

PUBLIC PROTECTION ENFORCEMENT POLICY

INTRODUCTION

The Public Protection division of the Directorate of the Environment is divided into four groups: - Environmental Health, Trading Standards, Licensing and Registrars, Community Safety and Catering. The division has extensive regulatory functions, dealing with matters as diverse as animal health and welfare, health and safety, emergency planning, pollution and pest control, dog warden services, public health nuisances, food safety, communicable disease control, abandoned vehicles, licensing, registration of births, marriages and deaths, community safety, anti-social behaviour, littering and dog fouling, consumer safety, weights and measures and fair trading.

These services aim to promote the health, safety, social and economic well being of the public and improve environmental conditions by regulation, information, licensing, advice and action. They also aim to assist legitimate business in meeting their legal obligations within a fair, competitive market place.

This policy only applies to those services within the division that have regulatory responsibilities and has been developed with the Enforcement Concordat's principles of good enforcement as its foundation as well as the principles of the Regulators' Code.

AIM OF THE ENFORCEMENT POLICY

The aim of the Policy is to set out our approach to enforcement action through out the service areas covered, without placing an unnecessary burden on local businesses, organisations, consumers and the public. We intend to apply our legal powers consistently and fairly, whatever the circumstances. This Policy sets out our approach for those affected by our enforcement activities as well as for Officers of the Council.

Objectives.

- : To ensure we enforce the law in a fair and consistent manner
 - To assist and advise business and others in meeting their legal obligations
 - To focus on prevention rather than cure
 - To take firm action against those who flout the law, act irresponsibly, or where there is an immediate risk to health and safety
 - To support economic progress.
- We will also make sure all enforcement activities are;
- Taken in accordance with the principles of good enforcement (best practice guides and / or statutory provisions).

Compatible with the European Convention on Human Rights and the Human Rights Act 1998, to protect the rights of the individual. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

Managed efficiently

Taken promptly and without unnecessary delay

Undertaken consistently by all relevant service areas within Public Protection

Undertaken in a fair and transparent manner

Targeted according to risk and having regard to the National Enforcement Priorities for Wales.

EQUALITY AND DIVERSITY

The authority and its officers in Public Protection will take all reasonable and practical steps to prevent and eliminate unlawful discrimination and encourage good relations between all parties, treating all those involved with equal respect, both when corresponding with those individuals and organisations and during the enforcement proceedings.

This will be done irrespective of the individual's ethnic origin, sex, age, marital status, sexual orientation, disability, gender reassignment, religious beliefs or non-belief, use of Welsh, BSL or other languages, nationality, responsibility for any dependents or any other reason which cannot be shown to be justified.

During the monitoring and review process the Council will also ensure that the enforcement reflects these requirements, all of which are in line with the Council's Strategic Equality Plan. This and other related documents can be found at Equalities, Strategies, Plans and Policies.

This Policy is bilingual and will be provided in any other language or format on request. Officers are aware of and respect cultural requirements and when necessary and with prior notice, will arrange suitable meeting times and venues, and appropriate translation or interpretation services.

When dealing with juveniles or persons who are vulnerable, whether due to learning difficulties, mental illness or in some other way, due regard will be taken of their vulnerability and of any current Codes of Practice whether statutory or not, to ensure these persons are treated fairly.

CONSULTATIONS AND REVIEW

This Policy was subject to consultation during its production. We continue to welcome feedback, particularly responses from affected persons. We strive to monitor continually the content and adherence of our officers to this policy. The Policy will be reviewed regularly and we will endeavour to include suggested improvements in future

revisions where possible. A report on enforcement action taken by the Public Protection Division will be submitted annually to the relevant Scrutiny committee.

This Policy was formally approved by Cabinet on

COMPLAINTS

Any complaints about the application of this Policy should be addressed to the Head of Public Protection at the address below. If the matter is not satisfactorily concluded it will be dealt with in accordance with the Caerphilly County Borough Council Corporate Complaint Scheme

This Policy is published on the Public Protection pages of our website at Caerphilly County Borough Council Website and in hard copy. Requests for copies in other formats or languages or comments on this policy should be sent to the following:-

Head of Public Protection
Environment Directorate
Pontllanfraith House
Pontllanfraith
Blackwood
NP12 2YW
01495 235316

THE PRINCIPLES OF GOOD ENFORCEMENT - LOCAL GOVERNMENT CONCORDAT ON GOOD ENFORCEMENT

The Authority has formally adopted the central and local government Concordat on 'Good Enforcement' and will abide by its principles. Consideration will also be given to any additional guidance or codes of practice on enforcement that are relevant to the Public Protection services. The following principles will also be adhered to:

Openness

We will provide information and advice in plain language and in other languages and formats on request, on the rules that apply, and will distribute this as widely as possible. We will be open about how we set about our work including any charges we set. We will discuss general issues, specific compliance failures or difficulties in complying with the law, we will respond to enquiries and visit individuals when requested.

In certain circumstances we will take steps to raise awareness and increase compliance levels by publicising unlawful business practices or criminal activity and, where appropriate, we will publicise the results of specific court cases and other formal actions.

We will draw up clear standards, setting out the level of service and performance the public and business can expect to receive. These will be developed in consultation with other relevant interested parties, where appropriate. We will publish these standards and our annual performance against them. The standards will be made available to local businesses and others who are regulated.

Helpfulness

We believe that 'prevention is better than cure' and that our role involves actively working with business and individuals to advise on compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number and will encourage businesses and individuals to seek advice and information from us. Applications for licences, registrations, and approval of establishments etc will be dealt with efficiently and promptly. We will ensure that wherever practicable, our enforcement activities are effectively co-ordinated to minimise unnecessary overlaps and time delays.

Proportionality

We will minimise the costs of compliance for business by ensuring that any action we require or take is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the business or persons involved when considering action. We will take particular care to work with small businesses and voluntary and community organisations, so that they can meet their legal obligations without unnecessary expense, where practicable.

When dealing with individual members of the public, the concept of proportionality will also apply, in so far as the relevant legislation permits. We will balance the potential effect of enforcement action on the individual against the harm caused by allowing the activity to continue if it affects communities and others. Where possible we will attempt to identify and contact all individuals concerned with each case.

Consistency

We will carry out our duties in a fair, equitable and consistent manner. Where Officers are expected to exercise judgement in individual cases, we will have arrangements in place to ensure consistency, including effective arrangements for liaison with other authorities and enforcement bodies. This will be achieved through staff development training and where appropriate the use of written procedures and protocols.

THE PRINCIPLES OF GOOD REGULATION - REGULATORS CODE

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Authority to have regard to the Principles of Good Regulation when exercising a specified regulatory function¹. The Regulators Code applies to the regulation of business and supplements the principles of the Enforcement Concordat. The code only applies to specified functions carried out by our Environmental Health, Trading Standards and Licensing services.

Regulators must have regard to the code when developing policies and operational procedures that guide their regulatory activities. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented. Consideration will also be given to any additional guidance or codes of practice on enforcement that are relevant to the regulatory services.

¹ Specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, available at <http://www.legislation.gov.uk/ukdsi/2007/9780110788708/schedule>

Supporting Regulated Businesses to Comply and Grow

We will try to avoid imposing unnecessary regulatory burdens on business through our regulatory activities and we will assess whether the desired outcomes could be achieved by less burdensome means. Our policies and practices will encourage and promote compliance but, in doing so, will try to minimise the negative economic effect of our activities and the cost of compliance. We will take into consideration the size of the regulated entity, capacity and the nature of their activities.

Engaging With Those We Regulate and Hearing Their Views

We will create effective consultation and feedback opportunities to enable continuing cooperative relationships with regulated entities and other interested parties. We will consider the impact of our policies and service standard on businesses, so we invite views from businesses, citizens and others about them.

We will ensure that our officers provide courteous and efficient services to regulated entities and others and take account of comments regarding the behaviour and activity of our enforcement officers.

Complaints will be dealt with in accordance with the Council's Corporate Complaints Procedure. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Basing Our Regulatory Activity On Risk

We will ensure that the allocation of our efforts and resources are prioritised and targeted where they would be most effective by assessing the risks to our regulatory outcomes. Such risk assessments will inform our approach to regulatory activity including data collection, inspection programmes, business advice and enforcement /sanctions. Risk assessment will take into consideration the potential impact of and the likelihood of non-compliance. We will make use of any risk assessment methodology schemes that are devised and approved by Government Departments for our specific service areas. Some of the nationally agreed risk assessment schemes that we adhere to are listed below:

- The Health and Safety Executive / Local Authorities Enforcement Liaison Committee (HELA) Health and Safety Inspection Rating System (A rated premises only)
- The Trading Standards Risk Assessment Scheme
- The FSA Food Hygiene Intervention Rating Scheme
- The FSA Food Standards Intervention Rating Scheme
- The DEFRA Local Authority Integrated Pollution Prevention and Control (LA-IPPC)
- Local Authority Pollution Prevention and Control (LAPPC) Risk Method
- DEFRA Animal Health Risk Assessment Scheme
- The Feed Law Enforcement Code of Practice Animal Feed Law Inspection Rating Scheme

We will ensure that inspections and other visits to check compliance will occur in accordance with a risk assessment methodology, except where visits are requested by businesses or where visits are made to check compliance with our advice regarding rectifying non-compliances or where we act on relevant intelligence or complaints. In those circumstances we may carry out inspections outside the

frequencies stated in the appropriate risk assessment scheme. Health and safety interventions are also project based and are determined on a regional basis in line with HSE's priorities. Certain categories of premises are inspected as they are included in the National Local Authority Enforcement Code Annex A - activities/sectors for proactive inspection. In addition we may use a small element of random inspection in our programme.

When we carry out a revisit to check that non-compliances have been rectified we will expect this to have been implemented, at least to a significant extent, and for the business to demonstrate that they have improved their systems to prevent similar non-compliances occurring in the future. If non-compliances have continued we will consider taking more formal enforcement action.

We will focus our greatest inspection efforts on businesses where our risk assessment shows that a compliance breach would pose a serious risk to regulatory outcome and there is a high likelihood of non-compliance by business. We will provide feedback about the results of our visits including the more positive aspects of the visits and encourage and reinforce good practices. We will have regard to published inspection plans for businesses that are a Primary Authority partnership when conducting our programmed activity at the business.

We will comply with the requirements of the Regulatory Enforcement and Sanctions Act 2008, as amended when we are considering taking enforcement action against any business or organisation that has a Primary Authority Partnership, and will have regard to any relevant guidance issued by the Secretary of State. In particular we will consult with the Primary Authority and take into account any advice that they have provided, notify them of any proposed enforcement action and comply with the statutory procedure if the Primary Authority does not consent to us taking this action.

At every step of the decision making process we will choose the most appropriate type of intervention or way of working with businesses, including when targeting checks on compliance or taking enforcement action. If the performance of a business is seen to represent a greater or lesser risk than others of a similar type, we will make a change to their risk rating when this is allowed by the relevant risk assessment scheme. We will recognise their compliance record, including evidence of any external verification so that we can consider any appropriate earned recognition approaches. We will review the effectiveness of our regulatory activities in delivering the desired outcomes and will make any necessary adjustments accordingly.

SHARING INFORMATION ABOUT COMPLIANCE AND RISK

When determining the data we require from businesses we will endeavour to reduce business costs where possible by varying data requests according to risk, limiting collection to specific businesses or sectors, reducing the frequency of data collection, obtaining data from other sources, allowing electronic submission and only requesting data which is justified by risk assessment. In order to help target our resources and activities and to minimise duplication we will share information about business with other regulators when the law allows this. Where there is a need for this authority to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988.

Making Information, Guidance And Advice Available To Business

We will provide general information, advice and guidance free of charge to make it easier for business to understand and meet their legal obligations and we will provide it in clear, concise and accessible language. Where possible we will look to utilise any relevant national guidance. Officers are encouraged to promote compliance with the law by raising awareness of relevant standards and legal requirements by means of press statements, distributing leaflets and face-to-face contact. Face to face contact is generally on request or by means of a programmed visit to discuss general compliance.

When offering compliance advice we will distinguish between legal requirements and suggested best practice and we will try not to impose any unnecessary burdens. Advice will be confirmed in writing, if requested. If our advice conflicts with that provided by another regulator we will liaise with them in order to reach agreement. Businesses may seek advice from us without directly triggering an enforcement action. If a business wishes to enter into a formal Primary Authority Partnership or Home Authority agreement with us, we will use our best efforts to achieve a satisfactory arrangement.

Where we encounter non-compliances we will explain the nature of the non-compliance, clearly advise on any action required and why and explain the reasons behind any decisions we make in relation to them.

When considering formal action we will, where appropriate, discuss the circumstances with those suspected of the breach and take these into account when deciding on the best approach. However this will not apply where immediate action is required to prevent or respond to a serious breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

Ensuring Our Approach Is Transparent

We will publish a set of clear service standards about:

- How we communicate with those we regulate and how we can be contacted;
- Our approach to providing information, guidance and advice;
- Our approach to checks on compliance and protocols for our conduct;
- Our enforcement policy;
- Our fees and charges;
- Our appeals procedure;
- Our complaints procedure;

These service standards are available on the Councils website ([hyperlink](#)) and will be provided on request. We will also publish on a regular basis details on our performance against these standards including customer satisfaction survey results and data on complaints and appeals.

ENFORCEMENT OPTIONS

A number of enforcement options are available and Officers are authorised to enforce legislation in accordance with the Council's **Scheme of Delegation**

The appropriate option will be determined following careful consideration of the circumstances of each individual case. Our enforcement officers will interpret and apply legal requirements and enforcement policies consistently and fairly.

Our Enforcement Actions Will:

- Aim to change the behaviour of the offender and deter future non-compliance;
- Aim to eliminate any financial gain or benefit from non-compliance;
- Consider what is appropriate to the nature of the offence and the regulatory issue;
- Be proportionate to the nature of the offence and the harm caused, with consideration of the size of the business entity where relevant
- Aim to restore the harm caused by regulatory non-compliance, where appropriate;

Conduct Of Investigations

Officers investigating breaches of legislation may use powers relevant to the specific legislation they are enforcing. These can include entering premises, in some instances under a warrant of entry, to inspect goods, services, procedures, and documentation, carry out an investigation, requiring a name and address, taking samples, making test purchases and seizing items. Some legislation may include offences for obstructing an authorised officer or failing to comply with a reasonable requirement made by the officer.

As well as using such powers officers may need to speak to individuals and, in the more serious case, interview persons under caution. Such interviews will take place in accordance with the Police and Criminal Evidence Act 1984. In the most serious cases officers may make arrangements for a potential defendant to be arrested by the police to facilitate the investigation. The authority will comply with any relevant time limits specified in legislation for commencing legal proceedings. All investigations will be conducted expeditiously.

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to this authority:

The Police and Criminal Evidence Act 1984

The Criminal Procedure and Investigations Act 1996

The Regulation of Investigatory Powers Act 2000

The Criminal Justice and Police Act 2001

The Anti-social Behaviour, Crime and Policing Act 2014

The Human Rights Act 1998

Where there is a need for CCBC to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988. Authorised officers will comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice and will keep

alleged offenders, complainants and witnesses informed of the progress of investigations. Investigating officers and managers will make a recommendation on suitable outcomes to the Head of Public Protection who in consultation with Legal Services will make the final decision.

Shared Enforcement Role

There are situations where the local authority shares or has a complimentary enforcement role with other agencies, e.g. Police, Health and Safety Executive. In such situations we shall have due regard to the Data Protection Act 1998 any Information Sharing Protocols, Codes of Practice or Memoranda of Understanding that exist in seeking to co-operate with those agencies.

On occasion, it will be more appropriate for other agencies or other Local Authorities to deal with particular breaches of legislation. In carrying out shared duties, we will still comply with our Enforcement Policy, but the other agencies will maintain the right to take any action they consider to be necessary.

If an offender commits an offence in a number of Local Authority areas, it may be more appropriate for one Council to take a prosecution for all the offences, including ones that took place outside of its area. In such circumstances we may enter into legal agreements with other councils for one authority to take the lead role, making use of the provisions under Sections 19 of the Local Government Act 2000 and 222 of the Local Government Act 1972 or any other enabling powers.

Informal Action

In circumstances where minor breaches of legislation have been identified formal action may not be considered appropriate. There may be no significant risk and the offence appears to have been committed by a genuine mistake or accident and, from the individuals/businesses past history, it can be reasonably expected that informal action will achieve compliance. Therefore formal action may not be in the public interest. Informal action may consist of verbal or written warnings.

We will clearly identify any contraventions of the law and give advice on how to put them right. We will distinguish between legal requirements and best practice. The time allowed will be reasonable and will take into account the seriousness of the contravention. Continued non-compliance of legal requirements could result in an escalation to more formal enforcement action.

We will take account of any advice or guidance provided to businesses by their Primary Authority Partnership when considering the most appropriate enforcement action for us to take and may discuss any need for compliance advice and support with the primary authority.

The authority may in some circumstances accept voluntary undertakings that breaches will be rectified and /or recurrences prevented. Any failure to honour such undertakings is likely to result in enforcement action.

Formal Action

Statutory Notices

Certain legislation allows statutory notices to be served to require offenders to take specific actions or cease activities within particular timescales. These can include prohibition, improvement, revocation, suspension and remedial action, cessation and rectification, seizure and detention notices. A statutory notice will clearly set out the actions that must be taken and the timescale for completion. Failure to comply with statutory notices can be an offence and in some instances may allow the Authority to carry out works in default and charge the person served with the notice for the cost of the work. All notices will include details of any applicable appeal procedure. Some notices issued in respect of premises may be affixed to the premises and /or registered as local land charges.

Fixed Penalty Notice, Penalty Notices for Disorder, Penalty Charge Notices and Community Protection Notices.

In some areas, for example dog fouling, littering, disorder, non display of food hygiene rating, sales of alcohol to minors, and smoking in enclosed public places officers can exercise powers to issue either Fixed Penalty Notices or Penalty Notices for Disorder, which give the offender an opportunity to avoid prosecution by payment of the penalty. They are recognised as a low-level enforcement tool, whereby they do not create a criminal record for the offender. Choosing to pay the penalty is not an admission of guilt and so the issuing of these notices cannot be used as evidence in any future court proceedings. In some circumstances, particularly where breaches are serious or recurrent, or the notice is ignored, a prosecution may be more appropriate. Such action will only continue where there is adequate evidence to support a prosecution. Failure to pay the amount imposed by the notice may result in the offender being pursued through the courts. All notices issued will include details of any applicable appeal procedure.

The service areas will follow relevant guidance on issuing such notices to juveniles, with actions taken being influenced by the offender's age and the circumstances of the offence. When dealing with juveniles who are vulnerable, whether due to learning difficulties, mental illness or in some other way, due regard will be taken of their vulnerability and of any current Codes of Practice whether statutory or not, to ensure these persons are treated fairly. Where a fixed penalty is issued to a juvenile which remains unpaid the authority will implement the Resolution of non payment of FPNs Youth Offending Service intervention programme to minimise the number of cases referred to the criminal justice system. This is outlined in the process map in appendix 1.

Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

Community Protection Notices (CPN's) may be issued where anti-social behaviour is of a persistent or continuing nature and is affecting a community. A warning stipulating the matter to be resolved will be issued first. A CPN will stipulate the action to be taken

to resolve the issue and the reasonable timeframe to achieve this. Failure to comply with a CPN may result in prosecution.

Revocation, Review and Suspension

The authority issues a number of licences, permits and approvals. It also has 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 licence conditions may also lead to a review of the licence, which may result in its revocation or amendment. When considering future licence applications, the Authority may take previous breaches and enforcement action into account. In relation to reviews or revocations of licences, licence holders have the right to attend hearings and to be informed of their right of appeal against the decision.

The Authority is responsible for issuing Environmental Permits to operators who carry out certain types of industrial processes. The permits contain conditions intended to prevent or minimise pollution. Enforcement powers include revocation and suspension of permits, and in serious cases prosecution for non-compliance with an enforcement notice.

The Authority is responsible for issuing approvals to certain food establishments. The approval authorises the handling of certain types of product within an establishment. Enforcement powers include revocation and suspension of approvals.

Part 2A Orders

The Authority can apply for Part 2A orders under the Health Protection (Part 2A Orders) (Wales) Regulations 2010, to deal with threats to human health from infection or contamination that presents, or could present significant harm. It is for the JP to decide whether an order is necessary to address the risk. If the JP is satisfied by the local authority's case, an order can be made under the Public Health (Control of Diseases) Act 1984 Act. Such orders for instance can specify that an operation must cease and articles and equipment should be surrendered. The Order can also specify to destroy and dispose of surrendered articles.

Injunctive Actions

The authority may seek injunctive orders in the Civil Courts to stop infringements of a wide range of laws that seriously affect the rights of others. Officers may seek agreement from a person /business to:

- Cease a particular action
- Comply with a negative requirement
- Comply with a positive requirement
- Sign an informal undertaking
- Sign a formal undertaking

In urgent cases or where the above cannot be agreed upon, the services may seek an injunctive order in the civil courts or an interim, or without notice order. Contravention of injunction, formal undertaking or order issued by the courts could result in contempt of court and be liable to a fine or imprisonment.

In certain circumstances officers are required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice.

The Council is one of the “responsible authorities” of the Safer Caerphilly Community Safety Partnership (SCCSP). The SCCSP operates a multi-agency “4 Strike” Anti-Social Behaviour (ASB) process, into which partners may refer perpetrators of ASB. Where behaviour is not moderated, and in appropriate cases, the Council may apply to the County Court, or Youth Court in the case of juveniles, on behalf of the partnership, for grant of an Anti-social Behaviour Order (Anti-Social Behaviour Injunction after enactment of Section 1 of the Anti-social Behaviour, Crime and Policing Act 2014). Following conviction of a criminal offence, the Crown Prosecution Service (via the Police), or the local authority may apply for the grant of a Criminal Behaviour Order (CBO).

Confiscation of Assets

Under the Proceeds of Crime Act 2002, officers may seek Confiscation Orders against persons who have been convicted of offences where they have made money from their crimes. The purpose is to recover the financial benefit that the offender has obtained from their crimes and act as an additional deterrent to others. Proceedings only take place after a criminal conviction has been obtained, and are conducted according to the civil standard of proof.

Seizure and Forfeiture

Certain legislation enables officers to seize goods, equipment or documents, where they may be required as evidence for possible future court proceedings or to prevent further offences from being committed. When items are seized an appropriate receipt will be given to the person from whom the items are taken. In certain circumstances an application will be made to the Magistrates’ Courts for forfeiture of the goods. Forfeiture may be used in conjunction with seizure and / or prosecution, where there is a need to dispose of the goods or equipment to prevent them being used to cause a further problem or to prevent them re –entering the market place.

Taking Animals into Possession

Under the Animal Welfare Act 2006, if a veterinary surgeon certifies that ‘protected animals’ are suffering or are likely to suffer if their circumstances do not change, we may consider taking them into possession and applying for Orders for re-imburement of expenses incurred and subsequent disposal. Additionally Horses and Ponies found fly grazing, straying or that have been abandoned may be seized and impounded and owners pursued for the associated costs. In cases of non payment of these costs the authority may keep the animals and dispose of them in accordance with the relevant legislation.

Tobacco Restriction Orders

Where an offender continually breaks the law by selling tobacco products to young people, we may make a complaint to the court and apply for a restricted premises order or a restricted sale order. The effect of such an order is to prohibit a premise or a person from selling tobacco for a period of time up to one year.

Fixed Monetary Penalties

The authority has powers under certain legislation to impose Fixed Monetary Penalties, which are not intended to be used for more serious cases of non-compliance. Fixed Monetary Penalties are not criminal fines and do not appear on an individual's criminal record. Fixed Monetary Penalties cannot be used in conjunction with any other sanction. The form and content of such notices varies between different legislation but will generally include details of the offence, the amount of penalty, the period during which proceedings will not be taken, how to appeal and where to pay. Usually the legislation allows the authority to amend or withdraw such notices if it is appropriate to do so.

Discretionary Requirements

Under certain legislation the authority has the power to impose Variable Monetary Penalties and Non-Monetary Discretionary Requirements.

Variable Monetary Penalties may be imposed up to a maximum level set out in the relevant legislation.

Non-Monetary Discretionary Requirements are requirements to take steps to ensure that a breach does not continue or recur. Where the authority chooses to impose Non-Monetary Discretionary Requirements it will clearly set out what those steps should be and the time period within which they must be completed. A failure to comply with the requirements is likely to result in a financial penalty.

The Authority may use Variable Monetary Penalties and Non-Monetary Discretionary Requirements in combination.

Simple Cautions

The use of a Simple Caution offers an alternative to prosecution and may be considered during any decision to prosecute. A simple caution is an admission of guilt but is not a form of sentence, nor is it a criminal conviction. Before issuing a Simple Caution the following conditions must be satisfied:

- There must be evidence of guilt sufficient to give a realistic prospect of conviction
- The offender must understand the significance of a caution and consent to it
- The offender must admit to the offence
- The offender must be over 18 years of age

A simple caution is a serious matter, which will be recorded and will influence any future decision as to enforcement action should the business or person offend again. A simple caution can be cited in court, so it may influence the severity of any sentence imposed by the court. The refusal of an offender to be cautioned will be a material consideration when deciding whether the offender should then be prosecuted for that offence. Accepting a simple caution may have consequences if an individual seeks certain types of employment.

Prosecution

Where the circumstances warrant it and the alternative actions listed above are considered inappropriate, then prosecution may result. As with all the previous methods of enforcement, in deciding what action to take, a number of factors will be taken into consideration including:

- The nature and seriousness of the offence
- The previous history of the offender
- Any statutory defence available
- Action taken to avoid reoccurrence
- Any explanation offered, and if the law allows, the circumstances and attitude of the offender
- What course of action will best serve the public interest
- Realistic prospect of conviction

The decision to prosecute or any other formal action is taken by an appropriate authorised officer and takes into account:

- This policy
- The current Crown Prosecution Service, 'Code for Crown Prosecutors'
The CPS: The Code for Crown Prosecutors
- Any statutory requirements
- Consideration of all other relevant codes of practice

The Code for Crown Prosecutors has two main tests that must be satisfied;

Evidential Test -Is there sufficient evidence to provide a realistic prospect of conviction?

Public Interest Test -Is it in the public interest to take action?

Charging Suspects

There may be circumstances where the police have arrested a suspect but the offences will be investigated by the authority. After interview at the police station it may be appropriate to charge the offender and bail to an appropriate court for the offences rather than to report the suspect so that summonses can be issued at a later date. A senior officer will consider the evidential and public interest tests and if satisfied will instruct an authorised officer to charge the suspect with the offence(s) at the police station.

Fixed Penalty Notice Process

Appendix 1

