

***Assets & Environment***

**Environmental Health Enforcement Procedure Policy 2023**

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Document Location

This document is held by Tamworth Borough Council, and the document owner is the Environmental Health Officer.

Current location:

Printed documents may be obsolete, an electronic copy will be available on Tamworth Borough Councils Intranet. Please check for current version before using.

Revision History

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Approvals

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| **Name** | **Title** | **Approved** |
| Wendy Smith | Head of Environmental Health | Yes |
| Martin Summers | Porfolio Holder Signature of Martin Summers | Yes |

Document Review Plans

This document is subject to a scheduled annual review. Updates shall be made in accordance with business requirements and changes and will be with agreement with the document owner.

Distribution

The document will be available on the Intranet and access by authorised users.

Security Classification

This document is classified as SEC1 Routine with access restricted to Tamworth Borough Council Staff and business partners.

Scope

**Environmental Health Enforcement Procedure Policy 2023**

**1. Introduction**

1.1. The Council has a responsibility to enforce specific legislation identified within the Council’s Constitution. We also have a responsibility to ensure that we enforce these regulations following the statutory principles of good regulation. Each case is unique and will be considered on its own merits, but this document in conjunction with the Councils Corporate Enforcement Policy has been prepared to set out our approach, the general principles to be applied and the factors to be taken into consideration when determining the enforcement actions to apply or recommend.

1.2. Our primary function is to achieve regulatory compliance in order to protect the public, legitimate business, the environment, consumers and workers.

**2. Aims of policy**

2.1. To ensure that enforcement decisions are consistent, transparent and proportionate and that people, businesses, organisations and the community are aware of the basis on which enforcement action is taken.

2.2. To provide a clear framework for officers undertaking regulatory enforcement work clearly setting out the factors to consider to achieve the principles of good enforcement identified in the policy.

**3. Shared role/partnership**

3.1. Regulatory enforcement can in many situations overlap with enforcement responsibilities of external agencies or other services within the council. Officers shall consider this wider context of enforcement if there is a shared or complementary role with internal and external partners. The main organisations and services are listed below (this is not an exhaustive list):

* Street Scene
* Waste Management
* Licensing
* Development Control & Planning Enforcement
* Housing External partners:
* Trading Standards
* Staffordshire Police
* Staffordshire Social Services
* Housing Associations
* Voluntary sector organisations
* Environment Agency
* Staffordshire Fire and Rescue

**4. Governance and ethics**

4.1. Equality and diversity

We will take into account the legal and procedural implications of The Human Rights Act 1998 and European Convention on Human Rights. We will also have regard to our responsibilities as described in the Council Equalities Policy Statement and Objective. We recognise there is diversity within the community. Care will be taken to ensure enforcement actions are clearly understood by all. For example, we may arrange for an interpreter or make reasonable adjustments for people with disabilities, where appropriate. Many of the activities which we seek to control happen out of office hours. Within our resource and if considered necessary we will arrange for enforcement to take place out of usual office hours. This will include monitoring enquiries, etc.

4.2. Legislative and regulatory reform

This policy has been prepared with regard to the current principal legislation and statutory guidance including:

* The Regulatory Enforcement and Sanctions Act 2008
* Enterprise Act 2016
* Co-ordination of Regulatory Enforcement Regulations 2017
* Legislative and Regulatory Reform Act 2006
* Legislative and Regulatory Reform (Regulatory Functions) Order 2007 as amended in 2009 2010 and 2014
* BIS Regulators Code April 2014.

Regard is also given to:

* The Code for Crown Prosecutors.

We are committed to delivering our regulatory activities in a manner that is risk-based, proportionate and consistent and we aim to be transparent and accountable about our regulatory approach and activities, in accordance with the statutory principles of good regulation.

4.2.1. When we take enforcement action we aim to:

* change behaviour
* change attitudes in society to offences which may not be serious in themselves, but which are widespread
* eliminate any financial gain or benefit from non-compliance
* be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
* be proportionate to the nature of the offence and the harm caused
* restore the harm caused by regulatory non-compliance, where appropriate deter future non-compliance

4.2.2. When considering formal enforcement action, we will, where reasonably practicable, discuss the circumstances with those suspected of a breach of regulation and take any information gained into account when deciding on the appropriate enforcement approach. However, in some situations, for example, where immediate action is required to prevent or respond matters of imminent risk to public health or where such an approach will defeat the purpose of the proposed enforcement measure, we may not be able to do so.

4.2.3. Where businesses are in a Primary Authority Partnership under The Regulatory Enforcement and Sanctions Act, we will, where required, comply with the agreed provisions for enforcement and notify the business’s Primary Authority of the enforcement action we propose to take.

**5. Methods of enforcement**

There are a wide range of actions available to the authority and we may respond with one or more of them as is proportionate. There are some cases where we may take enforcement action after compliance has been achieved if it is in the public interest to do so:

**Informal action**

1. No Action
2. Informal Action - Advice and Guidance

**Formal action**

1. Formal Written Warning
2. Statutory Notices, Community Protection Notices,
3. Fixed Penalty Notices
4. Prosecution
5. Simple Caution
6. Seizure and Detention
7. Works in default
8. Forfeiture Proceedings
9. Refusal/Suspension/Revocation of a licence
10. Injunctive Actions and other Civil Sanctions We believe in firm but fair enforcement and will follow enforcement proportionate to the offence. Where there is a serious or flagrant breach of legislation, or there is an imminent risk to the health or welfare of people, immediate enforcement action may be considered.

5.1 No action

In some circumstances reports are made to the council which fall outside any legislation that they have a responsibility to enforce in which case the complainant will be informed that the council or other agency has no statutory role. Where legislation does apply the only circumstance where no action should be taken is when the breach was a result of a genuine mistake where, once identified, immediate action was taken to comply.

5.2. Informal action – advice and guidance

The term informal action means offering advice and guidance to persons, businesses or organisations, this can be verbally or in writing. If it is included in forms or letters, it will be clearly identified as such. Situations which may be dealt with through informal action are generally but not exclusively:

* The act or omission is not serious enough to warrant formal action or,
* From the past history it can be reasonably expected that informal action will achieve compliance or,
* Where we seek to educate and inform of ‘good practice’

5.3. Formal action

As an authority we can take action through more formal means to achieve compliance or protect the public, this includes the following options.

5.3.1. Formal written warning

A formal written warning is used where the act or omission is serious enough to warrant formal written warning and must contain the following:

* The legislation contravened and measures which enable compliance to be achieved,
* Clearly differentiate between legal requirements and recommendations of good practice, and
* A reasonable date for compliance. Where the recipient of the letter disagrees with any requirement and there is a “right of appeal”, where identified in legislation, this should be made to the relevant Senior Officer/Head of Environmental Health.

5.3.2. Statutory notices

Notices may be served in circumstances where there is a serious contravention, imminent risk to safety or health, or continuing non-compliance. Notices include, but are not limited to:

Hygiene Emergency Prohibition Notices (food) or Prohibition Notices (health and safety) which require contravening activities to cease immediately and may close all or part of a premise.

Hygiene Emergency Prohibition Notices (food) must be confirmed by a Magistrates Court within 3 days of service.

Hygiene Improvement Notices (food) or Improvement Notices (health and safety) may be served to correct specific contraventions of the legislation and specify a compliance date. In both cases, the Notice must state what provision is being contravened, and what is necessary in order to comply with it.

Environmental Protection Act notices may be served for contraventions of appropriate legislation e.g., for the existence of a statutory nuisance. Notices shall be served to require persons, businesses or organisations to cease contravening activities, or improve conditions to comply with legislation within a reasonable time.

The Environmental Permitting (England and Wales) Regulations 2016 Notices can be served under this legislation for failure to comply with conditions contained in an Environmental Permit. Enforcement Notices can include steps to remedy any issues and bring a Permitted business back into compliance. Where, in the opinion of the Council, there is a risk of serious pollution, a Suspension Notice can be served which requires the business to cease operating until the remedial steps have been taken.

Community Protection Notices (CPNs) may be issued under the Anti-social Behaviour, Crime and Policing Act 2014 will always be preceded by a community protection warning. The scope of use for CPNs is extremely broad, for example:

* Anti-social behaviour
* Litter and refuse accumulations
* Dog control including repeat strays
* Noise including barking dogs
* Bonfires and other nuisances
* Public Health issues including vermin.

Where the legislation contains an appeal process no further action will be taken until the appeal period is completed. Officers will revisit to confirm the notice has been complied with. Failure to comply with a Notice is an offence in itself and may result in prosecution.

5.3.3. Prosecution

The authority to prosecute will be given in accordance with the council’s constitution. The decision to prosecute will be made by the Head of Shared Legal Services having regard to the authorisation from the relevant authorising officer and the Full Code Test as set out in the code for Crown Prosecutors which has two stages which must be satisfied:

1. The Evidential Stage – is there sufficient evidence to provide a realistic prospect of conviction against the offender

2. The ‘Public Interest’ Stage – is it in the public interest for the case to be brought to court? This can be found on The Crown Prosecution Service (CPS) website.

5.3.3.1. The decision to recommend the institution of proceedings will in general be in respect of those persons or organisations that:

* visually or materially damage the environment;
* blatantly disregard the law; • fail to achieve basic legal standards, (often following previous contact with the Services); or
* who put the public at risk

5.3.3.2. The investigating officer, when deciding on the appropriateness for legal proceedings (prosecution)shall also take the following criteria into account:

* Community benefit

Legal proceedings may be taken on the first occasion of certain events because of the seriousness of the case and/or Community benefit from a prosecution and its likely deterrent effect.

* Blatant breach of law

Where there is a breach of law is such that public health, safety or wellbeing, animal health or welfare or the local environment is or has been put at risk, it would be appropriate to take legal proceedings.

* Failure to comply with a statutory notice

Legal proceedings, seizure of equipment or works in default will usually be appropriate, in cases of failure to comply with improvement or prohibition notices or other notices requiring or prohibiting action.

* Failure to comply with lawful requirements If a person or business fails to comply with lawful requirements, having been advised on previous occasions, legal proceedings will usually be taken.
* History of non-compliance If there is a history of non-compliance with legislation by a person or business, then legal proceedings will usually be taken.
* Obstruction Legal proceedings will be taken in cases of deliberate obstruction of an officer.

5.3.4. Simple cautions

The decision to offer a simple caution will be made by the Head of Service having received a recommendation from the investigating officer in consultation with the Head of Shared Legal Services.

5.3.4.1. We may use a simple caution as a proportionate alternative to prosecution and in accordance with Ministry of Justice guidance ‘Simple Cautions for Adult Offenders’ (dated 13.4.15).

5.3.4.2. A simple caution will only be considered:

* Where we are satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the offender,
* The offender admits the offence,
* The offender consents to being cautioned, and
* It is in the public interest to offer a simple caution in respect of the offence rather than to prosecute

5.3.4.3. Where a simple caution is offered and declined, we are likely to consider prosecution.

5.3.5. Seizure and detention

Certain legislation enables authorised officers to seize goods or equipment. This includes unsafe food or dangerous pieces of work equipment, noise generating equipment or vehicles associated with certain waste crime etc. Receipts will be issued to the person from whom the goods are seized. Where the law requires, seized goods will be taken before a Magistrate e.g., unfit food.

5.3.6. Works in default

Under certain legislation a council can undertake work in default and recover the cost from the occupier or owner. This may be appropriate for example, when:

* It is necessary to carry out work in the public interest and/or the costs are not prohibitive,
* There is a failure to carry out work covered by a statutory notice,
* Immediate action is required, or
* It is unlikely that work will be carried out unless done in default

5.3.7. Forfeiture proceedings

In certain situations, it may be appropriate for the Council to seek forfeiture of property to address a contravention. This would only occur where the legislation gives the Council the power to do so and would be through an application to the Court.

5.3.8. Refusal / Suspension / Revocation of Licence / Approval / AuthorisationLicences, Approvals and Authorisations are issued under a range of specific legislation and will only be refused, suspended, or revoked following appropriate procedures and consideration of all relevant evidence. In the case of certain food business manufacturing or handling high risk food products require approval to allow their foods to be sold. For the approval to be refused, suspended, or revoked, one or more of the following criteria must be met:

* Failure to comply with legal requirements
* Have ignored written warnings or statutory notices
* Are producing unsafe food products likely to harm human health
* Obstructed an officer undertaking their duties

5.3.9. Injunctions and civil sanctions

An injunction can be used to deal with a wide range of behaviours, many of which can cause serious harm to victims and communities. If a person ‘engaged or threatens to engage in anti-social behaviour’ an application may be considered. This could include but is not limited to irresponsible dog ownership or noisy/abusive behaviour towards neighbours. Many of the civil sanctions available to the authority are already identified in sections 5.3 other appropriate options may be considered such as restoration or stop notices.

5.3.10. Other enforcement action

The diverse and evolving nature of the legislation used across the service means that other enforcement tools can be appropriate, but it is not practical to list them all here. Where other enforcement action is used its use will be proportionate and only by officers that are trained and authorised in writing to do so in accordance with section 6 below.

**6. Authorisation**

6.1. Officers carrying out enforcement work will be suitably trained, qualified, experienced and fully competent to undertake their enforcement activities. Officers will be appropriately authorised in accordance with the councils Constitution and Scheme of Delegation.

6.2. Officers authorised to sign and serve various documents will have the level of competence and ability required. Officers authorised will carry identification and will have evidence of their authorisation.

**7. Deciding on enforcement action to be taken**

7.1. For breaches resulting in ‘no action,’ ‘advice and guidance’ and ‘formal written warning’ the case officer will decide upon the appropriate course of action.

7.2. The case officer’s decision will be based upon professional judgement, legal guidelines, statutory codes of practice, guidance. Advice and confirmation can be obtained from colleagues and a Senior Officer/Head of Environmental Health.

7.3. For breaches resulting in enforcement methods not listed at 7.1 the case officer will consult with a Senior Officer to decide the appropriate course of action. This will include service of Hygiene Emergency Prohibition Notices (food), Prohibition Notices (health and safety), refusal / suspension / revocation of licences / approvals / authorisations and Remedial Action Notices (RAN). Where a Senior is unavailable, the Head of Environmental Health or other senior manager will be consulted.

7.4. In the case of service of Hygiene Emergency Prohibition Notices (food) and Prohibition Notice (health and safety), agreement of the Food Lead Officer, the Head of Environmental Health or other senior manager may not be possible where there is an imminent and serious risk to safety or health. Officers will inform them as soon as practicable.

7.5. In exceptional circumstances where officers, on consideration of the evidence and the risk to health or the environment, may depart from the policy.

7.6. In the case of a work-related death, the case officer must inform and liaise with Staffordshire Police this may result in a joint investigation. Where Staffordshire Police/Crown Prosecution Service decides not to pursue a manslaughter case, consideration will be given to a health and safety prosecution, in-line with this policy.

**8. Application of this policy**

8.1. The principles contained within the enforcement policy shall be applied to the enforcement of legislation within the remit of Tamworth Environmental Health Service.

8.2. The preparation of this policy and any supplementary supporting documents will involve, where appropriate, consultation of affected parties.

**9. Approval**

9.1. The Environmental Health Enforcement Policy will be approved by Cabinet.

**10. Access to the policy**

10.1. The policy is available on the Tamworth Borough Council website. The case officer will be able to provide a copy of this policy given suitable notice. On request and where practicable this policy may be made available on tape, in Braille, large type, or in a language other than English.

**11. Review of policy**

11.1. The Policy will be kept under review to take account of changes in legislation and amendments found necessary as a result of internal monitoring.

**12. Complaints/Appeals**

12.1 If any person is unhappy with the action taken, or information or advice given, they will be given the opportunity of discussing the matter with the relevant Senior officer, Head of Service or Assistant Director. This does not affect the right of any aggrieved person to exercise their rights under formal or informal appeal processes.

12.2 Any such appeal does not preclude any aggrieved person from making a formal complaint about the service or any officers. Any such complaint will be dealt with in accordance with Corporate Complaints process accessed via the Tamworth Borough Council website.

**LICENSING ENFORCEMENT PROCEDURE**

The Licensing Service has enforcement responsibilities in a wide number of areas affecting the public, the environment and businesses. These include:

* Hackney Carriage & Private Hire Drivers, Vehicles and Private Hire Operators
* Licensing Act 2003
* Gambling Act 2005
* Charitable Collections
* Sexual Establishment Venues
* Scrap Metal Act 2003
* Street Trading

**Our General Approach**

We will use a balance of approaches to enforcement work to ensure the protection of the public, and legitimate trade and business. These include:

* Routine inspection of businesses and others to ensure compliance with conditions and the law
* Investigation of complaints and other reported incidents which may involve breaches of conditions and the law
* Education and advice to encourage voluntary compliance with conditions and the law
* Gathering intelligence to target resources at “rogue traders” and other areas of threat to the public and business

We believe the vast majority of businesses want to comply with conditions and the law. We will encourage them to do so but will take firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. We aim to improve communications and develop partnerships with local business to achieve compliance, improve standards and sustain a thriving local economy.

We will ensure that, wherever practicable, our enforcement services are effectively coordinated to minimise unnecessary overlaps and time delays. Where the Council has a shared or complimentary role with another enforcement agency then action will be coordinated so as to best protect the public without unnecessarily increasing the burden on businesses.

We are committed to ensuring that all sectors of the community receive fair treatment and we will continue to make efforts to reach those customers whose access to our services is restricted.

**Service Standards**

Our service standards will cover:

* Courtesy and helpfulness of staff
* Our manner when answering the telephone
* Our manner when we meet someone in person
* Response times following a request for one of our services
* How often a business will be visited

Whenever it is possible and appropriate to do so, we will consult the users of our service and consider their opinions when setting our standards and developing programmes of work. We will publish these standards, monitor our performance against them and report on the findings.

**Openness**

We will be open in how we carryout our work and discuss with all interested parties any difficulties they may be experiencing. We will provide information about the work we do and the rules we apply in plain language in booklets, leaflets and newsletters. As technology develops, other forms of communication will be introduced, for example, the Internet.

**Helpfulness**

We will offer advice and assist businesses and individuals as much as possible to comply with the law. When sufficient resources are available to us, we will organise training courses and seminars to help businesses improve standards. General advice and information to both businesses and individuals will be further developed using various media and where appropriate, information will be provided in other languages.

Our staff will remain professional at all times and provide a courteous, responsive and efficient service. They will identify themselves by name when answering the telephone, and show means of identification and leave contact details when visiting businesses or people’s homes.

**Partnership**

We believe a closer partnership between business and the Council means better protection for consumers and business. As part of our partnership approach we will work with businesses and other enforcement agencies to meet the needs of the community.

**Proportionality & Consistency**

We will ensure that any enforcement action we take is proportionate to the risks to public health, well being and amenity and to a fair trading environment.

We will carry out our duties in a fair, equitable and consistent manner and will have arrangements in place to promote consistency of enforcement throughout the Council and with other enforcement authorities.

In assessing risk and ensuring consistency of enforcement and good practice we will take note of any published guidelines and liaise with other authorities.

**Your Questions Answered**

**Who will visit my business?**

* Inspections and investigations will be carried out by suitably qualified officers appointed and authorised by the Council
* They will carry suitable identification that can be verified at all times. They have the right to enter and / or inspect all premises, vehicles, stalls and any such place that holds a licence, registration, consent or permit issued by the Council, at all reasonable times

* They do not have to make an appointment and will usually visit businesses without notice

**How often are businesses inspected?**

The frequency of inspections will normally depend upon the potential risk posed to the public by the particular licence holder or licensed activity.

Inspections may be scheduled or occur as a result of a complaint.

**What will an officer look for?**

* Officers will look at the way your business and activities are operated to ensure that the law is being complied with
* Officers will also check that all licensing and local bylaws are being complied with

**What can I expect from an officer?**

* To be shown identification and authorisation
* To be treated courteously
* To be provided with a contact point and telephone number to contact us for advice if necessary
* To receive a written report of the inspection detailing any breaches of conditions and or the law, clearly distinguishing between recommendations and legal requirements and explaining why such action is necessary and over what timescale

* OR To have explained clearly and simply any advice and requirements and have them confirmed in writing on request with an explanation of why any action is necessary and over what timescale. Legal requirements will be clearly distinguished from best practice advice

* Subject to requirements in the Police & Criminal Evidence Act 1984, to be given the opportunity to discuss the circumstances of a case and, if possible, resolve points of difference unless immediate action is necessary
* Where immediate action is considered necessary, to be given the reason for such action at the time and confirmed in writing within 10 working days

**What powers does an officer have?**

Powers vary with different licensed activities but generally Officers, as well as having powers of entry, can take photographs and videotape activities. They can seek information and inspect premises, vehicles and records.

It is a criminal offence to obstruct an Officer when they are exercising their powers or carrying out their duties.

All investigations will be undertaken in accordance with the Regulation of Investigatory Powers Act 2000.

**What action can we take?**

As far as the law allows, Officers will take account of the circumstances of each case when considering the appropriate course of action. The overriding consideration in all cases will be public safety.

All enforcement activity will be undertaken with due regard to the provisions of the Human Rights Act 1998.

The following options are available to us:

**No Further Action**

Where premises / activities are found to be satisfactory this will be confirmed in writing.

**Informal Enforcement Action**

The informal approach of offering advice and issuing warnings will be our usual option if breaches of condition and or legislation are found but there is no serious risk to public welfare and:

1. The offence is not sufficiently serious to warrant formal action
2. The circumstances would indicate that informal action would be successful

The Officer will set out all such advice in writing at the time.

**Formal Enforcement Action**

The formal options open to us include prosecution, formal caution, penalty points, and suspension and revocation of licences. Any rights of appeal against formal action will be clearly set out in writing.

***Prosecution***

The decision to prosecute is a serious step. Where circumstances warrant, it we will prosecute without prior warning or recourse to alternative sanctions. In determining where this is appropriate, we will apply the Code for Crown Prosecutors to make fair and consistent decisions about prosecutions. This states that in deciding whether to prosecute for an offence an Enforcement Officer will consider whether there is enough evidence available to provide a realistic prospect of conviction and, if so, whether prosecution is in the public interest.

Each case will be considered on its individual circumstances however factors that will be taken into consideration in prosecution include:

* The intent of the offender trader in committing the offence. Where there is intent to deliberately or consciously carry out action in contravention of legislation this will weigh towards prosecution

* The gravity of the offence within the community in terms of damage to health, safety, financial loss, the environment, the local economy or other factors

* Nature of the victim such as the vulnerable, the elderly, the young, those on low incomes or where they are put in considerable fear, or suffered personal attack, damage or disturbance
* The scale of offences committed
* Previous history of the offender including any failure to comply with advice, notices, and guidance issued

* The extent of diligence or negligence of the offender in committing offences

***Formal Caution***

Formal cautions are registered against the person agreeing to the caution and can be used in evidence in any subsequent legal proceedings. A formal caution is an alternative to prosecution

A formal caution may be offered as an alternative to prosecution in the following circumstances:

* There is sufficient evidence to give a realistic prospect of conviction
* The accused admits the offence
* The accused understands the significance of the caution and gives informed consent to being cautioned

The formal caution will be used in accordance with Home Office Circular 18/1994. There is no legal obligation for any person to accept the offer of a formal caution and no pressure will be applied to accept a caution. If a formal caution were declined then prosecution would be the normal course of action.

***Other Formal Enforcement Action***

This may include a formal letter of warning, a formal interview by an Authorised Officer or the Licensing Committee, the suspension of a licence or the revocation of a licence.

**ENVIRONMENTAL PROTECTION ENFORCEMENT PROCEDURE**

All customers shall be dealt with in accordance with the TBC’s Customer Services Policy.

All enforcement will be considered in conjunction with TBC’s Corporate Enforcement Policy and where appropriate informal measures should be exhausted prior to commencing formal enforcement action.

All actions will be undertaken following reference to the Pollution Procedure Documents.

Actions will be taken in accordance with TBC’s Constitution.

**POLLUTION SERVICE INTERVENTIONS**

Enforcement action will be considered against individuals and commercial operations for breaches of Environmental Health (Pollution) legislation that is not discussed in detail in any other section of this document.

Notices may be served, with realistic time limits, if it is believed that a breach of Environmental Health (Pollution) legislation has occurred and informal action is not appropriate or has failed to achieve compliance.

Works in Default and Prosecution shall be considered for failure to comply with a Notice.

**ENVIRONMENTAL PERMITTING**

Enforcement action will be considered against operators of processes prescribed for LA-IPPC/LAPPC (Permitted Processes) under the Environmental Permitting (England and Wales) Regulations 2016.

Premises will be inspected at a frequency determined by risk assessment or following complaint.

**STATUTORY NOTICES**

**Enforcement Notices**

Enforcement Notices may be served if it is believed that a permit condition is, has been or is likely to be contravened.

The circumstances considered appropriate for the issue of statutory enforcement notices may include one or more of the following:

1. There are contraventions of legislation.
2. There is a lack of confidence in the operator to respond to an informal approach.
3. There is a history of non-compliance with informal action.
4. Standards are generally poor with little management awareness of statutory requirements.
5. There is a potential for serious effects on the environment and impact on residents.

NOTE: Enforcement Notices can be subject to an appeal by the Secretary of State and this process may unnecessarily delay the rectification of a breach of a permit condition.

Enforcement notices will be signed in accordance with TBC constitution.

Realistic time limits will be placed on notices.

Prosecution shall be considered for failure to comply with an Enforcement Notice.

**Suspension Notice**

A suspension notice may be served whether or not the manner of carrying on the process contravenes a permit condition, and may relate to any aspect of the process whether regulated by the conditions or not.

Suspension notices are an exceptional means of dealing with immediate and serious risks, not an everyday enforcement tool.

The specific circumstances considered appropriate to issue suspension notices may include one or more of the following:

1. The consequences of not taking immediate and decisive action would involve an imminent risk of serious pollution of the environment.
2. An imminent risk of serious pollution of the environment can be demonstrated.

Suspension notices will be signed in accordance with TBC constitution.

Following the issue of a suspension notice a notice will be served withdrawing the suspension notice only when satisfied that the steps required by the notice have been completed.

**Revocation Notice**

Service of a revocation notice ceases to permit the operation of the installation or an activity within it.

Any post operation requirements of a permit may remain in force.

Revocation notices may be used whenever deemed appropriate. Revocation may be deemed appropriate where exhaustive use of other enforcement tools has failed.

Revocation notices may be withdrawn before they come into effect.

POWERS OF REGULATORS TO PREVENT OR REMEDY POLLUTION

If it is felt that a permitted process operation involves an imminent risk of serious pollution TBC may arrange for steps to be taken for the risk to be removed.

7 days notice of the steps TBC intends to take may be necessary.

The costs incurred may be recovered from the operator except where they can show that there was no imminent risk of serious pollution. Other costs incurred by TBC cannot be recovered if the operator shows that they have been unnecessary.

GUIDANCE

At all times the General Guidance Manual on Policy and Procedures for A2 and B Installations, issued by DEFRA will be consulted.

**FOOD HYGIENE ENFORCEMENT PROCEDURE**

**1. Aim**

The aim of this policy is to ensure that food intended for sale for human consumption, which is produced, stored, handled, consumed, or distributed into or through the Borough is without risk to the health or safety of the consumer through effective enforcement of food safety legislation.

**2. Scope**

This policy sets out the way in which Tamworth Borough Council (subsequently referred to as the Council) will monitor and deal with the conditions in and under which food is handled, processed, manufactured, imported, sold etc. within food establishments in the Borough.

This policy covers the following functional areas:

* Undertaking food safety interventions at food establishments
* Approving establishments under Regulation 853/2004 as appropriate
* Responding to complaints about food and food establishments
* Undertaking a programme of food sampling
* Responding to Food Alerts and notifications of food hazards
* Acting within the Primary Authority scheme, as appropriate
* Undertaking appropriate enforcement activity

This policy is relevant to those situations in which the Competent Authority has food related statutory duties or discretionary powers under domestic and retained EU law. All officers will work within the requirements of this policy. Any significant departure will be exceptional, capable of justification and be fully considered by the Head of Service, Lead Officer for food safety or another appropriately qualified and competent officer, unless it is considered that there is a risk to the public in delaying the decision. All officers will be fully acquainted with the requirements of the policy.

**3. Food Standards Agency Guidance**

The Competent Authority and individual officers will have regard to the Food Standards Agency (FSA) Food Law Code of Practice and Practice Guidance (subsequently referred to as the Code of Practice and Practice Guidance) and other guidance from the FSA. In particular officers will have regard to published UK or EU Industry Guides to Good Hygiene Practice and to other relevant Food Industry Codes of Practice.

The Competent Authority and individual officers will have regard to the Food Standards Agency’s Food Hygiene Rating Scheme: Guidance for local authorities on implementation and operation – the Brand Standard (subsequently referred to as the Brand Standard) when approaching issues related to the Food Hygiene Rating Scheme.

Particular reference is made to guidance on enforcement action which is contained in the Code of Practice and Practice Guidance as issued under Section 40 of the Food Safety Act 1990.

**4. Revisits**

Food businesses that fail to comply with significant statutory requirements will be subject to appropriate enforcement action and at least one compliance revisit inspection. Failure to comply with significant statutory requirements includes:

* Where an intervention has resulted in a compliance score of 15 or higher for hygiene and/or structure and/or
* Where an intervention has resulted in a confidence in management/control procedures score of 20 or higher
* Where an investigation into a complaint or incident identifies failings that have resulted in food safety being compromised.
* In order to check compliance with a Notice or Order issued by the Council

Revisits will focus on the significant statutory requirements that were found to be contravened at the previous intervention. The timing of the revisit will depend upon the nature and number of the contraventions found in the earlier intervention. In more serious cases or where businesses are slow to rectify problems multiple revisits may be required. Whenever practicable the revisit will be undertaken by the officer who conducted the original intervention.

**5. Enforcement**

Enforcement should secure efficient and effective compliance through a fair and consistent approach. This includes taking into account the Enforcement Concordat, advice from the Crown Prosecution Service, the Home Office, Codes of Practice and Guidance. After considering all relevant information received or gained during an intervention one or more of the following courses of action should be considered:-

* No Action
* Information action (verbal or written)
* The use of Hygiene Improvement Notices
* The use of Hygiene Emergency Prohibition Notices
* The use of Voluntary Closure Arrangements
* The voluntary surrender of foods
* The use of Remedial Action/Detention Notices (for approved establishments)
* Revocation or suspension of approval
* The seizure, detention, or rejection of food
* The use of Prosecutions
* The use of Simple Cautions; and
* A combination of the above

In all instances enforcement action will be taken which is proportionate to the risks to public health arising from any contravention identified. In deciding the type of enforcement action to be taken regard will be given to the risks arising from contraventions, the nature of the food business and the nature and type of food handled as well as the nature of the contravention and the history of compliance of the proprietor with food safety legislation.

The Council will ensure that the number of notices etc. served or the number of other legal processes such as prosecution or simple caution will not be used as an indicator of performance. Unless a significant risk to health is identified, officers will operate a graduated and educative approach (the hierarchy of enforcement) starting with advice and education and only moving to more formal action when the informal approach does not achieve the desired effect.

Officers will also consider the following criteria in deciding the most appropriate course of action: -

* The seriousness of the offence
* The offender’s past history
* Consequences of non-compliance
* The known or likely public benefit of the chosen enforcement action
* The willingness of the offender to prevent a recurrence and the confidence in management.
* The strength of the evidence
* The Crown Prosecution Service’s Code of Practice for Crown Prosecutors.

**5. Types of Enforcement**

**a) No Action**

Where no contraventions are found and there is insufficient information or evidence to proceed.

**b) Informal Action**

Informal action includes: -

* Verbal advice. To be given when the offender shows an understanding and willingness to remedy contraventions of a minor nature. Officers will ensure that there is a clear distinction between matters that are necessary to meet statutory requirements and those recommended as good hygiene practices.
* Written advice. To be used when there are contraventions that require rectification, and the officer is confident that the necessary works will be carried out. Reasonable timescales will be given to achieve compliance.

Informal approaches to enforcement will make clear all the information that will enable a proprietor to understand what is wrong, what work is required and why it is necessary.

**c) Hygiene Improvement Notices**

Hygiene Improvement Notices will be served if the authorised officer is satisfied that:

* There has been a significant contravention of the relevant food hygiene regulations;
* The proprietor may not carry out the necessary works without the use of formal notices;
* The contravention, in the opinion of the authorised officer, does not pose an imminent risk to health;
* Significant contravention(s) highlighted in an informal letter have been found to be still outstanding during a subsequent intervention and it appears that the proprietor does not intend to undertake the works.

All Hygiene Improvement Notices will clearly specify both the measures to be taken and the period of time allowed for compliance. The period given for completion of work will be discussed with the proprietor whenever possible. Account will be taken of the nature of the problem, the risk to health and the availability of solutions before a time limit is set. Requests for time extensions received prior to the expiry date of a notice will be considered although there is no specific provision in the Food Safety and Hygiene (England) Regulations 2013 to extend the time limits on a Hygiene Improvement Notice. The proprietor will be advised, in writing, of the decision and any new time limits granted.

Hygiene Improvement Notices will not be used in the following circumstances:

* Where the contravention might be a continuing one, for example, personal cleanliness of staff and a notice may only secure an improvement at one point in time;
* In transient situations, and it is considered that swift enforcement action is needed, for example, a one-day festival or sporting event. A Hygiene Emergency Prohibition Notice would be the only formal remedy, which would have immediate effect;
* Where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation.

It will be made clear within all Hygiene Improvement Notices that there is a provision to allow the proprietor to carry out alternative measure(s) of an equivalent effect to those specified. When the officer and proprietor agree on alternative works the officer will confirm in writing that they have approved the alternative works. In situations where the manager is not the proprietor, and cannot make decisions with regard to structural repairs and replacements, the officer will, if possible, discuss the detail of the works with the person in a position to authorise repair before issuing a notice. Due consideration will be given to any relevant UK or EU Industry Guides to Good Hygiene Practice when assessing compliance with the Food Safety and Hygiene (England) Regulations 2013.

Hygiene Improvement Notices will make it clear that the proprietor has a right of appeal against the service of a notice. The relevant information is contained within notes attached to the notice.

Whilst the proprietor has a right of appeal, an officer will be prepared to discuss the need for the notice and its requirements informally with the proprietor. The works required will be checked ideally the day after the notice expires or at least within three working days of the expiry of a notice or following notification that the works are complete. Whenever possible the authorised officer who served the notice will check that the works have been carried out to the specified standard.

Environmental Health Officers, and Food Safety Officers who have achieved the competency levels as laid out in the Code of Practice and the Practice Guidance, will serve Hygiene Improvement Notices. Notices will only be served by officers in relation to the premises they are authorised and competent to inspect.

**d) Hygiene Emergency Prohibition Notices**

Hygiene Emergency Prohibition Notices will be used if an authorised officer has evidence that the health risk condition is fulfilled i.e. there is an imminent risk of injury to health. In such situations, a Hygiene Emergency Prohibition Notice will be served on the food business operator, followed by an application to a Magistrates’ Court for a Hygiene Emergency Prohibition Order. The use of a Hygiene Emergency Prohibition Notice will only be considered in one or more of the following circumstances:

* The consequences of not taking immediate and decisive action to protect public health would be unacceptable;
* An imminent risk of injury to health can be demonstrated. This might include evidence from relevant experts, including a food analyst or food examiner;
* The guidance criteria, specified in the relevant statutory Code of Practice, concerning the conditions when prohibition may be appropriate, are fulfilled;
* There is no confidence in the integrity of an unprompted offer made by a proprietor voluntarily to close the establishment or cease the use of any equipment, process or treatment associated with the imminent risk, and
* A proprietor is unwilling to confirm in writing a voluntary prohibition.

The following are examples of situations where use of a Hygiene Emergency Prohibition Notice may be appropriate for a premises:

* Infestation by rats, mice, cockroaches, birds, or other vermin, serious enough to result in the actual contamination of food or a significant risk of contamination;
* Very poor structural condition and poor equipment and/or poor maintenance or routine cleaning and/or serious accumulations of refuse, filth or other extraneous
* matter resulting in the actual contamination of food or a significant risk of food contamination;
* Drainage defects or flooding of the establishment, serious enough to result in the actual contamination of food or a significant risk of food contamination;
* Premises or practices which seriously contravene food law and have been or are implicated in an outbreak of food poisoning;
* Any combination of the above, or the cumulative effect of contraventions which, taken together, represent the fulfilment of the health risk condition.

A Hygiene Emergency Prohibition Notice may also be appropriate for dealing with defective equipment or for unsafe processes that for example pose a serious risk of cross contamination. The following are examples of situation where use of a Hygiene Emergency Prohibition Notice may be appropriate for a piece of equipment:

* Use of defective equipment, e.g., a pasteuriser incapable of achieving the required pasteurisation temperature;
* Use of equipment for the processing of high-risk foods that has been inadequately cleaned or disinfected or which is grossly contaminated and can no longer be properly cleaned;
* Dual use of complex equipment, such as vacuum packers, slicers and mincers or raw and ready-to-eat foods;
* Use of storage facilities or transport vehicles for primary produce where the storage facilities or transport vehicles have been inadequately cleaned or disinfected.

The following are examples of situations where use of a Hygiene Emergency Prohibition Notice may be appropriate for a process:

* Serious risk of cross contamination;
* Failure to achieve sufficiently high processing temperatures;
* Operation outside critical control criteria, for example, incorrect pH of a product which may allow Clostridium botulinum to multiply;
* The use of a process for a product for which it is inappropriate.

Hygiene Emergency Prohibition Notices will be signed only by Officers who have achieved the appropriate competency levels which are detailed in the Code of Practice.

**e) Voluntary Closure Arrangements**

Voluntary procedures to remove a health risk condition may be used at the instigation of the food business operator, when the food business operator agrees that a health risk condition exists i.e., there is an imminent risk of injury to health. An officer may suggest this option but only when the conditions for the service of a Hygiene Emergency Prohibition Notice apply. The officer must advise the food business operator to take independent legal advice concerning any offer to voluntary close their food establishment. The officer will explain that by making the offer to close any right to compensation is lost.

Any voluntary closure must be confirmed in writing by the food business operator or manager and the authorised officer. Such confirmation shall include an undertaking that the establishment will not re-open without the officer’s prior approval. If the manager of a food business offers to close voluntarily, the officer should confirm that the manager has the authority of the food business operator to agree to such action.

In advising the food business operator, the authorised officer will appreciate that there is a risk that the establishment could be re-opened without the Competent Authority’s knowledge or agreement and recognise that there is no separate legal sanction against a food business operator who reopens (although enforcement action for the actual breaches remains available).

**f) The Voluntary Surrender of Food**

Voluntary procedures to remove food that is not suitable for human consumption from the food chain may be used; either at the instigation of the owner of the food or at the suggestion of the authorised officer when the owner of the food agrees the food is not suitable for human consumption. A receipt must be issued for food that is voluntarily surrendered to the Competent Authority for destruction. The receipt must indicate that the food has been voluntarily surrendered to the Competent Authority for destruction and be signed and counter-signed by the authorised officer and the person surrendering the food respectively. The receipt must include space for recording the time, place, and method of destruction of the food, and these details must be recorded on the office copy by the authorised officer in due course and retained by the Competent Authority. The Competent Authority will secure, as part of the voluntary surrender, an agreement by the owner to pay the reasonable expenses of destruction or disposal as necessary. A charge is made for this service set at a level to recover actual costs. In dealing with a voluntary surrender of food, the authorised officer will ensure the total destruction of the food by incineration or some other appropriate method. If total destruction is not possible, the officer will ensure such a degree of disfigurement that the food could never re-enter the food chain, e.g., by opening packaging and adding a dye to the food, having regard to the requirements of relevant waste disposal legislation. A copy of the waste transfer note must be obtained and kept on file for any food that has been disposed of by a licensed waste disposal contractor under these arrangements.

**g) The Seizure, Detention or Rejection of food**

Detention and seizure can be used to deal with foods that fail to meet food safety requirements. Food does not comply when:

* ▪ It is unfit for human consumption; or
* ▪ It has been rendered injurious to health; or
* ▪ It is so contaminated (by extraneous matter or otherwise) that it would not be reasonable to expect it to be used for human consumption in that state.

Detention notices served under Regulation 10 of the Food Safety and Hygiene (England) Regulations 2013 have no provision for compensation, whereas compensation is payable for any depreciation in value of the food if the notice is withdrawn (if the food is found to be compliant). An authorised officer will seize food products (with or without prior detention) if adequate arrangements can be made to immediately transport and store the goods until a Justice of the Peace can deal with them. If food is condemned by the Justice of the Peace, it must be destroyed. This must be witnessed by an authorised officer.

**h) Prosecutions**

In general, the decision to prosecute will be restricted to those persons who blatantly disregard the law, refuse to achieve even the basic minimum legal requirements and who put the public at serious risk. The decision to initiate a prosecution will be taken at the earliest opportunity. Before deciding whether a prosecution should be taken the Competent Authority will consider a number of factors:

* Whether there is sufficient evidence (the test for which is set out in the Code for Crown Prosecutors). Of particular note are:
* The likely cogency of any important witness, and their willingness to cooperate;
* The alleged person or persons responsible have been identified;
* Any explanation offered by the defendant;
* The likelihood of the defendant being able to establish a defence – in particular a due diligence defence.
* Whether the Public Interest Test has been satisfied as set out in the Code for Crown Prosecutors. Prosecutors must note that unless the Evidential Test is satisfied, the Public Interest Test is irrelevant. If there is insufficient evidence, the case is very likely to fail in court so there is no justification in launching a prosecution.
* The hierarchy of enforcement will illustrate whether a prosecution is more appropriate as opposed to the other enforcement options. It must be remembered that a Hygiene Improvement Notice could ultimately result in a Court case, so evidence must be robust before a Notice is served.
* That this Enforcement Policy has been adhered to.
* Whether any other action, such as issuing a caution in accordance with the Ministry of Justice – Simple Cautions for Adult Offenders guidance would be more appropriate.

Factors favouring prosecution include:

* The seriousness of the offence;
* The prevalence of that type of offence in the area in which it was committed (if the offence is not serious in itself);
* The suspect’s previous convictions or cautions.

There are various factors against prosecution including:

* The likelihood of a nominal penalty;
* The offence was committed as a result of a genuine mistake or misunderstanding (this must be balanced against the seriousness of the offence).

Officers will explain the reason for bringing a prosecution and record that reason, which may later be referred to in open Court. The reasons will be documented.

The sufficiency of the evidence to support proceedings will be a matter of judgment for the Head of Environmental Health and Lead Officer for food safety. Authorised officers will ensure they brief their legal advisers fully on the public health aspect of the case to enable the seriousness of the offence(s) from a public health perspective can be fully expressed to the Court.

In instances where a risk to public health exists and a prosecution is to be undertaken it may still be appropriate to serve Hygiene Improvement or Hygiene Emergency Prohibition Notices. Where it is intended to prosecute in addition to the service of a Hygiene Improvement Notice this will be made clear to the proprietor at the time the Notice is served. All prosecutions will be conducted in accordance with the relevant procedures.

**i) Simple Cautions**

The purpose of a Simple Caution is to deal with less serious offenders quickly and simply and to divert them from the criminal courts and to reduce the chances of their reoffending.

The following conditions must be met before a caution can be administered:

* There must be sufficient evidence of the offender’s guilt to give a realistic prospect of conviction;
* The offender must admit the offence;
* The offender must understand the significance of a caution and give informed consent to being cautioned.

When deciding whether to issue a caution the following will be considered:

* The nature of the offence;
* The likely penalty if the offender was convicted by a court;
* The offender’s age and state of health;
* Any previous criminal history;
* The offender’s attitude towards the offence and steps taken to prevent a recurrence.

There is no legal obligation for any person to accept the offer of a simple caution and no pressure will be applied to the person to accept a caution. However, where a person declined the offer of a simple caution it will normally follow that a prosecution will be taken.

**6. Enforcement Options in Product-Specific Establishments**

Additional enforcement provisions are provided by retained Regulation (EC) No 853/2004 relating to product-specific establishments. Powers to suspend or withdraw the approval or conditional approval of an establishment are provided within the Regulations. In considering use of these powers the immediate effect of the suspension or withdrawal on the business will be considered. Other enforcement options will be explored as appropriate and necessary to control the food hazards presented by the establishment. Non-compliance will not necessarily be considered sufficient to justify the immediate suspension or withdrawal of an establishment’s approval or conditional approval, and a reasonable opportunity to achieve compliance will be allowed where this is appropriate.

In the case of a suspension of approval or conditional approval where the food business operator makes guarantees about future production in accordance with the Regulations these will only be considered if made in writing. It is however noted that the Competent Authority cannot insist on this, as no requirement exists in law to provide such guarantees in writing.

An establishment’s approval or conditional approval will normally only be withdrawn in circumstances where the food business operator is unable to satisfy the Competent Authority to the extent that it has a reasonable expectation that the identified deficiencies will be rectified, and acceptable standards will be maintained in the future.

Decisions to suspend or withdraw an establishment’s approval or conditional approval will be notified in writing to the food business operator. Reasons for the decision will be given. The notification will also make the food business operator aware of their right of appeal against the decision to the Magistrates’ Court and provide the address of the Magistrates’ Court.

Following an appeal against a decision to refuse or withdraw an approval the food business operator may continue to use the establishment, pending the results of the appeal, subject to any conditions imposed for the protection of public health. This provision does not extend to appeals against the suspension of an approval. If it is considered that any activities undertaken in an establishment pending the result of an appeal may present a risk to public health, the use of other relevant enforcement powers shall be considered.

Remedial Action Notices may be used in respect of establishments subject to approval under Regulation 853/2004. They are used if any of the hygiene requirements are breached or an inspection under the “Hygiene Regulations” is being hampered. More specifically this provision provides for the prohibition of the use of any equipment or any part of the establishment, the imposition of conditions, upon, or prohibiting, any process and also allows for the rate of an operation to be reduced or stopped completely. Remedial Action Notices will only be signed by Officers who have achieved the appropriate competency levels which are detailed in the Code of Practice..

**7. Enforcement within Local Authority Run Establishments**

Local Authority run establishments will be treated in the same way as all other food establishments within the Borough and inspected in accordance with the Code of Practice. Any enforcement concerns will be brought to the attention of the lead officer for food safety and serious breaches of food law will be brought to the attention of the Head of Service and Chief Executive without delay.

**8. Involvement of other Competent Authorities**

If an investigation of a complaint brings to light a problem or potential problem outside the area of the Council, the other appropriate authorities (for example the authority where the food was manufactured and/or the authority where a company’s decision-making base is located) will be informed as soon as possible.

If a complaint investigation identifies food that has the potential to cause an adverse effect on the health of consumers and may affect a wide geographical area, the Food Standards Agency will be informed. Officers will have due regard to the Code of Practice and Practice Guidance.