



ENVIRONMENTAL ENFORCEMENT POLICY

1. Aim

The aim of this policy is to secure efficient and effective compliance through a fair and consistent approach. This includes taking into account information from the Regulators Code, the Crown Prosecution Service, the Home Office and other Government Codes of Practice and guidance.

2. Scope

This policy covers the following functional areas:

- Pest control
- Odour
- Drainage
- Noise
- Air Pollution
- Fly-tipping
- Littering
- Graffiti
- Contaminated Land
- Dogs
- Accumulations on private land
- Light

3. Authorisations

In accordance with the Council's constitution Chief Officers have a duty to appoint officers with suitable qualifications, experience and level of competency to enforce, or, to ensure that appropriate officers are trained to the required level to undertake an enforcement role.

Authority to exercise executive functions in relation to Environmental Protection and Environmental Crime has been delegated to the Head of Regulatory Services as detailed in the Council's Constitution. These powers have then been further delegated where considered appropriate and necessary, as outlined in the Head of Regulatory Services Scheme of Officer's Delegations Memorandum. .

4. General Principles

This policy provides a framework to aid Environmental Protection & Environmental Crime officers in deciding what form of enforcement is the most appropriate. Following these guidelines should help maintain a degree of consistency.

When carrying out enforcement action it is important that the Council works within the statutory framework set out and that it follows best practice and procedure.

In particular, the Council is committed to acting in a fair and consistent manner and has adopted this enforcement policy as part of this commitment. When exercising its enforcement functions, the Council will act in such a way which is

- transparent;
- accountable;
- proportionate;
- consistent;
- targeted only at cases in which action is needed

Relevant advice/guidance and legislation underpinning this strategy includes

- Dover District Councils Overarching enforcement strategy
- Advice from CPS
- Home Office COPS and Guidance
- Regulator's Code
- Human Rights Act 1998
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigator Powers Act 2000
- Data Protection Act 1998
- Freedom of Information Act 2000
- The Protection of Freedoms Act 2012
- The Crime and Disorder Act 1998
- Environmental Protection Act 1990
- Clean Neighbourhoods & Environment Act 2005
- Dog Fouling of Land Act (1996)
- Anti-social Behaviour Act (2003)
- Anti-social Behaviour Crime and Policing Act 2014
- Equal Rights and anti-discrimination legislation

and any advice issued by e.g. the Chartered Institute of Environmental Health, Central Government and other relevant bodies.

The above list is not exhaustive.

5. Interventions and Enforcement

After considering all relevant information one or more of the following courses of action shall be taken:-

a) No action – where no problems are witnessed and there is insufficient evidence to proceed.

b) Informal Action.

Informal action includes:-

- Verbal advice. To be given where the offender shows an understanding and willingness to remedy contraventions of a minor nature.
- Written advice. To be used where there is no imminent risk to health and the officer believes the offender will co-operate in remedying the offence. Written advice may also be given where it is felt necessary for the offender to consider their liabilities under law.

Informal action is appropriate where;

- the act or omission is trivial nature and it can be simply remedied.
- confidence in the individual/businesses management is high
- consequences of non-compliance will not pose a significant risk to health.
- there is insufficient evidence for formal action at the time (although formal action may follow at a later date).

c) Fixed penalty notice (FPN)

This option can only be used for certain offences, e.g. littering and failing to remove faeces after a dog has fouled. This option gives the offender the opportunity to discharge liability for the offence by payment of a specified amount. FPNs must only be issued where there is sufficient evidence to prosecute. If the FPN is not paid within a specified time the case should proceed to prosecution.

Further information on the use of FPNs is given in the Fixed Penalty Notice Operational Policy

d) Statutory notice

To be issued where

- there is enough evidence to prove an offence in court
- informal action has failed
- the officer has low expectations of the individual/business remedying the problem
- the service of a notice and subsequent enforcement, e.g. works in default, is the only realistic option to abate a nuisance or secure compliance.
- there is a risk to public health

When drafting notices, realistic time limits shall be imposed and the case officer shall, where possible or appropriate, discuss these with the recipient.

Where practicable officers shall also discuss with the recipient any works specified. The recipient should be advised that alternative methods of compliance should be put in writing along with requests for extension of time limits.

Failure to comply with statutory notices will lead to legal proceedings and/or carrying out the works specified in the notice in the recipients default.

Only officers with the appropriate delegated authority are able to sign any formal notices. Reference should be made to the Department's scheme of delegation.

e) Seizure

Noise equipment

Where a noise abatement notice served under the Environmental Protection Act 1990 is persistently breached, officers may enter a property to seize noise making equipment under [Section 81\(3\) of the Environmental Protection Act 1990](#) as extended by the [Noise Act 1996](#) and seize noise making equipment to abate the nuisance and/or prevent further recurrence.

Vehicles

Where a person is convicted for fly-tipping under [Section 33 of the Environmental Protection Act 1990](#) the court can order the seizure of any vehicles involved in the offence. The court can also make an order depriving the owner of rights in any vehicle used in the commission of the offence and vesting these in the Environment Agency or a waste collection authority.

The Control of Pollution (Amendment) Act 1989 makes it a criminal offence for a person who is not a registered carrier to transport controlled waste to or from any place in Great Britain. It also provides under, [The Controlled Waste \(Registration of Carriers and Seizure of Vehicles\) Regulations 1991](#) for the seizure and disposal of vehicles used for illegal waste disposal.

f) Revocation of authorisation/enforcement notice/prohibition notice

- Revocation. [Section 12 – Environmental Protection Act 1990](#). Where there is reason to believe that an authorised prescribed process has not been carried on, or not for a period of twelve months, the authorisation will be revoked by giving written notice to the permit holder
- Enforcement notice. [Section 13 – EPA 1990](#). To be used where it is believed the person carrying on a prescribed process is contravening any condition of the authorisation, or is likely to contravene any such condition.
- Prohibition notice. [Section 14 EPA 1990](#) – To be used where the carrying on of a prescribed process or the continuing to carry it on in a particular manner, involves an imminent risk of serious pollution of the environment. The notice shall be served on the person carrying on the process

g) Simple Caution

See [guidance](#) issued from the Ministry of Justice.

Cautions should only be issued when

- there is enough evidence to prosecute
- the offender admits the offence
- the offender understands the significance of, and is willing to accept, the caution

If the offender refuses a simple caution then the case should proceed to prosecution.

Any cases where it is felt a simple caution is warranted, must be discussed with the Head of Regulatory Services or Environmental Protection Manager in conjunction with Legal Services

h) Works in default

Under certain pieces of legislation the Council is empowered to carry out works in default and recover the costs. Works in default may be carried out where:

- a notice has not been complied with within the specified time
- there is no prospect of the person responsible carrying out the work, e.g. the person is absent or infirm
- speedy abatement is required, e.g. a misfiring burglar alarm
- the circumstances are such that works in default are a more appropriate or effective remedy than prosecution
- the problem persists after prosecution.

i) Prosecution

When considering prosecution officers must follow the guidance in the [Code of Practice for Crown Prosecutors](#).

Prosecution may be initiated when one or more of the following are met: -

- there is a history of similar offences and/or written warnings have been ignored
- non-compliance with a statutory notice
- failure to pay a fixed penalty notice
- refusal to accept a simple caution
- serious breach of the law leading to a risk to the health of residents and/or the environment
- there is enough admissible and reliable evidence to show an offence has been committed by an identifiable individual/business

Any cases where it is felt a prosecution is warranted, must be discussed with the Head of Regulatory Services or Environmental Protection Manager in conjunction with Legal Services

j) Injunction

On rare occasions action under the relevant legislation may be considered ineffective, e.g. where previous prosecution has not resulted in improvement

or continued wilful breaches of legislation. Any cases where it is felt an injunction is warranted must be discussed with the Head of Regulatory Services.

Not all of these options are available in every case. This underlines the need to consider powers available under each piece of legislation individually.

In making any decision on enforcement, officers will consider the following criteria:-

- 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 in the case of a business, the confidence in management
- the likely ability of any witnesses to give evidence and their willingness to cooperate
- the Crown Prosecution Service's Code of Practice for Crown Prosecutors

6. Policy monitoring

To ensure compliance with this policy, the enforcement activities of the Environmental Protection and Environmental Crime Teams will be monitored regularly by the Environmental Protection Manager and are subjected to a regular audit process.

This policy will be reviewed annually by the Environmental Protection Manager and Head of Regulatory Services

7. Training and Development

Appropriate resources will be made available for training officers to enable them to successfully carry out their duties within this policy

8. Equality impact assessment

This Policy falls within the Overarching Enforcement Strategy Equality Impact Assessment.