

# **Lewes District Council**

# **Regulatory Services Enforcement Policy**

**November 2016**



## Regulatory Services Enforcement Policy

### 1.0 Introduction

Local authorities are required by the Regulator's Code to publish a clear set of service standards, including their enforcement policy, explaining how they respond to non-compliance. This is an important document for regulators in meeting their responsibility under the statutory principles of good regulation, to be accountable and transparent about their activities.

The Regulators' Code can be found on the GOV.UK website at; <https://www.gov.uk/government/publications/regulators-code>

This document contains Lewes District Council's Regulatory Services Enforcement Policy, taken to Cabinet on 4 January 2017.

The term "Regulatory Services" covers the Environmental Health and Licensing functions, and specifically the following areas of work:

- Pollution including Environmental Crime
- Food
- Health and Safety
- Private Housing
- Licensing – premises, taxi and private hire, gambling and ancillary functions

In Lewes, these services are delivered within our Service Delivery Directorate.

The primary aim of the Regulatory Services function is to protect public health. This is done by ensuring compliance with the legislative framework so that consumers, businesses, employees, individuals and the environment are protected. Fair, proportionate, targeted and effective enforcement is essential to protecting the health, safety and economic interests of all concerned, and there is a range of tools available to the Service to achieve this.

Generally we will provide advice and support to those seeking to comply and, at the same time, deal with those who choose not to comply, taking a proportionate approach. The detail on how and when action may be taken is outlined in the content of this policy.

We must have regard to various general duties e.g. section 17 of the Crime and Disorder Act 1998, and we must also comply with the Human Rights Act 1998, taking its provisions into account when making decisions relating to enforcement action.

This Policy should be read in conjunction with our service standards, see separate document.

## **2.0 Policy scope**

Relevant legislation must always be adhered to by an officer whilst carrying out all Regulatory Services enforcement and investigation work, such as:

- Human Rights Act 1998;
- Regulatory Enforcement and Sanctions Act 2008;
- Legislative and Regulatory Reform Act 2006;
- Police and Criminal Evidence Act 1984;
- Regulation of Investigatory Powers Act 2000;
- Criminal Justice Act 2003;
- Criminal Procedure and Investigation Act 1996;
- Criminal Justice and Police Act 2001;
- Equality Act 2010;
- Data Protection Act 1998.

We are committed to providing an effective service with officers carrying out their duties in a way which is:

1. Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence;
2. Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and a fair and efficient complaints procedure;
3. Consistent – our advice to those we regulate will be robust and reliable, and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities;
4. Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
5. Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and priorities.

To achieve this we have adopted the principles of the following:

- The Department for Business, Innovation and Skills' (BIS) Regulators Compliance Code;
- The Enforcement Concordat;
- Local Better Regulation's Priority Regulatory Outcomes (BRDO);
- BIS Code of Practice on Guidance on Regulation;

- Health and Safety Executive/Local Authorities Enforcement Liaison Committee (HELA) Guidance to Local Authorities on Priority Planning;
- HELA Incident Selection Criteria Guidance;
- Local Government Regulation's Home Authority Principle;
- BRDO's Primary Authority Principle and Guidance;
- The Crown Prosecution Service Code for Crown Prosecutors (as amended);
- The Food Law Code of Practice;
- Health and Safety Executive Enforcement Management Model;
- The Health and Safety Commission's Enforcement Policy Statement;
- European Convention on Human Rights
- Government guidance on the enforcement of the Housing, Health and Safety Rating System.

We will comply with any statutory requirement placed upon us and align our procedures with best practice, including any codes introduced subsequent to the adoption of this Policy.

The Policy applies to actions in relation to the legislation enforced by the Council's teams that deliver Regulatory Services. This enforcement action includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law, however we are committed to avoiding the imposing of unnecessary regulatory burdens.

### **3.0 General principles**

Prevention is better than cure. Therefore, our role involves actively working with businesses and the public to advise on and assist with compliance. Where we consider that formal action is necessary, each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy, and officers authorised to act under relevant legislation will do so in accordance with this Policy.

The Council's Scheme of Delegation can be found at;

[http://www.lewes.gov.uk/Files/Constitution\\_Part9\\_T\\_pages.pdf](http://www.lewes.gov.uk/Files/Constitution_Part9_T_pages.pdf)

The majority of cases involving regulatory action will relate to businesses, however, there will be some cases that relate to individuals, particularly those involving statutory nuisance. Cases involving individuals will be treated in the same way as those involving businesses, and the general principles around

proportionality of action will be followed, e.g. where appropriate trying informal approaches before resorting to formal action.

Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender or gender identity, religion or belief, political views, disability, age 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. Where applicable, we will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision whether to take formal action.

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. We recognise the positive impact that Regulatory Services can have on economic progress and growth in the local economy, and see it as part of our role to encourage and support the growth of legitimate business activity within the legal framework provided by central government.

#### **4.0 Risk Based Enforcement for Businesses**

We will ensure that our resources are targeted where they will be most effective. We will ensure that intelligence and risk assessment inform all aspects of our approach to business regulatory activity, including:

- Data collection and other information requirements;
- Inspection programmes;
- Advice and support programmes;
- Enforcement activity and sanctions.

We will normally use the appropriate Government risk assessment scheme to inform any inspection programme but, where these do not exist, we will publish the details on our website.

In the absence of other factors, when determining risk we will consider:

- Compliance history and potential future risks;
- The existence of effective management systems;
- Evidence of recognised external accreditation;
- Management competence and willingness to comply;

We will also use intelligence to direct inspection based projects or business where there are known issues. Obviously, a complaint may

also trigger a visit or inspection, if that is the most appropriate response.

#### **4.1 Advice and Guidance for Businesses**

We will provide general information, advice and guidance to make it easier for businesses to understand and meet their obligations. This will be provided promptly, in clear and concise language, using a range of appropriate formats and media. Information will cover all legal requirements relating to our regulatory activities, as well as changes to legal requirements. Where changes are of great significance, we will look at the best ways of informing businesses of the changes e.g. through newsletters, mail-shots or seminars.

We recognise that we have businesses in the district managed and run by black and minority ethnic groups, and English may not be their first language. We will provide material in their first language, and arrange interpretation services where necessary, to assist the individual to access advice, guidance, information and legislation.

When offering advice, we will clearly distinguish between statutory requirements, and advice or guidance aimed at improvements above minimum legal standards. We seek to provide proportionate advice, the content of which will help achieve compliance but impose the minimum burden required on the business concerned.

Where a business identifies a problem and seeks advice to remedy the situation, it will not normally trigger enforcement action. Where appropriate we will seek to support the remedial action to prevent future problems, however, we reserve the right to take enforcement action where applicable, particularly to protect public health. However, we are committed to dealing firmly with those who deliberately or persistently fail to comply.

Generally, we will provide our advisory services free of charge however we may charge a reasonable fee for services beyond the basic advice and guidance necessary to help ensure compliance with the law. We may suggest you seek advice from a consultant to assist you.

#### **4.2 Inspection of Businesses**

We will ensure inspections and other visits to businesses only occur in accordance with a risk assessment methodology, except where visits are requested by businesses, following receipt of complaints, or where we act on relevant intelligence. We will focus our efforts on businesses where intelligence and risk assessment shows there is a higher likelihood of non-compliance or which pose a more

serious risk to regulatory outcomes. Some processes by their nature present a greater risk to health or the environment, or due to their complexity, may make it more difficult to ensure compliance. These are the areas where we will focus our inspection resources.

When we visit or carry out inspections, we will give feedback to businesses to encourage and reinforce good practice. We will also share information about good practice amongst businesses, and with other regulators.

Where we and another regulator have a shared interest in a business we will work together to rationalise our activities to minimise the burden on the business, providing this is of benefit to the business and does not harm the standard of enforcement for either regulator.

### **4.3 Information Requirements**

We do not routinely require information from businesses, and when determining what data we may require, we will consider the costs and benefits of data requests to businesses and:

- Limit the data that we request to that which is either appropriate, or required by statute e.g. food registration, licensing applications, etc;
- Minimise the frequency of collection and seek the information from other sources where relevant and possible.

### **5.0 Enforcement Action**

In accordance with good practice, we will:

- Publish our Enforcement Policy;
- Follow-up enforcement actions where appropriate;
- Be transparent in the way in which we enforce requirements and apply and determine penalties (when such powers are made available);

When considering what action should be taken, we will look to:

- Be proportionate to the nature of the offence and the harm caused;
- Change the behaviour of the offender;
- Eliminate any financial gain or benefit from non-compliance;
- Address the harm caused by regulatory non-compliance, where appropriate;
- Deter future non-compliance; and
- Be responsive and consider what is appropriate for the particular offender and regulatory issue.

When considering formal enforcement action, we will, when appropriate, discuss the circumstances with those suspected of a breach. We will take any comments made into account when deciding on the best approach (unless immediate action is required to prevent or respond to a serious breach or where to do so would be likely to defeat the purpose of the proposed enforcement action).

We will ensure that clear reasons for any formal enforcement action are given to the person or entity at the time the action is taken. These reasons will be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress will also be explained at the same time.

### **5.1 Deciding what enforcement action is appropriate**

In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- The seriousness of compliance failure;
- Past performance of the business and current practice;
- In the case of new businesses, an assessment of the operator's willingness to undertake the work identified by the Officer;
- The risks being controlled;
- Legal, official or professional guidance;
- Acting in the interest of Public Health.

The Council recognises that where a business has entered into a Primary Authority Agreement, the primary authority may provide compliance advice and support, and we will take such advice into account when considering the most appropriate enforcement action. We may discuss any need for compliance advice and support with the primary authority.

Primary authority allows businesses to be involved in their own regulation. It enables them to form a statutory partnership with one local authority, which provides robust and reliable advice for other local regulators to take into account. The aim is to ensure that local regulation is consistent at a local level. For more information, see [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/396388/pa-overview.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396388/pa-overview.pdf)

There are a range of potential enforcement options, and the level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that can be considered, if specifically permitted by legislation, are shown below:

- No action;
- Informal Action and Advice;

- Fixed Penalty Notices;
- Penalty Charge Notices;
- Variable Monetary Penalty (penalty charges);
- Statutory Notice;
- Formal closure;
- Seizure of goods/equipment;
- Injunctive Actions;
- Refusal/revocation of a licence;
- Simple Caution;
- Prosecution.

With regard to breaches of health and safety legislation, we will use the Health and Safety Executive's Enforcement Management Model.

Under the provisions of food safety legislation, specific statutory notices can be issued. These are:

1. Hygiene Improvement Notices
2. Hygiene Emergency Prohibition Notices (where there is an imminent risk of injury to health)

Information relating to these notices can be found at Appendix 1, on page 17.

Specific requirements relating to Private Housing can be found at Appendix 2, on page 20.

## **5.2 No Action**

There will be circumstances where a contravention may not warrant action, or it may be inappropriate. Many minor contraventions can be dealt with via advice and/or assistance.

## **5.3 Informal Action and Advice**

For certain minor breaches of the law we will give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable and will take into account the seriousness of the contravention and the implications of the non-compliance. Where the advice required is detailed, or there are potentially serious implications from the failure, the advice will be provided in writing. Failure to comply could result in an escalation of enforcement action.

Wherever possible we will advise the person or business about 'good practice', but we will clearly distinguish between what they must do to comply with the law and what is recommended best practice.

## **5.4 Fixed Penalty Notices**

Certain offences are subject to fixed penalty notices where prescribed by legislation. These notices are recognised as a low-level enforcement tool and avoid the defendant obtaining a criminal record. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. They will be used in appropriate circumstances to give a fast and measured response to the situation.

Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches. If a fixed penalty is not paid the Council may commence criminal proceedings or take other enforcement action in respect of the breach. Fixed penalty notices will not be issued to persons under the age of 16 years.

## **5.5 Penalty Charge Notices**

Penalty Charge Notices (PCNs) are used to enforce civil offences, e.g. dog fouling and fly tipping. With all issued PCNs there is an appeal process which can be followed by the recipient, whereby the terms of the notice can either be withdrawn or enforced by an authorised LDC representative.

Unlike fixed penalty notices (FPNs), a PCN does not result in criminal charges, but is viewed as a civil debt. If unpaid, the Authority will endeavour to recover the value of the PCN through the County Court system. Ultimately this could result in the case being referred to a bailiff for debt recovery.

## **5.6 Variable Monetary Penalty (penalty charges)**

With regard to determining breaches of housing legislation, for example The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, and The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, is the ability to issue Variable Monetary Penalties (penalty charges) for regulatory non-compliance.

Lewes District Council as the enforcement authority can impose a penalty charge of up to £5,000 where it is satisfied that there is an offence against this legislation.

The expectation contained in Government guidance is that a £5,000 fine should be considered the norm, and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances.

It will be up to the enforcement authority to decide what the extenuating circumstances might be, taking into account any representations made.

Detail on how Lewes District Council will consider each case is given in the Statement of Principles for Determining the Amount of a Penalty Charge.

Further information on The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 is contained in the Redress Schemes Policy.

Further information on The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 is contained in the Smoke and Carbon Monoxide Alarms Policy.

## **5.7 Statutory Notices**

Officers have powers under some legislation to issue notices that:

- Prohibit the sale or distribution of food or use of property for letting where relevant provisions may have been breached; Prohibit the use of equipment, carrying out activities, entry to certain areas of a site etc. where there may be a risk of personal injury;
- Require a business to take specific actions to remedy an identified problem;
- Require a business to desist from particular activities that may not comply with legal requirements;
- Require any person to take action to ameliorate or stop nuisances being caused by their actions.

Notices may require immediate action where, for example, there are risks to public health or safety, or an immediate risk of environmental damage or serious nuisance. In other circumstances, a reasonable amount of time will be given, depending on the circumstances, to rectify the problem.

Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with (a breach of the notice) we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge

the person/business served with the notice for any cost we incur in carrying out the work. See section 5.7 for further information.

An application to a Court is not required in the case of Housing Act Prohibition Orders but there is a right of appeal.

Failure to comply with a statutory notice can be a criminal offence. All notices issued will contain details of any appeals process that may be available to the recipient.

### **5.8 Seizure of Goods/Equipment**

The right to privacy and respect for personal property are key principles of the Human Rights Act 1998. Powers of entry, search and seizure should be fully and clearly justified before use because they may significantly interfere with the occupier's privacy. Officers should consider if the necessary objectives can be met by less intrusive means. In all cases authorised officers should:

- exercise their powers courteously and with respect for persons and property; and
- in circumstances where a warrant has been obtained and is appropriate, only use reasonable force when this is considered necessary and proportionate to the circumstances.

Section 20 of the Health & Safety at Work etc Act 1974 contains the various powers of inspectors, including the power to take possession and detain articles or substances that have caused or are likely to have caused danger to health and safety.

### **5.9 Works in default**

Works in default or emergency remedial action may be carried out if:

- There is no prospect of the person responsible carrying out the work e.g. the person is absent;
- There is an imminent risk to public or environmental health;
- A prosecution is not appropriate;
- A prosecution has been brought and works have still not been carried out; and
- It is appropriate to get a nuisance abated quickly.

The Council will seek to recover all the costs incurred including officer time. The costs of the works will be charged (not including VAT) plus the cost of officer time, plus twenty percent to cover administration costs.

### **5.10 Injunctive Actions**

In some circumstances the Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

### **5.11 Licence Conditions**

The Council issues a number of Environmental Health and Licensing related licences and permits. We also have a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a prosecution or in the case of licences issued under the Licensing Act 2003, a prosecution or a review of the licence which may result in its revocation or amendment by the Council's Licensing Committee.

### **5.12 The Use of Simple Cautions**

Where the public interest justifies it, we will consider offering a Formal (Simple) Caution (or Reprimand/ Final Written Warning if the offender is under 18). In offering a Caution, we will take account of the Home Office Guidelines in relation to the cautioning of offenders and the Code for Crown Prosecutors.

Where the offender is under 18 and a formal approach is being considered, appropriate bodies such as the Youth Offending Team will be consulted. A Caution requires an admission of guilt on behalf of the offender, however there is no sentence and there is no recorded conviction. A caution will remain on record for a period of two years and may be cited in Court should a further offence be committed and prosecuted during that time. Where a simple caution is offered and declined the Council will consider prosecution.

## **6.0 Commencement of Legal Proceedings**

Once an officer has completed his/her enquiries, a case report will be submitted to a Manager authorised to institute legal proceedings, who is independent of the investigation, and who will decide, using the criteria below, the most appropriate course of action.

Where the law has been broken, there is a range of enforcement options available to seek compliance with the law. Under normal circumstances, a process of escalation will be used until either compliance is reached or there is no option other than to instigate proceedings. Exceptions would be where there is a serious risk to

public safety or the environment, or the offences have been committed deliberately or negligently or involve deception. Each case is unique and will be considered on its own facts and merits.

The officer authorised to institute legal proceedings will take into consideration the requirements of the Code for Crown Prosecutors and other relevant codes before deciding whether or not to authorise the institution of legal proceedings. This officer will have to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each defendant on each charge (i.e. that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged). To this end, the officer authorised to institute legal proceedings will look at all the available evidence, reliability of witnesses, supporting documentation and any other matters relating to the investigation. They must consider what the defence case may be and how it is likely to affect the prospects of conviction [Code for Crown Prosecutors]. Only when this evidential test has been satisfied will the public interest to proceed with the prosecution be considered.

In deciding whether a prosecution will serve the public interest, this officer will balance factors for and against the prosecution carefully, fairly and impartially. Some factors may increase the justification to prosecute whereas others may militate against. Below are some of the matters to be taken into consideration for and against criminal proceedings. This is not an exhaustive list and, as such, each case is considered strictly on its own individual merits;

**Factors in favour of prosecution:**

- The offender was in a position of control within the business;
- The offender acted dishonestly, wilfully, premeditatedly or negligently;
- The product or service was aimed at a vulnerable group or person;
- The product or service has caused or had the potential to cause physical or mental injury or suffering, significant harm or loss
- The offender has received advice or a warning concerning the circumstances of the offence or similar matters;
- The offender has failed to comply with the requirements of a formal notice;
- The offender has received previous formal warning or a caution from an enforcement officer;
- The offender has previous convictions that are relevant;

- The offence, though not serious in itself, is widespread in the area where it was committed;
- A conviction is likely to result in a significant sentence;
- There are grounds to believe that the offence is likely to be continued or repeated, for example by a history of recurring conduct;
- The outcome of a prosecution might serve an important, informative purpose or establish a legal precedent.

**Factors which might mitigate against the need for prosecution:**

- The offence was minor in nature and as a result of a genuine mistake or misunderstanding, which did not involve significant negligence;
- The offender is elderly, or was at the time of the offence suffering from significant mental or physical ill health, which contributed to the commission of the offence, and the offence was neither serious nor likely to be repeated;
- A prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence and the views of the victim about the effect of a prosecution on his or her physical or mental health;
- The loss or harm could be described as minor and was as a result of a single incident, particularly if it was caused by a failure of judgment;
- The offender put right the loss or harm caused prior to the intervention of the Council
- Prior to the Service's intervention, the offender had introduced adequate steps to prevent further similar offences
- The defendant was a youth at the time of the offence
- There has been a long delay between the offence and any potential court action, unless either:
  - The offence is serious;
  - The delay has been caused by the defendant or his/ her legal representatives;
  - The offence has only recently come to light; or
  - The complexity of the offence meant that there has been a long investigation.

**7.0 Role of Legal Services**

The Manager involved in making the more serious decisions will also have regard to advice from the Council's Legal Services.

## **8.0 Liaison with other regulatory bodies and enforcement agencies**

Where appropriate, enforcement activities within the Environmental Health or Licensing activities will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement. The Council will respect advice that has been provided by other regulators and enforcement agencies. Where an enforcement matter affects a wide geographical area beyond the Council's boundaries, or involves enforcement by one or more other local authorities or organisations, where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible, and all enforcement activity coordinated with them.

Relevant Regulatory Services intelligence relating to wider regulatory matters will be shared with other regulatory bodies and enforcement agencies, and examples include:

- Government Agencies;
- Police Forces
- Fire Authorities;
- Other Statutory Bodies;
- Local Authorities.

## **9. Review**

This policy will be reviewed annually and updated if necessary to take into account legislative changes. The policy will also be reviewed if comments are received.

Comments should be sent to;

Rebecca Wynn  
Environmental Health Specialist  
Lewes District Council  
Tel 01273 471600

Email [Rebecca.Wynn@lewes.gov.uk](mailto:Rebecca.Wynn@lewes.gov.uk)

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## **APPENDIX 1**

### **SPECIFIC REQUIREMENTS RELATING TO FOOD SAFETY**

#### **1.0 General**

The Council's approach to the enforcement of Food Safety reflects the responsibilities placed upon it by the Food Safety Act 1990, Food Safety and Hygiene (England) Regulations 2013, General Food Regulations 2004, the Official Feed and Food Control (England) Regulations 2009 and other regulations. The Authority's approach will also comply with the Framework Agreement on Local Authority Food Law Enforcement, the statutory Code of Practice and guidance issued by the Food Standards Agency (FSA). It will also reflect the principles of the Enforcement Concordat, adopted by the Council.

The Authority's key objective in terms of food safety is:-

*" to strive to ensure that food and drink intended for sale for human consumption, which is produced, stored, distributed, handled or consumed within the Borough is without risk to the health or safety of the consumer, as far as is reasonably practicable"*

The primary responsibility for ensuring food safety lies with the food handlers who produce or handle food, and in particular food business operators must recognise their responsibilities for ensuring food safety.

#### **2.0 Enforcement options**

If enforcement officers, in carrying out their functions, find evidence that the law is being broken they may exercise a range of powers, and will respond according to the particular circumstances of the case.

##### **2.1. Hygiene Improvement Notices**

Hygiene Improvement Notices may be appropriate where one or more of the following criteria apply:-

- There are significant contraventions of legislation.
- There is a lack of confidence in the proprietor or business to respond to an informal approach.
- There is a history of non-compliance with informal action.
- Standards are generally poor with little management awareness of statutory requirements.

- The consequences of non-compliance could be potentially serious to public health.
- Although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

The use of Hygiene Improvement Notices will be related to the potential risk to health, and they will only be issued by officers specifically authorised to do so in accordance with the statutory Code of Practice. Hygiene Improvement Notices will not be signed by authorised officers on behalf of other officers unless the authorised officer has witnessed the contravention and is satisfied that it is significant and that any other appropriate criteria are satisfied.

Failure to comply with a Hygiene Improvement Notice will generally result in prosecution.

## **2.2 Hygiene Emergency Prohibition Notices**

Hygiene Emergency Prohibition Notices will be issued where in the opinion of the authorised officer there is an imminent risk of injury to health. It should only be necessary to consider the use of Hygiene Emergency Prohibition Notices in one or more of the following circumstances:

- 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 consequences of not taking immediate and decisive action to protect public health would be unacceptable;
- 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 premises or cease the use of any equipment, process or treatment associated with the imminent risk;
- A proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition.

## **2.3 Remedial Action Notices**

In Approved Premises (premises which require approval to trade due to the high risk nature of the undertaking) officer may consider the use of remedial action notices (a prohibition notice not requiring Court attendance designed to provide a higher level of consumer protection). Officers will only initiate procedures to suspend or

withdraw a business's approval if all other enforcement options have been considered. Any recommendation for suspension or withdrawal will be discussed with a senior officer.

## **2.4 Consistency**

Where any enforcement action considered is believed to be inconsistent with that adopted by other Authorities or is contrary to any advice from the Local Government Group Association (LGA), the matter will be referred to the East Sussex Food Liaison Group.

Where enforcement action proposed is contrary to any advice issued by the relevant Home/Originating Authorities or Primary Authority, the matter will be discussed with them before taking action. Reference to the Home Authority will always be made where enforcement action impacts on aspects of a business policy which has been agreed centrally by the decision making base of the business.

## **APPENDIX 2**

### **SPECIFIC REQUIREMENTS RELATING TO PRIVATE HOUSING**

#### **Introduction**

Lewes District Council is responsible for enforcing a wide range of statutory provisions relating to housing and environmental conditions affecting health and safety.

Our objectives are to:

- improve the standards of homes in the private sector;
- assess local housing conditions ;
- reduce the number of properties with serious risks to health and safety ;
- reduce the number of vulnerable households living in non-decent homes;
- improve energy efficiency, warmth of homes and help reduce fuel poverty;
- improve the standards in HMOs (houses in multiple occupation);
- ensure all residential mobile home sites comply with licence conditions;
- work closely with private landlords towards improving private rented sector conditions;
- provide an excellent service accessible to everyone in private housing.

#### **Housing, Health and Safety Rating System**

The Health and Safety Rating System (HHSRS) is set out in Part 1 of the Housing Act 2004 (the Act). The Council will base enforcement decisions in respect of residential premises on assessments made under the HHSRS.

Action by the Council will be based on a three stage consideration:

- a. The hazard rating determined under HHSRS;
- b. Whether the authority has a duty or power to act, determined by the presence of a hazard above or below a threshold prescribed by Regulations (Category 1 and Category 2 hazards); and
- c. The authority's judgement as to the most appropriate course of action to deal with the hazard.

The Act contains enforcement options, and the choice of the most appropriate course of action is decided having regard to statutory enforcement guidance.

All ratings are made with regard to Government operating guidance and worked examples.

Further information on HHSRS can be found at:

<https://www.gov.uk/government/publications/hhsrs-operating-guidance-housing-act-2004-guidance-about-inspections-and-assessment-of-hazards-given-under-section-9>

### **The Enforcement Framework**

Local Authorities have a duty to act when Category 1 type hazards are found. They have a discretionary power to act in respect of a Category 2 hazard. The courses of action available to authorities where they have either a duty or a power to act are to:

- Serve an improvement notice requiring remedial works;
- Make a prohibition order, which closes the whole or part of a dwelling or restricts the number or class of permitted occupants, or restricts its use;
- Suspend either of the above, until a date or time specified
- Serve a Hazard Awareness Notice;
- Take Emergency Remedial Action;\*
- Serve an Emergency Prohibition Order;\*
- Make a Demolition Order;\*
- Declare a Clearance Area;\*

\* Only in respect of Category 1 hazards

The action the Council chooses to take will be the most appropriate course of action in relation to the hazard. With the exception of a hazard awareness notice, each of the notices and orders are declared on local land charges and outstanding notices may affect the sale or value of a property.

Where the Council takes action and the property owner does not comply, the Act gives powers to authorities to act in default (i.e. carry out the work themselves and recover the cost from the owner of the property) and/or to prosecute. It also enables the Council to charge and recover charges for enforcement action.

The Council may revoke or vary Notices served.

## **Use of Discretionary Power: Decision Rules**

The Housing, Health and Safety Rating System: Enforcement Guidance, statutory guidance made under section 9 of the Housing Act 2004, gives advice on how local housing authorities should use their discretionary powers. In deciding what the most appropriate course of action is, the statutory guidance states that there should be regard to a number of factors. The Council is obliged to give a formal statement of reasons for the action it intends to take.

For the purposes of assessing the hazard, it is assumed that the dwelling is occupied by the most vulnerable household (irrespective of what household is actually in occupation or indeed if it is empty). However, for the purposes of deciding the most appropriate course of action, regard is had to the actual household in occupation.

An authority has to take account of factors such as:

- Extent, severity and location of hazard;
- Proportionality – cost and practicability of remedial works;
- Multiple hazards;
- The extent of control an occupier has over works to the dwelling;
- Vulnerability of current occupiers;
- Social exclusion of tenants;
- The views of the current occupiers;
- The landlord's history of compliance.

In some cases, the Council is required to consult with other bodies when taking enforcement action. An example of this is where we take action to improve fire safety and are required by law to consult with the Fire Authority.

## **The Most Appropriate Course of Action – Category 2 Hazards**

In addition to the Council's duty to take action where a Category 1 hazard exists, the Council will generally exercise its discretion to take the most appropriate course of action where a Category 2 hazard exists in the following situations:

### **A. Band D Hazards**

There will be a general presumption that where a Band D hazard exists, officers will consider action under the Housing Act 2004 unless that would not be the most appropriate course of action.

### **B. Multiple Hazards**

Where a number of hazards at Band D or below appear, when considered together, to create a more serious situation, or where a

property appears to be in a dilapidated condition, they may authorise the most appropriate course of action to be taken.

### C. Exceptional Circumstances

In exceptional circumstances where A and B above are not applicable, a manager may authorise the most appropriate course of action to be taken.

### **Level to which Hazards are to be improved**

The Housing Act 2004 requires only that the works specified when taking the most appropriate course reduce a Category 1 hazard to Category 2 hazard. For example Band C and Band A hazards need only be reduced to Band D. The Council will generally seek to specify works which, whilst not necessarily achieving the ideal, will achieve a significant reduction in the hazard level and in particular will be to a standard that should ensure that no further intervention should be required for a minimum period of twelve months.

### **Tenure**

In considering the most appropriate course of action, the Council will have regard to the extent of control that an occupier has over works required to the dwelling. In normal circumstances, this will mean taking the most appropriate course of action against a private landlord (including a Registered Social Landlord) and in most cases this will involve requiring works to be carried out. With owner occupiers, in most cases they will not be required to carry out works to their own home and the requirement to take the most appropriate course of action will be satisfied by the service of a Hazard Awareness Notice.

However, the Council may in certain circumstances require works to be carried out, or use Emergency Remedial Action or serve an Emergency Prohibition Order, in respect of an owner occupied dwelling. This is likely to be where there is an imminent risk of serious harm to the occupiers themselves or to others outside the household, or where the condition of the dwelling is such that it may adversely affect the health and safety of others outside the household. This may be because of a serious, dangerous deficiency at the property. Another example is a requirement to carry out fire precaution works to a long leasehold flat in a block in multiple occupation.

### **Houses in Multiple Occupation (HMOs)**

The Council has further powers to ensure adequate standards in HMOs are met and maintained. The Housing Act 2004 introduced a

mandatory scheme to licence HMOs. Mandatory licensing is intended to apply only to larger high risk HMOs of three or more stories occupied by five or more people, comprising two or more households.

The HMO licensing regime provides procedures to assess the fitness of a person to be a licence holder, potential management arrangements of the premises and suitability of the property for the number of occupants, including the provision of relevant and adequate equipment and facilities at the property. It is a criminal offence if a person controlling or managing a HMO does not have the required licence. Breaking any condition of a licence is also an offence. The Housing Act 2004 also addresses the on-going management of unlicensed or problem HMOs, with view to protecting occupiers and those in the vicinity and, where possible getting properties licensed and properly managed.

Management Regulations made under the Housing Act 2004 impose duties on landlords and managers of HMOs (whether or not subject to licensing). There are no notice serving powers under the Management Regulations but the Council can prosecute for breach of the regulations, and is able to do so where a premises exhibits multiple contraventions of the regulations.

Overcrowding notices apply to HMOs that are not required to be licensed. The effect of an overcrowding notice is that the person served must comply with the terms of the notice and if they fail to do so they commit an offence for which the Council is able to prosecute. An overcrowding notice must either prohibit new residents or limit the number of people sleeping in the HMO. The Council may take action on overcrowding under the rating system hazard of crowding and space.

### **Residential Mobile Home Sites**

The use of land as a Residential Mobile Home site usually requires a caravan site licence under the Caravan Sites and Control of Development Act 1960 and the Council may impose site licence conditions. The Council is able to take enforcement action under this legislation and the Mobile Homes Act 2013, should a site be operating without a licence or where site licence conditions are not being met.