5 Where the likelihood of fire is low / medium or the consequences of a fire are slight, informal action will be taken. Informal action will take the form of a letter, pointing out that people are at risk in case of fire, where in the building they are located and what has led to them being put at risk as well as what should be done to provide safety and how to prevent the same danger from recurring. Informal action may also be taken, if those responsible have displayed clear intentions to undertake corrective action. Failure to respond to informal action can result in escalation to formal enforcement action.
- 8.6 Formal action will take the form of serving a Notice (alterations, enforcement, and / or prohibition notices). Formal action will be taken when the consequences of fire are such that people are likely to be harmed, suffer serious injury or death. It can require specific action to be taken or certain activities to cease.
- 8.6.1 Where a reasonable known change to premises or to the use of premises could result in a significant increase in the risks to people on the premises, we may serve an Alterations Notice, which requires the responsible person / duty holder to notify us, before making that known change.
- 8.6.2 Enforcement Notices require improvements in safety and will point out: that people are at risk in case of fire; where in the building they are located; and what has led to them being put at risk, as well as what should be done to provide safety and how to prevent the same danger from recurring. Enforcement Notices include a reasonable period of time for safety to be put in place. Failure to respond to a formal Notice can result in escalation to an investigation for prosecution.
- 8.6.3 Where immediate action is considered necessary to keep people safe from fire, a Prohibition Notice, which can prohibit or restrict the use of premises, can be served. An explanation of why such action is required will be given at the time and confirmed in writing. Whereas a Prohibition Notice requires action to remove imminent and immediate risks in case of fire, an Enforcement Notice might also be served to deal with less imminent risks in case of fire.

8.7 Fire Safety law gives power to warranted inspectors to take samples of dangerous materials or extracts of recorded safety information and documents. When we take materials or documents we will provide an appropriate receipt.

8.8 In the most serious of cases we will gather information and conduct an investigation to prepare for a prosecution. The decision to prosecute a case will be taken by those with authority to do so in accordance with our Scheme of Delegations.

8.9 All our members of staff that make enforcement decisions will be required to follow the Regulators Code.

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More about After Enforcement Action

9.1 When the Service takes enforcement action we will discuss what is required to achieve safety for relevant persons with the responsible person / duty holder (taking into account the circumstances of the case, if they have been explained to us).

9.2 The Service will clearly explain any advice, required actions or decisions taken at the time of our visit and will be willing to discuss such matters on any future occasion to ensure those responsible have clarity of what must be done.

9.3 Our letters and notices will provide details in writing of what must be done and how to appeal against any of our regulatory decisions. Our letters and notices will also explain what will happen next, especially if you do not undertake the work. Our web-site has details of how to complain about our conduct, if you should feel it necessary. [\[Complaints\]](#)

9.4 We encourage those responsible for providing safety in case of fire to contact us, especially if there are any questions or comments about our regulatory activity. We will also maintain regular communication (where required) until safety has been provided.

More on a Failure to Comply With Requirements

10.1 Rights of and routes to appeal will be clearly set out in writing and issued with our letters.

10.2 The failure to comply with an alterations, enforcement or prohibition notice constitutes an offence and may result in prosecution.

10.3 We can withdraw alterations, enforcement and prohibition notices at any time but they will generally be deemed to be in force until such time as the notice is complied with, withdrawn or cancelled by the court.

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More on Simple Cautions and Prosecution

11.1 There are a number of offences that can be committed under Fire Safety law.

Among the foremost of these are failure to comply with a formal notice and failing to provide safety in case of fire to such extent that one or more people are put at risk of death or serious injury in case of fire.

11.2 The Service can deal with offenders through prosecution and Simple Cautions.

These legal actions are important ways to bring to account those responsible for alleged legal offences. Where appropriate, we will use one of these measures in addition to issuing a formal notice.

11.3 A prosecution may be taken following full consideration of the many factors arising for the alleged breaches of the law. Penalties for offences are awarded by the courts and can include fines, imprisonment or both.

11.4 A Simple Caution will only be used where a prosecution could be properly brought and there is a realistic prospect of conviction. A Simple Caution includes a written submission from the person responsible that an offence has been committed.

11.5 A record of a Simple Caution will be kept on file for three years and if a conviction for a further offence is brought within that period, the written submission of the previous offence will be introduced to the court for consideration.

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More about the Other Duties of the Service

13.1 In addition to Fire Safety law the Service is also responsible for the following regulations.

- Licensing authority for the Petroleum Consolidation Regulations 2014
- The Explosive Regulations 2014.

13.2 The Service can request a review of a premises license under Section 51 of the Licensing Act 2003. The options available to the Licensing Committee are:

- i. Modification of the conditions of the Licence
- ii. Exclusion of Licensable activity from the scope of the Licence
- iii. Removal of the Designated Premises Supervisor
- iv. Suspension of the Licence for a period not exceeding three months
- v. Revocation of the Licence
- vi. Issue of a Warning Letter
- vii. No Action

13.3 The Service enforces the requirements of Explosive Regulations 2014 through application of the Health and Safety at Work (etc) Act 1974 and the serving of improvement notices and prohibitions orders. [Regulating and Enforcing Health and Safety](#)

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More on Data Protection

14.1 The Service will comply with the principles of the Data Protection Act 1998 governing the use of personal data received or obtained and will respect the rights and freedoms of those individuals when processing their details. The following document Information Management Strategy lays out our strategic

approach to meeting these legal requirements. (Details are available on request and on our website [\[Information Management Strategy\]](#))

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More on Freedom of Information

15.1 Under the Freedom of Information Act 2000, individuals are given ‘a general right of access to information held by public authorities in the course of carrying out their functions subject to certain conditions and exemptions’. Under Section 19 of that Act, public authorities are required to produce a publication scheme setting out details of the information routinely published or made available, how the information is made available (in hard copy and on-line), and whether it is available free of charge or on payment.

15.2 Details of The Service’s publication scheme are available on request and on our website [Publication Scheme](#).

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The Regulators Code

The Regulators Code is a statutory code of practice for regulators and makes six broad requirements:

- i. To carry out their activities in a way that supports those they regulate to comply and grow;
- ii. To provide simple and straightforward ways to engage with those they regulate and to hear their views;
- iii. To base their regulatory activity on risk;
- iv. To share information about compliance and risk;
- v. To ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply; and
- vi. To ensure their approach to regulatory activity is transparent.

The service has taken regard of the Regulators Code in producing this policy statement.

For the full version click here: [‘The Regulators Code’](#)

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The Regulatory Enforcement and Sanctions Act

The Regulatory Enforcement and Sanctions Act (The RES) established The Local Better Regulation Office (later renamed as the Better Regulation Delivery Office (BRDO)). It also imposed a duty on Regulators to: (a) have regard to any guidance issued by BRDO, (b) a duty to comply with guidance where the Regulator is directed to do so by BRDO, and (c) a duty to have regard to any list of enforcement priorities published by BRDO. As a listed Regulator, the Service is committed to these duties.

For the full version click here: [‘The Regulatory Enforcement and Sanctions Act’](#)

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Legislative and Regulatory Reform Act

Part 2 of the Legislative and Regulatory Reform Act, requires the Service to have regard to the Principles of Good Regulation. We recognise that our regulatory activities should be carried out in a way which is: (i) proportionate; (ii) accountable: (iii) consistent: (iv) transparent: and (v) targeted to situations which need action.

When we exercise a regulatory function, which for the Service includes: the Regulatory Reform (Fire Safety) Order, [\[The Petroleum \(Consolidation\) Regulations 2014, Explosives Regulations 2014 and the Health and Safety at Work \(etc\) Act\]](#) we have regard to the Regulators Code.

For the full version click here: [‘Legislative and Regulatory Reform Act’](#)

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The Legislative and Regulatory Reform (Regulatory Functions) Order 2007

The Legislative and Regulatory Reform (Regulatory Functions) Order imposes a duty on the Service to have regard to the Regulators' Code when determining general policies or principles. It requires that the regulatory activities of the Service are carried out in a way which is transparent, accountable, proportionate and consistent, as well as being targeted only at cases in which action is needed.

For the full version click here: '[Legislative and Regulatory Reform \(Regulatory Functions\) Order](#)'

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The Environment and Safety Information Act

The Environment and Safety Information Act requires the Service to make a publicly accessible record of formal enforcement action that we have taken.

For the full version click here: '[The Environment and Safety Information Act 1988](#)'

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The Regulatory Reform (Fire Safety) Order

The Regulatory Reform (Fire Safety) Order 2005 principally imposes a general duty on responsible persons and duty holders to take general fire precautions to keep people safe in case of fire and establishes enforcing authorities to enforce the provisions of the Order. The Service is an enforcing authority under the Order and is empowered to inspect premises and serve notices to improve safety standards (among others).

For the full version click here: '[The Regulatory Reform \(Fire Safety\) Order](#)'

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The Licensing Act 2003

The Licensing Act establishes the Service as a 'responsible authority' with whom the Licensing Authority must consult in connection with Licensable activities, including the sale or supply of alcohol or the provision of regulated entertainment or late night refreshment. The licensing objectives are to promote: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm.

For the full version click here: '[The Licensing Act](#)'

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The Explosive Regulations 2014

The Service is the local authority for the purposes of dealing with applications for registration or for a licence to store explosives (under certain prescribed conditions).

For the full version click here: [The Explosive Regulations 2014](#)

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The Petroleum (Consolidation) Regulations

The Service is the 'petroleum enforcement authority' and can grant 'storage certificates' for premises at which petrol is dispensed, and enforces The Petroleum (Consolidation) Regulations in premises to which those regulations apply.

For the full version click here: '[The Petroleum Consolidation Regulations](#)'

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September 2018

Norfolk County Council Highways Enforcement Protocol

1.0 Introduction

Commented [NS1]: This section has been amended as a result of consultation feedback – see committee report

The Highways area teams receive a significant number of customer complaints each year relating to enforcement matters. These range from trading on the highway, such as car sales on verges, caravans / motorhomes being parked on the highway, blocked public footpaths and trailer or van mounted advertising hoardings.

The CES enforcement policy is followed, although priority is given to highway safety matters. Increasingly, the teams work with District and Borough Councils and on a more local level with Town and Parish Councils to achieve successful outcomes.

In the majority of cases, the legal processes relating to enforcement are well established, such as dealing with public rights of way issues under various sections of the Highways Act. The following processes are less well established and have been the subject of recent Local Member interest.

2.0 Vehicles for sale on the Highway

When a complaint is received or issue identified, the Highways Area team will notify the owner and ask them to remove it immediately. A phone call will suffice provided that a record is kept of the time and date.

The Highways Area team will re-inspect the site at least twice within the next calendar month, taking photos and noting the date and time of the inspections. If the problem persists after 4 weeks, the Highway Engineer and Area Manager will assess situation and identify a way forward.

3.0 Advertising Boards and Trailers on the Highway

At joint authority meeting, which included NPLaw, it was concluded that the most appropriate way forward in addressing the issue of illegal advertising boards and trailers was to use the Town & Country Planning Act 1990 rather than the Highways Act 1980, as this offered the best chance of a successful prosecution combined with deterrent fines. In these cases, District and Borough Councils would take be the Lead Authority.

However, where a complaint is received and the issue identified is likely to cause a danger to other highway users, the Highways Area team will;

- Check whether route is subject to an advertising ban by-law (generally District/Borough Council imposed)
- Laminated notices can be attached to towable hoardings if they are found to be on Highway land, illegal and causing a safety issue for highway users.
- If the contact details for the trailer owner are known, they can be contacted direct to remove the trailer. This can be by either telephone or the use of letter
- If letter is sent or contact details are unknown, a formal notice must be attached to the advertising hoarding. All fees charged should recover all costs incurred including Officer time, administration costs and hoarding collection costs.
- Officers can request the removal of unauthorised A Boards. Photographic records can be taken and re-inspection may be required
- Request for removal, by formal letter, should be made to the offending party, in their absence, immediate removal can be arranged and cost recovered.
- If there is a significant problem with a particular shopping area, precinct or high street it may be helpful for the Highways Engineer to arrange a meeting with the traders, town Councillors or Town Centre Managers to explain the procedure and our Duty of Care for all highway users
- In exceptional cases Area Managers can consider whether offenders should be prosecuted in Magistrates Court.

1.0 Introduction

In November 2011 Norfolk was designated as a Civil Enforcement Area and, following the commencement of the Disabled Persons' Parking Badges Act 2013, local authority enforcement officers are now able to inspect and retain a blue badge without police presence, if they have reasonable grounds for believing that an offence has occurred.

Wrongful or misuse of a Blue Badge is a strict liability offence. The County Council employs a Blue Badge Investigator to carry out follow up investigations and prepare the evidence in support of enforcements – including giving written warning, or recommendations for formal prosecutions or simple cautions.

The Community and Environmental Services Enforcement Policy is followed, and this protocol is to be read in conjunction with that over-arching document. The Blue Badge Investigations service forms part of the Infrastructure and Development Section. There is a close working arrangement with Trading Standards, who process the legal disposals, and with the Customer Services Centre (CSC) who administer the Blue Badge Scheme.

There is close liaison with District Councils who employ Civil Enforcement Officers (CEO), including guidance on the policy requirements for evidence-gathering and operational arrangements.

The misuse of the Blue Badge Scheme can have serious consequences for legitimate users by denying them access to essential services and facilities. Norfolk County Council are committed to reducing the level of misuse and increasing compliance with the scheme in pursuit of our traffic management duties and aims, and to support vulnerable people in Norfolk.

2.0 Identifying Offences

Blue Badge Offences are identified in 3 ways –

- Reports by members of the public via the online form or the CSC
- Badge Inspections and seizures by CEOs as part of normal patrol duties.
- Badge Inspections and seizures by the Blue Badge Investigator during specific patrols.

The County Council publicised the commencement of work by the Blue Badge Investigator and continues to publish on its website the results of enforcement action where a person is taken to court.

<https://www.norfolk.gov.uk/care-support-and-health/disabilities/blue-badges/blue-badge-enforcements>

We have provided guidance to Civil Enforcement Officers who have the power to inspect and retain Blue Badges. This includes when and when not to inspect/retain badges, what offences are likely to have been committed. How they should interact with members of the public in what is a stressful situation and the type of questions to ask to gather evidence.

3.0 Investigation Process

All investigations into alleged offences are conducted in accordance with statutory powers, relevant legislation and codes of practice.

Persons suspected of committing an offence will always where possible be formally interviewed in accordance with Police and Criminal Evidence Act 1984 (PACE). This is undertaken in 3 ways –

- Roadside interview by the Blue Badge Investigator
- Interview in person with the Blue Badge Investigator
- Postal Interview

The method chosen is dependent on how the alleged offence was identified.

The opportunity to demonstrate a statutory defence and offer mitigating information is, where possible, always offered during the PACE interview. Unsolicited information may also be recorded and used as part of the decision making process. We will also give an additional opportunity to offer mitigation following a road side interview by writing to the alleged person providing them with a copy of their responses.

4.0 Disposal

We are committed to giving advice, guidance and support to all those persons suspected of committing an offence and will do so at all stages of an investigatory process. Mitigating information where supplied will be used during the decision making process but, a formal disposal may still be the likely outcome.

There are four methods of disposal available to use in relation to the misuse of a Blue Badge.

1. No further Action (NFA) – the alleged offence may fall outside our jurisdiction, there may be insufficient evidence or formal action not in the public interest.
2. Written warning – The alleged offence was within our jurisdiction but there is insufficient evidence or formal action would not be in the public interest.
3. Simple Caution – In certain cases a simple caution may be offered instead of prosecution. When offering a simple caution we will comply with relevant Home Office Circulars and the offender will be made aware of the impact the simple caution may have on their life.
4. Prosecution - We may prosecute using different pieces of legislation depending on what offences are alleged. The legislation we use is;
 - Section 115/117 of the Road Traffic Regulation Act 1981
 - The Fraud Act 2006
 - Forgery and Counterfeiting Act 1981
 - The Theft Act 1968
 - Proceeds of Crime Act 2002

A person could also be issued with a penalty charge notice for any parking contravention that occurs.

In cases where a badge holder lets a third party use a badge, the issuing local authority can withdraw the badge under regulation 9(2)(a) of the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 after a relevant conviction has been obtained.

In certain circumstances involving prolific offenders Courts are able to disqualify drivers for a period of time under section 46 of the Powers of Criminal Courts (Sentencing) Act 2000.